EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS
COMMERCIAL DIVISION

IN THE HIGH COURT OF JUSTICE

CLAIM NO. BVIHC (COM) 30 OF 2014

IN THE MATTER OF KEYSTONE PRIVATE EQUITY INVESTMENTS LIMITED (IN LIQUIDATION ("THE COMPANY)

AND IN THE MATTER OF THE INSOLVENCY ACT 2003

BETWEEN:

RAINER BUSCH AND MERCURY PARTNERS Gmbh

Applicants

AND

RUSSELL CRUMPLER AND KRIS BEIGHTON (Joint Liquidators of the Company)

Respondents

Appearances:

Mr. Michael Collings QC and with him Mr. Bharesh Patel for the Applicants
Mr. Mark Forte and with him Mr. Adams Hinks for the Joint Liquidators/Respondents

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2015: January 18;
2016: January 26

Application to reverse disallowance of claims in liquidation – Proper test to be applied in section 273 application under Insolvency Act 2003 – the 'perversity test' – Whether appropriate to decide issue under summary procedure – Whether court should disturb exercise of liquidators' discretion.

JUDGMENT

The Section 273 Application

[1] **FARARA J [Ag.]:** On 18 January 2016, I heard an application by two unsecured creditors of the Company, made pursuant to section 273 of the Insolvency Act 2003 ("the Section 273 Application") against the Respondents who are the court appointed joint liquidators ("the JLs"). The application is also made pursuant to the inherent jurisdiction of the Court. The Applicants seek certain directions and an Order in terms of the draft Order accompanying the Application.

[2] By the terms of the draft Order[1], the Applicants seek the following substantive relief:-

(1) That the indemnity under Articles 159-164 of the Articles of Association of the Company be applied to the costs incurred by Rainer Busch as a Director of the company with regard to the legal fees of Mourant Ozannes;
(2) That the indemnity under clause 14 of the Investment Management Agreement dated 1 March 2005 (as amended) (the "IMA") be applied to the costs incurred by Mercury Partners GmbH ("Mercury") with regard to the legal fees of Mourant Ozannes;
(3) That the Respondents confirm whether they adopt the IMA and if so, that Mercury be allowed to perform its obligations under the IMA without any restriction from the Respondents, and that it be entitled to be paid its fees due under the IMA when they become properly due;
(4) That the Respondents provide an explanation of all funds passing between the Respondents and Guy Huet, Huet & Cie, Intimis Management SA, and/or Intimis Investments SA within 14 days of the date of this Order;
(5) That the Respondents provide to the Court and to the shareholders of the Company the books of the Company for inspection within 7 days of the date of this Order; and
(6) The Applicant's costs of the application be admitted as costs in the liquidation and paid pursuant to the indemnities referred to at point 1 and/or point 2 above.

[3] As the matter progressed before me, the Applicants sought orders in respect of the following proofs of claim in the liquidation of the Company:-

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[1] See Tab 1

(1) a claim by Mr. Busch and Mercury ("the Applicants) for legal fees of Mourant Ozannes BVI in the amount of $103,076.75 ("the Mourant Fees") incurred pre-appointment of the Joint Liquidators ("JLs"); and

(2) a claim by Mercury for its fees as investment manager under and pursuant to the Investment Management Agreement ("IMA") entered into as of 1st March 2005, and amended and restated as of 1st March 2010, between Mercury and Keystone Private Equity Investments Limited, a BVI Fund ("the Company")[2].

[4] The claim by Mercury for fees under the IMA was put in the alternative. If the IMA was not properly terminated on 31 December 2014 by the JLs acting on behalf of the Company, then Mercury claims an entitlement to be paid fees up to 31st March 2015 when the effective term of the IMA ended. The sum claimed as management fees for this latter period, calculated as a percentage of net asset value, is $191,528.91. Alternatively, if the IMA was properly terminated on 31st December 2014 by the notice of termination issued by the JLs, the quantum of fees claimed would be $148,425.30.

