

IN THE SUPREME COURT  
TURKS AND CAICOS ISLAND  
CIVIL DIVISION  
W 4/10

**BETWEEN**

**FINANCIAL SERVICES COMMISSION**

**PETITIONER**

**AND**

**TCI BANK LTD.**

**RESPONDENT**

CORAM: RAMSAY-HALE J

Mr Jonathan Katan for the Financial Services Commission

Mr. Peter McKnight for Anthony Kikivarakis , joint liquidator

Mr. Robert d'Arceuil for Mark Munnings, joint liquidator

Heard on the 23<sup>rd</sup> day of October, 2012



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**NOTE OF EX TEMPORE RULING**

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1. This is the decision on the application of Mr. Munnings for the release and discharge of Mr. Kikivarakis as joint liquidator.
2. Mr. D'Arceuil says he makes this application to the Court to release a discharge Mr. Kikivarakis under the Court's inherent jurisdiction; Not to remove him as liquidator, but to release and discharge him.
3. I can find no power in the Companies Laws that allows the Court to release and discharge a liquidator. It is a statutory power conferred on the Court by s.174 of the UK Insolvency Act which is not part of our law. I am not persuaded that I have any inherent jurisdiction to give that sort of relief which to my mind has nothing to do with controlling the conduct of officer of the Court.
4. Release and Discharge are terms of art which refer to a liquidator being discharged from liability in respect of acts done in the winding up and in relation to his conduct of it and does not fall to be considered while he remains in office.
5. Given the evidence before the Court, I treat Mr. Munnings' application - however phrased- as an application to remove Mr. Kikivarakis as joint liquidator. Mr. D'Arceuil has submitted that Mr. Munnings does not have the requisite standing to apply for his removal, but I disagree.
6. In Re A & C Supplies Ltd, a case which also concerned that breakdown in the relationship between a liquidator and his partners in the firm, Blackburn J held , that the firm, which had the

day to day conduct of the 122 liquidations in which in which the liquidator was engaged was entitled to make application to remove him. Deloitte was similarly entitled to make application and I do not know why it did not. Had they done so, unopposed, on the basis that Mr.Kikivarakis's retirement and their agreement meant that he could no longer function as joint liquidator, the Court would have heard and granted their application.

7. The application to remove Mr. Kikivarakis is, however, opposed by the Financial Services Commission whose position is that, of the joint liquidators, Mr. Kikivarakis is the more experienced and his removal as joint liquidator would be inimical to the liquidation and to creditors and not in the public interest.

8. I therefore go on to consider whether any cause has been shown by Deloitte for Mr. Kikivarakis removal. I refer again to the matter of Re A & C Supplies Ltd. in which Blackburn LJ interpreted for "cause shown" to mean where, for whatever reason, the office holder is no longer satisfactorily to discharge the functions of his appointment.

9. In that case, the liquidator, Sutton, had been expelled from the partnership in his firm as a result of a breakdown in their relationship. There arose enormous practical difficulties in his continuing in the over 122 insolvencies in which he was acting. The Court found that he was unable to arrange to have the day to day management of the liquidations – in which he had been assisted by the firm – carried out by himself, either through another firm or by employing another person to assist him, and that his remaining as the office-holder but having no access to letters, returns, other documents and the files except on terms dictated by his former partners was not practical and, in any event, not something which the liquidator was prepared to do. In the circumstances, the Court felt the only sensible course was for him to be removed

10. There is no evidence in the matter in front of me to suggest that Mr. Kikivarakis would be unable to continue to function in office as a result of his departure from Deloitte or be unable to provide the necessary continuity for the effective discharge of his duties. Mr. Kikivarakis indicated that he has a firm and employees who work full time at TCI Bank.

11. There is no evidence to suggest that this liquidation would not continue to function. The only reason advanced by Deloitte for his removal and/ or release or discharge is that it was agreed with his former partners that he would relinquish all insolvency offices that he held on retirement. Mr. Kikivarakis does not oppose this application. He is not breaking his undertaking. It is the FSC that is very keen that he remain.

12. In the circumstances where Deloitte cannot demonstrate how Mr Kikivarakis's retirement will affect his ability to continue in office, I do not think the contractual arrangement between Mr. Kikivarakis and his firm should outweigh the interests of the FSC. Mr. Munnings said that

Deloitte regards the bank as a client and as such it should be keen to act in the best interest of its client.

13. Mr. Munnings has said, inter alia, that Mr. Kikivarakis was not approached to have conduct of the liquidation as a sole practitioner but as a partner in Deloitte and that the liquidation belonged to the Firm. That is not the law. As Blackburn LJ stated in Re A & C Supplies Ltd.:

*“(The liquidator’s ) appointments are personal to him . The appointments are not, of course, of (the firm) however much they may have been made because Mr. Sutton was a partner in (the firm) and therefore would be expected to draw on (the firm’s ) resources for the today management of his appointment .*

14. In the circumstances, I dismiss Mr. Munnings summons however it is styled.

15. I hesitated to go on to consider the FSC’s application to remove Mr. Munnings and leave Mr. Kikivarakis in office as sole liquidator, as the FSC’s application was only made to avoid Mr. Kikivarakis being removed from, or demitting office, as a result of his retirement from Deloitte. The FSC were, before the application to remove Mr Kikivarakis from office, content to have both liquidators remain in office.

16. Mr. Katan, however, submits that given the breakdown in the relationship between Mr Kikivarakis and the firm, it would be for the general advantage of the persons interested in the liquidation for Mr. Munnings to be removed.

17. Although I can see no difficulty in principle with leaving Mr. Munnings in office - indeed, Mr. Munnings has said that it would not be unusual for a retiring lead liquidator to remain as consultant and continue to work with the firm- Mr. Munnings, and through the firm, has not indicated a willingness to work with Mr. Kikivarakis but rather, has expressed the clear desire that Mr. Kikivarakis cease acting in the liquidation.

18. I have considered whether it is to the advantage of the creditors for Mr. Munnings to be removed because of perceived hostility between Mr. Kikivarakis and his former partners.

19. As a practical matter, the evident reluctance of the Deloitte partnership as expressed by Mr. Munnings casts doubt on the ability of Mr. Kikivarakis to function as lead liquidator if he has to rely on Deloitte or Mr. Munnings to provide support seems to be a practical matter. However, Mr. Kikivarakis has indicated he is able to continue in office without their support.

20. Each of the joint liquidators has said that we only need one liquidator at this stage. I am taking on board that Eunice Sands, who has been engaged in the day to day operations at the

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Bank, is now employed to Mr. Kikivarakis ensuring continuity and that Mr. Kikivarakis remaining in office is desired by the FSC because, of the two liquidators, he is the one most qualified, a view that was shared by the Judge who made the order to wind up the Bank.

21. We should not remove a liquidator for convenience. I do not want to do anything to damage Mr. Munnings or Deloitte's reputation, but as both of the joint liquidators have agreed there is need for only one liquidator, the court has to decide who is the most qualified to continue

22. I must take into account the wishes of the FSC. No doubt Deloitte has enormous resources, but no challenge has been made to Mr. Kikivarakis' ability to complete the liquidation and in consideration of his greater experience, Mr. Kikivarakis is to remain and Mr. Munnings be removed.

23. I order that costs follow the event, and that the FSC's costs and Mr. Kikivarakis' costs be paid by Mr. Munnings, to be taxed if not agreed.

DATED THE 23<sup>rd</sup> OCTOBER, 2012



JUDGE OF THE SUPREME COURT