

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO FSD 58 OF 2018 (RPJ)

IN THE MATTER OF THE COMPANIES LAW (2018 REVISION)

AND

IN THE MATTER OF BTU POWER COMPANY (IN OFFICIAL LIQUIDATION)

IN CHAMBERS

Appearances: Mr Francis Tregear QC of XXIV Old Buildings
Mr Matthew Goucke and Peter Kendall of Walkers on behalf
of the JOLs

Before: The Hon. Justice Parker

Heard: 17 and 18 January 2019

Draft Judgment
Circulated: 12 February 2019

Judgment Delivered: 14 February 2019



HEADNOTE

Application to remove Liquidators-section 107 Companies Law (2018 Revision)-standing - solvent Liquidation-proper person with legitimate interest-merits-legal test for removal-abuse of process -indemnity costs.

JUDGMENT

Introduction

1. Mr Wael Almazeedi ("Mr A") applies to remove the Joint Official Liquidators (the "JOLs") of BTU Power company (the "Company") (Mr Penner and Mr Sybersma, both partners in Deloitte & Touche) and to replace them with different JOLs, namely Kenneth Kryss and Angela Barkhouse of Kryss Global (the "Removal Application").

2. The Removal Application was made by way of summons on 10 July 2018 and was heard on 17 and 18 January 2019. An earlier hearing fixed for 13 and 14 November 2018 was adjourned upon Mr A's very late request. I made it clear that there would be no further adjournments on the basis of the convenience of the parties or of any counsel instructed. The adjournment was granted on the basis of an expectation that the directions I made for the hearing of this matter would be complied with and that the parties and/or counsel would attend the hearing. In the result Mr A did not comply with the timetable or submit a skeleton argument and failed to attend either by counsel or in person at the hearing. Instead, a 76 page affidavit with a very substantial exhibit, which runs to eight lever arch files, was submitted on 7 January 2019 ("A2") to add to his affidavit of 6 July 2018 ("A1").
3. It is important in this introduction to give an overview of the type of evidence submitted by Mr A. Serious allegations of wrongdoing, sometimes amounting to dishonesty, are made in Mr A's evidence against the JOLs, their attorneys and indeed previous attorneys instructed by Mr A, and there are allegations of bias against judges of this Court.
4. The multiple allegations of wrongdoing on the part of professionals go hand in hand with events which are claimed to be adverse to Mr A's interests in the matters raised in his two affidavits. There is a common theme of a conspiracy against Mr A and/or his interests. Throughout his evidence Mr A portrays himself as the innocent victim of events brought about by professional actors in this conspiracy. In Mr A's version of events, the Preference Shareholders are in effect said to be pulling the strings in this conspiracy.
5. As I have said, Mr A alleges bias on the part of individual judges of the Grand Court, notably myself and the Chief Justice concerning Orders which he perceives to be contrary to his interests, and he has asked for each of us to recuse ourselves on different occasions.
6. Indeed on 9 January 2019, shortly before the hearing of this matter, he applied by way of letter for my recusal due to perceived or actual bias. I dismissed that application having raised it with the Chief Justice who was of the view that there are no grounds to substantiate any lack of independence and no real risk of apparent or actual bias on my part.
7. An example of the type of allegation made in Mr A's written case is contained at paragraphs 22 to 26 of A2. He asserts that the Preference Shareholders presented the Winding Up Petition against the Company in 2011 in this jurisdiction for the purpose of:

"..capitalising on a biased judiciary, company laws which favour equity holders over small companies and individuals and attorneys, and prohibitively expensive litigation procedures as compared to other jurisdictions."
8. No basis is provided for these assertions.



9. Another is at paragraph 48 where he asserts, again without providing any basis for the assertion that:

“Mr Longmate, potentially with assistance from senior litigation partners at White and Case, procured the appointment of Justice Cresswell to the Qatar International Court”.

10. There are many of these kinds of allegations made by Mr A which are based on this conspiracy theory and which upon examination are unsupported by any evidence. One might be forgiven for thinking that such serious allegations, if they were to be made good, would be pursued by Mr A and his counsel at the adjourned hearing organised to deal with them in detail. The Court was pressed for an in person hearing in the Cayman Islands by Mr A and made directions allowing ample time for Mr A to prepare (including to instruct new counsel, which he had indicated he was in the process of doing).
11. Instead the Court was left on 17 and 18 January 2019 in the unsatisfactory position of having accommodated Mr A’s Removal Application to be heard at an *inter partes* hearing and yet having to determine these serious allegations without Mr A or his counsel attending to substantiate, argue, explain or defend them in person. No satisfactory reason has been given for this non-attendance.
12. Mr A by his conduct has left the Court to grapple with the extensive written material he has submitted containing allegations of the type I have mentioned and to do justice between the parties in his absence. This is an obviously unacceptable way to conduct litigation.
13. Having said this by way of introduction, I have nevertheless been careful to approach the Removal Application thoroughly and from a position of complete impartiality in order to do justice to the parties. I am grateful for the considerable assistance of Leading Counsel instructed to appear at the hearing by the JOLs , Mr Francis Tregear QC, who whilst not of course approaching the matter as if it were *ex parte*, nevertheless very fairly presented and explained in detail the case that Mr A makes from the extensive written material he has submitted.

Factual background

14. The Company was incorporated on 16 December 2002 as an exempted limited company under the laws of the Cayman Islands. It was established as an open ended investment vehicle to raise investment capital for specific investments in power generation and water desalination projects in the Middle East and North Africa. At the time the JOLs were originally appointed in 2012, the Company held indirect equity investments in two facilities in Abu Dhabi and in Tunisia. The Company has a share capital of US \$4,100 divided into 100 ordinary shares of US \$1 each and 4,000 preference shares of US \$1 each.

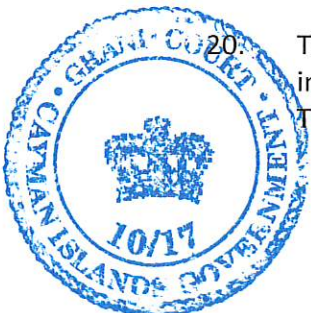


15. The 100 ordinary shares were held by QGEN Industries Ltd ("QGEN") which was also incorporated in the Cayman Islands and owned and controlled by Mr A. It was struck off the register of companies on 31 October 2013 and has not been reinstated.
16. The ordinary shares originally had voting rights subject to Article 64 of the Company's Articles of Association. Article 64 provides that the Preference Shareholders would have the right to attend meetings and vote. The ordinary shares would cease to have those rights if the Preference Shareholders had not received their investment back with a return of 5% per annum by ten years from Initial Closing Date (which was 6 June 2013.) Since the Preference Shareholders did not receive this return they now hold all the voting rights in the Company and QGEN has lost the voting rights it originally held.
17. Article 64 states as follows:

"If the holders of Preference Shares have not received, during the first 10 years after the Initial Closing Date [ie by 6 June 2013], dividends or other distributions in the aggregate amount of at least the aggregate capital paid up on the Preference Shares with the return of 5% per annum accruing (without compounding) on such holders' weighted average invested capital (calculated as the aggregate amount of capital paid up on the Preference Shares held by such Member less any distributions made by the Company under Article 116 paragraph (i) with respect to such Preference Shares,) the Ordinary Shares shall cease to confer on the holder thereof the right to receive notice of and to attend and vote at any general meeting of the Company and the Preference Shares shall become voting shares. In which case, the Preference Shares shall then confer on the holders thereof right to receive notice of and to attend and vote at any general meeting of the Company and, accordingly, on all matters thereafter requiring the sanction of the Company in general meeting, the holders of the Preference Shares shall vote to the exclusion of the holder of the Ordinary Shares on the following basis....."

