



In re Arck Estrela Limited – untangling a fraudster’s web of trust and corporate structures

Service area / [Restructuring and Insolvency](#)

Location / [Jersey](#)

Date / [April 2017](#)

Carey Olsen continues to operate at the forefront of offshore asset recovery work and the development of insolvency law and process in Jersey.

In this case, the firm was instructed by the English liquidators of Arck LLP (in liquidation) to assist in the recovery of assets misappropriated from a large number of British investors and channelled through Jersey corporate and trust structures as part of a fraudulent collective investment scheme.

Arck LLP was an English Limited Liability Partnership used as a vehicle by Richard Clay and Kathryn Clark to defraud several hundred retail investors of close to £50 million on the bogus promises of substantial investment returns from offshore property investments. Clay was the driving force behind the fraud and was sentenced to 10 years and 10 months in prison by the English Crown Court following an investigation by the Serious Fraud Office, Financial Conduct Authority and other agencies, while Clark as a willing deputy was given a two year suspended sentence.

A substantial part of the LLP investors’ money was funnelled through Jersey companies, purportedly to invest in tourism real estate assets in the Cape Verde Islands. The complex structure of corporate and trust vehicles put in place by the fraudsters stood between the UK liquidators and any chance of recovering any value. But Jersey lacks a creditor driven insolvency process which would have allowed the English liquidators of the LLP, as creditors with a claim of £27 million, to appoint a private law liquidator into the Jersey companies. A further complication was that all of the target Jersey companies had been dissolved by the Jersey Regulator having failed to file statutory returns.

1 In re Northern Investments (Wrexham) Limited [2015] JRC 207

The dissolved Arck Estrela Limited (“Estrela”) was thought to be the asset holding entity. Assuming Estrela could be restored, the only available route into the assets was for the Court to appoint a liquidator using Art.155 of the Companies (Jersey) Law 1991, to wind up Estrela on the grounds it was just and equitable to do so.

While the LLP liquidators had sufficient standing to apply to restore the Jersey companies on existing principles¹, the Royal Court was reluctant to make the order without a plan to recover value for the creditors. Simply restoring the company to obtain a paper judgment was not sufficient as there would be no benefit to the creditors in the absence of identified assets within the jurisdiction. It was clear from the outset that the Royal Court would only restore Estrela if a mechanism could be ascertained to recover value by engaging the statutory investigatory and remedial powers of a liquidator.

Typically only the target Jersey company, its shareholders or directors can apply under Art.155 for a Court appointment of a liquidator into a Jersey company. The LLP’s liquidators needed to become registered shareholders before making the application but the majority of Estrela’s shares were held by other dissolved corporate entities or defunct offshore trusts.

The group’s corporate records had been maintained by the Herald Trust group, which itself became defunct following investigations by the Jersey regulatory authorities. It was expected that the records were incomplete but a forensic examination hinted at a nascent trust benefitting Arck LLP created as the fraudsters tried to cut and run. The Royal Court had the option of undertaking a wholesale reconstruction of an insolvent corporate structure based on records which were

OFFSHORE LAW SPECIALISTS

likely to be incomplete, or recognising the establishment of a trust from indirect evidence comprising a chain of emails and an unexecuted trust instrument in respect of 5% of the shares in Arck.

The Court was persuaded that a trust existed in favour of the LLP which its liquidators could immediately dissolve on a *Saunders v. Vautier* basis² to give them title to the shares. But title to the shares was not enough to give the LLP liquidators standing, as in the absence of any corporate governance Estrela's shareholders' register could not be updated. On a further application, this time made pursuant to the rarely employed Art.47 of the Companies (Jersey) Law 1991, the Court was persuaded that the LLP was entitled to be registered and ordered a rectification of the shareholders' register to reflect Arck LLP's legal ownership of the shares.

Having become registered shareholders the LLP liquidators applied for and were granted orders to wind up Estrela and appoint KPMG appointment takers as Jersey liquidators. By putting Estrela directly into a winding up process the potential for offences to be committed by failing to provide a registered office or complying with basic corporate governance were avoided.

In the course of various applications for Art.155 relief made by Carey Olsen Advocates since 2012, the terms of the local liquidators' appointment have been refined and tailored to provide a bespoke set of tools for the appointees tempered only by pragmatic compliance with the spirit of Jersey bankruptcy law to ensure appropriate judicial oversight of the just and equitable winding up process.

The Estrela application was made with the benefit of Carey Olsen's market leading experience of applications employing insolvency remedies to assist in asset tracing. This innovative approach enabled Carey Olsen to unscramble the fraudsters' opaque web of trust and corporate structures to get into the asset holding companies so as to facilitate the Court appointment of liquidators to investigate and recover value where they can.

Carey Olsen continues to act for the newly appointed liquidators, who are now conducting further investigations in the hope of securing assets and recovering value for the victims of this fraud.

The decisions of the Royal Court of Jersey are reported as *In the Representation of Rendle & Butcher* [2017] JRC 004 and [2017] JRC 042.

Key contacts

For further information or professional advice please contact our lawyers below:



Jeremy Garrood

Partner

D +44 (0)1534 822360

E jeremy.garrood@careyolsen.com

² (1841) 4 Beav 115



FIND US

Carey Olsen Jersey LLP
47 Esplanade
St Helier
Jersey JE1 0BD
Channel Islands

T +44 (0)1534 888900

E jerseyco@careyolsen.com



FOLLOW US

Visit our Restructuring
and Insolvency team at
careyolsen.com



PLEASE NOTE

Carey Olsen Jersey LLP is registered as a limited liability partnership in Jersey with registered number 80.

This briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen Jersey LLP 2019