IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

Cause No.63 of 2014 (AJJ)

Before The Hon Mr Justice Andrew J. Jones QC
In Chambers on 14th, 16th and 17th July 2014

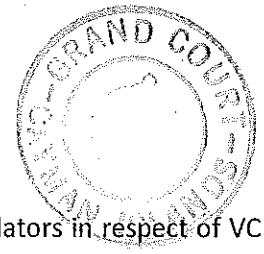
IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)

AND

IN THE MATTER OF VC COMPUTER HOLDINGS LIMITED

Appearances: For the Petitioner - Mr. Neil Timms QC instructed by Ms Charlotte Hoffman of Turners

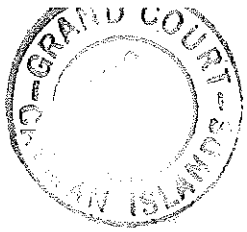
For the Company - Mr. Nigel Meeson, QC and Mr. Michael Mulligan of Conyers Dill and Pearman



REASONS

1. This is an application for the appointment of provisional liquidators in respect of VC Computer Holdings Limited ("VC") made pursuant to section 104(1) of the Companies Law on a creditors' petition presented by Zukiapa Management Limited ("Zukiapa"), a Cypriot company which is under the control of Dr. Olga Finkel ("Dr. Finkel"). Dr Finkel is the official liquidator of Zukiapa's parent company, Sakaras Holding Limited (In Liquidation) ("Sakaras"), in which capacity she was able to appoint herself as the sole director of Zukiapa. The application is supported by an affidavit sworn by Dr Finkel on 20 June 2014.

2. The Petitioner's application first came before the Court on 23 June 2014 (when the Petitioner was represented by Mr Alan Turner) without notice having been given to VC. On that occasion I reached the provisional conclusion, without the benefit of any submissions or evidence on behalf of the company, that Dr Finkel's evidence established a prima facie case for making a winding up order on grounds of insolvency and also a case for appointing provisional liquidators pending the hearing of the petition. However, I was not satisfied that there was any exceptional circumstance which would justify dispensing with VC's right under CWR Order 4, rule 1(2) to at least 4 clear days' notice of the application. I therefore adjourned the application for an *inter partes* hearing, which was initially fixed for 30 June and then adjourned by consent of the parties until 14 July.



3. At the hearing on 14 July counsel for the Petitioner (now Mr Neil Timms QC) took the point that the affidavit sworn by Dr Mikhail Krasnov ("Dr Krasnov") and intended to be relied upon by VC ought not to be admitted in evidence because it did not comply with the formal requirements. It does not state Dr Krasnov's role in the management of VC or the basis upon which he is authorized to act on behalf of the company or the sources of the information stated in this affidavit. For reasons which will become apparent from analysis of the evidence, I concluded that there was merit in this submission. I ruled that, in the absence of further evidence from which to establish Dr Krasnov's role, his authority and the basis upon which he is able to give evidence about VC's affairs, his affidavit would not be admitted in evidence. The application was adjourned for two days to enable additional evidence to be filed. Two further affidavits were filed. One is sworn by Ms. Natalia Terekhova, the former managing director of Verysell SA, who was empowered to manage VC's affairs pursuant to a general power of attorney. The other is sworn by Mr Ben Hobden, an employee of the company's attorneys who has no personal knowledge of the matters stated in the affidavit. In the light of this further evidence, counsel did not pursue his point about its admissibility. Having considered the whole of the affidavit evidence and documentary exhibits, I am still of the opinion that the Petitioner has made out a prima facie case for a winding up order and that the appointment of provisional liquidators is necessary in order to prevent the dissipation of assets and the continued mismanagement and misconduct on the part of those who control VC.

4. It is not disputed Sakaras used the proceeds of $30m worth of loan notes issued to Brava Limited to finance the business activities of VC which was engaged in the purchase and sale of computer equipment into the Russian market. The books and records of Sakaras, Zukiapa and VC reflect that these companies entered into a series of seven back to back loan agreements between 27 March 2007 and 8 December 2010, by which Sakaras lent a total of $32.4m to Zukiapa which in turn lent the same amount to VC. An examination of the relevant bank records relating to the first of these transactions reflects that on 27 March 2007 Brava Limited paid $30m to Sakaras which in turn paid $10m directly to VC. Although the funds did not pass through Zukiapa's bank account, this transaction is consistent with the back to back loan agreements dated 27 March 2007. VC's case is that the loan agreements were never intended to be performed and did not create any debt obligation. In other words, it is now said that loan agreements are a sham, which itself raises serious questions about the integrity of this group's management. Ms Terekhova's affidavit makes no attempt to explain why VC executed these loan agreements if they were not intended to be performed. Dr Krasnov, who appears to have exercised ultimate managerial control over the Verysell group, has given an explanation which I find wholly unconvincing.