18. The management of the Company was delegated to a Management Company (BTU Power Management Company) (the "Manager") which acted pursuant to a Management Agreement dated 6 June 2003 (the "Management Agreement") and was also incorporated in the Cayman Islands. Mr A was the sole director and ultimate beneficial owner of the Manager. The Manager was also struck off the register on 31 October 2013 and is now in liquidation.
19. The Preference Shareholders who own the vast majority of the economic interest in the Company are the Qatar Investment Authority ("QIA"), the Supreme Council for Economic Affairs and Investment of Qatar ("SCEAI"), the Qatar Foundation Fund, the Qatar National Bank ("QNB"), Broog Trading Company (the Emir of Qatar's investment vehicle) and the Dubai Islamic Bank.

The Preference Shareholders became concerned about Mr A's conduct when he initiated a 'restructuring' as a result of an investor's desire to exit from the Company. They were concerned as to the amount of the costs which were being incurred without



their required approval and information as to the status of their investment. As a result, on 11 November 2011 two of the Preference Shareholders presented a Petition for the winding up of the Company on 'just and equitable' grounds, which was supported by all the Preference Shareholders. Both the Company and Mr A confirmed that there was no opposition to the making of a Winding Up Order which was duly made unopposed on 26 January 2012 by Cresswell J.

21. The assets of the Company had considerable value and the JOLs have distributed approximately US\$33.3 million in dividends to Preference Shareholders- see paragraph 16 of the third affidavit of Mr Penner dated 5 November 2018 ("Penner 3").
22. Part of the work conducted by the JOLs involved investigating the background to various claims potentially vesting in the Company against Mr A (as the Company's former sole director) and the Manager of which Mr A was beneficial owner- see paragraph 17 of Penner 3.
23. The liquidation continued under the supervision of the Court and Cresswell J made Orders for disclosure from Mr A in May 2013. Mr A also gave an oral deposition in Massachusetts in August 2013. Cresswell J also dealt with proof of debt appeals brought by Mr A and the companies he owned or controlled.
24. Only one proof of debt was finally adjudicated upon and it was rejected by the Court. It was originally in the amount of US\$4,152,187 but only US\$672,000 remained in dispute by the time the Court came to rule on it on appeal. All the other proofs of debt, originally totalling US\$41 million, were abandoned.
25. A significant development occurred when Mr A discovered in 2014 that Cresswell J had been appointed as a Supplementary Judge in the Qatar International Court and Dispute Resolution Centre. He thereafter alleged that because some of the Petitioners had a connection with the Minister of Finance in Qatar, who oversaw judicial appointments in Qatar, a fair-minded and informed observer would conclude that there was a real possibility of an appearance of bias on the part of the judge.
26. Mr A argued this point in the Cayman Islands Court of Appeal which allowed his appeal in part leaving Cresswell J's Winding Up Order and the liquidation in place, but setting aside his order dismissing Mr A's single proof of debt appeal and in relation to the discovery ordered to be given by Mr A.
27. Mr A appealed to the Privy Council and was successful by a 4 to 1 majority on the ground of apparent bias (Lord Sumption dissenting). The judgment of the Privy Council of 26 February 2018 whilst expressed with 'some reluctance' (see paragraph 34 of the Board's decision) by the President Lord Mance, accepted that in the unusual circumstances of the case there was a real possibility of the appearance of bias and they set aside the Winding Up Order itself and all the Court Orders made subsequently in the liquidation by Cresswell J.

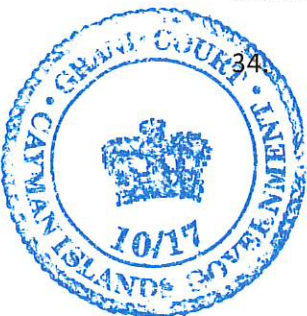


Analysis.

28. Given the way Mr A has put his case it is important to clarify that certain matters were not decided by the Privy Council. There was no finding of any actual bias on the part of Cresswell J nor was there any criticism of the substance of the decisions made by him.
29. There was no criticism of the JOLs, both as regards their conduct or motivation. I should also note in passing that no criticism has been made to my knowledge of the JOLs' conduct by the Grand Court of the Cayman Islands (as the supervising Court) or the Court of Appeal of the Cayman Islands.
30. However, as a result of the Privy Council's decision the original Winding Up Order as well as all the other Court Orders made by Cresswell J were set aside from 25 January 2012 to September 2014, tainted as they were by the finding of apparent bias, and the liquidation fell away with it.
31. Because the liquidation fell away, the effect of the decision upon the Orders the Court had made (and their legal effect with regard to limitation issues and the like) was as if they had not been made and they were 'cancelled out'. So, for example, the single proof of debt adjudication and the discovery order would have no effect and would be 're-litigable'. Those particular processes, to be legally effective, would have to be started again.
32. Again, given the way Mr A has put his case it is important to clarify that the effect of the Privy Council decision did not extend to events which took place during the first liquidation. Certain things were done during the period 2012 to 2014 by the JOLs (as ratified by the Preference Shareholders), the Company, the Preference Shareholders themselves and Mr A which clearly cannot be 'cancelled out' as if they had not taken place. Those actions are unaffected by the Privy Council decision.
33. As had been explained at the hearing in the Privy Council, as a way of preserving the *status quo*, the Preference Shareholders had decided to place the Company into voluntary liquidation in the event that the Privy Council set aside the Winding Up Order. The relevant resolutions took effect on 26 February 2018 with the support of all the Preference Shareholders. The JOLs became Joint Voluntary Liquidators and took the decision to seek to continue the voluntary liquidation under Court supervision, again with the support of the Preference Shareholders and the Court duly made an order to this effect on 5 June 2018. As well as placing the Company into voluntary liquidation, the Preference Shareholders also ratified the JOLs' acts taken in the course of the liquidation.

Standing

34. The threshold question to be considered in the application brought by Mr A is whether he has standing to make this application. I have decided that he has not for the following reasons.



35. Section 107 of the Companies Law (2018 Revision) provides:

“An official liquidator may be removed from office by order of the Court made on the application of a creditor or contributory of the company”.

36. In *Deloitte [1999] CILR 297*, a case decided under Cayman Islands law, the Privy Council considered a previous version of this rule where the wording did not indicate any specific type of person who had standing to make such an application. The previous relevant section was s.106 (1) of the Companies Law (1995 Revision) which provided:

“Any official liquidator may... be removed by the Court on due cause shown...”

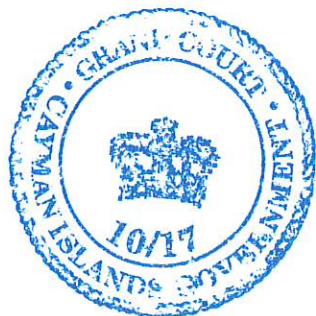
37. It was argued in that case that there was no limitation on the type of person who could apply to terminate the appointment to remove a liquidator as long as that person had an interest in making the application or might be affected by its outcome. The Privy Council disagreed.

38. Lord Millett said:

“[the English authorities] show the courts have consistently regarded the creditors (in the case of an insolvent liquidation) and the contributories (in the case of a solvent liquidation) as the proper persons to make the application, being the only persons interested in the liquidation” page 303 lines 37-42

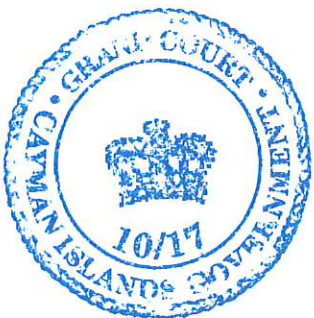
“In their Lordships opinion, two different kinds of case must be distinguished when considering the question of a party’s standing to make an application to the court. The first occurs when the court is asked to exercise a power conferred on it by statute. In such a case the court must examine the statute to see whether it identifies the category of person who may make the application. This goes to the jurisdiction of the court, for the court has no jurisdiction to exercise a statutory power except on the application of the person qualified by statute to make it. The second is more general. Where the court is asked to exercise a statutory power or its inherent jurisdiction, it will act only on the application of a party with a sufficient interest to make it. This is not a matter of jurisdiction; it is a matter of judicial restraint. Orders made by the court are coercive. Every order of the court affects the freedom of action of the party against whom it is made and sometimes (as in the present case) of other parties as well. It is therefore incumbent on the court to consider not only whether it has jurisdiction to make the order but whether the applicant is a proper person to invoke the jurisdiction” page 304 lines 24-40.

