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Case Update

The dangers of a company dissolution – cautionary tales on the *escheat* doctrine

The *escheat* doctrine is a topical issue in the private client world at the moment, largely because of the two recent English Court decisions in *Lizzium Ltd & Anr v the Crown Estate Commissioners*[1] and *Pennistone Holdings Ltd v Rock Ferry Waterfront Trust*[2]. These cases illustrate the perils of *escheat*, which currently affects at least 7,000 properties across the UK[3].

The *escheat* doctrine is a remnant of the feudal system of land tenure in England. Put simply, *escheat* refers to land which has become ownerless and thereby reverts to the Crown (or, in some cases, the Duchy of Cornwall or County Palatine of Lancaster).

This article looks at the two recent cases of *Lizzium* and *Pennistone Holdings*, where UK situs properties have fallen victim to escheat at the expense of the UBO and considers how trust administrators handling corporate owned UK real estate can avoid and/or mitigate the impact of *escheat*.

How the problem can arise

In offshore jurisdictions such as Jersey, the doctrine is most likely to *'bite'* if an offshore company is dissolved before it has fully disposed of all its UK based real estate. This is, for obvious reasons, a rarity, but could happen, for example, if:

a. There is a defect or irregularity within a transaction that prevents legal title from being effectively transferred to the new owner on HM Land Registry;

b. The offshore corporate owner of the land is dissolved prematurely, before the transfer of UK land has been completed;

c. An option to purchase land has been granted to a purchaser by an offshore company, but the grantor company is dissolved before the option is exercised[4]; or In error, a section of land within a property or group of properties is not included within a transaction, and by the time the error is identified the original holding company has been dissolved (see the case of *Lizzium*, discussed below).

[1] [2021] EWHC 941 (Ch)
[2] [2021] EWCA Civ 1029
[3] See the *'What is Escheat?'* section of the Crown Estate's FAQ webpage, accessible here.
[4] See, for example, *UBS Global Asset Management (UK) Limited v Crown Estate Commissioners [2011] EWHC 3368 (Ch)* and *Quadracolour Limited v Crown Estate Commissioners [2013] EWHC 4842 (Ch)*.

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Lizzium Ltd & Anr v the Crown Estate Commissioners

In *Lizzium*, the administrator of a family trust transferred a portfolio of properties from a Gibraltan company to Lizzium Limited, a Jersey incorporated company, as part of a restructuring exercise. In error, one of the freehold titles was not transferred as intended, a problem only discovered some 18 years later when Lizzium Limited came to sell the property. By this time, the Gibraltan company had been dissolved, meaning the land in question was escheated to the Crown. The Gibraltan company was subsequently restored in 2020, and the administrators applied to Court under section 181 of the Law of Property Act 1925 to have the property vested in Lizzium Limited, as this is what was originally intended.

Section 181 enables the Court to grant respite to an escheated property owner by *"creat[ing] a corresponding estate and vest[ing] the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate"*[5]. In other words, to obtain relief it must be proven that, but for the dissolution, the benefitting company would have been *entitled* to ownership of the land in question.

Unfortunately, in *Lizzium*, the Court held that the legal test for relief was not met, as there had only been an alleged intention to transfer the property to Lizzium Limited, rather than a *legal entitlement* to the same. The Court would have been willing to make an order vesting the property in the Gibraltan company, but this was not a category of relief requested in the application. Accordingly, the Court declined to make a vesting order.

Pennistone Holdings Ltd v Rock Ferry Waterfront Trust

The significance of this case is largely limited to its facts, as it involves a somewhat unorthodox arrangement whereby the UBO instructed his solicitor not to register a land transfer in order to avoid revealing his association with a potentially contaminated former oil site. However, it is noteworthy that the Crown Estate Commissioners sold the escheated land to a third party within a couple of years of the *escheat* occurring. The introduction of a third-party purchaser caused further problems, because unlike in *Lizzium*¸ the application to recover the property was wholly contentious, resulting in additional cost and more vigorous debate on the effects of the *escheat* (incidentally, the UBO in *Pennistone Holdings* was ultimately unsuccessful).

Takeaway points

i. Administrators are at their most vulnerable when restructuring offshore corporate ownership of UK real estate. Moving UK real estate from one holding company to another may involve plans to dissolve the original company; administrators need to ensure that all Land Registry titles are transferred out of the original company before setting in motion the dissolution

[5] Section 181 (1) of the Law of Property Act 1925

procedure. Watch out for any *'parcels'* of land that hold additional Land Registry title entries (this is what caught out the administrator in the *Lizzium* case).

ii. The Crown Estate Commissioners do not often oppose applications to Court for relief, but they will on occasion, and without warning, exercise their rights of sale and disposal in respect of escheated land. Escheated land will not always 'stand still' during the time it takes for its former owner to discover the problem and make preparations for recovery.

iii. Recovery of escheated land is more likely if the problem is identified promptly. In *Lizzium* the 18-year delay in identifying the *escheat* meant that the application for relief was starved of contemporaneous witness evidence, whilst in *Pennistone Holdings* the delay resulted in the land being sold to a third party (who promptly changed the locks).

iv. Be realistic about the nature and extent of salvaging escheated land. *Lizzium* represents a narrowing of the rules; not all mistakes can be remedied. In previous cases concerning option agreements[6], the Court arguably adopted a more expansive approach to exercising its powers under section 181 to avoid an escheat and give effect to transfers as intended. However, in *Lizzium* we see a narrower interpretation of the legislation – the applicant must prove *legal* entitlement to the land; establishing a subjective intention to transfer the land is insufficient.

v. If applying to court, it may be easier to go backwards rather than forwards. If the intended holding company cannot realistically demonstrate a legal entitlement to the property, then consideration will need to be given to restoring the property to the original holding company. Of course, this requires the administrator to reinstate the original company first, which will involve additional legal costs, and the restoration of the property back into its original corporate structure could have unwelcome tax implications.

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[6] See the *UBS Global* and *Quadracolour* cases (ibid)