

IN THE SUPREME COURT OF BELIZE, A.D. 2018

Claim No. 43 of 2018

IN THE MATTER of the International Business Companies Act, Chapter 270 of the Laws of Belize, Revised Edition 2000 .

-and-

IN THE MATTER of MONTEVERDI UNIVERSAL S.A.

BETWEEN:

INTERNATIONAL LIQUIDATOR SERVICES LIMITED

Claimants

And

**THE REGISTRAR OF INTERNATIONAL
BUSINESS COMPANIES**

Defendant

**Appearances: Mrs. Ashanti Martin for the Claimant
No appearance of or for the Defendant**

JUDGMENT

- [1] The Claimant has applied for orders that the dissolution of Monteverdi Universal S.A. ("Monteverdi") be set aside and that its name be restored to the Register of International Business Companies. Monteverdi was registered as an international business company and it was voluntarily dissolved on December 25, 2014 pursuant to a shareholders' resolution dated November 11, 2014.
- [2] The application was made by Fixed Date Claim Form filed on January 19, 2018 supported by affidavits sworn to on January 19, 2018 supported by affidavits sworn to on January 19, 2018 and March 6, 2018 by Denise Lopez, a director of the Claimant, the duly appointed liquidator. The Defendant, the Registrar of International Business Companies, was served on January 26, 2018 but did not file either an acknowledgement of services or an affidavit or defence. The claim

was dealt with by way of trial at the first hearing pursuant to Rule 27. 2 (3) of the Supreme Court (Civil Procedures) Rules, 2005.

BACKGROUND

- [3] The Monteverdi maintained a bank account with UBS Switzerland ("UBS"), which stored its data at its office in Frankfurt, Germany. That account had been closed prior to the dissolution of Monteverdi.
- [4] In May 2012, the UBS data was seized by the German Tax Authority and distributed to the various countries of residence of the ultimate beneficiary of the account holders. The Spanish Competent Authority has made a request by letter dated July 28, 2016 to the Swiss Federal Tax Administration for information relating to specific accounts held with UBS including the account in the name of Monteverdi. Objections have been raised by UBS on the basis that Monteverdi was not domiciled in Spain and as such the Spanish Competent Authority is not entitled to the information requested.
- [5] Under the Spanish Penal Code, if it is determined that any person has by act or omission defrauded the state, such person can be liable to imprisonment and to a fine. Accordingly, the director or ultimate beneficial owner of Monteverdi can be potentially held criminally liable for tax fraud based upon the information requested if disclosed by UBS.
- [6] In as much as the officers and beneficial owner of Monteverdi believe that there has not been any violation, Monteverdi is precluded under Spanish procedural law from making objections to the disclosure having regard to its dissolution. For the purpose of commencing proceedings to challenge the disclosure, Monteverdi is required to establish that it is in good standing.

[7] In the first affidavit of Denise Lopez, it was sworn that such proceedings were not contemplated by the Monteverdi as Monteverdi was not aware of any request by the Spanish tax authorities. In the second affidavit, the need to set aside the dissolution of Monteverdi was rationalized in paragraph 10 as follows:

“The only way to protect Monteverdi’s officers would be to permit the company to object to the disclosure of its account information. The right of objection is afforded to persons because there is a serious concern that the request is a fishing expedition and is unlawful. That right is reserved to Monteverdi, notwithstanding that any finding in relation to the company would affect its officers.”

Whether or not Monteverdi’s director is correct in the assessment of the company’s ability to resist the request for disclosure, it cannot proceed to object unless Monteverdi is restored to the Register of International Business Companies.

JURISDICTION OF THE COURT TO SET ASIDE VOLUNTARY LIQUIDATION OF COMPANY

[8] By section 98(2) of the IBC Act, Monteverdi was permitted to voluntarily commence to wind up and dissolve by a resolution of members. It has done so by the resolution of its shareholders on November 11, 2014. It was stated in the said resolution that there was no pending legal action against the company in any court in or outside of Belize. Further the claimant was appointed as Liquidator and a Plan of Dissolution and Articles of Dissolution approved. The Certificate of Dissolution of Monteverdi was issued by the Defendant on December 25, 2014.

[9] Although section 214(1) of the Companies Act, Chapter 250 (“the Act”) provides that in cases where a company, and by extension (by virtue of section 105 (1) of the IBC Act) an IBC, can apply to the Court to have its voluntary dissolution set aside within two years of the date of dissolution, this provision is inapplicable to the voluntary liquidation of Monteverdi. There is no specific provision in the IBC

Act that speaks to the setting aside of the voluntary dissolution of an IBC pursuant to section 98 thereof.