[5] As matters further progressed, Mr. Collings QC, learned counsel for the Applicants, in his closing address, clarified the Applicants' position in light of the evidence, on certain of the items listed in their Scott Schedule[3] as follows:-

(i) the challenge to the sum of $37,179.00 admitted in the liquidation to Mr. Huet by the JLs was no longer being pursued in light of the explanation given by Mr. Crumpler in his oral testimony;

(ii) the sum of $100,962.31 admitted in the liquidation by the JLs in respect of Mr. Huet, includes a sum of approximately $20,000 payable to KPMG. The remaining approximately $80,000 paid to Mr. Huet relates, in part, to the steps taken in March 2014 before the Court, that is, an application by Mr. Huet to wind up the Company, in respect of which the Court ruled he had no standing. The position of the Applicants on the approximately $80,000 approved to Mr. Huet, is that they no longer take issue with that payment, but submit that, on the evidence, if Mr. Huet can be paid by the JLs for fees incurred in bringing an application without the standing to do so, then fairness

[2] See Tab 11 pages 37 to 42
[3] See Tab 4

would dictate that Mr. Busch's fees, incurred with Mourant for successfully preventing the appointment of liquidators on the application improperly made by Mr. Huet, ought also to be paid;

(iii) as regards the sum of $77,691.00 admitted as an expense of the liquidation to Intimis, the Applicants no longer take any issue with this, as this was incurred in respect of the successful application by Intimis to wind up the Company, and covered by the Order of Bannister J made 28 April 2014.[4] and

(iv) the sum of $103,077.00 claimed by Mercury in respect of the Mourant Fees incurred by Mr. Busch and Mercury, includes a sum of $12,230 for advice received by Mr. Busch on FATCA, which advice the JLs had agreed to pay, provided the advice was handed over to them by Mr. Busch, which he did not. Accordingly, the Applicants were now prepared to admit that they ought not to be paid that sum of $12,230 in the liquidation. The effect of this is to reduce the sum being claimed in the liquidation in respect of the Mourant Fees to $90,847.00.

[6] The Application is supported by the First Affidavit of Mr. Busch filed 10th November 2014[5], together with the documents at Exhibit RB-1 thereto[6]. It is also supported by the Applicants Scott Schedule[7], and the Second Affidavit of Mr. Busch filed 11 December 2014[8] with Exhibit RB-2[9] .

[7] The JLs rely on the Second Affidavit of Mr. Crumpler filed 8th December 2014[10] with Exhibit RC-2[11], and the JLs responses to the Scott Schedule[12].

[8] Reliance has also been placed on a series of inter-solicitors correspondence[13], and other letters[14] passing between the lawyers with regard to the questions to be

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[4] See Tab 11pages 69 to 70
[5] See Tab 10
[6] See Tab 11
[7] See Tab 3
[8] See Tab 14
[9] See Tab 15
[10] See Tab 12
[11] See Tab 18
[12] See Tab 4
[13] See Tab 5
[14] See Tabs 7, 8 and 9

put by the Applicants' lawyers to Mr. Crumpler in cross examination, and his responses thereto.

Directions by the Court

[9] The procedural foundation relating to the Application is the Order of Bannister J. dated 11 December 2014[15] and the Order of Leon J dated 6 October 2015.[16] Justice Bannister gave directions for the Applicants to list in a Scott Schedule their claims in the liquidation and their objections to other claims or payments admitted by the JLs in the liquidation, and for the JLs to respond thereto. It is noteworthy that Mr. Busch was ordered by Bannister J summarily "*to execute a draft change of mandate provided to him by the Joint Liquidators failing which the Court will direct the Registrar to execute the mandate under its powers pursuant to section 25 of the Supreme Court Act.*" As I understand it, this was necessary because Mr. Busch had failed to co-operate with the JLs in the discharge of their duties to collect in and to take control of the assets of the Company.

[10] The Order of Justice Leon provided for the listing of the Application for a full day's hearing, for the Applicants to provide a list of questions to the JLs for their written responses, and for Mr. Crumpler to be available at the hearing for cross-examination.

Cross Examination of Mr. Crumpler

[11] At the hearing before me on 18th January 2016, Mr. Crumpler was extensively cross-examined by Mr. Collings QC and re-examined by Mr. Forte, learned counsel for the JLs. Essentially, the cross-examination focused on the two main claims by the Applicants in the liquidation – the Mourant Fees and the management fees under the IMA.

