

BERMUDA SUPREME COURT

Petroplus Finance 2 Ltd [2014] SC (Bda) 91 Com (7 November 2014)

WINDING UP - COMPANIES ACT, 1981 - WHETHER COMMITTEE OF INSPECTION CAN BE COMPRISED OF SOLE CREDITOR - DE FACTO COMMITTEE OF INSPECTION

The Official Receiver/Provisional Liquidator applied by Summons for directions from the Court following the first Meeting of Creditors. One matter of legal principle was drawn to the Court's attention in that only one very significant creditor had voted in favour of the key resolutions to: (1) appoint the Joint Liquidators of the Company; and (2) to appoint a Committee of Inspection comprising only of that substantial creditor.

The difficulty with the second resolution, which was duly passed as an administrative matter, was the doubt surrounding whether or not a committee of inspection under Bermuda law could be constituted by a single creditor. The Chief Justice noted that the position was not made explicit by our legislative scheme, but looking at key statutory provisions, he noted that it was inferred that Parliament envisaged that a committee, consistent with the natural and ordinary meaning of the word 'committee', would consist of more than one creditor.

In the present case the Chief Justice decided to make an Order providing that the Joint Liquidators could deal with the principal creditor as if it was a *de facto* Committee of Inspection (in line with the decision of Hellman J in the related case of *Re Petroplus Finance Ltd, Commercial Court, Companies (Winding Up)* 2012: 259). However, the Chief Justice emphasised that such an Order was subject to one important *caveat*. While as a practical matter the Joint Liquidators were free to consult with the principal creditor in the same way and in relation to the same sort of matters that a committee of inspection would be consulted on, the position as a matter of strict law was materially different. Where the *Companies Act 1981*, in particular Section 175, specifies certain powers which the liquidators can only exercise with the approval of either the Court or the committee of

inspection, the fact that there is a *de facto* committee of inspection cannot clothe that *de facto* committee with authority to empower the liquidators in the same way that a duly constituted committee could. The Court held that to direct that should this happen it would effectively extend the operation of the statute beyond its intended scope. As a result, the Chief Justice refused to make a direction that the sole significant creditor should be appointed as a sole committee of inspection.

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