Liquidation - application for summary judgment

[2026]JRC202

ROYAL COURT
(Samedi)

30 July 2026

Before : R. J. MacRae, Esq., Bailiff, and Jurats Dulake and Entwistle

Between

(1) Andrew Wood

(2) Alexander Adam

(in their capacity as Liquidators of Gold & General Limited)

(3) Gold & General Limited

Plaintiffs

And

(1) Mzilikazi Khumalo

(2) Tulani Sikwila

(3) Three Rivers PTC Limited

(a company incorporated under the laws of New Zealand with registration no. 8822313, sued in its capacity as Trustee of the Southern SelliBen Trust)

Defendants

Advocate L. C. Gregory for the Plaintiffs.

***EX TEMPORE* JUDGMENT**

THE BAILIFF:

1. The Liquidators bring claims against the First and Second Defendants in this case, Mr Khumalo and Mr Sikwila, under *inter alia* Article 176 of the Companies (Jersey) Law 1991 (the "1991 Law") to reverse a transaction at an undervalue. The transaction the Liquidators say is a simple one, Mr Khumalo and Mr Sikwila procured the transfer of the shares of Gold and General Limited ("G&G")

in a key subsidiary to Mr Khumalo himself. The Liquidators say the transfer was for no *cause* and G&G obtained no discernible benefit in return. Subsequently the shares were transferred to Three Rivers PTC Ltd, against which judgment in default has already been given, a private trustee company whose directors include Mr Sikwila and which is the trustee of a trust that Mr Khumalo and his family appear to benefit from.

2. G&G (acting by the Liquidators) also brings alternative claims under Article 74 of the 1991 Law against Mr Khumalo and Mr Sikwila for breaches of their fiduciary duty and their duties of care, skill and diligence. If the transfer of the shares to which we have referred is not liable to relief under Article 176 then it is said that permitting and/or allowing it to happen is a straightforward breach of Mr Khumalo's and Mr Sikwila's duties under Article 74.

3. G&G is a company incorporated in Jersey. We have been told today that its shareholder is Clarendon Nominees Ltd, a Jersey nominee company managed by Stonehage, and it is thought to be the case, indeed very likely to be the case, that the ultimate beneficial owner of G&G is Mr Khumalo. It is now in a creditors' winding up. Mr Khumalo and Mr Sikwila were at all times directors of G&G.

4. From 19 August 2014 onwards G&G was the registered holder of 84,000 or 84% of the issued shares in Metallon Corporation Ltd ("Metallon"), a UK company.

5. On 11 February 2020, G&G and Sir Samuel Jonah entered into a settlement agreement. We do not know the background to that agreement although we have seen the agreement and there is no suggestion that that was anything other than a *bona fide* transaction pursuant to which G&G assumed a pre-existing liability of Mr Khumalo's to pay Sir Samuel the sum of US$12.5m plus interest.

6. In March and April 2020 G&G made two payments totalling US$1.25m to Sir Samuel but failed to repay the balance of US$11.25m plus interest which became due and payable on 8 November 2020. The Liquidators say that from this date (if not earlier) G&G was unable to pay its debts as they fell due.

7. In October 2021 G&G, whilst under the control of the first two Defendants, transferred the 84,000 shares in Metallon to Mr Khumalo himself. This is described as the "Khumalo Share Transfer" and was a transfer of all of the shares that G&G held, representing as we have said 84% of Metallon's issued shares.

8. The Liquidators have investigated this transfer, and the books and records of G&G and Metallon and have found no reference to any payment to G&G which might represent a *cause* for the purpose of this transfer, and no agreement setting out the terms of this transfer. The inference which the Liquidators invite the Court to draw from this investigation is that the Khumalo Share Transfer was both undocumented and made without contractual *cause*.

9. In February 2023, G&G was struck off the Register for a failure to file annual returns.

10. In July 2023 Mr Khumalo settled 74,000 of the 84,000 shares in Metallon on the Third Defendant ("Three Rivers"). This has been described as the "Trust Share Transfer" and is recorded in Metallon's register of members.

11. As to this transfer, the Third Defendant, Three Rivers is a private trust company incorporated in New Zealand which serves as trustee of the Southern SelliBen Trust (the "Trust"). The board of Three Rivers includes Mr Sikwila.

12. Our attention has been drawn to public filings in relation to this entity, in particular during submissions today we were taken to a filing with the US Securities and Exchange Commission in relation to a company called Greenstone, to which we will return, a Cayman Islands company. The filing says that

> *"The Company… [advised that] the Controlling Shareholder of Metallon and Greenstone… was determined to be [Mr Khumalo]. …[And] [a]s of the execution of the BMC Purchase Agreement"* - which we will come to - *"Mr Khumalo controlled 84% of the outstanding shares of Metallon, of which 10% were held by [him] directly and 74% were held indirectly through the Southern SelliBen Trust ("the Trust"). Mr Khumalo's close family members, who together with Mr Khumalo are viewed as a single-family unit for the purposes of IFRS 10 analysis, are the beneficiaries of the Trust. Under the operative trust document, voting and dispositive powers of the outstanding shares held by the Trust are exercised by its trustee; however Mr Khumalo retained the ability to appoint an individual (Protector) who would have the power to remove and replace the trustee at any time. As a result, in accordance with IFRS 10, the trustee was determined to be an agent of Mr Khumalo and Mr Khumalo was determined to control the Trust."*

Various other significant matters are referred to in this SEC filing.

