

Sometimes it's the Simple Things...

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Law is often viewed as being a pursuit involving highly technical issues which require a great deal of thought from experienced minds. This is frequently the case. However, sometimes important matters arise out of circumstances which are, ultimately, quite simple. This is illustrated by a recent decision from the High Court in England by Mrs Justice Proudman in **Re Kaupthing Capital Partners II LP Inc** [2010] EWHC 836 (Ch), which involved a Guernsey investment fund.

The Technical Bit

An investment fund, Kaupthing Capital Partners II LP Inc (the “Fund”), was established using a Guernsey incorporated limited partnership. Largely as a result of the collapse of Kaupthing Bank in Iceland, a demand for a significant amount of money was made against the Fund which it was unable to meet.

As a result, the Fund was placed into administration by the resolution of its general partner. At about the

same time, the general partner, through whom the Fund acted, was also placed into administration. This meant that the administrators took control of the Fund. Once appointed, the administrators became the only people who could lawfully operate the Fund and the only people able to sell the Fund's assets. Their role was to either manage the Fund's affairs such that it became solvent again or, if this was not possible, to repay the Fund's creditors as much as possible of the debts they were due.

We now need to fast forward through the next eighteen months of the Fund's administration. At this time the Fund's main creditors brought a number of applications to the High Court in England, all of which had one broad thrust: that the Fund had not actually been put into administration.

The Nature of the Fund Itself

One of the arguments in support of this contention the Fund had not been lawfully placed into

administration (and consequently that the administrators of the Fund had not been appointed) was that the correct process had not been followed. One of the main issues over which the Court heard substantive argument was whether the Fund was a company, a partnership or a 'hybrid' of the two.

The Court found that whilst the Fund was an incorporated limited partnership, which had a separate legal personality, it was still to be treated as a partnership in this context. This is a potentially important decision regarding the recognition of Guernsey's incorporated limited partnerships and, in respect of this particular case, it had significant consequential effects.

The Simple Bit

When placing a partnership or a company into administration in England using an 'out of Court' procedure the Court found that there are two

different forms which can be used. In this instance the form for companies, rather than for a partnership, had been incorrectly used when placing the Fund into administration. The disastrous effect of this was that the appointment of the administrators of the Fund was indeed invalid; they had never had a legal right to operate the Fund and had done so for around eighteen months without authority. This raised some serious issues.

Thus, whilst a problem can appear to be of a technical legal nature involving sophisticated structures, we can see that the real issue can sometimes be surprisingly simple – in this case, someone had merely used the wrong form.

Following this High Court decision Appleby was instructed to provide Guernsey law advice in respect of the consequences arising from the ruling.

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