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[15] See Tab 1
[16] See Tab 6

[12] The gist of Mr. Crumpler's explanation in his oral evidence, as to why the JLs did not admit the full sum claimed by Mr. Busch and Mercury for the Mourant Fees was that having reviewed the matters which transpired before the winding up order in respect of the Company (which had been, for some considerable time, hopelessly deadlocked), including Mr. Busch's challenge to the constitutionality of the proposed EGM on 21 January 2014[17], and his successful challenge to Mr Huet's standing to bring an application on 27 March 2014 to appoint liquidators of the Company, the JLs considered that these actions were not in the best interest of the Company. Mr. Busch's efforts and steps were intended, not to find a way out of the deadlock and to put the Company into liquidation, but to prevent it being put into liquidation.

[13] This, Mr. Crumpler testified, was in contrast to the legal fees of Withers incurred by M. Huet pre-liquidation of the Company, and which were approved by the JLs in the liquidation, even though his efforts and steps were found to be both wrong and legally ineffective. These were, (i) Mr Huet's intended 22 January 2014 EGM, which Justice Bannister found to be unconstitutional, in that the meeting would be inquorate and invalid[18]; and (ii) Mr. Huet's 27 March 2014 application to wind up the Company, in respect of which he was found to lack proper standing. The JLs nevertheless came to the conclusion that Mr. Huet was trying to find a solution to the Company's deadlock, and his steps, and hence the Wither's Fees which he had incurred, were nevertheless of value to the Company. Mr. Crumpler also testified that the legal work used in preparation of Mr. Huet's application to appoint liquidations of the Company, was adopted when Intimiss was substituted as the applicant in the successful application. These steps were all geared to finding a solution out of the deadlock, and putting the Company into liquidation, as the only realistic and appropriate solution.

[14] In short, Mr. Crumpler's testimony is that, in the considered view of the JLs, the Company derived some corporate benefit from the unsuccessful steps taken by

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[17] See Tab 13 page 6
[18] See Mr. Emory's email of 20 January 2014

Mr. Huet, since these were aimed at finding a solution to the impasse, which was ultimately found when Intimiss applied to appoint liquidators. However, the successful steps taken by Mr. Busch to prevent an unconstitutional AGM and the winding up of the Company by the Court on the basis of Mr. Huet's lack of standing, did not result in any corporate benefit to the Company.

[15] Not surprisingly, Mr. Collings QC takes serious issue with this. He submits, essentially, the this decision reached by the JLs on this claim is nonsensical and not keeping with principles of fairness under which liquidators, as officers of the court, are bound to adhere. He submits that fairness would dictate that if Mr. Huet's legal fees were allowed in the liquidation, so should the legal fees of Mr. Busch.

[16] The position of liquidators as fiduciaries and officers of the court is well established. These principles were helpfully set out by Mr. Collings QC at paragraph 4 of the Applicant's Skeleton Argument. They include the Court's inherent jurisdiction to control the conduct of its own officers, who are bound to behave in an "honourable and high minded way" – **Ex parte James**. At paragraph 183 of the judgment of Justice David Richards in **Lomas v. Burlington,** he states:-

> *"I take it that unfairness is a sufficient ground for the application of the principle in **Exp. James** if the Court thinks that, in all the circumstances, it is right to apply the principle ..... What constitutes unfairness will .....depend on the circumstances of the case."*

The perversity test and its exception

[17] Section 273 of the Insolvency Act 2003 states: –

> *A person aggrieved by an act, omission or decision of an office holder may apply to the Court and the Court may confirm, reverse or modify the act, omission or decision of the office holder.*

[18] What then is the test to be applied when considering a Section 273 application? At the beginning of the hearing, there was an apparent significant difference between counsel for the parties as to the proper test to be applied. However, this gap narrowed considerably when the matter got to closing submissions..

[19] It is now accepted by Mr. Collings QC, with respect to the claim for the Mourant Fees, that the test is as formulated in **Re Edennote [1996]** 2 BCLC 389, at 394, and also in **Mohomed v. Morris** [2000] 2 BCLC 536., that is, the 'perversity test.' At page 394 of **Edennote** the perversity test is stated in these terms:-

> *"The Court will only interfere with the act of a liquidator if he has done something so utterly unreasonable and absurd that no reasonable person would have done it."*

[20] The perversity test was applied in this jurisdiction by Hariprashad-Charles J. in **Iceberg Transport and Others v. Meade Malone** - BVIHCV 2004/0130. As submitted by Mr. Forte, the hurdle is deliberately high. It is not a **Wednesbury** test, it is higher[19] .