13. On 16 February 2024, at the instance of Sir Samuel, the Royal Court declared the dissolution of G&G void and on 10 May 2024 G&G was placed into a creditors' winding up under Article 157A(2) of the 1991 Law with the Liquidators appointed as the liquidators of G&G.

14. We have summarised the Liquidators' position in relation to the Khumalo Share Transfer already and the subsequent transfer into the Trust. The Liquidators observe that G&G is not a beneficiary of the Trust and exercises no control over it. The Trust appears to be for the benefit of Mr Khumalo and his family.

Jurisdiction

15. Mr Khumalo is resident in Switzerland. Mr Sikwila is resident in South Africa with the Third Defendant Three Rivers incorporated in New Zealand. Whilst each of the Defendants are domiciled or otherwise outside of the jurisdiction it is submitted to us, and we accept, that Jersey is the most appropriate forum for these proceedings for the following reasons:

    (i) the company which suffered the loss, G&G, is registered in Jersey;

    (ii) in authorising the Khumalo Share Transfer, Mr Khumalo and Mr Sikwila gave effect to a transaction, it is said, at an undervalue under Article 176 of the 1991 Law and any claim under that law should *prima facie* be determined by the Royal Court;

    (iii) The loss was sustained in Jersey and arose from an act that took place in Jersey; and furthermore

    (iv) The First and Second Defendants are and were at all relevant times directors of G&G and as such were required to comply with their duties under Article 74 and any such claim should *prima facie* be determined by this Court.

16. Furthermore, the question of forum was considered and determined by the Court on granting the Plaintiffs' application for leave to serve the proceedings out of the jurisdiction. The Court concluded that Jersey was the proper forum for the resolution of this dispute and the application for such orders was supported by an affidavit.

Service of the proceedings

17. By Act of Court dated 10 November 2025, the Master granted the Plaintiffs leave to serve the summons and the Order of Justice and other documents (collectively the "Service Documents") on Mr Khumalo in Switzerland, Mr Sikwila in South Africa and Three Rivers in New Zealand.

18. Switzerland (but not New Zealand or South Africa) has ratified the Hague Service Convention and accordingly leave was granted on the basis that Mr Khumalo would be served via the relevant central authority in Switzerland.

19. On 25 November 2025, the Plaintiffs submitted a formal request for service via the Hague Service Convention to the Judicial Greffier in accordance with the Service Rules and on 19 December 2025, the Bailiff's Chambers sent the Service Documents to the forwarding authority in Switzerland, being the Office Federal de la Justice in Berne.

20. On 28 January 2026, Mr Khumalo was served in Switzerland in accordance with the Hague Service Convention by service on his legal representative. The Plaintiffs understand that valid service was effected because they have received a procuration document through the Bailiff's Chambers from the Tribunal de première instance in Geneva, the relevant central authority for the purposes of service under Article 5 of the Hague Service Convention. We have seen a copy of that document. The procuration states *inter alia* that Jean-Christophe Hocke of Kellerhals Carrard, a Swiss law firm, was authorised to accept service on behalf of Mr Khumalo and the procuration adds that M. Hocke grants a power of attorney to Ms Fanya Guertchakoff to represent him and to collect a summons in these proceedings.

21. The Plaintiffs received from the Bailiff's Chambers a Service Receipt on the headed paper of the Tribunal de première instance bearing the signature of Ms Guertchakoff and the case number (NC/67/2026).

22. The Plaintiffs also received via the Bailiff's Chambers an Attestation stamped by the Tribunal de première instance confirming that service of the proceedings had taken place in conformity with Article 5 of the Convention, accompanied by a letter to the Bailiff confirming service. The Attestation was stated to be made in accordance with Article 6 of the Convention; again, it bore the same case number as the previous documents.

23. In accordance with the terms of the summons, Mr Khumalo was required to attend Court on 27 February 2026 to witness the confirmation of the Order of Justice. He did not appear, nor did he

engage legal representatives to appear on his behalf. Accordingly, the Plaintiffs were entitled if they wished, to seek judgment in default, pursuant to 6/6(6) of the Royal Court Rules.

24. In view of the quantum sought in this case the Plaintiffs anticipated that the Court would wish to give Mr Khumalo every opportunity to defend the claim and the Plaintiffs therefore, as they were entitled to do, applied to have it placed on the pending list which gave Mr Khumalo an opportunity to file and serve a defence, or as we call them in Jersey, an Answer.

25. Accordingly, the Court ordered the proceedings to be placed on the pending list giving Mr Khumalo until 20 March 2026 to file and serve an Answer. The Plaintiffs were directed to write to Mr Khumalo to give him notice of that order (the "Directions Order").

