



محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

**In the name of His Highness Sheikh Tamim bin Hamad Al Thani,
Emir of the State of Qatar**

Neutral Citation: [2024] QIC (F) 26

**IN THE QATAR FINANCIAL CENTRE
CIVIL AND COMMERCIAL COURT
FIRST INSTANCE CIRCUIT**

Date: 3 July 2024

CASE NO: CTFIC0019/2023

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

**Applicant [in the original
claim]**

V

**HORIZON CRESCENT WEALTH LLC
(IN LIQUIDATION)**

**Respondent [in the original
claim]**

AND

QATAR FINANCIAL CENTRE AUTHORITY

First Interested Party

AND

MOHAMED ABDULAZIZ MOHAMED EL-EMADI

Second Interested Party [Applicant in this Application]

AND

OPUS RESTRUCTURING LLP

Third Interested Party [Respondent in this Application]

JUDGMENT

Before:

Justice Sir William Blair

Justice Ali Malek KC

Justice Dr Muna Al-Marzouqi

Order

1. The application dated 6 May 2024 of the Second Interested Party, Mr Mohamed Abdulaziz Mohamed Ali El-Emadi (the Applicant in this Application) against Opus Restructuring LLP, the Third Interested Party (the Respondent in the Application) to remove the liquidators of Horizon Crescent Wealth LLC is dismissed.
2. The Court makes no order as to costs other than the costs of the liquidator be costs in the liquidation.

Judgment

1. The Court has before it an application dated 6 May 2024 of the Second Interested Party, Mr Mohamed Abdulaziz Mohamed Ali El-Emadi, against Opus Restructuring LLP, the Third Interested Party. The application is to remove the liquidators of Horizon Crescent Wealth LLC.

2. The facts of the case are set out in full in the judgment of the Court in *Qatar Financial Centre Authority v Horizon Crescent Wealth LLC and others* [2024] QIC (F) 1. In summary, upon the application of the Qatar Financial Centre Authority ('**QFCA**'), on 12 December 2023 – following a hearing that day – the Court ordered the winding up of Horizon Crescent Wealth LLC ('**HCW**'), a company registered in the Qatar Financial Centre ('**QFC**'). This was confirmed by order of 23 December 2023, the nominees of the QFCA, Steven John Parker and Joanne Kim Rolls of Opus Restructuring LLP, being appointed as joint liquidators of HCW (the '**Joint Liquidators**' or the '**Liquidators**').
3. Reasons were given in the judgment of the Court which was issued on 8 January 2024. Among other things, the Joint Liquidators are charged with getting in HCW's assets, determining the creditors, and determining priorities as between the creditors and distributing the company's assets accordingly.
4. The Applicant, the Second Interested Party, is a judgment creditor of HCW who has been paid in part. As explained in the judgment, he objects to his claim being held up by the liquidation. Though this was not accepted by the Court, it remains his position. The Court's decision was subject to an appeal by HCW, but the appeal was dismissed by the Appellate Division on 15 April 2024 ([2024] QIC (A) 5).
5. The Court notes that the application is defective because it is brought against the firm, Opus Restructuring LLP ('**Opus**'), a UK firm to which the Joint Liquidators belong, rather than the Liquidators themselves. Further, the Application has not been served, though the form makes it clear that this is the Applicant's responsibility.
6. But the firm was made aware of the application, and all relevant parties that have so far been identified were before the Court at the hearing of the application on 6 June 2024. To save time and costs, and in view of the non-objection of the other parties, the Court decided to hear the matter, but this is exceptional, and in future, procedural requirements must be observed.
7. The Court informed the parties at the end of the hearing that it would consider its decision, and since the matter needed to be resolved quickly, would issue a

determination shortly after the hearing and prior to giving reasons. The parties were duly notified by Order of 9 June 2024 that the Court had decided to dismiss the application. The Court now gives its reasons.

8. Since the case was before the Court last, there was a meeting of the creditors on 6 February 2024. The creditors are, in order of size of claims:

- i. Sami Abushaikha Law Office – QAR 1,253,587 – 2.42% of overall claims
- ii. Mohamed Abdulaziz Mohamed Ali Al Emadi – QAR 2,275,936.64 – 4.39% of overall claims
- iii. QFCA – QAR 12,224,682 – 23.56% of overall claims
- iv. Qatar Financial Centre Regulatory Authority ('QFCRA') – QAR 36,128,461.15 – 69.63% of overall claims

Total claims to date = **QAR 51,882,666.79**

9. The first claim listed consists of legal fees for services rendered to HCW; the other claims are in respect of judgment debts.

10. The first meeting of the Liquidation Committee took place on 3 April 2024. The Liquidators presented their fees to date in the sum of £26,642. By a majority, the charge rates and disbursements of the Liquidators were approved, to be drawn from the company assets.