Where the court is asked to exercise a statutory power, therefore, the applicant must show that he is a person qualified to make the application. But this does not conclude the question. He must also show that he is a proper person to make the application. This does not mean as the appellant submits, that he “has an interest in making the application or may be affected by its outcome”.



It means that he has a legitimate interest in the relief sought. Thus, even though the statute does not limit the category of person who may make the application, the court will not remove a liquidator of an insolvent company on the application of a contributory who is not also a creditor: see re Corbenstoke (No 2) -page 304 line 41-305 line 6.

39. The Court made it clear that creditors in the case of an insolvent liquidation and contributories in the case of a solvent liquidation are the only proper persons to make the application because it is they who have the ultimate interest in the distribution of the company's assets. In an insolvent liquidation, the contributories have no interest because no money will go to them. In a solvent liquidation, creditors have no interest because they are going to get paid and it is the contributories who have the interest. The passage I have cited above from Lord Millett's judgment makes it clear the applicant must show that he is a person qualified to make the application *and* has a legitimate or proper interest in the relief sought.
40. In *Banco Economico [1998] CILR 102* a director of the company applied to remove provisional liquidators. Smellie J (as he then was) held that the director did not have *locus* because he did not have the authority of the company's members and the English Insolvency Rules which applied at the time, provided that only a creditor, contributory, the provisional liquidators or the company itself could apply to terminate the appointment.
41. Dealing with the status Mr A claims to have:
- a) It is clear that Mr A ceased to be a director following his removal at an AGM of the Company held on 20 May 2015 - see Penner 3 at paragraphs 9(a) and 25 (which exhibit a copy of the Company's register of directors which records that a Mr Derksen is the sole Director at MP3 page 90). It is therefore not correct to state as Mr A did in A1 that he is the Company's sole director (see paragraph 1). The Privy Council's decision has not changed the position so as to restore him as a Director.
- b) It is also not correct to state as Mr A did in A1 (see paragraph 1) that he is the beneficial owner of all the ordinary voting shares of the Company. This is dealt with extensively in Penner 3 at paragraphs 9 and 68 where he also exhibits at page 1 of MP3 the Company search report in respect of QGEN. The Preference Shareholders together hold the entire economic interest and voting rights in the Company. QGEN had held the ordinary voting shares in the Company. QGEN's voting rights passed to the Preference Shareholders pursuant to Article 64 on 6 June 2013. QGEN was struck off the register on 31 October 2013 and the ordinary shares are vested as *bona vacantia* in the Financial Secretary of the Cayman Islands. The ordinary shares have no economic participation in the liquidation because the Preference Shareholders have not received their entitlement under Article 114. This is unaffected by the Privy Council's decision, which did not affect the Company's constitution. Mr A has no personal shareholder rights.



c) It is not correct to state as Mr A did in A1 that he is the Company's largest creditor. Mr Penner deals with this at paragraph 9 (c) of Penner 3. He confirms that Mr A has not submitted any proof of debt claim in the Company's liquidation following the Supervision Order of June 2018. He explains that despite submitting a number of proofs of debt in the Company's previous liquidation proceedings in both his personal capacity and on behalf of the various corporate vehicles under his control, the vast majority in number and amount of such claims were subsequently voluntarily withdrawn in the course of appeals which were made against the rejection of those proofs of debt. The one remaining proof of debt appeal in Mr A's own name was dismissed by this Court on the merits. This evidence, which I accept, shows that Mr A is not a contributory in the solvent liquidation of the Company.

42. An argument was made by attorneys acting for Mr A at one time that section 99 of the Companies Law (2018 Revision) operated to invalidate the alteration in the voting rights of the ordinary shares.

43. Section 99 provides:

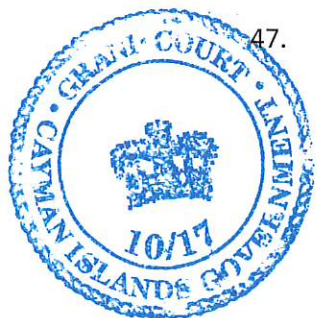
"When a winding up order has been made, any disposition of the company's property and any transfer of shares or alteration in the status of the company's members made after the commencement of the winding up is, unless the court otherwise orders, void."

44. I accept the argument put forward by Mr Tregear QC that this point has no merit because nothing was done after the Winding Up order made in January 2012 to alter the voting rights which had been agreed between the Company and its members. They had been agreed at the time that the Articles were entered into in 2003. If support were needed for this proposition it can be derived from the old case of *Re Blaina (1926) 70 Sol Jo 404* per Romer J. The object of section 99 is to preserve the economic interests of shareholders in the event of a liquidation. In any event, the effect of the Privy Council's order setting aside the Winding Up Order from its inception is that as at June 2013, there was no valid winding up to trigger the effect of section 99.

45. The only debt Mr A claimed in his own right has been rejected by the JOLs and the companies that originally submitted and then had withdrawn proofs of debt have been struck off the register. These companies have not been reinstated.

46. At Paragraph 39 of A2 Mr A states that *"... the unprecedented JCPC judgment and orders have reaffirmed my standing in these proceedings .. [the judgment].... reset the clock on the entire process."*

47. This in my view is misconceived. Mr A is free to relitigate the adjudicated proof of debt claim which was dismissed by Cresswell J (as his Order has no effect) and to bring any other proof of debt claims he has, but that does not give him a legitimate interest or standing in this application. Those claims, as and when they are brought, will stand or



fall on their merits and he is in no better position by the result of the Privy Council's decision in that regard.

48. The liquidation of the company is a solvent liquidation in which only the Preference Shareholders have a legitimate interest as contributories. Mr A's interests are adverse to their interests. The intentions that have been expressed by Mr A to pursue proofs of debt do not give him standing to make this application.
49. I have formed the view that the application should be dismissed on this basis alone, i.e., Mr A has no legitimate interest in making it and is not a proper person to make it.
50. He may have brought it on the basis that he wishes to avoid further investigation and the claims being brought against him by the JOLs. That would be a wholly impermissible and improper basis to invoke the statutory jurisdiction of the Court to remove these liquidators.
51. I will go on to consider the position on the merits of Mr A's application, should I be wrong about the threshold question.

Legal Test

52. Assuming that a person with a legitimate interest in the liquidation brings an application it is clear that a good reason needs to be demonstrated to remove a liquidator - see *AMP Enterprises [2002] BCC 996*.
53. As Neuberger J (as he then was) said in that case, care needed to be exercised when removing generally effective and honest liquidators:

"In an application such as this, the court may have to carry out a difficult balancing exercise. On the one hand the court expects any liquidator, whether in a compulsory winding up or a voluntary winding up, to be efficient and vigorous and unbiased in his conduct of the liquidation, and it should have no hesitation in removing a liquidator if satisfied that he has failed to live up to those standards at least, unless it can be reasonably confident that he will live up to those requirements in the future." page 1001 at C.

54. It should not be seen as easy to remove a liquidator so as to encourage applications by creditors who have not had their preferred liquidators appointed or who for some other reason were 'disgruntled' - see page 1001 at H.
55. In *Deloitte (supra)* Lord Millett summarised the position as follows:

"...impropriety is not necessary; ...it is sufficient to satisfy the court that the removal of the liquidator will be for the general advantage of the persons interested in the liquidation; that in the absence of impropriety the court will have regard to the wishes of the majority of those interested; but that where



impropriety is shown the court may override their wishes.” (paragraph 17 at page 7)

56. In this case the question is whether grounds have been shown by Mr A which would mean it would be to the clear advantage of those who have the economic interest in the liquidation for the liquidators to be removed or some evidence of impropriety which makes the case for their necessary removal.
57. The Preference Shareholders who have all the economic interest in the liquidation wish the JOLs to continue. It is also worth noting that given the history of this complex liquidation, the time and cost which would be involved in new liquidators getting on top of matters involving complicated interests in the power plants in the Middle East and to realise those assets would be very considerable. The consequent disruption and delay of such a removal would fall upon the Preference Shareholders.