26. The Plaintiffs were advised by Archipel Law, their Swiss attorneys, that Article 271 of the Swiss Criminal Code (also referred to colloquially as the "Swiss Blocking Statute") has the effect of prohibiting them from writing directly to Mr Khumalo to notify him of the Directions Order, in accordance with its terms, but Archipel advised the Plaintiffs that Article 141 of the Swiss Civil Procedure Code allows service of process (including court rulings and decisions) to be effected by publishing a notice in the official cantonal gazette or Swiss Official Gazette of Commerce. By analogy, Archipel advised that the lawful way to inform Mr Khumalo of the Directions Order was to publish a notice of it in the Jersey Gazette and write to Kellerhals Carrard suggesting their client monitor the Gazette with a link to the relevant webpage. The Plaintiffs did as suggested, placing the notice in the Gazette and writing a letter in these terms.

27. In addition, as Mr Khumalo is a director of Metallon, the Plaintiffs wrote to Metallon's joint administrators with a letter advising Mr Khumalo of the terms of the Directions Order and asking that it be passed on.

28. No Answer was filed by Mr Khumalo on 20 March 2026 or at all. Nor was any application to challenge the jurisdiction of this Court made. Accordingly, by virtue of rule 6/7/(8) of the Royal Court Rules Mr Khumalo is deemed to have submitted to the jurisdiction of the Royal Court.

29. As to Mr Sikwila, the Court granted leave for the proceedings to be served personally on him in South Africa and by order he was summoned to appear before the Court on 9 January 2026.

30. On 18 December 2025, a further Act of Court granted the Plaintiffs permission to serve a supplemental summons with a revised return date of the first Friday falling four weeks after the date of service (mirroring the position which applied to Mr Khumalo).

31. The Plaintiffs experienced severe difficulties in effecting personal service on Mr Sikwila in South Africa, in particular issues arising from redirection by one South African department to another and multiple layers of bureaucracy which would mean, as advised to the Plaintiffs by the South African authorities that service through official channels would typically take six months and those difficulties are set out in the sixth affidavit of Ms Le Poidevin.

32. As a consequence of these difficulties on 11 March 2026 a further Act of Court granted the Plaintiffs permission to effect substituted service of the summons and other documents on Mr Sikwila by email, as well as by registered post to the London-based registered offices of various UK companies of which Mr Sikwila is a director.

33. Service was effected on 16 March 2026 in accordance with this order. Various postal receipts confirm delivery including delivery to the various companies where the Plaintiffs were granted permission to serve.

34. Accordingly, Mr Sikwila was summoned to attend Court on 17 April 2026. He did not appear or engage legal representatives to appear on his behalf. Again, an application was made to the effect that the case against him should be placed on the pending list, allowing him until 8 May 2026 to file and serve an Answer.

35. He was notified by email and via the London offices of companies to which he was connected as a director to advise him of the outcome of the hearing and the date by which his Answer was due and again confirmation of receipt is evidenced.

36. On 8 May 2026, no Answer was filed, nor was any application to challenge jurisdiction made. As such, by Royal Court Rule 6/7(8) Mr Sikwila is deemed to have submitted to the jurisdiction of the Royal Court.

37. This today is not an application for judgment in default. It is an application for summary judgment, that is to say a judgment on its merits. The Plaintiffs may only apply for summary judgment where the proceedings have been placed on the pending list - Royal Court Rules 7/2/(1). That has been done in this case. The fact that the First and Second Defendants have not filed an Answer is no barrier to the Plaintiffs seeking and obtaining summary judgment. The summons for summary judgment and an affidavit in support were served not less than 14 clear days before the day of the hearing as required.

38. On 13 April 2026, the Master indicated that upon issuing the summons for summary judgment, he would issue various directions in relation to service. Those directions have been complied with.

39. The Master directed that the Plaintiffs issue a draft summons for summary judgment with an affidavit in support addressing issues created by the Swiss Blocking Statute and the Plaintiffs' proposals for notifying the Defendants. This has occurred.

40. A notice was published in the Jersey Gazette on 5 June 2026 notifying Mr Khumalo that a date fix appointment was scheduled to take place via video link at 11am on Friday 19 June 2026 and asking that he contact the Bailiff's Chambers so that arrangements could be made for him to attend. Letters were sent to the company offices in London (in the case of Metallon, to its administrators) in similar terms and to Kellerhals Carrard.

41. Mr Khumalo did not attend the date fix and a date for the hearing of the Plaintiffs' application was fixed in his absence.

42. A further notice was published in the Jersey Gazette containing the text of the summons and informing Mr Khumalo of the date and time of the hearing of the summons for summary judgment on 10 July 2026. He was also informed that the affidavits filed in support of the application were being sent to the offices of Metallon and Great Lakes (a company to which we will return) and invited to contact the Plaintiffs' advocate were further and/or electronic copies required. It was again suggested to Kellerhals Carrard that their client keep an eye on the Gazette and further letters were sent enclosing the summons, affidavits and exhibits thereto to Mr Khumalo at Metallon by registered post and via email to its administrators, and by registered post to Mr Khumalo at Great Lakes.

43. The Plaintiffs received confirmation of delivery of their email to Metallon's administrators on 10 July 2026 and proof of delivery (where available) from Royal Mail evidencing acceptance of the documents on 15 July 2026. The summons and supporting affidavits were therefore served on Mr Khumalo at least 14 clear days before the hearing.