[21] But there is an exception to the 'perversity test', which was recognised in **Mitchell v. Buckingham International plc** [1998] 2 BCLC 369 by the English Court of Appeal. In **Mohomed v. Morris** [200] 2 BCLC 536 at 556, Peter Gibson LJ stated –

> *"31. The Court held that the Edennote test, whilst applicable to decisions taken by liquidators as to: the realization of assets of the company for the benefit of the general body of unsecured creditors, was not applicable to the decision to apply to the American Court. The argument of counsel which was accepted was that the application was concerned with competing creditors: in particular, with the efforts of one pair of judgment creditors to put themselves in the position of secured creditors before the position was frozen by the onset of the winding up. That was said to be a matter for the Companies Court or for liquidators acting*

[19] See para 7 Respondent Skeleton

under the control of the Companies Court."

> "32. *The circumstances of the present case seem to me far removed from those of* ***Mitchell v. Buckingham International plc****. They have nothing to do with competing unsecured creditors. What was involved was a decision by the liquidators on the realization of the assets of the company in the form of the notes in circumstances where a rival claim to those notes had been made. Compromise in such circumstances calls for commercial decision to be taken. That decision did not involve purely legal issues."*

[22] It is the submission of Mr. Collings QC, in relation to the claim for fees under the IMA, that this is a matter which falls under the exception to the perversity test. As he puts it, the issue there is a simple and discreet one based upon the terms of the IMA: whether the Applicant, Mercury, is entitled to payment of the management fees upon termination of the IMA. Such a matter, he argued, did not involve the liquidators' discretion or commercial decision-making, but really is, as he termed it, a 'black and white' issue. There is a right or wrong answer. Accordingly, the issue does not involve a consideration of evidence requiring cross-examination of Mr. Busch, but is one which the court can decide based on the clear and unambiguous terms of the IMA itself.

[23] Mr. Forte, on behalf of the JLs disagrees. It is his submission that the perversity test also applies to the court's consideration of the claim to the IMA Fees. I will return to this when I come to give my analysis and conclusion on that aspect of the Section 273 claim.

The Mourant Fees

[24] From the testimony of Mr. Crumpler before me and the documentary evidence, it is clear, and I accept, that the work done and services provided by Mourant for and on behalf of Mr. Busch and Mercury, was indisputably of some corporate benefit to the Company, prior to it being put into liquidation by this Court.

[25] Mr. Busch cannot be faulted for obtaining his own independent legal advice, as did Mr. Huet with Withers, since the Company's lawyers, Walkers, were unable to advise in the face of the deadlock on the Board and in the general meeting.

[26] By his stance taken in relation to both the constitutionality of the intended AGM in January 2014 and the fatal application by Mr. Huet in March 2014 to have liquidators appointed over the Company and its assets, Mr. Busch and his lawyers benefitted the Company in a meaningful and significant way by any objective assessment. They prevented a meeting being convened of the shareholders which would have been contrary to the constitutional documents of the Company, rendering any resolutions passed at the EGM invalid and open to challenge, including a resolution to wind up the Company because of deadlock. The invalidity of the proposed EGM was apparently made clear by Justice Bannister during the hearing before him on 20th January 2014, as reported in the email from Mr. Emory of Mourant to Mr. Huet that same day.[20]

[27] That the objections taken by Mr. Busch, through his lawyers Mourant, was of some corporate benefit to the Company, is, in my view, borne out by the fact that, as reported at page 96 of the JLs Report[21], on 21st January 2014, at the EGM, the one resolution which Justice Bannister had indicated could validly or properly be considered, a resolution to take steps to have the Company wound up, was in fact passed by a majority of the Class C Shareholders, who voted in favour of Mr. Huet being authorized to take all necessary steps to implement the voluntary liquidation of the Company. Of course, ultimately, the liquidation of the Company occurred based on the application to the Court by Intimis.

[28] In short, the stance taken by Mr. Busch prevented the Company embarking upon an unconstitutional or improperly convened EGM, and passing 6 proposed resolutions or taking 6 proposed steps which the meeting could not lawfully do.[22]

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[20] See Tab 11 page 79
[21] See Tab 11 page 96
[22] Tab 13 pages 6 to 8

[29] The same can, in my view, be said of Mr. Busch's objection to the application by Mr. Huet to have the Court appoint liquidators over the Company, on the basis that Mr. Huet lacked locus standi to bring the application. This objection was upheld by the Court as being legally sound and correct.

