In the name of His Highness Sheikh Tamim bin Hamad Al Thani,

Emir of the State of Qatar

IN THE CIVIL AND COMMERCIAL COURT

OF THE QATAR FINANCIAL CENTRE

FIRST INSTANCE CIRCUIT

16 April 2018

CASE No: 10/2016

In the Matter of Guardian Wealth Management Qatar LLC (In Liquidation)

JUDGMENT

Before:

Justice Robertson
Justice Hamilton
Justice Arestis

ORDER

IT IS ORDERED that:

1. The joint liquidators of Guardian Wealth Management LLP (in CVL) (**"Company"**) be authorised to draw their time costs incurred in administering the Members' Voluntary Liquidation, above the agreed existing paid cap of £25,000, in the sum of £100,806.25 (being total time costs of £125,806.25 less £25,000 paid to date) to be paid out of the assets of the Company as an expense of the liquidation;

2. The joint liquidators of the Company be authorised to draw the disbursements incurred in administering the Members' Voluntary Liquidation of the Company out of the assets of the Company as an expense of the liquidation;

3. The costs of this Application be treated as expenses of the liquidation; and

4. The hearing scheduled for 23 April 2018 be vacated.

JUDGMENT

1. The Applicant is a licensed Insolvency Practitioner and a partner at Opus Restructuring LLP ("Opus"). On 6 May 2016 the Applicant and a fellow-partner in Opus were appointed as joint liquidators of Guardian Wealth Management Qatar LLC ("the Company") pursuant to a special resolution of that date passed by the Company's members that the Company be wound up voluntarily in accordance with Article 58(2) of the Qatar Financial Centre Insolvency Regulations 2005 (as amended) ("the Regulations").

2. Prior to that appointment the Applicant had in December 2015 agreed with the Company in writing on Terms of Engagement which included an identification of the scope of the work to be undertaken by Opus and the fees to be payable to it. On 6 May 2016 the members (who were only two in number) passed a resolution providing, among other things, for the fees payable to Opus, both in the period prior to and in that subsequent to

the appointment. This arrangement superseded that made earlier. Limits of £15,000 and £25,000 respectively were put on these fees, subject to authority being granted by the members for additional remuneration.

The Initial Application

3. In an Application filed with the Registry of the Court on the 5 December 2017, the Applicant stated, amongst other things, that the nature and complexity of the liquidation had changed significantly since the initial discussions on remuneration. In her witness statement filed alongside the Application, the Applicant gave details of the complexity which has ensued and produced a substantial bundle of documentation vouching that complexity.

4. The Applicant further stated that, in light of the unanticipated additional work required in the liquidation, an approach was made to the members requesting a fee adjustment. Despite her writing to the members on various occasions about this, no substantive response was, at that time, received.

5. At the time the initial Application was filed with the Registry, the Company remained in Members' Voluntary Liquidation. The Application was presented under Article 137 of the Regulations. It was served on both the members but neither entered an appearance in this process. The remedies sought included a declaration that the liquidators be paid fees for their post-appointment work in full based upon their true costs by reference to the time properly given by them and their staff at Opus' standard rates and that such remuneration be paid out of the assets of the Company. The amount so sought substantially exceeded the £25,000 referred to in the resolution of 6 May 2016.

6. Article 137 of the Regulations is in the following terms:

(1) *If the officeholder considers that the remuneration fixed for him by the Creditors' Committee, or by resolution of the creditors, is insufficient, or the basis of the officeholder's remuneration is not fixed within 18 months after the date of his appointment, he may apply to the QFC Court for an order fixing or increasing its amount or rate.*

(2) *The officeholder shall give at least 14 days' notice of his application to the members of the Creditors' Committee; and the Creditors' Committee may nominate one or more members to appear or be represented, and to be heard, on the application.*

(3) *If there is no Creditors' Committee, the officeholder's notice of his application shall be sent to such one or more of the Company's creditors as the QFC Court may direct, which creditors may nominate one or more of their number to appear or be represented.*

(4) *The QFC Court may, if it appears to be a proper case, order the costs of the officeholder's application, including the costs of any member of the Creditors' Committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the insolvency proceedings.*

7. Article 137 appears in Part 5 of the Regulations. Also in that Part is Article 110 which provides:

(1) *Unless specifically provided in this Part or elsewhere in these Regulations, or the context otherwise requires, this Part applies to all officeholders.*

(2) *For the purposes of this Part, "officeholders" means Administrators, provisional Administrators, Supervisors, provisional Liquidators and Liquidators, and "insolvency proceedings" means Administration, Liquidation and Company Arrangements.*

8. On 23 January 2018 the Court, having some concern whether it had the jurisdiction under Article 137 or otherwise to grant a remedy to a liquidator in a Members' Voluntary Liquidation, set the case down for hearing on that matter on Thursday 8 February. The

Directions included a requirement that a Skeleton Argument be filed no later than 4pm on 5 February. Although that deadline was not met, a Skeleton Argument was available for consideration before the Court convened.