44. As against the Second Defendant, as already explained, the substituted service order in relation to Mr Sikwila gave the Plaintiffs leave to effect substituted service on him by registered post and also by email. The postal communication being to the UK companies of which he was a director. He was notified of the date fix on 8 June 2026. He failed to attend the date fix. On 10 July 2026 the Plaintiffs served the summons for summary judgment on him by the same means together with the affidavits and exhibits in support. Confirmation of delivery by email was received on 10 July 2026

and those sent by post that were signed for on 15 July 2026. Accordingly, both the summons and supporting affidavits were served upon him at least 14 days before the hearing.

Summary judgment - legal principles

45. The Legal Principles upon which summary judgment is granted under RCR 7/1 are that a plaintiff may obtain summary judgment if the defendant has no "***real prospect of successfully defending the claim or issue and there is no other compelling reason why the case or issue should be disposed of at a trial*.**"

46. In Duferco SA v CVG Ferrominera Orinoco CA [2021] EWHC 824 (Comm) Ali Malek KC (sitting as a Deputy High Court Judge) considered the circumstances in which summary judgment could be sought against a non-participating defendant as an alternative to default judgment so as to obtain a determination on the merits to aid enforcement. He determined that it was appropriate to do so on the facts of that case.

> ***"18… First, FMO has been properly served with the proceedings and is aware that they are taking place. The English court has jurisdiction to hear this claim. Secondly, FMO has declined to take up the opportunity to defend the proceedings and to serve evidence to support any argument it wishes to advance. Thirdly, FMO has been properly served with the application for summary judgment. Fourthly, FMO has chosen not to challenge the application for summary judgment. It has been given every opportunity to participate in the proceedings. Finally, Duferco has adduced evidence that is unchallenged and, which I accept, showing that there is a risk that a default judgment against FMO will not be capable of enforcement in Venezuela and that a judgment on the merits may be more readily enforced against FMO, whether in Venezuela or in other jurisdictions where it has assets.***
>
> ***19. In these circumstances, I find that there are good and proper reasons to allow Duferco to pursue an application for summary judgment before an Acknowledgment of Service or Defence has been filed by FMO. I consider it would be unjust in the circumstances to refuse permission to apply for summary judgment in circumstances where FMO has chosen not to engage with the proceedings…."***

47. In that case the judge treated the application as a standard application for summary judgment on usual principles. Applications for summary judgment have been granted against non-participating

respondents to facilitate enforcement in a number of other cases such as European Union v Syrian Arab Republic [2018] EWHC 1712.

48. Where a respondent to a summary judgment application does not appear it is standard, and we accept good, practice to draw to the attention of the judge, in this case the Inferior Number, any potential defences that might have been raised had the Defendants chosen to be present (see paragraph 40 of the judgment in Duferco and paragraph 11 of the judgment in Standard Chartered Bank (Hong Kong) Limited v Independent Power [2016] EWHC 2908 (Comm)).

49. As Mr Malek KC observed, and we adopt, in Duferco, it is unlikely that there is a full blown duty of full and frank disclosure in the true sense in circumstances where - as here - the respondent to the application is aware of the proceedings and has elected not to participate.

50. Further, it is noted and we accept it is inherently difficult to identify such defences where the respondent to the application is aware of the proceedings and has elected not to participate and has not identified a potential defence or facts giving rise to a such a defence.

51. In this case neither Mr Khumalo or Mr Sikwila have participated in these proceedings or corresponded with the Plaintiffs. There is no indication of what, if anything, they might say in answer to the claims against them. Nonetheless the Plaintiffs have been through the relevant material and had they identified any material which undermines the applications made today then we would have expected them to draw that material to the Court's attention.

52. In view of the fact that Mr Khumalo and Mr Sikwila were properly served there is no reason to think that they are unaware of these proceedings. Furthermore the First and Third Defendants are participants in proceedings before the English High Court in which they are active parties - which reinforces the Plaintiffs' view, with which the Court concurs, that they are aware of these proceedings.

53. Furthermore, the Third Defendant, Three Rivers, did appear before the Royal Court when summoned. An Advocate from Bedell Cristin reserved the right of the Third Defendant to make submissions in relation to jurisdiction and as we know Mr Sikwila is a director of Three Rivers, and the Trust administered by Three Rivers is a trust for the benefit of Mr Khumalo and his family. It is very unlikely they were unaware of the proceedings in the circumstances where Three Rivers was aware of the proceedings in this case.

54. The Plaintiffs say, which one can well understand, that it may facilitate enforcement of a judgment in Switzerland and South Africa if there has been a determination on the merits in Jersey as opposed to the making of a judgment in default.

Liability under Article 176

55. As we have said there are claims in this case against both the First and Second Defendants under Article 176 and Article 74 of the 1991 Law respectively. Article 176(1) of the 1991 Law applies in respect of a creditors' winding up and allows the Court to make such orders the Court thinks fit for restoring the position following a transaction at an undervalue by the company.

56. This is similar to section 238 of the Insolvency Act 1986. We accept that UK authorities may assist this Court in interpreting and applying Article 176.