11. Unfortunately, Mr Parker passed away suddenly on 7 April 2024. Ms Joanne Rolls is therefore now the sole liquidator (the '**Liquidator**').

12. Prior to the hearing of the application on 6 June 2024, the Court received material including grounds for the application, witness statements, skeleton arguments, and other material from some of the parties. Counsel for the directors and Mr Abu Shaikha made oral representations at the hearing, at which the Applicant, HCW, the QFCA and the QFCRA were represented. The Liquidator, Ms Joanne Rolls, appeared in person.

13. It was submitted on behalf of the Applicant that the Liquidator is unreliable and in breach of her duties and has done nothing to progress the affairs of the liquidation. She should be dismissed, it is submitted, on a number of grounds. The complaints against her are: (i) that the meeting of the Liquidation Committee started an hour earlier than scheduled – this was to get approval from the QFCA and QFCRA for the fees being charged – before the other creditors arrived; (ii) not accepting the Applicant’s claim for preference as a former employee of the HCW; (iii) spinning the process out to charge more; (iv) there was no proof of expenses; and (v) in consequence, the current Liquidator should be removed and replaced by a local firm.

14. The Applicant seeks an order that the Liquidator should:

... stop the current process of the Liquidation [of HCW)] with the UK Firm and appoint an appropriate Local Firm in Qatar in accordance with Article 89 and 109A of QFC Insolvency Regulations Act to process the liquidation process as soon as possible and pass such other orders deemed fit in the interests of justice.

15. All these points are denied by the Liquidator. She gave an account of the activities that had been carried out in the liquidation to date, and said that it was proving difficult to persuade banks holding HCW assets to transfer them. She had the support of the QFCA and the QFCRA to her continuing in office. Counsel for the directors on the other hand objected to the time that the matter was taking, and seemed to suggest that the Applicant was not entitled to be paid at all. Mr Abu Shaikha on behalf of his firm also pointed to the time that the matter was taking but broadly and appropriately took a neutral attitude. The Court notes that it heard submissions from the directors de bene esse, and the Liquidator pointed out that their right to make submissions was not established as their powers to act for the HCW terminated upon liquidation. If the directors of HCW wish to make submissions in any further applications, it will be necessary for them to establish the legal basis on which they contend that the Court can receive their submissions.

16. The relevant legal provisions are as follows. Article 89 of the QFC Insolvency Regulations 2005 (the ‘**Regulations**’) provides that, “(2) *The Liquidator may be removed from office only by an order of the QFC Court...*”. It does not set out the grounds on which the Court may remove a liquidator, but by implication the Court must have good grounds. There is a discussion of the principles in the UK case of *Re St George's Property Services (London) Ltd* [2011] EWCA Civ. 858 at paragraphs 16 and 33 which the Court has found useful because the terms of the statutory provision in that case are similar to those in article 89. We consider that an application under article 89 need not involve misconduct, personal unfitness, or imputation against the integrity of the liquidator. The discretion of the court must, of course, be exercised judicially on the basis of evidence, on the application of the correct legal principles, and having regard to all the relevant circumstances. Those circumstances include having regard to the wishes of the majority of creditors. The concern raised by the Applicant need not be resolved in his favour at the time of the application, as long as the evidence raises a serious issue for investigation. It must be established by the evidence that there is a good or sufficient ground or cause for the removal of the liquidator and for their replacement by another liquidator. Only then can the Court properly proceed to consider the exercise of its discretion by having regard to all the relevant factors for and against an order for removal.
17. We wish to add that the Court will not lightly take such a step, and to the contrary, where a liquidator is performing his or her duties with due diligence, the fact that the steps they are taking could be accomplished differently is in itself not a ground for interference by the Court, and liquidators are entitled to the support of the Court in exercising their duties according to their best judgment.
18. Some complaints against liquidators do, however, involve allegations of misfeasance. So, far as misfeasance is concerned, this is dealt with specifically in article 141A of the Regulations which provides (among other things) that the Court may terminate a liquidator’s appointment upon grounds that the liquidator:
- (A) *has misapplied or retained money or other property of the Company;*
 - (B) *has become accountable for money or other property of the Company;*

(C) has breached a fiduciary or other duty in relation to the Company;

(D) has been guilty of misfeasance; or

(E) has otherwise failed to discharge the duties of his office.

19. These are serious charges to bring against an office-holder, and the Court is of the view that they should not be invoked except on proper and full evidence. If that is lacking, the Court may dismiss the application summarily. Under article 110, the term office-holder includes a liquidator.