Mr A’s case on the merits

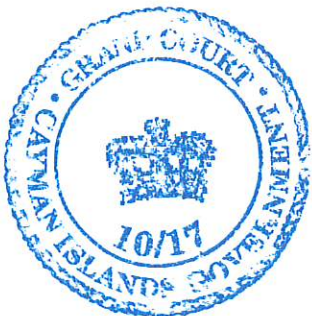
58. I note before coming to Mr A’s allegations that Mr Penner and Mr Sybersma have only been in office as Joint Voluntary Liquidators since February 2018 and under Court supervision since June 2018. Most of Mr A’s complaints date back to their conduct in the previous liquidation.
59. I will not deal with each and every point made in these affidavits as to do so is not necessary to explain my decision and I will only deal with those points which are of some potential significance.

Mr A’s first affidavit of 6 July 2018 (A1).

60. The central themes of Mr A’s evidence in this affidavit are that the JOLs: are unable to fairly and dispassionately deal with claims he might submit; should have resigned following the decision of the Privy Council and instead maintained the status quo by a carefully considered ‘device’ of a voluntary liquidation; have acted improperly in concert with other parties to damage Mr A; have irreconcilable conflicts of interest; and cannot be trusted to exercise due process fairly.

The February 2018 special resolutions.

61. Mr A alleges that the steps taken to appoint the JOLs as voluntary liquidators in February 2018 were “...irrespective of any Privy Council advice” - see paragraph 5. The JOLs behaved improperly by “deliberate and manipulative attempts” to “subvert the process” following the judgment of the Privy Council - see paragraph 6.
62. I have carefully considered Mr A’s interpretation of events to see if they were supported by the facts and have found that they are not. Mr A has misconstrued the scope and effect of the Privy Council decision. No further rights accrued to Mr A as a result of the Privy Council’s decision to set aside the 2012 Winding Up Order and the liquidation.

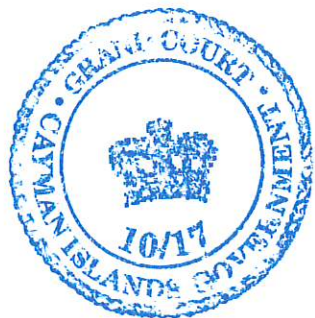


63. The setting aside of the 2012 Winding Up Order did not affect the Company's Articles of Association or the rights of the Preference Shareholders or Mr A. The special resolutions to appoint the JOLs as Joint Voluntary Liquidators on 15 February 2018 were approved by the Preference Shareholders who plainly exercised their rights to protect their investment in the Company and to prevent any further adverse potential disruption to the liquidation. It was within their power to do so as the entities who have the majority of the economic interest in the Company. Minutes of the EGM confirming the special resolutions are exhibited at pages 91 to 93 of MP3. In addition to these special resolutions the Preference Shareholders also passed an ordinary resolution ratifying all of the actions taken by the JOLs on behalf of the Company during the liquidation proceedings - see paragraph 27 of Penner 3.
64. Mr A complains that an EGM was held on 15 February 2018 *before* the Privy Council issued its judgment in which resolutions were obtained initiating the relevant course of action-see paragraph 5. This is accepted by the JOLs and it had been made clear in the course of the proceedings before the Privy Council by Mr Tregear QC that this was the intention. Mr Penner points out at paragraph 23 of Penner 3 that Mr Tregear QC made it clear to the Privy Council and Mr A that the appeal would achieve nothing as the Preference Shareholders could simply place the Company into voluntary liquidation if the winding up order were to be set aside and Mr A's leading counsel did not take issue with that submission.
65. I find that there was nothing '*surreptitious*' in this as alleged by Mr A at paragraph 14. I accept the evidence of Mr Penner at paragraphs 41 to 44 of Penner 3 that the Supervision Petition was properly brought to Mr A's attention together with its supporting evidence.
66. I am satisfied that the Preference Shareholders had authority to pass the resolutions and that the JOLs' position has been transparent and consistent throughout on this issue: the appeal did not alter the fact that Mr A has no economic interest in the Company; and the Company has remained in liquidation albeit on a solvent basis. Mr A has not been restored as a director and as I have explained above has no contributory interest in a solvent liquidation, whether or not he intends to submit or re submit an as yet unparticularised proof of debt.

Allegations made at Paragraph 18.

67. Mr A states this:

"It is worth noting that over the course of the past 6 and a half years, the JOLs have pursued an irrational and oppressive strategy against me aiming at forcing me into personal bankruptcy and included, among other things: a) unlawfully stripping me from my shareholder and creditor rights; b) wrongfully terminating the management agreement between the Company and its manager; c) tortuously[sic] interfering in the contractual obligations between the manager and one of the Company's assets; d) soliciting senior executives



of the manager; e) systematically destroying over US \$30 million of value created in the Company's reorganisation; f) rejecting my unambiguous indemnity rights under the Company's articles of association; g) refusing to reimburse me for expenses incurred in furnishing them with information; h) obtaining a security of costs order in respect of my appeal in the Cayman Islands Court of Appeal; i) enforcing two orders against me in Massachusetts while my appeals were pending and most troubling; j) engaging in a failed attempt to improperly dispose of the Company's assets."

68. Having reviewed the extensive material provided by Mr A in support I have found no documents or facts amounting to proof to support these wide-ranging assertions. Doing the best I can from the material before me and the evidence provided in paragraph 67 of Penner 3, which I accept, I make the following observations as to the position:

- a) No creditor or shareholder rights have been taken away from Mr A. Mr A has never been a shareholder in the Company and QGEN, which held the voting rights in the Company until 6 June 2013 when it lost those rights, has been struck off the register since October 2013. The sole proof of debt claim adjudicated upon by Cresswell J in the sum of US\$672,000 has been set aside but not resubmitted. His previous proof of debt claims were either voluntarily withdrawn or dismissed by the Court on the merits. Mr A did not seek to appeal against any Court judgment on the merits, nor has he submitted any proof of debt claim in the liquidation following the making of the supervision order.
- b) No evidence is provided to substantiate the allegation that the Management Agreement was wrongfully terminated. Mr Penner's fourth affidavit of 7 November 2018 deals with the reasons for termination which I accept. Mr Penner says at paragraph 8:

"... immediately prior to the Winding Up Order, the Manager caused the Company to transfer substantially all of its remaining cash reserves to the Manager despite (i) it being clear that no further management services would be required to be undertaken by the Manager following the Company's winding up and (ii) such payments being void pursuant to section 99 of the Companies Law."

69. He goes on to say that the JOLs took the view that the Manager's actions constituted a material breach of the Management Agreement and therefore served a termination notice. As a result of the Manager's failure to remedy the breach, the Management Agreement was deemed to be terminated at the time of notification of the material breach i.e. 1 February 2012 and no later than 2 April 2012.

70. And at paragraph 11:

"For completeness only, I also noted at paragraph 68(b) [of Penner 3] that the Management Agreement was in any event also terminable for 'cause' as of 6



June 2013 as a result of the Preference Shareholders not receiving the minimum return on their investments mandated by the Management Agreement prior to the tenth anniversary of their investment in the Company.”

71. The Manager was struck off the register in October 2013 and on 7 March 2018 Mr Penner and Mr Derksen were appointed as JOLs of the Manager.

c) No detail has been provided.

d) No detail has been provided. The JOLs deny ‘soliciting’ but accept that they have engaged former staff on a commercial consultancy basis to assist in the running of the Company’s business.

e) There is a serious conflict of evidence on this. Mr A provides no detail as to the ‘systematic destruction of US\$30 million of value’ by the JOLs which he asserts was created in the Company’s reorganisation. The JOLs on the other hand say Mr A caused the Company to incur US\$31 million in unauthorised cost in the period leading up to the Winding Up Order in 2012. They also allege that he left a substantial debt unpaid by the Manager and removed substantial sums in cash from the Company’s bank account. They deny that any value was created by the reorganisation and say that the true position is that the Company’s cash assets were paid to entities connected to Mr A and his wife as “reorganisation expenses”. Mr Penner deposed in his second affidavit sworn on 29 December 2014 in the appeal proceedings at paragraph 33 that during the 10 year period in which Mr A had control of the Company’s affairs (between 2002 and 2012) he had procured contractual payments as well as irregular and unauthorised payments totalling some US\$64.9 million from the Company to be paid to other entities owned and controlled by him and/or his wife.