57. The key requirements for identifying such a transaction under Article 176 are as follows:

(i) The Court must identify a transaction at an undervalue. This includes, pursuant to Article 176(7)(a) a gift, or under Article 176(7)(b)(i) a transaction on terms for which there is no *cause*, or under Article 176(7)(b)(ii) a transaction for a *cause* the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the *cause* provided by the company.

(ii) The company in a winding up must enter into the transaction with another person.

(iii) That the transaction must take place at a relevant time, as to which the transaction must be entered into during the 5 years immediately preceding the date of commencement of winding up and either the company was insolvent when it entered into the transaction (Article 176(9)(a)) or became insolvent as a result of the transaction (Article 176(9)(b)).

There are similar provisions in relation to bankruptcy in the Bankruptcy (Désastre) (Jersey) Law 1990.

58. Importantly, where the transaction was entered into with a person connected with the company or with an associate of the company - as defined - then a transaction entered into within the 5 year period is deemed to be one at a relevant time unless the disponee proves that the company was not insolvent when entering into it and did not become insolvent as a result of the transaction.

59. Pursuant to Article 176(2), it is a defence for the person entering into the transaction with the company to prove that it was entered into in good faith and that there were reasonable grounds for believing it would be of benefit to the company. As to this, it is for the Defendants to prove this defence see Health & Home Ltd [2025] EWHC 839 (Ch) at [184]-[185].

60. We note that in Taqa Bratani Ltd v Fujairah Oil and Gas UK LLC [2025] EWCA Civ 1669 Falk LJ described the defence at [37] as "***narrowly targeted***", in line with the purpose of the provision which is "***that insolvent companies should not, as a general rule, enter into transactions that deplete assets available for creditors***".

Liability under Article 74

61. Claims under Article 74(1) of the 1991 Law are claims by the company against a director for breach of duty. Article 74(1) provides that:

> ***"A director, in exercising the director's powers and discharging the director's duties, shall –***
>
> ***(a) act honestly and in good faith with a view to the best interests of the company; and***
>
> ***(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances."***

62. The requirement of "honesty" in Article 74(1)(a) is to be judged objectively. A director is dishonest if he fails to act "***as an honest person would in the circumstances***" (Royal Brunei Airlines v Tan [1995] 2 AC 378).

63. Under English law, a director's duties to act honestly and in the interests of a company's creditors are modified when the company is insolvent or on the verge of insolvency. This is called the Sequana principle. It has not been determined hitherto if this principle is part of Jersey law. We understand the decision in Sequana is likely to be persuasive and if the principle is part of our law then where a company is insolvent or bordering on insolvency, the director must act in a manner that takes the interests of creditors into account BTI 2014 LLC v Sequana SA [2024] AC 211 at [87]-[88].

64. We do not find, having regard to the fact that only the Plaintiffs are represented, that this principle forms part of Jersey Law but we can see strong arguments to the effect that it should be recognised.

65. A director who breaches their duties but acts honestly may be relieved of liability under Article 212 of the 1991 Law. Honesty is a prerequisite for relief. It is unnecessary for the director who is acting honestly to act reasonably under the relevant provision.

66. A claim for breach of duty under Article 74 may still properly lie against directors notwithstanding that liability under Article 176 is not established (GHLM Trading Ltd v Maroo [2012] EWHC 61 (Ch)).

67. In many cases involving breaches of duty by directors, the Court is faced with an absence of contemporaneous written documentation in respect of the dealings of the company. Where a director has had the opportunity to produce such documents in their defence but has not, the Court may draw inferences as to whether a transaction was for *cause*, in the company's interests or other analogous matters.

68. In Re Mumtaz Properties Ltd [2011] EWCA Civ 610, Lord Justice Arden said at paragraph 17

> ***"Put another way, it was not open to the respondents to the proceedings in the circumstances of this case to escape liability by asserting that, if the books and papers or other evidence had been available, they would have shown that they were not liable in the amount claimed by the liquidator. Moreover, persons who have conducted the affairs of limited companies with a high degree of informality, as in this case, cannot seek to avoid liability or to be judged by some lower standard than that which applies to other directors, simply because the necessary documentation is not available."***

Decisions on Liability - Khumalo

69. The Plaintiffs argue, and the Court agrees, that Mr Khumalo has no reasonable prospect of successfully defending the Article 176 claim against him.

70. G&G is in a creditors' winding up under the 1991 Law. The Khumalo Share Transfer was a transfer of all of G&G's shares in Metallon to Mr Khumalo himself. The fact of the transfer is obvious from G&G's register of members. It was a transaction entered into for the purpose of Article 176 with Mr Khumalo.

71. The transaction took place for no *cause.* Mr Khumalo has had an opportunity to put in evidence as to the *cause* but has not done so and we are entitled to and do draw proper inferences from this failure.

72. The transaction took place in October 2021, within 5 years of G&G's winding up in May 2024 and therefore took place at a relevant time for the purpose of the Article. Because Mr Khumalo was a director and so was a person connected with G&G at the time of the transfer, accordingly the burden of proving that G&G was not insolvent or did not become insolvent as a result of the transfer rests on him. There is no evidence supporting Mr Khumalo in this respect, indeed by 14 October 2021 G&G's debt to Sir Samuel was outstanding and overdue. An inference of cash flow insolvency can properly be drawn from that unpaid debt (<u>Cornhill Insurance plc v Improvement Services Ltd</u> [1986] 1 WLR 114).