[30] Certainly, it was in the best interest of the Company not to have it being put into liquidation by an applicant, albeit a shareholder and director, who had no standing to do so. The corporate benefit was simply not to have the draconian consequences of a winding up initiated and brought about by an improperly commenced process, which would have been open to challenge, with the likelihood of additional and unnecessary legal cost being incurred and further delay resulting in putting the Company into liquidation.

[31] These steps led, ultimately, to Mr. Huet's legal advisers, who had gotten it wrong on both matters, and whose fees have been allowed as a debt in the liquidation to be paid out of the estate, finally getting it right, by substituting Intimis as the applicant, and thereby properly and correctly achieving the intended objective of breaking the deadlock and having the Company put into liquidation.

[32] In my view, the clear benefit to the Company is not diminished by any ulterior motive of Mr. Busch, who was not in favour, at least initially, of liquidation. Ultimately, he did not oppose or attempt to prevent the Intimis application being granted on the just and equitable ground.

[33] The next question for the Court to consider, applying the 'perversity test', is whether the JLs, in making their decision to not admit this claim in the liquidation, got it so manifestly wrong that the Court ought to set aside their decision, and admit this claim against the estate. Put in classic terms, as formulated in **Re Edennote,** did the JLs do something which was "so utterly unreasonable and absurd that no reasonable person would have done it".

[34] Mr. Forte for the JLs submits, that the decision of the JLs' on the claim for the Mourant fees, does not on the evidence, rise to this standard. He also submits that the JLs were within their duties and powers, having conducted a detailed assessment, and even a line by line scrutiny of the Mourant invoices, to have disallowed this claim in the liquidation.[23] It is his submission that in exercising their discretion in the way they did, and coming to the conclusion that the Company did not derived any corporate benefit from these steps taken by Mr. Busch, the court ought not to reverse their decision. He submitted that Mr Busch was intent not on co-operating, but on obstructing efforts being made by Mr. Huet to break the deadlock and put the Company into liquidation.

[35] Mr. Collings QC, on the other hand, submits that the JLs decision was clearly and patently wrong, nonsensical and rises to the level of the perversity test.

[36] In my view, the decision taken and the reasons therefor given by the JLs for not allowing this claim in the liquidation, made in the face of allowing Mr. Huet's claim for legal fees incurred in getting matters wrong, is not defensible on any reasonable or rational basis. I am also of the view that fairness dictates that, if the same test of corporate benefit applies to allow Mr. Huet's lawyers' fees in taking steps which were clearly wrong, more so this test ought to apply to allow the fees of the Applicants' lawyers, in circumstances where they got it right on both counts, and prevented the Company from doing something which was not just wrong, but manifestly so, and, in one instance, in breach of its constitutional documents.

[37] Accordingly, I reverse or set aside the decision of the JLs on the Mourant Fees denying the Applicants' claim which, excluding the fees in respect of advice on FATCA, amounts to the sum of $90,847.00. This claim is therefore allowed to be paid out of the estate of the Company.

THE IMA FEES

[23] See Tab 13 pages 67 to 71

[38] Mr. Collings QC submits on behalf of the Applicant Mercury, that on a clear interpretation of the IMA, in particular clause 16.3, the Investment Manager is entitled to receive all fees up to the effective date of termination, whether on 31st December 2014 or 31st March 2015 when the term of the IMA lapsed. He argues that the perversity test has no application here, and the Court must apply the lower standard when determining whether to set aside the JLs disallowance of their claim in the liquidation.

[39] On the other hand, Mr. Forte for the JLs submits that this is not a simple and straight forward interpretation and application of clause 16.3 of the IMA, as Mr. Collings QC contends. It was within the power of the JLs to consider a number of factors, including a possible claim for damages against Mercury for breaches, including repudiatory breaches, of the IMA, which claim Mr. Crumpler testified, based on his assessment, would exceed the claim for management fees under the IMA.

[40] Mr. Forte also submits that the Court must look at other clauses of the IMA in order to see whether clause 16.3 can be construed in the manner contended for by Mr. Collings QC.