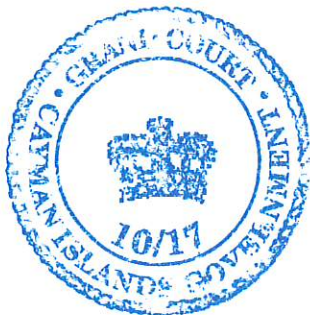
f) The JOLs deny that Mr A has any indemnity rights. They set out their position in a letter dated 4 January 2018. Mr A is entitled to challenge the JOLs’ interpretation of Articles 137 and 138 if he wishes to do so.

g) No credible detail is provided and the case put forward by the JOLs is that of obstruction and resistance by Mr A in providing information.

h) Mr A did not comply with the Order, nor does Mr A explain why the application was irrational.

i) This is accepted by the JOLs but they do not accept that the proceedings in Massachusetts were brought without authority as alleged in paragraph 19. I accept the evidence at Penner 3 at paragraphs 48 to 57 that the JOLs have at all times had authority to act for and on behalf of the Company, including in respect of claims against Mr A.

j) The JOLs deny that there was anything improper in seeking to realise the value of the Company’s assets for the benefit of the Preference Shareholders and in the



process applying for and receiving the Court's sanction under the Companies Winding Up Rules.

Paragraphs 20-22.

72. Mr A complains about the proof of debt process. He suggests that the JOLs were compromised by the makeup of the Liquidation Committee which has representatives of government agencies on it with whom Mr A was in dispute. He claims that having reached adverse decisions to him in connection with those proofs of debts that the JOLs were *functus officio* in relation to any new determinations.
73. Dealing with this latter point they are clearly not *functus officio* and are properly constituted in respect of the current liquidation to adjudicate on any proof of debt submitted.
74. As to the proofs of debt rejected by the JOLs, there is no evidence that in discharging their functions that the JOLs were compromised by the Liquidation Committee and somehow failed to act impartially. The matter is dealt with in the Penner 3 at paragraphs 69 to 72 which I accept.
75. Mr A says at paragraph 22:

... "It does seem irreconcilably incongruous and perverse for Messrs Penner and Sybersma to have conceded by their letter of 27 February 2018, that the winding up order of 26 January 2012 was set aside by the Privy Council's Advice, and yet wish to maintain the status quo in respect of adverse decisions they would have made during the currency of the previous proceedings which have now been declared unlawful".

76. The decision of the Privy Council did not declare any of the acts of the JOLs unlawful. As the winding up has been set aside there is no reason why Mr A may not submit new proofs of debt which if he is unsuccessful in maintaining, may be appealed to the Court which will consider the matter *de novo*. A mechanism exists to protect his interests.

Conflict of interest

77. In paragraphs 23 and 24 Mr A asserts that a conflict of interest has arisen because the JOLs are now debtors of the Company and creditors of the Preference Shareholders so that they should resign or be removed.
78. He alleges that the JOLs are liable to reimburse the Company for all fees paid to them consequential upon the winding up which he says has been declared to be unlawful. He goes on to suggest that they have recourse against the Company's Preference Shareholders on the basis that they promoted and initiated the previous liquidation which has been set aside by the Privy Council decision. Mr Penner deals with this in Penner 3 at paragraphs 69 to 72. I again accept his evidence and find that Mr A has misunderstood and misconstrued the scope and effect of the Privy Council decision.



79. The fees paid to the JOLs in the course of the previous liquidation had all been ratified by the Preference Shareholders and approved by the Court. There is no legal obligation created by the Privy Council decision for these fees to be repaid to the Company, let alone any recourse which has arisen against the Preference Shareholders. Indeed as Mr Penner points out at paragraph 71 the Preference Shareholders ratified all of the actions taken by the JOLs in the course of the liquidation proceedings from the date of the original Winding Up Order to the date on which it was overturned by the judgment of the Privy Council, which clearly must extend to the fees incurred in taking those actions. The only persons who could complain if there was a conflict would be those who had the economic interest in the Company: the Preference Shareholders; and they have not done so. As Lord Millett said in *Deloitte* [1999] CILR 297 at p.305 a conflict of interest is not the same as impropriety or want of probity.
80. I find that there are no good grounds made out which would justify the removal of the JOLs in Mr A's first affidavit of 6 July 2018.

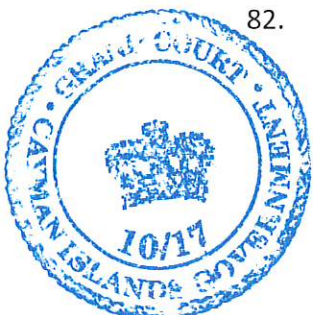
Mr A's second affidavit of 7 January 2019.

Introductory paragraphs

81. At paragraph 2 Mr A states:

"... I am concerned that throughout the liquidation proceedings which have taken place in the Cayman Islands... [QGEN, the Manager and I] have not received fair and equitable treatment and have been treated as vexatious litigants... I would expect any newly appointed liquidator to undertake the following tasks: a) sell the Company's assets on an arm's-length and transparent basis via a bone fide auction; b) adjudicate... [QGEN, the Manager and my] proofs of debt in a fair and objective manner and cause the Company to provision an appropriate amount as a contingency; c) reconstitute the Company's Liquidation Committee so that the smaller preference shareholders who are likely to be affected the most will receive fair and equitable treatment; d) seek to broker a fair settlement between the Company (and if required the Qatari Preference Shareholders) and me. In the event that the new liquidator determines that a further investigation of my conduct is required, despite the compelling evidence presented later in this Affidavit, he or she should honour the Company's obligations to me in respect of my unambiguous indemnity rights under the Company's Articles based on evidence that I had previously submitted in various affidavits and deposition transcripts. In this regard, it would only be fair to afford me reciprocal discovery rights."

82. At paragraphs 3 to 5 Mr A says that it would be to the advantage of all the Company's stakeholders for new Liquidators to be appointed given that the two assets owned by the Company had not been sold for seven years and that it made sense for a 'new set of eyes' to be brought in. He asserts, to some degree, repeating allegations he made



in A1, that the JOLs collaborated with the Company's Qatari Preference Shareholders to wrest control of the Company's assets from the Manager, and to strip him personally of his shareholder and creditor rights. He also alleges defamation, denial of his unambiguous indemnity rights and that the objectives of the Qatari Preference Shareholders and the JOLs, and their attorneys, is to force him into personal bankruptcy.

83. He says that the JOLs and their attorneys have not acted independently or rationally and have in some instances acted in bad faith and destroyed the substantial intangible value that the Company had built in its reorganisation and concealed such value from the Grand Court. He suggests they have done so in order to unnecessarily prolong their tenure and to satisfy vindictive motivations held by the Qatari Preference Shareholders for whom they act and to whom they report.
84. At paragraph 13 Mr A attacks the original Winding Up Order (which has now fallen away) made on 26 January 2012. He also revisits at paragraph 20 the events of 2011 which in his opinion prompted the filing of the original Winding Up Petition on 11 November 2011. I note in passing that neither the original Winding Up Order or indeed any of the Orders previously made in the liquidation proceedings were appealed on their merits by Mr A - see paragraph 20 of the sixth affidavit of Michael Penner dated 14 January 2019 ("Penner 6").
85. These introductory paragraphs give a framework and a flavour to what comes in detail in the subsequent paragraphs which in total number 135.

