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Case No: CR-2019-007350/CR-2019-007352  
CR-2019-007358/CR-2019-007359

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST (ChD)**

**IN THE MATTER OF BRICKVEST LIMITED**  
**AND IN THE MATTER OF BRICKVEST SERVICES LIMITED**  
**AND IN THE MATTER OF BRICKVEST TECHNOLOGY LIMITED**  
**AND IN THE MATTER OF BRICKVEST TALENTS LIMITED**  
**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Date: Thursday, 7<sup>th</sup> November 2019

**Before:**

**MR JUSTICE MARCUS SMITH**

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**Between:**

**MR EMMANUEL JOSEPH LOUIS LUMINEAU**

**Applicant**

**- and -**

**BERLIN HYP AG**

**Respondent**

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**MISS GEORGINA PETERS** (instructed by **CMS Cameron**  
**McKenna Nabarro Olswang LLP**) for the **Applicant**  
**MR STUART HORNETT** (instructed by **Memery Crystal LLP**) for the **Respondent**

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## **Approved Judgment**

Digital Transcription of Marten Walsh Cherer Ltd.,  
2<sup>ND</sup> Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP  
Telephone No: 020 7067 2900. Fax No: 020 7831 6864. DX: 410 LDE  
Email: [info@martenwalshcherer.com](mailto:info@martenwalshcherer.com)  
Web: [www.martenwalshcherer.com](http://www.martenwalshcherer.com)

**MR JUSTICE MARCUS SMITH:**

1. I have before me applications for the putting into administration various companies within the BrickVest group of companies. Those four companies are:
  - i) The ultimate holding company of the group, BrickVest Limited;
  - ii) Two direct subsidiaries of BrickVest Limited, namely, BrickVest Services Limited and BrickVest Technology Limited; and
  - iii) A sub-sub-sub-sub subsidiary of BrickVest Limited, BrickVest Talents Limited.

I shall refer to these four companies as the “Companies”.

2. There are other companies in the BrickVest group, but administration orders are not sought in relation to those other companies. The reason for this is that, having considered the matter most carefully, the director who moves these applications, Mr Emmanuel Lumineau, is satisfied (together with those advising him) that it is unnecessary to extend the administration regime beyond the Companies.
3. That is for two reasons. First of all, the Companies are in need of the insolvency protection that an administration order would confer. The other companies in the BrickVest group do not require that protection. But, and this is the second reason, were these other companies later on to require protection the administrators could, if necessary, apply to extend or vary the insolvency regime. Essentially, because it is proposed that the ultimate holding company, BrickVest Limited, will be under the control of the administrators, there is no reason why the regime governing the other entities cannot, if appropriate, be varied.
4. The proposed administrators are Mr Mark Supperstone and Mr Ben Woodthorpe of ReSolve Advisory Limited. Their consents to act under Rule 3.2 of the Insolvency England and Wales Rules 2016 are before me.
5. The applications for administration are supported by a witness statement of Mr Lumineau, dated 1 November 2019. That statement I have read, and read with some care. On the basis of that statement, and the matters exhibited to it, I am satisfied that the jurisdictional requirements for the making of an administration order, which are set out in paragraph 11 to Schedule B1 to the Insolvency Act 1986, are met.
6. Those requirements are as follows:
  - i) First, that the company, or in this case the Companies, are or are likely to become unable to pay their debts: paragraph 11(1)(a); and
  - ii) Secondly, that the administration order is likely to achieve one of the purposes of the administration set out in paragraph 11(1)(b).

7. These requirements have been addressed in some detail in the written submissions of Ms Peters, who appears for the directors in these applications. I am satisfied, on the basis of her submissions and on the evidence before me that those two requirements are met. It seems to me otiose to repeat the detail of the material set out in Mr Lumineau's statement and in Ms Peters' submissions. I therefore only note, for the record, that having considered those documents with some care I am satisfied that these jurisdictional requirements are met.
8. It is appropriate that I sound one note of warning in relation to the evidence of Mr Lumineau. Having been involved previously in an application for interlocutory relief by a shareholder in BrickVest Limited, Berlin Hyp AG, I made various injunctive orders in a decision with a neutral citation [2019] EWHC 2662 (Ch). There are, as it seems to me, certain inconsistencies between the evidence of Mr Lumineau today and the material that was before me on Berlin Hyp's application at the end of September 2019. I do not consider that those inconsistencies preclude me from making the orders that I intend to make. However, I do think that it is appropriate to record a warning note regarding Mr Lumineau's description of the events leading up to the Companies becoming likely to be unable to pay their debts. That does not affect my view that the Companies are or are likely to become unable to pay their debts. I regard that fact as clearly established.
9. Subject, therefore, to one point of difficulty, it seems to me that it is entirely appropriate that I make the orders sought. The BrickVest group has, within it, certain entities that are capable of sustained and valuable economic activity. It is that economic activity that will fund the administrations. That will, if the administrators' strategy is fulfilled, generate a basis for an outcome that will be better for creditors of the Companies and for the BrickVest group as a whole than were the group simply to be put into liquidation.
10. The point of difficulty which I must refer to is this. Mr Lumineau is presently the only director of BrickVest Limited, which, as I have said, is the ultimate parent of the group. By Rule 12(1)(b) of Schedule B1 to the Insolvency Act 1986, an application to the court for an administration order in respect of a company may only be made by one of five designated classes of person, one of which is the directors of the company in question. It is clear law that in the case of the appointment of administrators out of court, such an appointment is only regular if the internal rules regarding the company's internal management are properly followed. That, one might think, is self-evidently the case: there must be some form of binary control where the court is not involved in the making of an appointment. Either the resolution appointing the administrator is valid or it is not. If it is valid, then the appointment can take effect. If it is not, then there is an irregularity that must be cured. The authority that stands for this proposition is *Re BW Estate Limited (No.2)*, [2017] EWCA Civ 1201.
11. Ms Peters has quite properly drawn to my attention that there is a potential difficulty arising out of the Articles of Association of BrickVest Limited. Article 4 of the articles provides:

“Unless otherwise determined by ordinary resolution and Berlin Investor consent and in accordance with Article 11, the number of directors shall not be less than three and no more than five.”

12. There is, I would observe in passing, no contrary ordinary resolution nor Berlin Investor consent. So the rule is that there should be not less than three and no more than five directors.
13. Article 11.1 provides for what constitutes a quorum of directors. The quorum, as one can see from the article, varies according to certain contingencies and events. I do not need to read Article 11.1, save to note that it provides for a varying regime as to quorum. The one thing that is clear, however, is that the quorum in all cases postulated in Article 11.1 comprises more than one director.
14. However, Article 11.2 provides:  

“If and for so long as there is only one director, the quorum shall be one.”
15. The question before me is whether this provision entitles Mr Lumineau, as the sole director of Brick Vest Limited, to present the application for BrickVest Limited’s administration. The relevant resolutions, in this case, are made only by him.
16. The construction of Articles 4 and 11 gives rise, it seems to me, to an extremely difficult question. It might be said that Article 11.2 is the principal governing provision, and that if (for whatever reason) there is only one director, the quorum shall be one, and that that is the case even if the existence of a single director is irregular. On the other hand, it might be said that all Article 11.2 is doing is identifying what shall occur if, in circumstances that are regular, only one director is appointed.
17. This is, I must stress, a rather difficult question of construction. My view is that it is hard to read Article 11.2 as entitling Mr Lumineau properly to act on his own, when the Articles require (as they do, in the present circumstances) a minimum of three directors.
18. The question goes to the standing of Mr Lumineau under Rule 12(1)(b) of Schedule B1 to the Insolvency Act 1986 to make the application for BrickVest Limited. Given that administration orders are made – as here – in circumstances of urgency – it seems to me inapt to engage in detailed analysis of the internal operations of a company or to delay an order that otherwise ought to be made whilst an irregular position is being rectified. Delay might cause a company to be at risk of trading insolvently; and the purpose of an administration order being thwarted. As I have already found, it seems there is real benefit in the making of an administration order in the case of BrickVest Limited.
19. In a case such as this, where there is a question – indeed, a serious question – over a director’s standing to make an application for an administration order, the court should approach the matter as essentially a discretionary one, taking full account of the question as to standing, but not allowing the point to be

automatically determinative against the application. I note that the question of standing in Rule 12(1)(b) of Schedule B1 to the Insolvency Act 1986 is not framed as a jurisdictional questions as to which the court must be satisfied. That is the manner in which I intend to proceed in this instance.

20. Here there is a situation where, through no fault of his own and, more importantly, through no fault of BrickVest Limited, Mr Lumineau is left on his own, the two other directors having recently resigned. In these circumstances, it seems to me that it would be conduct capable of grave injustice were I to refuse to make the orders that are being sought. Accordingly, notwithstanding the issues regarding the BrickVest Limited resolution being by only one director, the jurisdictional requirements in paragraph 11 to Schedule B1 to the Insolvency Act 1986 being met, I should make the administration orders sought.
21. I conclude with one further thought as to how potential irregularities, like that described in paragraphs 9ff above, can be dealt with. Having reached the view that an application for an administration order without notice to all interested parties is an inappropriate forum to deal conclusively with such matters, it seems to me that the proper course in terms of dealing with potential irregularities in appointment is under Rule 12.64 of the 2016 Rules which provides:

“No insolvency proceedings will be invalidated by any formal defect or any irregularity unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity and the injustice cannot be varied by any order of the court.”
22. It seems to me that that is a matter for the future, if it arises at all, and I should simply make clear that nothing that I have said in this ruling is intended to confine the discretion of any Judge dealing with any application that may or may not be made in future under Rule 12.64.
23. I should add that I was asked to abridge time regarding the service of these matters on the administrators for the reasons described by Ms Peters. I am quite prepared to do so.