[41] He further submits that the perversity test ought also to apply to this claim. Furthermore, this is not the type of issue which ought properly to be decided under the summary process of a Section 273 application. It requires pleadings, evidence and cross-examination of witnesses, including Mr. Busch. It ought not to be decided in this way, where only Mr. Crumpler is called upon to present himself for cross-examination.

[42] In my view, this claim rests squarely on the Law of Contract. This means that one has to construe the IMA as a whole, not just clause 16.3. The clause reads, in relevant part,: –

"16.3 Upon termination of this Agreement, the Investment Manager shall be entitled to receive all fees and other monies ***accruing due*** *up to and including the date of such termination." (emphasis added)*

[43] This provision does not go on to say, as is often the case, that payment is to be made without deductions or notwithstanding any claim for damages against the Investment Manager.

[44] Clause 8.1, dealing with the Investment Manager's fees, is also of significance. It reads in part –

"As compensation for the Investment Manager's ***services rendered*** *hereunder, the Fund pays a management fee .....to the Investment Manager....." (emphasis added)*

[45] This provision is open to the interpretation that no fee is payable if no services are rendered by the Investment Manager. It is the complaint and evidence of Mr. Crumpler, that very little was done by Mercury (as represented by Mr. Busch), in the discharge of its duties as Investment Manager under the IMA, since the JLs were appointed by the Court on 28th April 2014[24]. Evidence of this is in Mr. Crumpler's Second Affidavit[25] and in his oral evidence in cross-examination.

[46] Indeed, the Company purported to bring the IMA to an end by accepting what the JLs say were repudiatory breaches of the agreement by Mercury[26]. It will be a question of both fact and law whether this termination of the IMA was valid or not, warranting the non-payment of the management fees under the IMA.

[47] Mr. Collings QC conceded that some sort of equitable set-off is possible where the Company has suffered damages because of the actions or failures of the Investment Manager to discharge its duties under the IMA. This would involve a set-off of compensatory damages against any management fees that may have accrued due to Mercury under the IMA.

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[24] See Tab 11 pages 69 to 70
[25] See Tab 12
[26] see letter dated 31 December 2014 from Conyers to Forbes Hare

[48] In my judgment, all these matters demonstrate clearly that this is not a straight forward matter, as Mr. Collings QC submits. It is not simply a claim based solely on an application of clause 16.3 of the IMA. Furthermore, it is not one which, on these facts, is properly amenable to a Section 273 application determination. It is correct that the Company did not disclaim the IMA, as the JLs threatened to do in correspondence from their lawyers. However, this, of itself, does not in my view, lead to an absolute entitlement to payment of the fees. It is not a black and white issue, as Mr. Collings QC submits.

[49] Finally on this aspect, in my judgment it was open to the JLs to not admit this claim, in circumstances where they consider, either that the fees have not been earned or are payable, because of failures by the Investment Manager to discharge its duties under the IMA, and where they consider that the Company has a claim against the Investment Manager for substantial damages.

[50] In this regard, I point to paragraph 6 of the Order made by Bannister J. on 11 December 2014 whereby he summarily ordered Mr. Busch to execute by 4 p.m. on 19 December 2014, a draft change of mandate provided to him by the JLs, failing which the Court would direct the Registrar to execute it. While this related to a failure to hand-over control of certain assets of the Companies to the JLs some 7½ months after they were appointed by the Court, and does not pertain to Mercury's (Mr. Busch's company) failure to perform under the IMA, it is some indication or evidence of the apparent lack of co-operation by Mr. Busch with the JLs, of which Mr. Crumpler testified. It is his evidence that the relationship with Mr. Busch was extremely strained and, during re-examination by Mr. Forte, he described Mercury's work as being, at worst, non-existent, at best, very poor.

[51] For the reasons advanced above, I do not regard this claim as the type which this Court ought to determine on a section 273 application, and I can find no solid basis upon which to set aside or reverse the decision of the JLs to disallow this claim. This is so whether the test is as contended by Mr. Collings QC or the

perversity test as contended by Mr. Forte. Accordingly, this aspect of the claim for the Management Fees under the IMA is dismissed.

[52] As to costs, the Applicants have succeeded in part, and so have the JLs. Accordingly, the Applicants are entitled to 50 percent of their cost to be paid out of the estate of the Company to be assessed if not agreed.

[53] The JLs costs of this Application are to be paid out of the estate of the Company.

Gerard St.C. Farara, QC
Commercial Court Judge (Ag.)