5. His assertion that the loan agreements were never intended to be performed is inconsistent with other documents. Most importantly, it is inconsistent with the advice notes in respect of Zukiapa's bank account with UBS. The credit advice note dated 16 April 2010 reflects the receipt

of $240,000 from VC and the narrative description of the transaction is "Partial reimbursement of loan agreement No.3A" (which is the loan agreement dated 27 March 2007). The debit advice dated 17 April 2010 reflects a corresponding payment by Zukiapa to Sakaras of $205,000. The narrative description is "Payment of interest for Loan No.3". This is evidence which contradicts Dr Krasnov's assertion that the loan agreements were never in fact performed. Dr Krasnov's evidence is also inconsistent with an audit confirmation dated 4 May 2012. Zukiapa's directors signed a written confirmation addressed to VC stating that principal of $36.4m and interest of $3.9m was owing by VC to Zukiapa in respect of "Long term loans" as at 31 December 2011.

6. I was also referred to VC's management accounts for the years ended 31 Dec 2006-2011 and the nine months ended 30 Sept 2012. Contrary to Dr Krasnov's assertion that no loan liabilities existed, these accounts do reflect that VC was indebted to "Zukiapa (Sakaras)" in respect of "nominal loans" in the sums of $21.2m (2007), $24.5m (2008), and $23.7m (2009). Zukiapa's own audited financial statements for the same years characterize its receivables as "Trade and other receivables" rather than "nominal loan receivables" but no attempt has been made to reconcile these financial statements. As at 31 December 2010 these liabilities have disappeared from VC's management accounts and the corresponding assets have disappeared from Zukiapa's financial statements. No explanation has been offered for the fact that VC's liabilities appear to have been written off. However, VC's management accounts for the years ended 31 December 2010 and 2011 are inconsistent with the audit confirmation dated 4 May 2012 written in response to a request from VC which states that "Long-term Loans" of $36,425,369.83 and "Interest" of $3,927,800.22 were due to Zukiapa from VC as at 31 December 2011.

7. This evidence raises serious concerns about the integrity and competence of those involved in the management of VC, Zukiapa, Sakaras and, by implication, the wider Verysell Group. Their response to the statutory demand served by the Petitioner leads to the conclusion that VC's management cannot be relied upon to conduct the company's affairs properly between now and the date upon which this petition is likely to be tried. At best, the response was thoroughly evasive. It is signed by Mr Caldas, who appears to be a nominee having no personal knowledge of the relevant transactions. He asserts that there are no loan agreements entered into between VC and Zukiapa, which is patently untrue. He says that "we have conducted a thorough review of the accounts and documents of VC beginning from 2007". If this were true, he would have discovered that VC had in fact entered into loan agreements which are now said to be a sham. He says that VC did not receive any wire transfers from Zukiapa's bank which is true, but he fails to explain the basis upon which VC did receive wire transfers from Zukiapa's parent company.

8. The manner in which VC's management have accounted for its transactions with Zukiapa and Sakaras and the manner in which they have responded to the legitimate enquiries from Sakaras's liquidator over the past year leads me to conclude that they cannot be relied upon to maintain the integrity of VC's books and records pending the outcome of this proceeding. In my judgment it is necessary to appoint provisional liquidators in order to prevent continued

mismanagement and misconduct of the kind which has occurred in the past. Any failure to maintain the integrity of VC's books and records will prejudice the Petitioner by hampering the official liquidators in the performance of their duties in the event that a winding up order is made. On the other hand, it is difficult to see how the appointment can prejudice VC, bearing in mind that it ceased to carry on business at least a year ago and is said to have no assets other than a nominal bank balance of about $5000.

9. For these reasons I made an order appointing provisional liquidators. I will give directions for the trial of the petition on Monday 4 August 2014.

DATED this 4th day of August 2014

The Hon. Mr. Justice Andrew J. Jones, QC
JUDGE OF THE GRAND COURT