- [10] In its submissions, the Claimant cited the case of Collins Brothers & Co. Ltd. [1916] S.C. 620. In that case, the Company was incorporated in Scotland and subsequently sold its undertaking to a newly formed company incorporated in London. At a meeting of the shareholders, the liquidator rendered a report which was approved and duly filed with the Registrar. The company was dissolved three (3) months thereafter. However, the formal title to a certain property had not been received by the new company which was desirous of seeking a new loan by way of mortgage on the said property. Section 223(1) of the Companies (Consolidation) Act 1908 provided for an application to be made by a liquidator within two (2) years of the date of dissolution to seek an order to have the dissolution declared void. More than two (2) years had elapsed since the date of dissolution. Nevertheless, an application was made by virtue of the Court's *nobile officium*. It was argued that since ten years had elapsed, the case was a *casus improvisus* and it was necessary to invoke the *nobile officium* of the court. The analogy was made of the liquidator being akin to a trustee of a bankrupt estate, in respect of which it had been held in the exercise of the *nobile officium*, that the Court had a discretion to grant an application rendered necessary by circumstances for which there was no provision in the Bankruptcy Acts (Whyte v. Northern Heritable Securities Investment Co. (1888) 16 R. 100). The Lord President agreed and approved of the report and pronounced in favour of the petitioner in the exercise of *nobile officium*. In that case, the Supreme Court of Scotland exercised the equitable and inherent jurisdiction of *nobile officium* which ushered is a legal remedy where there was no provision by statute or common law. The omission or *casus improvisus* operated to address a situation where the law was silent.
- [11] In the context of English law, the Collins case operates to invite the invocation of the inherent jurisdiction of the Court. Learned Counsel submitted that the Court

ought to set aside the dissolution of Monteverdi on the basis of its inherent jurisdiction. Indeed, this Court has done so in at least three (3) matters, namely:

- i. **Irish Bank Resolution Corporate, et al. v. Continental Liquidators Inc.** – Claim No. 509 of 2012 – Order dated November 5, 2012;
- ii. In re: **Anouk Invest Corporation, International Liquidator Services Limited vs. The Registrar of International Business Companies** – Claim No.666 of 2014 – Order dated March 2, 2015; and
- iii. In re: **Arlinda Limited, Alfred Victor Brewster v. The Registrar of International Business Companies** – Claim No. 527 of 2015 – Order dated November 2, 2015.

In each case, the factual scenario was different from the present case.

[12] Learned Counsel relied extensively on the inherent jurisdiction of the Court as discussed in the article by I.H. Jacob entitled “Inherent Jurisdiction of the Court” (Current Legal Problems 1970, Vol. 23, pp. 23 -52). The following opening statement reads (at pp. 23 -24):-

“The general jurisdiction of the High Court as a Superior court of record is broadly speaking, unrestricted and unlimited in all matters of substantive law, both civil and criminal, except in so far as that has been taken away in unequivocal terms by statutory enactment. The High Court is not subject to supervisory control by any other court except by due process of appeal, and it exercises the full planitude of judicial power in all matters concerning the general administration of justice within its area.”

The learned author continued (at p. 24):-

“...the court may exercise its inherent jurisdiction even in respect of matters which are regulated by statute or by rule of court, so long as it can do so without contravening any statutory provision... the source of the inherent jurisdiction of the court is derived from its nature as a court of law,

so that the limits of such jurisdiction are not easy to define, and indeed appear to elude definition.”

[13] It is important to note that such inherent jurisdiction is conferred on the Supreme Court of Belize by virtue of Section 18 of the Supreme Court of Judicature Act, Chapter 91, which reads:

“18 (1) There shall be vested in the Court, and it shall have and exercise within Belize, all the jurisdictions, powers and authorities whatever possessed and vested in the High Court of England...”

This provision embraces and included the inherent jurisdiction of the Court as a superior court of record with unlimited original jurisdiction: (see: section 95(1) & (3) of the Belize Constitution, Chapter 4).

RULING

[14] In the present case, Monteverdi through its directors and its beneficial owner, is at risk of being rendered liable to prosecution for fraud unless its dissolution is set aside. To my mind, in the absence of a statutory provision in the IBC Act allowing for such setting aside, the Court is empowered to exercise its inherent jurisdiction in order to do justice.

[15] The Court is seized of the inherent jurisdiction enjoyed by the High Court of Justice in England. It is only right that Monteverdi be put in a position to challenge the disclosure of its account information by UBS to the Spanish Competent Authority.

[16] Accordingly, the relief sought is granted and it is ordered that:

- (1) The dissolution of Monteverdi Universal S.A. be set aside;
- (2) The name of the Company "Monteverdi Universal S.A." be restored to the Register of International Business Companies with effect from the date of this Order.

Costs shall be borne by the Company.

DATED this 15th day of March, 2018.



KENNETH A. BENJAMIN
Chief Justice of Belize