Analysis

86. It is clear to me having reviewed these paragraphs in detail that the main thrust of Mr A's case (setting aside the many and various allegations of wrongdoing) is that Mr A expects the JOLs to act in a way that will suit his interests, or if they will not do so, to replace them by others who will. This ignores three realities. The first is that the liquidation is not primarily concerned with protecting Mr A's personal interests. It would be bizarre if that were so.
87. The second is that (absent compelling evidence to the contrary) the JOLs and those advising them (and the Court from whom they obtain sanction) are presumed to be independent, impartial and focussed on the best interests of those who have the economic interest in the assets. The presumption is of course displaceable upon cogent evidence to the contrary, but not upon bare unsupported assertion.
88. The third is that those persons, the Preference Shareholders, who have the economic interest are content with the way in which the JOLs are conducting the liquidation, and see great disadvantage to their interests in their replacement.

89. As to a) the potential for and realisation of a sale of the assets, which is an essential matter for the JOLs acting as officers of the Court and in the commercial best interests of the Company and its shareholders, the evidence shows that there was a potential



sale for which the Court gave sanction in December 2015, but it did not proceed. The Liquidation Committee has been provided with relevant information pursuant to reporting obligations under the Companies Winding Up Rules and have made no complaint about a lack of progress for a sale. Mr A provides no legitimate basis for criticism of the JOLs in this regard.

90. As to b) adjudicating on any proof of debt claims and making a provision for any such proof of debt claims, these are likely to be personal to Mr A given that QGEN has been struck off and the Manager is in liquidation. He provides no evidence to substantiate the allegation that any proofs of debt submitted by him would not be adjudicated in a fair way or that any appeals would not be similarly dealt with in a fair way.
91. As to c) the allegation that the Liquidation Committee has not been operating fairly to non-Qatari Preference Shareholders, there is no evidence adduced by Mr A to support that contention and no complaints are made in the evidence submitted from anyone apart from Mr A to this effect.
92. Mr Penner says at paragraph 30 of Penner 6:

“Based on my extensive interaction with the Preference Shareholders in the seven year period following the Winding Up Order, it is clear that the commercial interests of the Preference Shareholders in seeking to maximise the value of their respective investments in the Company are aligned. However, any suggestion that the Qatari members of the Liquidation Committee sought to use the Company's liquidation proceedings as a means of pursuing a vendetta against Mr Almazeedi and have somehow caused the non-Qatari Preference Shareholders to participate in this endeavour is entirely without foundation.”

93. And at paragraph 31:

“As I expect Mr Almazeedi will have been advised by one of the six firms of Cayman Islands attorneys retained by him in relation to the Company's liquidation, the role of a Liquidation Committee is relatively limited and committee members generally act as a sounding board for the Official Liquidators in respect of material work streams that it is proposed will be undertaken on behalf of the Company in official liquidation. The decisions of the Liquidation Committee are non-binding and an official liquidator is ultimately responsible for exercising their independent professional judgment in the conduct of a liquidation. That is how the JOLs have conducted and will continue to conduct this liquidation.”

94. I accept that evidence.
95. Mr A sets out at paragraphs 6 and 19 the six headings under which he claims there has been misconduct by the JOLs and those advising them.
100. They are as follows:



1. The Company's second liquidation: attempt to subvert the enforcement of the JCPC judgment and orders.
2. The Company's first liquidation: attempt to freeze me out as shareholder and creditor of the Company.
3. The Company's first liquidation: defamation of my professional reputation and integrity.
4. JOLs' conduct: lack of independence.
5. JOLs' conduct: bad faith.
6. JOLs' conduct: abuse of process.

101. I have dealt with matters asserted under the first heading which are repeated from A1. There has in my view been a misunderstanding of the effect of the Privy Council decision. Nothing done by the JOLs was surreptitious or subversive. Rather it had been made plain to their Lordships in the Privy Council and to Mr A that the JOLs intended to implement the voluntary liquidation procedure that was in fact adopted. This preserved the interests of the Preference Shareholders in the event that the Privy Council set aside the Winding Up Order.

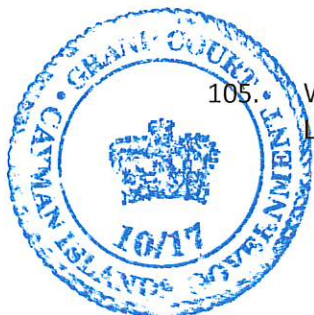
102. I have also dealt with the matters asserted under the second heading which are repeated from A1. Mr A was not deprived of any rights as claimed by virtue of the first liquidation. The Company's Articles of Association from inception set out the mechanism by which QGEN's rights as ordinary shareholder could be altered and they were in fact altered with effect from 6 June 2013 by virtue of the mechanism set out in Article 64.

103. As to the matters asserted under the third heading these are expanded upon in detail at paragraph 61 to 78 of A2 to support Mr A's assertion of "defamation of his professional reputation and integrity". Mr Penner states at paragraph 33 and 34 of Penner 6 that on advice obtained from legal counsel and based upon investigations into the Company's affairs in the period following the Winding Up Order he considers that a number of claims are capable of being pursued against Mr A arising from his conduct as director of the Company. These are summarised in detail in Penner 3.

104. Mr Penner states at paragraph 34 of Penner 6:

"...I would note that although I set out in paragraphs 22-28 of [Penner3] various detailed examples of potentially fraudulent conduct on the part of Mr Almazeedi in relation to the manner in which the substantial 'reorganisation costs' were recorded in the Company's accounts, Mr Almazeedi has elected not to provide any explanation for the very significant overstatement of the amounts of invoices provided to the Company's auditors in respect of reorganisation costs in [A2] compared to the same invoices in the Company's available records..."

105. Whether or not those claims are taken forward depends upon the sanction of the Liquidation Committee and the sanction of this Court. It is not necessary for me to



assess these for the purposes of this application. I note also in this regard that the Writ has not yet been served upon Mr A - see paragraph 32 of Penner 6.

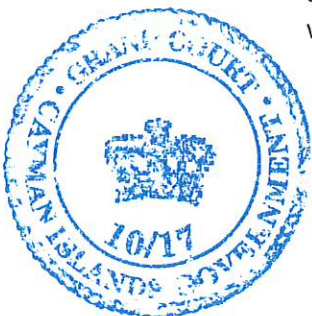
106. I have however noted that the points Mr Penner makes above and the evidence he tenders in support suggest a case of significant overstatement in the amounts of invoices provided to the Company's auditors in respect of reorganisation costs compared to invoices available in the Company's records, all of which is subject to further investigation and discovery. An example of this is at page 31 of "MP5" to Mr Penner's fifth affidavit dated 22 November 2018 (Comparison of recorded reorganisation costs - Auditors vs Tiedemann).
107. These are commercial claims which will either be proven or not. I have not found any of the JOLs' alleged conduct to be calculated to harass Mr A or to raise matters which are defamatory of Mr A. They seem to me to be proper enquiries and arguments based upon evidence, made by JOLs acting efficiently and effectively.
108. Paragraphs 50-60 paint a picture of collusion by the JOLs with the Qatari Preference Shareholders in issuing a predetermined "flawed" opinion for the purpose of undermining a proposed "asset swap" transaction, the terms of which were previously negotiated by Mr A on behalf of the Company without the Preference Shareholders' knowledge. The asset swap transaction was one of the matters of concern to the Preference Shareholders which led to the Winding Up Petition.
109. The matter is dealt with in paragraphs 36 to 39 of Penner 6 and I again accept his evidence. The Preference Shareholders had serious concerns in relation to the transaction and asked the Court to order a "Fairness Opinion" to provide an independent valuation of the Company's assets. At the time the Company sought a validation order Mr A was the sole director of the Company and he specifically agreed to the engagement of Deloitte Corporate Finance Ltd in Dubai to prepare the Fairness Opinion. There is no evidence put forward to support Mr A's stated belief that the Fairness Opinion was prepared for the purpose of undermining the terms of the transaction. There is no support for the allegation that the Fairness Opinion was not genuinely held by Deloitte Corporate Finance Ltd Dubai and was as Mr A alleges a 'contrivance' to harm the Company. On analysis Mr A's complaints are no more than disputes as to the methodology and certain assumptions used in the Fairness Opinion. The transaction was in the result aborted because the Court refused to validate the transaction. In fact the Fairness Opinion which was completed after the Company had been wound up concluded that the proposed consideration payable to the Company under the asset swap transaction should have been significantly higher than the sale price agreed by Mr A.
110. Also under this heading contained in paragraphs 57 to 58 of his affidavit are allegations as to the pressure Mr A's lawyers allegedly succumbed to in abandoning their duties to him and to their having given him false advice. He alleges that his own lawyers prevented him from doing anything or saying anything that was critical of the Qatari Preference Shareholders and their attorneys. This it is said all contributed to



the reason why he consented to the Winding Up Order. These allegations are unsupported by any contemporaneous or other evidence and stretch credulity.

