

Important Bermuda decision on the recognition of foreign insolvency office holders

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[Stephen John Hunt v Transworld Payment Solutions U.K. Limited \(in liquidation\) \[2020\] SC \(Bda\) 14 Com](#)

The Bermuda Supreme Court has clarified the rules for granting common law recognition and assistance to foreign office holders following the landmark competing Privy Council decisions of *Singularis Holdings Ltd v Price Waterhouse Coopers* [2014] UKPC 36 and *Cambridge Gas Transportation Corporation v Official Committee of Unsecured Creditors (of Navigator Holding PLC and others)* [2006] UKPC 26.

In *Stephen John Hunt v Transworld Payment Solutions U.K. Limited (in liquidation)*, the Supreme Court of Bermuda (Chief Justice Hargun) discharged an *ex-parte* order recognizing the appointment of Mr. Hunt as liquidator of Transworld Payment Solutions U.K. Limited ("Transworld") by the English High Court and corresponding *ex-parte* orders granting him assistance in that capacity on the basis that (1) Transworld did not have any assets in the jurisdiction of the Bermuda Court and (2) the purpose of the recognition application by Mr Hunt was to obtain documents and information for use in litigation that Mr. Hunt had already determined to bring in England.

Following the Privy Council's decision in *Singularis*, the Court held that recognition is permissible where there are assets within the jurisdiction in order to clothe the liquidator with the authority to deal with such assets but that conversely a specific restriction applies which prohibits the use of a recognition

order to obtain documents and information for use in actual or anticipated foreign litigation.

Since there was no evidence that Transworld has any assets in Bermuda, the sole purpose of obtaining the *ex parte* Order had been to enable Mr Hunt to obtain information and evidence for the use in contemplated proceedings in England.

Further the Bermuda Court confirmed the principle in *Singularis* that the recognition Order would not enable foreign liquidators 'to do something which they could not do even under the law by which they were appointed'. It was unnecessary to decide whether the liquidator would be entitled to relief from the English Court to compel the production of information since the Chief Justice had held that the Order was obtained for an illegitimate purpose.

It was argued that there was no basis for granting a general stay of proceedings against unidentified persons to assist a foreign liquidation. The Chief Justice also held that it was unnecessary to decide this issue as the Court had determined that the *ex-parte* recognition order ought to be discharged. Nonetheless, the Court observed that grant of a stay could serve a useful purpose when there were assets within the jurisdiction and there was justifiable apprehension that actions were likely to be commenced by some, as yet unidentified, creditors of the insolvent foreign company.

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This decision provides a useful starting point for the process of working out the wider implications of *Singularis* and highlights the limitations inherent in “modified universalism”. It also shows that the Bermuda Courts are prepared to take a robust approach to foreign officer holders who arrive in Bermuda seeking to use common law recognition as an evidence gathering tool for litigation.

Tom Smith QC, of South Square and Keith Robinson of Carey Olsen appeared for the Applicant (a Bermuda corporation) in its successful application to set-aside the recognition and assistance orders.



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