73. There is nothing in the evidence before the Court or in the material available to the Liquidators which suggests that, so far as Mr Khumalo was concerned, this was a transfer in good faith for G&G's benefit. Indeed, the fact that the majority of the shares in Metallon ended up in the Trust is an indicator to the contrary.

74. Therefore we find that Mr Khumalo has no prospect of successfully defending the Article 176 claim or any prospect of successfully defending a claim against him under Article 74. In respect of this latter claim G&G was insolvent or on the verge of insolvency at the time of the Khumalo Share Transfer, being as it was unable to make the payment to Sir Samuel. The share transfer was for no *cause* and brought no benefit to G&G. It benefitted Mr Khumalo alone. The transfer was a straightforward misappropriation of G&G's assets to the detriment of its creditors, a clear breach of Article 74(1)(a) and 74(1)(b). Even if Mr Khumalo was not dishonest in procuring or allowing the transfer, it is difficult to see how a director exercising reasonable care and skill would have permitted it to be made.

75. Mr Khumalo has been called upon to explain the transfer and why it might benefit G&G but he has not done so. It is proper in such circumstances to infer that there is no proper explanation for the transfer. Accordingly, he has no reasonable prospect of defending the Liquidators' claims against him on liability pursuant to Article 176 or Article 74.

Quantum - Khumalo

76. Article 176(3) confers a broad remedial discretion on the Court, including, in particular, ***"requir[ing] a person to pay in respect of a benefit received by him or her from the company such sum to the company as the court directs".***

77. The Liquidators do not seek anything other than an order for payment by Mr Khumalo. There is no application for an order that the shares are transferred *in specie*. Issues as to the form and scope of the other types of relief do not arise.

78. The purpose of any payment is as set out in Article 176(1), namely to restore the position to what it would have been if the company had not entered into the transaction. The quantum of payment should therefore be assessed accordingly, although the Court has a wide discretion conferred by Art. 176(1).

79. We have been invited to consider cases which evidence the ambit of the Court's discretion.

80. The Plaintiffs say that the shares in Metallon should be valued at an appropriate date, *prima facie* the date that the shares were subject of the transfer in 2021. Similar principles to valuation apply where equitable compensation is awarded for breach of a director's duties under Article 74(1) and we were referred to the section in Mortimore & Arnold, Company Directors (4th Edition 2024) at paragraphs 19.34 and 19.35 it being said

> ***"…the basic rule is that a trustee in breach of trust must restore or pay to the trust estate either the assets which have been lost to the estate or compensation for such loss."***

81. Accordingly, Mr Khumalo should be ordered to pay G&G the value of the shares in Metallon and the value of those shares is calculated upon two bases, either £77,041,670 (the estimated value of the shares on 14 October 2021, the date of transfer) or £33,415,760 (the estimated value at the date of the issue of the Order of Justice).

82. At the date of the Khumalo Share Transfer, Metallon was not (as we said above) in administration. It entered into administration on 15 February 2024.

83. Having regard to the Metallon administrators progress reports, the total value of Metallon shares on 14 October 2021, net of creditors as set out in the administration materials was £91,716,274. On the basis that G&G owed 84% of Metallon shares, all of which were transferred to Mr Khumalo,the value of those shares was 84% of this sum namely £77,041,670.

84. The Liquidators have done their best to approximate the value of the shareholding in G&G on 14 October 2021 by reference to the value of those shares at the start of the administration on 15 February 2024. In reality, the value of Metallon's shares in October 2021 may well have been higher or lower but the Liquidators say that that is the best that can be done by reference to the evidence that is available.

85. We will now look at some of that evidence, which has been drawn to our attention today.

86. Metallon, at the time of the Khumalo Share Transfer and the subsequent Trust Share Transfer, was the registered holder of all the issued share capital in Bulawayo Mining Company ("BMC") formerly known as Three Rivers Minerals Limited, a company of which the Second Defendant is a Director and the First Defendant a person with significant control, which in turn owns three gold mines in Zimbabwe, one of which in particular is productive.

87. Metallon also held 75% of the issued share capital in Great Lakes Telecom Infrastructure Limited which is a South African company. Metallon went into administration as we have said in February 2024 at which date Claire Lloyd and Henry Sinners of Evelyn Partners LLP were appointed administrators.

88. At some point prior to July 2023 the directors of Metallon, of which the First and Second Defendants were two, began negotiating with various third parties with the goal of effecting a sale of Metallon's shares in BMC. Great Lakes are not affected by the transaction. The Metallon administrators continued to pursue and negotiate the terms of the proposed sale following their appointment and on June 2024 Metallon and Metallon's administrators entered into an agreement with Greenstone, a company as we have said incorporated in the Cayman Islands, and the First Defendant and the Third Defendant for the sale and purchase of Metallon's shares in BMC.

89. The agreement was made *inter alia* on the following terms. Metallon would sell and Greenstone would purchase the entirety of Metallon's shareholding in BMC and the First and Third Defendants undertook to pay jointly and/or severally on behalf of Greenstone an initial purchase price of £53,209,818 with the first payment of £10,500,000 payable before 30 August 2024, the balance payable on the Metallon administrators applying to the High Court to end Metallon's administration.