9. The Skeleton Argument not only contained contentions about the proper interpretation of the Regulations (including that the Court had the relevant jurisdiction, although the Company was in Members' Voluntary Liquidation) but also made the following statement-

> *"We bring to the Court's attention that the Company is to be placed into insolvent liquidation pursuant to a decision of the liquidators dated 25 January 2018. A creditors' meeting is scheduled for 14 February 2018."*

10. This narrative had the effect of bringing into play Articles 68 and 69 of the Regulations. Article 68 provides that, if the liquidator is of the opinion that the Company will be unable to pay its debts in full within the period specified when the directors made the declaration of solvency provided for in Article 63 (as appears now to be the case), certain duties are incumbent on the liquidator, including the summoning of a meeting of creditors. Article 69 provides, in effect, that as from the day of such a meeting the winding up becomes a Creditors' Voluntary Winding Up.

11. Accordingly, this turn of events meant that the Company was on the cusp of moving into an insolvent winding up. A consequence may have been that any problem about the Court's powers in relation to a solvent winding up was superseded. But, as there remained a prospect that the Company would be unable to pay its debts in full, its creditors clearly had an interest in whether the enhancement in fees sought by the Applicant should be granted.

8 February Hearing

12. Mr Tahsin appeared for the Applicant at the hearing. Although his instructions were to press for the Applicant's case for an enhancement there and then, he readily recognised

that the recent turn of events had the consequence that the creditors of the Company had a real interest in the outcome of the Application. At the time of the hearing, that was evidently the case. If the Company was unable to pay its debts in full, the amount of the liquidators' fees would obviously alter the amount of the dividend payable in due course to the creditors. Further, the effect of the holding of the creditors' meeting would have been that on the day of that meeting the winding up would, by force of Article 69(2) of the Regulations, become a Creditors' Voluntary Winding Up. Article 137 clearly applies to such a winding up, so that any problem about the availability of that Article, if required, should have disappeared.

13. For reasons which were given in its Order of 8 February 2018, the Court adjourned the Application (initially to 23 April, but then later to 24 April) so as to give the creditors an opportunity to determine the appropriate basis for the liquidator's remuneration. The Court made clear that if that was not done, or if the Applicant was dissatisfied with what was done in that regard, resort may be made by her to the Court.

Subsequent Events

14. On 18 March 2018 the Applicant filed a second witness statement. That witness statement confirmed that the factual position in respect of the liquidation had changed in that (i) the directors of the Company had confirmed that they did not intend to challenge a Decision Notice of the Qatar Financial Centre Regulatory Authority ('QFCRA') which had imposed a not insubstantial fine on the Company and (ii) that fine had compelled the transition of the Members' Voluntary Liquidation into a Creditors' Voluntary Liquidation, with the QFCRA being the principle substantial creditor of the Company.

15. The Applicant stated that a creditors' meeting had taken place on 14 February 2018. A number of resolutions were put to the creditors for approval. Most of those resolutions were approved but two were not. The Applicant stated that the Liquidators had entered into further correspondence with the QFCRA inviting it to reconsider the two outstanding

resolutions but that the position of the QFCRA was that it could not sanction the liquidators' fees in respect of work undertaken during the Company's Members' Voluntary Liquidation phase. Accordingly, the initial Application filed by the Applicant remained outstanding and the Applicant sought relief from the Court.

The Present Position

16. As a result of the above, the Court listed the Application for a hearing on 24 April 2018. In addition to notifying the Applicant of the date of the hearing, the Registrar wrote to the QFCRA and the initial respondents to the Members' Voluntary Liquidation inviting them to make representations should they so wish. The Registrar also had cause to circulate, in the local Arabic and English newspapers, a Court Notice notifying potential creditors and other interested parties that they had 14 days in which to contact the Registrar should they wish to have sight of the Application and/or be heard at the hearing. No responses were received as a result of that Court Notice.

17. However, as a result of the above communication, the QFCRA entered into further discussions with the liquidators.

18. Suffice it to say that, on 9 April 2018, the Applicant filed a letter with the Registrar stating that neither the QFCRA nor the shareholders of the Company objected to the liquidators' Application. This letter was supported by two additional letters, one signed by the CEO of the QFCRA, the other by the two shareholders of the Company, both confirming that no objection was being taken to the Application.

19. Following enquiries by the Court, the Liquidators confirmed that (i) the claim from the QFCRA, as preferential creditor, is in the sum of QAR 3,930,379 (USD 987,000), (ii) the balance in the Liquidators' bank account following realisation of assets, the costs of the liquidation paid to date and a distribution in specie is USD 234, 205.30 and (iii) the total amount of fees being sought by the Joint Liquidators with respect to the Members'

Voluntary Liquidation is £100,806.25 (USD c. 144,000), being total time costs of £125,806.25 less £25,000 paid to date.

20. In light of these developments, the Court is of the view that (i) as the amount of the preferential debt is so large that only the preferential creditor, namely the QFCRA, is affected and (ii) as the QFCRA consents to the proposed Order, the Court is able to grant the Order sought.

21. Accordingly, the Court grants the Order in the terms set out above. Within 7 days of the date of this Judgment, the Applicant is to send a copy of it to the members of the Company and the Creditors of the Company.

By the Court,

Justice Bruce Robertson

Representation

For the Applicant: Mr N Tahsin, Clyde & Co (QFC Branch), Doha, Qatar

DIGITALLY SIGNED AND VERIFIED
موقّع رقمياً ومعتمد