111. At paragraph 61 of A2 Mr A alleges that in their Petition the Preference Shareholders and the JOLs deliberately misled the Grand Court and the Court of Appeal, essentially because the reorganisation costs he caused to be spent, some US\$32 million, have been characterised as a misappropriation. He complains that the Preference Shareholders did not have any right to be asked for approval for the spending of this money and he was entitled to carry out the reorganisation and incur the relevant expenditure as a result of the Company's constitutional documents and various related agreements. There has therefore been in his view "*defamation of his professional reputation and integrity*" for the JOLs to suggest that the money was misappropriated or dissipated. He gives an account of events and their effect from paragraphs 64 to 78. The JOLs do not agree with material aspects of the account provided by Mr A. They are all matters legitimately in issue or which have been in issue between the JOLs and Mr A.
112. Mr Penner deals with this account at paragraphs 40 to 52 of Penner 6. He concludes having investigated the matter that the US\$32 million expenditure conferred no tangible benefit to the Company or to the Preference Shareholders and that Mr A used the Company's capital to underwrite a funding of QGEN, a standalone entity owned and controlled by Mr A at the time. There was no value created for the Company to realise. I accept that his evidence may well be right but do not need to decide the matter for the purposes of this application.
113. In any case there seems to be no dispute that the reorganisation costs were paid to the Manager - see paragraph 74 of A2. There was also a loan to the Manager of US\$6.9 million which was contemplated by the documents but which has not been repaid. Mr A was the sole director and ultimate beneficial owner of the Manager at the relevant time. The question is whether the reorganisation costs were legitimate, prior approved payments (or whether they needed to be), and were properly made to assist a legitimate project and whether the Manager was entitled to be paid the monies. Mr Penner says the Company has actionable claims against Mr A for these monies which were paid to the Manager and other entities owned or controlled by Mr A and/or his wife and subsequently wrongly charged as expenses to the Company. These are not matters which would have been concluded without careful deliberation by the JOLs. There is no evidence to suggest that they were calculated to put pressure on Mr A or to impugn his reputation and integrity. They were no doubt based on investigation and evidence.
114. As to the consent required from Preference Shareholders for this expenditure, in a memorandum to the Preference Shareholders dated 23 September 2008 (exhibited at pages for 443 to 444 of MP6) Mr A acknowledged that the reorganisation was not within the Management Agreement:

"structuring the disposal of the investments into a newly created corporate entity has not been envisaged or provided for in the Management Agreement



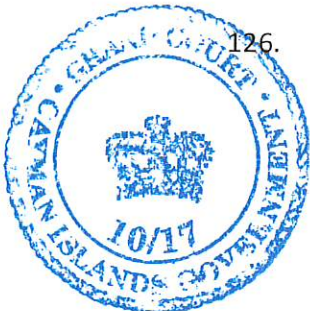
between [the Company] and [the Manager] and clearly falls outside the scope of service provided by [the Manager]as manager of [the Company]."

115. Reviewing the oral deposition Mr A gave in August 2013 (see pages 100-112 of 'MP6') such payments seem to have been accepted by Mr A to require the prior consent of the Preference Shareholders - he says he obtained the consent of all the Preference Shareholders. Presumably this was (but the transcript is not clear to me on this) pursuant to Article 110 of the Company's Articles (pursuant to which the Preference Shareholders were to approve material transactions not contemplated by the BTU Power Documents). The JOLs maintain consent was not given.
116. Whilst some reliance is placed by Mr A on legal advice obtained at the time, having reviewed that advice and in particular an email dated 1 September 2009 from Maples and Calder (at volume 9 of 'WA2') it is clear to me that the legal advice was not directed at costs which went to the development of QGEN and not to the Company.
117. At paragraph 71 of A2 Mr A says that "*The objective of the reorganisation project was to build [QGEN] into a compelling value proposition for new investors, provide QIA with voting rights (which they did not have under the Company's constitutional documents) and to generate liquidity to redeem... shares.*"
118. The JOLs' evidence is to the effect that Mr A was spending money to create a new fund in relation to which shares in the Company could be swapped for shares in QGEN. He was not spending money to invest in the Company. To do so he needed approval which he did not obtain.
119. It seems to me to have been perfectly reasonable for the JOLs to question the expenditure and the basis of approval sought or given (if any). To suggest that this was done deliberately to impugn Mr A's professional integrity and reputation without any factual or legal basis upon which to investigate and raise these matters is, again on the evidence I have reviewed, misconceived.
120. Mr A's fourth heading is 'lack of independence'. Reference to the 'Evolence' dispute at paragraph 79 of A2, which took place before the first liquidation, may well give Mr A reason to suppose that certain individuals at the QIA were antagonistic towards him at the time, but there is no evidence put forward that any of those individuals improperly influenced the Company's Liquidation Committee the JOL's or their attorneys "*... to implement a concerted potentially unlawful campaign against me which is clearly aimed at destroying me*"(paragraph 80).
121. Mr A complains about the participation of a senior litigation partner at White and Case at his deposition in Boston on 1-2 August 2013 without the sanction of this Court. The sanction of this Court was not necessary with regard to attendance at the deposition and there is nothing to suggest a lack of independence on behalf of the JOLs or their team by virtue of the attendance of one lawyer from the firm acting for the JOLs in the US. Mr Tregear QC attended with the JOLs, representatives from



Walkers and Deloitte. A senior individual attended as one of the JOLs' US attorneys as the deposition was being conducted in the US.

122. As to reference to a "related party transaction" which did not go ahead referred to at paragraphs 83 to 88 of A2, having reviewed the relevant material the Court was informed of the interest of QIA on the sanction application and the transaction did not proceed for reasons unrelated to any such alleged interest. It is regrettable that Mr A refers to the Grand Court's "complicity" in paragraph 85 when he must know that sanction had been given after careful consideration to all relevant aspects of the transaction. There is no ground put forward which merits such an accusation.
123. There is reference at paragraph 89 of A2 to an alleged failure to investigate evidence of a breach of the US Foreign Corrupt Practices Act by executives of the Qatari Preference Shareholders. The allegation concerns the placement fees paid in 2003 on the original investment. The JOLs have taken the view that this is not the Company's claim and is outside the scope of their role as there is no interest to the liquidation in investigating matters which would not form part of a claim by the Company. This seems to me to be a reasonable position to take. Mr A has submitted no evidence to support the assertion that bribes were paid to government officials in relation to the transaction in 2003. If there were such evidence he could of course provide it as a 'whistleblower' to the Department of Justice in the US.
124. The fifth heading alleges bad faith on the part of the JOLs. The first allegation concerns indemnity rights under the Company's Articles which are set out at Article 137 and 138. These would suggest that Mr A is entitled to an indemnity in respect of claims made against him whilst acting (or failing to act) as a director of the Company, which do not arise from his own wilful neglect or default. He is also entitled in these circumstances to an advance of reasonable attorney's fees and other costs and expenses incurred in defending any such claim.
125. Applying the facts to these provisions, the JOLs' evidence in summary is: the only proceedings which have been brought against Mr A in the US are enforcement of costs orders made by the Cayman Court and disclosure of his assets for the purpose of enforcement of costs Orders. All of these costs Orders resulted from his own actions in bringing the proof of debt appeals and under the relevant Articles Mr A is not entitled to an indemnity in respect of actions which he himself has initiated. As far as the other applications for discovery are concerned, those were not brought against Mr A but were brought against the third party document holders such as banks and lawyers who may hold documents relating to the Company. Mr A intervened in some of those applications, but again the indemnity does not apply as the cases were not brought against Mr A. Similarly, with the appeal to the Privy Council. That appeal was initiated by Mr A against the JOLs and is not a proceeding defended by Mr A in his capacity as a director of the Company. The Writ action has not yet been served.
126. All of these matters were canvassed in correspondence between the attorneys acting on behalf of the JOLs and Brown Rudnick who acted for Mr A in December 2018 and January 2019 - see 'WA 39'. These are all tenable positions for the JOLs to take. There



is no evidence to support the allegation of 'bad faith' with regard to the way in which the JOLs have dealt with the indemnity rights.