20. Taking the complaints sequentially:

- i. There does appear to have been a mix up over time of the meeting due to the change from GMT to BST, though the Liquidator maintained that the time was correctly shown electronically. Nevertheless, it has understandably caused considerable irritation among the creditors who were late. However, the Court is quite satisfied that this was not a deliberate attempt to get items agreed in their absence. Further, it made no difference, since the regulators between them account for approximately 93% of the claims.
- ii. The priority of the Applicant's claim to preferential treatment as a former employee remains to be decided.
- iii. There is no evidence that the Liquidator is "*spinning the process out*" to charge more, and the Court rejects this allegation. In her evidence, the Liquidator gives a full explanation as to how the time has been spent. Further, the creditors approved the basis of her remuneration in the Liquidation Committee meeting held on 3 April 2024. However, the Court does accept that timing is an important issue, and this is considered further below.
- iv. The proof of expenses should be provided in the conventional way.
- v. As regards removal of the current Liquidator and replacement by a local firm, the Court notes that article 184(1) of the Regulations provides that "*No person*

may be appointed as ... Liquidator of a Company ... under these Regulations ... unless he is registered as an insolvency practitioner under this Part.” The list of persons registered is in a public register maintained by the QFC. There are currently 4 names on the list, one of which is Joanne Rolls. The Applicant did not address this issue until the hearing, when counsel said that PwC could take on the task. This appears to be a reference to two of the names on the list. However, no enquiry has been made as to whether these persons would, or could, accept appointment, or that their charging rates would be less than that of the current Liquidator.

21. The case for the removal of the Liquidator is accordingly weak, and it would be most unusual for a Liquidator to be removed so soon after appointment in the absence of cogent evidence of misfeasance or other conduct showing that the liquidator was failing to discharge his or her duties as an officer of the Court. The Court is satisfied that there is no such evidence and no basis in law for making such an order. It would not be in the interests of the creditors as a whole, and the great majority of the creditors by value oppose the application. Accordingly, the application is refused.
22. However, the issue of time is an important one, and during the hearing, the Liquidator repeated the possibility of the liquidation taking several years. The Court was surprised to hear this. Once the assets are brought in, and the Court appreciates that this has been delayed through no fault of the Liquidator, it should be possible to establish whether they belong to HCW, or whether there are possible claims by customers. The relevant matters so far as understood by the Court are set out in the judgment of 8 January 2024. It is clear from the minutes of the 3 April 2024 meeting of the Liquidation Committee that the Liquidators were challenged, rightly in view of the Court, by counsel for the QFCA in this respect. She asked for, and was promised, regular updates. Such updates are important in the Court’s view, and should be provided.
23. Should she consider it necessary, the Liquidator will be entitled to seek a ruling from the Court as to priority once the facts are established, to the extent that in a case with a background like the present case, the facts can ever be established with certainty. If the facts cannot be established with certainty, which is quite possible, the best available conclusion can be expressed. The Liquidator will be entitled to apply in any other

matter where she needs the assistance of the Court to perform her duties, and this includes dealing with any alleged trust assets (as we explained in paragraph 63 of our judgment dated 8 January 2024). Generally, the Court will proceed on the basis that the liquidation is for the benefit of the creditors as a whole, and that its conduct is not to be disrupted by individual complaints.

24. As to the costs of the application, while normally the unsuccessful Applicant should have to bear the Liquidator's costs, the Court has borne in mind that the principles on which it will exercise its powers to remove a liquidator in a QFC liquidation do not appear to have been the subject of any prior decision. Now that the principles have been established, applicants who bring unsuccessful applications must expect to pay the liquidator's costs so as not to prejudice the position of other creditors, and where appropriate the costs of other parties too.

25. The Liquidator is of course entitled to her own costs in the liquidation. An objection was taken to her claim for time costs of £4,592 for dealing with this application. The Court rejects that objection. Serious complaints were being made against the Liquidator, and she is entitled to the costs of rebutting them, as she has.

By the Court,



Justice Sir William Blair

A signed copy of this Judgment has been filed with the Registry.

Representation

The Applicant (in the original claim) was represented by its in-house legal department.

The directors of Horizon Crescent Wealth LLC (In Liquidation) were represented by Jean Orso, Avocat (Orso Avocats, Geneva, Switzerland).

The First Interested Party was represented by its in-house legal department.

The Second Interested Party (Applicant in this Application) was represented by Mr Adel Chahine (Hassan Abdulaziz Al-Obaidly Law Firm & Legal Consultant, Doha, Qatar).

Mr Sami Abu Shaikha appeared for Sami Abdullah Abu Shaikha Advocates & Legal Consultants (Doha, Qatar)

The Liquidator of Horizon Crescent Wealth LLC, Joanne Kim Rolls (Respondent in this Application), appeared in-person.