90. The First and Third Defendants also agreed to guarantee Greenstone's obligations to make various payments and so on.

91. The Plaintiffs understand that on 17 January 2025, the date by which the first payment was due to be made, time for payment was extended to 30 March 2025 by agreement. £600,000 has been paid, the balance of £9,900,000 remains outstanding. It is the understanding of the Liquidators that the First and Third Defendants' obligations to pay the balance of the BMC purchase price remain outstanding and have not been discharged. On 1 October 2025 Metallon by its administrators issued proceedings in the High Court of England and Wales against the First and Third Defendants to recover the balance of the first payment and the remaining purchase price.

92. Further additional background is that Greenstone was connected to the First and Second Defendants. Each had a shareholding in Greenstone. The Second Defendant was the Chief Executive Officer of Greenstone. Greenstone has now been reorganised under a new Cayman Islands holding company known as Namib Minerals and listed on the NASDAQ index.

93. Further material germane to the issue of quantum was derived from the affidavit sworn by Mr Wood on behalf of the Plaintiffs and the items exhibited thereto, including the statement of affairs of Metallon as it stood on 15 February 2024. Importantly that document was signed by the Second Defendant Mr Sikwila.

94. Our attention was drawn to the statement of affairs which is of central relevance. The summary of assets which form part of that document valued the investment in BMC as £103,453,764. The value of the investment in Great Lakes Telecom as stated as £47,748,657. Total assets available for preferential creditors signed by the Second Defendant are identified as £151,202,411 subject to listed liabilities and giving a net total surplus available to members of £100,624,309.

95. This is an important document as it is the nearest to the time of the transfer. It provides an assessment of the value of the assets of Metallon and it is signed by the Second Defendant who as we have said was a director.

96. In addition to that document, which was filed at Companies House, we have seen the share purchase agreement dated 17 June 2024 which attributes a much lower value to BMC by way of consideration of just over £53,000,000 which contrasts sharply with the value of the shares in BMC in the statement of affairs.

97. Our attention was drawn to a useful, and ostensibly independent, documentation comprising a filing with the SEC for Greenstone once it had been reorganised under Namib Minerals. A filing on 6 December 2024 prior to the listing of the company on NASDAQ which included information about the assets of BMC. That indicated that BMC owned three gold mines in Zimbabwe which are described as substantially all of Greenstone's assets. The most important of those mines was the How Mine.

98. Our attention was drawn to a report from Atrium Research dated 15 August 2025 which noted that Namib Minerals had a market capitalisation of $113,800,000 at the time with a target share price equated to a much higher capitalisation in excess of $500billion. The report noted the significant contribution made by the How Mine to the revenue of Namib Minerals.

99. The report of Atrium Research described Namib Minerals as a Zimbabwe based gold producer with one mine in operation and two past producing projects with restart potential with a market capitalisation of $113.8milllion and an enterprise value of $116million. Namib Minerals has the possibility of increasing production significantly over the coming years and, perhaps of some significance in relation to the value of the shares with which we are concerned, this was not a company which had recently begun producing gold through the mines it owned. The How Mine has been producing gold for over 80 years. It is one of the country's most established gold producers and it has been in the ownership of successive companies for several decades and the property of Metallon since 2002. Namib Minerals became the latest steward of these assets in 2025. The production of gold from the How Mine has been stable over the last few years including from 2021 to 2024 inclusive.

100. There is also reference in the report to the involvement of the First and Second Defendants in Namib Minerals with the Second Defendant serving as Chief Financial Officer and said to have twenty years of experience of accounting and corporate finance. At the time of filing, the report says the shareholder base was dominated by the Southern SelliBen Trust which of course is connected to the First Defendant and which owned 63.7% of the shares with Mr Khumalo in addition owing 9.1% personally. Other shareholders were identified in the report.

101. The valuation attributed to Namib Minerals in this report is consistent more or less with the valuation ascribed to the company by the Second Defendant himself in the documentation relevant to the administration to which we have referred.

102. We considered the evidence filed by Mr Wood on this issue closely. The Liquidators considered the guidance set out in accounting standards as well as information available to them in relation to Metallon. Reference was made to IFRS 13 which provides *inter alia* that an entity shall use

valuation techniques appropriate in the circumstances and for which sufficient data are available to measure fair value. IFRS 13 does not set out what valuation base should be used but common approaches include net asset value or adjusted net asset value and the administrator says that this is the appropriate basis upon which to value the assets and liabilities of Metallon in reliance on publicly available documents to which we have referred, in particular the statement of affairs sworn by the Second Defendant as director of Metallon and the sale of BMC for a substantially lower price but agreed by independent insolvency practitioners.

103. On that basis two alternative approaches were identified namely an equity value of Metallon based on the statement of affairs with, as we have said, the 84% interest being ascribed a value of just over £77million, and on the footing of the later sale price in the subsequent agreement. , The valuation of BMC negotiated at that time, which added to the Great Lakes valuation less the amounts due to creditors and administration would yield an 84% interest with a value of £33,415,760. It was on that latter basis in relation to the 74% interest held by the Trust that judgment was entered in default against the Third Defendant.