127. Paragraph 99 deals with an alleged concealment from the Grand Court of the US\$30 million. The allegation is that instead of pursuing the creation of Mr A's new fund to its conclusion the JOLs wrongfully stopped the work from being carried out and then concealed it from the Court. There are issues as to the proper treatment of these monies, approval and to whose benefit they were applied, as I have said. There is in my view no evidence to support the contention that value was created in the Company which the JOLs have either concealed from the Court or destroyed. The Company had no interest in QGEN. The shareholders of QGEN were Mr A and his wife. The JOLs have concluded that the expenditures created no demonstrable value for the Company - see paragraph 44 of Penner 6.
128. Having reviewed the relevant material in volume 10 of Mr A's exhibit there is no evidence to support the points made at paragraphs 105 and 106 concerning the allegation that there was contractual interference by the JOLs. If there was anything to be investigated further it would be at the instigation of the Manager, which is in liquidation. In any case it seems to me that the JOLs were entitled to investigate payments which were being made and to engage persons to assist them in that regard, and then make decisions in the best interests of the Company. I find nothing untoward in the JOLs' actions.
129. The allegations made at paragraphs 108 to 115 to the effect that it is improper conduct for an officer of the Court to seek to enforce a costs Order on the basis that the debtor is unable to pay, have no obvious merit. The JOLs in my assessment were perfectly entitled to pursue costs Orders against Mr A in the circumstances. I note that the JOLs' evidence is that Mr A has never provided security nor satisfied any costs Orders. The JOLs have not accepted that Mr A does not have access to funds. That may be right or wrong, but it is not a matter of bad faith that they have pursued such applications. Mr Penner says at paragraph 56 of Penner 6 that:
- "... between 2003 and 2011, the JOLs have determined that at least a total of approximately US76.9m was paid to companies owned and controlled by Mr Almazedi and/or his wife."*
130. I have seen no evidence to suggest that they have tried to undermine his financial standing in an improper way. The JOLs have an obligation to protect the estate from expense which is irrecoverable. They have not threatened to commence litigation speculatively as a means of extracting a settlement from a party against whom there is no genuine cause of action - see *In Re ICP Strategic Credit Income Fund Limited & Ors [2014 (1) CILR 314]* per Jones J - which could not be justified.
131. In these proceedings considerable expense has been incurred to respond to applications brought by Mr A, like the present one.



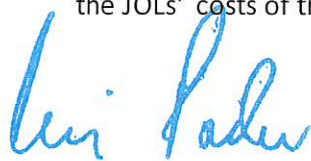
132. The sixth heading involves allegations which Mr A categorised as an ‘abuse of process’. These relate to costs Orders which the JOLs have sought to enforce. The JOLs would be open to criticism if having incurred costs which have been ordered to be paid in their favour they did not seek to recover them. The JOLs would also be open to criticism if faced with litigation where they perceived that their costs would not be recoverable if they did not seek security. To say that it is an abuse of process for JOLs to seek these orders and that this should give a ground for their removal as liquidators is plainly wrong. These are the ordinary incidents of adversarial litigation.
133. There is nothing in the allegations made at paragraphs 121 or 122. The JOLs did not require the specific sanction of the Court to engage Mr Rorabaugh.
134. Paragraphs 123 to 130 allege oppressive discovery. There is an allegation made at paragraph 129 concerning a driver allegedly parked outside Mr A’s home on several consecutive days who had a ‘Caribbean accent’. I accept that the JOLs have no knowledge of this. There is no evidence to support the allegation that discovery or information was sought in order to harass Mr A or where the underlying information was not genuinely required. The matters set out do not amount to an abuse of process or to oppressive disclosure applications justifying the removal of the JOLs. I also reject Mr A’s further assertion that he did not provide email addresses because he is concerned that the JOLs would commit illegal acts to hack into his computer.
135. Finally at paragraphs 130 to 132 he complains about the Winding Up Petition presented on 17 January 2018 in respect of the Manager for a debt of some US\$9.3 million. The limitation period expires six years after the statutory demand was served on 6 March 2012 which presumably explains why the Petition has been filed at this time. The points Mr A makes are not relevant to the issue of whether the JOLs ought to be removed, let alone that they should be.

Conclusion

136. Mr A does not have standing to have brought this application and it fails for that reason.
137. Even if he did have a legitimate interest in applying for the removal of the JOLs, none of the allegations made by Mr A in his extensive evidence, when properly reviewed and analysed, amount to anything which could justify the removal of the JOLs. Such a removal would be extremely disruptive and to the great disadvantage of the contributories in the liquidation.
138. I have formed the clear view that there has been no impropriety or misconduct by the JOLs. They have, from all the extensive activity I have reviewed, conducted themselves in a proper and open manner for the benefit of the Company’s stakeholders in very difficult circumstances. There is no credible evidence put forward of a lack of probity, impartiality or independence.



139. In my assessment, Mr A's conduct in bringing this application and not seeing it through to a conclusion at the hearing, leaving aside the merits of the application itself, has itself been an abuse of the process of this Court. It has created uncertainty and in my view was probably calculated to damage the entities which hold the economic interest in the Company and who remain fully supportive of the JOLs. It is these parties who Mr A alleges have a vendetta against him. However, he has provided no evidence to support the concerted unlawful campaign he alleges.
140. The history of continuing dispute between Mr A and the Preference Shareholders (and the JOLs) has no doubt shaped Mr A's view of how matters have transpired. From his description of matters which give rise to these events, one gets a clear impression of his sense of persecution. Perhaps from Mr A's point of view this application has played some part in once again giving vent to that. He may also perceive a collateral benefit in deflecting the JOLs from their pursuit of his own alleged wrongdoing which took place in the lead up to the first Winding Up Order and in encouraging them to settle matters at issue between them.
141. Be that as it may, this exercise has certainly been an expensive and time consuming distraction of the Company's resources and Court time, which should not have been so consumed.
142. No discernible legitimate benefit to Mr A in removing these JOLs and replacing them with others is apparent. Mr A is fully protected in any proof of debt claim he may bring and has no grounds whether as matter of due process or fairness to demand the removal of the JOLs in anticipation of unfair treatment.
143. The wide ranging allegations and assertions are on close analysis devoid of merit and in some instances can be fairly described as fantastic and irresponsible. Cumulatively, they add up to an assessment that Mr A is completely unreliable. Some lead me to the inescapable conclusion that they are an invention by Mr A.
144. I have no hesitation in dismissing this application. It can be characterised as a clear abuse of process and should never have been brought. Self-serving assertion upon assertion without any factual or legal basis to underpin it and which seeks to misconstrue and reinterpret events which occurred many years ago has served only to undermine all credibility in Mr A's evidence.
145. This is a clear case where indemnity costs should follow my findings to mark the Court's disapproval of Mr A's unreasonable conduct and I order that Mr A should pay the JOLs' costs of this application, to be taxed if not agreed, on the indemnity basis.



THE HON. RAJ PARKER
JUDGE OF THE GRAND COURT

