



PRESS SUMMARY

Singularis Holdings Limited (Appellant) v PricewaterhouseCoopers (Respondent) [2014] UKPC 36

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 *PricewaterhouseCoopers v Saad Investment Co Ltd* [2014] JCPC 35. Saad Investments Company Limited (“**SICL**”) and Singularis Holdings Limited (“**Singularis**”) are related companies incorporated in the Cayman Islands. Both companies are now in liquidation and both appeals concern attempts by liquidators to obtain material belonging to the companies’ auditors, PricewaterhouseCoopers (“**PwC**”). In the case of Singularis, it was ordered by the Grand Court of the Cayman Islands to be wound up. An order was made by the Bermudan court recognising in Bermuda the status of the liquidators. The Bermudan court then exercised what it termed a “common law power” to order PwC to produce information which they could have been ordered to produce under a statutory jurisdiction contained in section 195 of the Companies Act 1981 of Bermuda. The Court of Appeal set aside this order on the basis that this was not an appropriate exercise of discretion because this would be an order made in support of a Cayman liquidation which could not have been made by the Cayman court.

The following two issues arise on this appeal:

- 1) whether the Bermudan court has a common law power to assist a foreign liquidation by ordering the production of information in circumstances where the Bermuda court has no power to wind up an overseas company and its statutory power to order the production of information is limited to cases where the company has been wound up in Bermuda.
- 2) whether, if such a power exists, it is exercisable in circumstances where an equivalent order could not have been made by the court in which the foreign liquidation is proceeding.

JUDGMENT

The Judicial Committee of the Privy Council will humbly advise Her Majesty that the appeal should be dismissed. The majority of the Board (Lord Sumption, Lord Collins and Lord Clarke) holds that such a common law power of assistance does exist, but this power is subject to a number of important limitations and should not be exercised in this case. Lord Mance and Lord Neuberger would also have dismissed the appeal, but consider that it is not appropriate to extend the common law power to assist beyond categories which have some recognisable basis in current law.

REASONS FOR THE JUDGMENT

Common law power to assist in foreign liquidation [9-26]

In the Board’s opinion, there is a power at common law to assist a foreign court of insolvency jurisdiction by ordering the production of information which is necessary for the administration of a foreign winding up. However, this power would not be available to enable liquidators to do something which they could not do under the law by which they were appointed. The question of what power the court has to assist a foreign liquidation without conducting an ancillary liquidation of its own depends upon the nature of the assistance sought [11]. There is an established “principle of modified universalism” at common law, that is to say, a power to assist foreign winding up proceedings so far as the court properly can. This is subject to local law and public policy, and to the limits of the court’s own statutory and common law powers [15-19]. The question therefore arises whether in the absence of a statutory power to order production of information, there is an inherent power at common law to do so. The courts have never been inhibited in their willingness to develop appropriate remedies to require the provision of information when a sufficiently compelling legal policy calls for it, as the case of *Norwich Pharmacal Co v Customs and Excise Commissioners* [1974] AC 133 illustrates. In the opinion of the Board, an analogous power arises in the present case [21-23].

The Board therefore concludes that such a power exists at common law. This power is available only to assist the officers of a foreign court of insolvency jurisdiction or equivalent public officers. It is a power of assistance which exists for the purpose of enabling those courts to surmount problems posed for a world-wide winding up by the territorial limits of each court’s powers. Significantly, it would not be available to enable such officers to do something which they could not do even under the law by which they were appointed. This power is available only when it is necessary for the performance of the office-holder’s functions. Any order must be consistent with the substantive law and public policy of the assisting court, in this case that of Bermuda. Common law powers of this kind are not a permissible mode of obtaining material for use in litigation, to which different rules and powers apply. As with other powers of compulsion exercisable against an innocent third party, exercise of this power is conditional upon the applicant being prepared to pay the third party’s reasonable costs of compliance [25].

Exercise of the power of assistance in the present case [27-30]

Given these limitations on the common law power of assistance identified by the Board, this power should not be exercised in favour of the liquidators in the present case. The material which they seek in Bermuda would not be obtainable under the law of the Cayman Islands. The whole basis of the common law power is the right and duty of the Bermudan court to assist the Cayman court so far as it properly can. The Cayman court has no power to require third parties to provide its office-holders anything other than information belonging to the company. It does not appear to the Board to be a proper use of the power of assistance to make good a limitation on the powers of a foreign court [29]. For this reason, the Board will humbly advise her majesty to dismiss the appeal.

Lord Collins has written a concurring opinion addressing the liquidators’ primary argument that the Bermudan court should apply the provisions of domestic insolvency legislation to a foreign insolvency “by analogy”. Lord Collins explains why this argument involves a fundamental misunderstanding of the limits of judicial law-making power. Although statute law may influence the policy of the common law, it cannot be assumed, simply because there would be a statutory power to make a particular order in the case of domestic insolvency, that a similar power must exist at common law. So far as *Cambridge Gas Transportation Corporation v Official Committee of Unsecured Creditors of Navigator Holdings Plc* [2007] 1 AC 508 suggests otherwise, that decision is wrong [18, 52] as are cases which have relied on *Cambridge Gas* to reach that conclusion [63].

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.