

JSC Commercial Bank Privat Bank v St John Ltd and Ors [2021] JRC 189

Craig Swart considers the decision of the Royal Court of Jersey relating to the revival of a service provider's obligations on the reinstatement of a dissolved Jersey company.

Background summary

JSC Commercial Bank Privat Bank (**JSC**) (a Ukrainian bank) has brought proceedings in Israel against *inter alia* St John Limited (**St John**) (a Jersey company) relating to large-scale fraud alleged to have been suffered by the bank prior to its nationalisation. It is alleged that St John received misappropriated funds.

St John was however dissolved in 2014 following a formal solvent winding-up by its members. In order to serve St John, JSC applied to the Royal Court for the company's reinstatement, which order was made *ex parte* on 3 February 2020. The application was made pursuant to Article 213 of the Companies (Jersey) Law 1991 which provides that the Court has the power to declare a dissolution void "*and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.*"

Court papers were then served at St John's last known registered address, which is the address of the second respondent Lutea Trustees Limited (**Lutea**) (which had provided corporate services, i.e. registered office, directors, secretary, and nominee shareholders, to St John prior to its (now voided) dissolution).

Lutea refused its co-operation with service on the basis that it no longer provided any services to St John. Its position was that it did not accept the restoration of duties and obligations such as to require it to provide services which it had previously provided prior to the company's dissolution.

JSC was concerned that a point may be taken in Israel that St John had not been properly served. It therefore sought three declarations:

- (1) that Lutea's consent to act as corporate services and registered office provider to St John Limited survived the dissolution and subsequent reinstatement of the latter;
- (2) that Lutea's address in Jersey was the registered office of St John Limited; and
- (3) that the Israeli claim documents were served on St John Limited in accordance with Article 72 of the Companies Law and Rule 5 of the Royal Court Rules 2004 as amended.

At the hearing Lutea conceded that St John had been served at its registered address. It maintained its objection to the suggestion that it was providing any financial services after dissolution.

CASE UPDATE

Royal Court's Conclusions

The Royal Court identified the first requested declaration as an academic issue which did *“not need to be resolved in order to provide [JSC] with the substantive relief it seeks.”* After considering company and civil procedure legislation relating to service on Jersey companies, the Court was *“completely satisfied from every perspective”* as to the registered address of St John and confidently made declarations (2) and (3). At no stage prior to service had Lutea given notice that its address could no longer be used nor had St John given notice of a change of address.

The Court noted, however, that, despite the academic nature of the first requested declaration, the matter may be of interest to those who provide financial services in Jersey. They will need *“in future to pay careful regard to the potential consequences of reinstatement where a company has been dissolved.”* Given the terms of Article 213 it will be necessary to take steps *“prior to dissolution to ensure that any adverse consequences to them might be mitigated or avoided.”* Corporate and financial service providers may otherwise find themselves in a situation similar to that of Lutea, with a historic long-forgotten relationship revived and former professional responsibilities in relation thereto suddenly resuming as if they had never terminated.

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