104. We accept that it cannot be said that the transaction that took place in 2024 pursuant to which the shares in Metallon passed to Namib Minerals was an arm's length transaction as it was not. There were common interests on either side of that transaction and it could be regarded as another step designed to put these assets a further distance away from the creditor.

105. The Liquidators considered whether it would be appropriate to apply a minority interest discount to the above valuations noting the asset at the centre of the proceedings was 84,000 shares representing an 84% interest in Metallon. We agree that, owing to the entitlement of a shareholder with that degree of interest to control the board, pass ordinary and special resolutions and determine corporate strategy, this is not a case where a minority interest discount is appropriate.

106. We accept that the Liquidators have done their best to calculate the value of the shares in Metallon at the relevant time. We also accept tentatively their suggestion that the reports as to value may be relatively conservative, but we place no great weight on that.

107. Although Mr Khumalo might argue that the Metallon shares in his hands and the hands of the Trust should be valued at the date of the Order of Justice or the present date it is submitted, and we accept, that the proper award of restorative payment under Article 176 is £77,041,670 being the estimated value at the date of transfer on the 14 October 2021. We regard this as the proper value to ascribe to these shares having regard to the evidence before us, not only the evidence as to value but also the circumstances in which this transaction took place.

108. We accordingly enter judgment in this sum against the First Defendant, plus interest at the court rate from today.

Decisions on Liability - Sikwila

109. As to the claim for summary judgment against Mr Sikwila, we can deal with that briefly. As to the claim under Article 176, this was a transaction entered into between G&G and a person, Mr Khumalo, which was a transaction for no *cause* and with no benefit to the company. Insolvency is only presumed against the person against whom the transaction was entered into if they were connected with the company, so it would be presumed against Mr Khumalo and not Mr Sikwila, but all the evidence suggests that G&G was cashflow insolvent on 14 October 2021 and there is no material which suggests that Mr Sikwila could successfully rely on the defence of the transaction being in good faith and for the benefit of G&G. However, Mr Sikwila might argue that Article 176 does not allow relief against a director who received no benefit from the transaction in question who was not the person with whom the transaction was entered into. There are conflicting English authorities and no Jersey authority on whether there is a jurisdiction under Article 176 to make an order against directors who receive no benefit from an undervalue transaction but simply direct or permit the company to enter into it. We have been referred to authorities that go either way on this issue and we do not propose to make a finding as we are content to find in the alternative that we can enter and do enter summary judgment against Mr Sikwila under Article 74(1)(b) of the 1991 Law.

110. Mr Sikwila was the only co-director of G&G with Mr Khumalo at the time of the Khumalo Share Transfer. He either facilitated the transfer by approving and assisting Mr Khumalo to procure it or negligently failed to take proper steps to scrutinise Mr Khumalo's conduct of the company and the transaction. In other words, at best he was 'asleep at the wheel' and the principles relating to the aggregation of duty by one director are summarised in Re Westmid Packing Services [1988] 2 BCLC 646 at 653.

111. The scale of the Khumalo Share Transfer in the context of the assets of G&G and the fact that they generated no benefit for G&G or its creditors and the fact that Mr Sikwila was on the board of Three Rivers and deeply involved in Mr Khumalo's affairs are all proper bases for an inference that he did not properly scrutinise or take steps to stop the transaction. Accordingly, Mr Sikwila has no reasonable prospect of defending the Liquidators of G&G's claims against him under Article 74.

Quantum - Sikwila

112. We make an order that he is jointly and severally liable to pay equitable compensation of £77,041,670 plus interest for substantially the same reasons as we have identified for Mr Khumalo.

113. As we have said both the First and Second Defendants are jointly and severally liable with the other. They were both responsible for the misappropriation of the Metallon shares from G&G as co-directors. There is nothing on the evidence to suggest that liability between them should be apportioned. As to the position of the Third Defendant, if any recovery is made against the Third Defendant, then that must be taken into account in any enforcement against the First and Second Defendants and vice versa. The Plaintiffs will need to draw up an Act of Court to reflect that and the other findings of the Court.

Authorities

Companies (Jersey) Law 1991.

Royal Court Rules.

Duferco SA v CVG Ferrominera Orinoco CA [2021] EWHC 824 (Comm).

European Union v Syrian Arab Republic [2018] EWHC 1712.

Standard Chartered Bank (Hong Kong) Limited v Independent Power [2016] EWHC 2908 (Comm).

Insolvency Act 1986

Bankruptcy (Désastre) (Jersey) Law 1990.

Health & Home Ltd [2025] EWHC 839 (Ch).

Taqa Bratani Ltd v Fujairah Oil and Gas UK LLC [2025] EWCA Civ 1669.

Royal Brunei Airlines v Tan [1995] 2 AC 378.

BTI 2014 LLC v Sequana SA [2024] AC 211

GHLM Trading Ltd v Maroo [2012] EWHC 61 (Ch).

Re Mumtaz Properties Ltd [2011] EWCA Civ 610.

Cornhill Insurance plc v Improvement Services Ltd [1986] 1 WLR 114

Mortimore & Arnold, Company Directors (4th Edition 2024).

Re Westmid Packing Services [1988] 2 BCLC 646