



PRESS SUMMARY

PricewaterhouseCoopers (Appellant) v Saad Investments Company Limited (Respondent)
[2014] UKPC 35
On appeal from the Court of Appeal of Bermuda

JUSTICES: Lord Neuberger, Lord Mance, Lord Clarke, Lord Sumption, Lord Collins

BACKGROUND TO THE APPEAL

This appeal is closely connected with the concurrent appeal in *Singularis Holdings Limited v PricewaterhouseCoopers* [2014] JCPC 36. Saad Investments Company Limited (“**SICL**”) and Singularis Holdings Limited (“**Singularis**”) are two related companies incorporated in the Cayman Islands. Both companies have been ordered to be wound by the Grand Court of the Cayman Islands, and both appeals concern attempts by the liquidators to obtain information from the companies’ auditors, PricewaterhouseCoopers (“**PwC**”).

In the case of SICL, the Respondents presented a petition to wind up SICL in the Supreme Court of Bermuda (“the Supreme Court”) and were appointed as liquidators. The Respondents then applied successfully for an order under section 195 of the Companies Act 1981 (“**the 1981 Act**”) seeking disclosure of information in PwC’s possession. Section 195 of the 1981 Act grants the Supreme Court power to order the production of “*information concerning the [...] dealings, affairs or property of the company [...] at any time after the appointment of a provisional liquidator or the making of a winding up order*”.

PwC attempted unsuccessfully to have the order set aside on the ground that the Supreme Court had no jurisdiction to appoint the Respondents as liquidators of SICL or to make a winding up order. PwC’s appeal to the Court of Appeal of Bermuda failed.

The following two issues arise on this appeal:

- (1) whether the Supreme Court had jurisdiction to wind up SICL, either under the 1981 Act or, failing that, under the External Companies (Jurisdiction in Actions) Act 1885 (“**the 1885 Act**”), another Bermudan statute;
- (2) If not, whether it was open to PwC to challenge the winding up order (on the basis of the argument that as “strangers” to the liquidation, PwC had no standing to challenge the order)

JUDGMENT

The Judicial Committee of the Privy Council will humbly advise Her Majesty that PwC’s appeal should be allowed. Lord Neuberger gives the advice of the Board.

REASONS FOR THE JUDGMENT

Jurisdiction of the Supreme Court of Bermuda [14 – 23]

On the first issue, the Board holds that the Supreme Court did not have jurisdiction to wind up SICL,

either under the 1981 Act or under the 1885 Act. Under Bermudan law, the jurisdiction to wind up companies is wholly statutory in nature [14]. The jurisdiction under Part XIII of the 1981 Act only applies to a “company” as defined in the statute. Unless the context otherwise required, that expression does not extend to an overseas company such as SICL. There is nothing in the context of Part XIII to suggest that this expression was intended to apply to overseas companies [15-17]. This leads to the conclusion that the Supreme Court had no jurisdiction to wind up SICL under the 1981 Act [18].

Section 1(1) of the 1885 Act permits that companies “*doing business in Bermuda by agents or branches, may be sued in the Supreme Court for any cause of action, legal or equitable, arising in whole or in part in Bermuda [...]*” [19]. These provisions do not assist the Respondents. The only evidence relied upon to support the proposition that SICL did business in Bermuda was ownership of shares in a company incorporated in Bermuda. That cannot conceivably be enough to constitute the carrying on of business by agents or branches. [21]. Furthermore, in the circumstances of this case, the presentation of a winding up petition is not a cause of action arising in Bermuda [22].

PwC’s standing to challenge the winding up order as strangers to the liquidation [24 – 48]

On the second issue, it is well-established that an order made by a court of unlimited jurisdiction must be obeyed unless and until it has been set aside by the court [25]. However, the Board is satisfied that in the unusual circumstances of this case, it was open to PwC to argue before the Supreme Court that the winding up order was made without jurisdiction, and that the Supreme Court and the Court of Appeal had the power, which they should have exercised, to stay the winding up of SICL in Bermuda. The Board should now exercise that power [27].

PwC can be described as “strangers” to the winding up (in that they are not the company itself, nor the official Receiver, the liquidators, contributories or creditors). As a general proposition, it is correct that a court will not normally be prepared to entertain submissions from strangers to a winding up. However, the Board can see no reason why this practical general rule should be elevated into an immutable principle [31]. This case is unusual in two regards. First, PwC’s opposition to the winding up is based purely on jurisdiction. Where a party raises a well arguable point that there was no jurisdiction to make the order, it would have seriously to be addressed, and if the contention was made out, the court would have to consider what the interests of justice require [32]. Secondly, PwC is a stranger to the winding up only in the most technical sense. PwC were not merely affected by the winding up order made by the Supreme Court, they were the sole direct target of the winding up order [33]. The circumstances where it will be appropriate formally to hear a stranger to a winding up will be exceptional, and the mere fact that a person anticipates that his rights will detrimentally be affected as a result of the winding up order would normally be insufficient [36].

The contention raised by the Respondents that nobody can raise an argument that a winding up order was made without jurisdiction in the course of the winding up proceedings must be rejected as an artificial rule which appears neither to be based on any principle nor to accord with justice [42]. The Board cannot identify any good reasons for not granting a stay [44], and the suggestion that the question of a stay should be remitted to the Supreme Court has no merit. [45].

NOTE

This summary is provided to assist in understanding the Committee’s decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: www.jcpc.gov.uk/decided-cases/index.html.