Neutral Citation Number: **[2022] EWHC 2449 (Comm)**

Case No: **CL-2022-000390; CL-2022-000425; CL-2022-000431; CL-2022-000441**

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: **12 September 2022**

Before :

Justice HHJ Mark Pelling QC

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Between :

CL-2022-000425 (1) KEA INVESTMENTS LTD;
(2) LIDMAN HOLDINGS LIMITED

- and -

FARRER & CO LLP;
(2) ANNE-MARIE PIPER CL-2022-000431
(1) KEA INVESTMENTS LTD;
(2) LIDMAN HOLDINGS LIMITED

- and -

ARABELLA DI IORIO CL-2022-000390 BLUE SIDE SERVICES SA

- and -

(1) KEA INVESTMENTS LTD;
(2) SIR OWEN GEORGE GLENN KNZM ONZM CL-2022-000441 (1) KEA INVESTMENTS LTD;
(2) DAS HOLDINGS AG –

- and -

- SIR OWEN GEORGE GLENN KNZM ONZM

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Mr Gareth Tilley and Mr Oliver Jones (instructed by **Farrer & Co LLP**) for the **Group 1**

Hearing dates: **12th September 2022**

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JUDGMENT

Justice HHJ Mark Pelling QC **Monday, 12 September 2022**
(**12:08** am)

Judgment on Strike Out by **JUSTICE HHJ MARK PELLING QC**

1. These are a series of applications to strike out various claims brought in the name of Kea Investments Ltd. The applications I'm now dealing with are applications to strike out proceedings which have been commenced in the name of either Kea Investments Ltd -- in the name of Kea Investments Ltd and certain other corporate entities who purport to be corporate directors of Kea Investments Ltd. The circumstances which lead to this application are canvassed at great length in the evidence. It is unnecessary that I set it out in detail. The short point, however, is that it is alleged in these proceedings, as it has been alleged in many others, that individuals or corporate entities controlled ultimately by Mr Rizwan Hussain, or, alternatively, pseudonyms used by him, have purported to become directors of a very substantial company, and to have excluded the genuinely-appointed directors who can control that entity.
2. The current proceedings, as I have said, concern claims brought in the name of Kea and/or in the name of allegedly appointed corporate directors. The short point which is made by the applicants is that there is, before me, evidence in a witness statement to the effect that those who purport to be directors of the company in truth have never been appointed as such, and secondly and perhaps more importantly there is produced the true register of the -- registers of the company which show who the true directors are, that in those circumstances the proceedings commenced in the name of Kea were commenced without authority and should be struck out just as previous actions have been struck out, and insofar as claims are advanced by the corporate directors concerned they are commenced not because they claim to have their own interests but as a qua director. Since they are not directors they have no cause of action available to them, both by virtue of not being directors or because directors don't sue in their own name in relation to the affairs of the company of which they are directors.

3. I can start, first of all, with the basis on which these proceedings have been commenced against those who seek to have them struck out. The circumstances are set out in a letter of 8 August that purports to come from Kea Investments, but which, in fact, comes from, or is contained in the letter signed by -- or purportedly signed by Mr David Michael Tabet. The basis on which the various directors represented by Mr Tabet consider themselves to be entitled to act, are set out in the section of the letter entitled, "Background", at paragraph 4 and following. In paragraph 4 it is (a) it is asserted as follows:

4. "On 1 August 2022 in the circumstances and in light of certain actual or purported facts and whilst not formally invested with office but on their own initiative and in order to protect their interests, rights and benefits arising out of, in relation to, or in connection with us, and in order to provide additional capital of non-pecuniary resources as and when necessary, Lomeco Holdings Corporation, Das Holdings AG, Lidman Holdings Ltd, Sword Holdings SA and David Michael Tabet each a, 'Protected director', and together the, 'Protected directors', expressly confirm, indicate and gave notice that they were 1) willing and consent to be appointed and act as our directors to include in all cases all our committees with immediate effect; 2) in addition and in respect of the formal appointment and expressly (Inaudible) that the assumption of the status and function of a director so as to themselves responsible as if they were directors is not sufficient for them to be held as being a director of ours absent being in face that part of our corporate governance system, but insofar as there is ever a question or dispute as to whether they in fact assumed the status and function of a director of ours so as to make themselves responsible as if they were directors they expressly confirmed that they have and will assume the status, functions and role of a director of answer with immediate effect and they expressly accepted will hold office as, occupy the position of, and will act as director of ours and make themselves responsible and accept responsibilities that the office of all relevant statutes, including but not limited to the BVI Business Companies Acts 2004 as amended, including all succeeding acts as

well as all regulations made under all relevant statutes as if they were and are a de jure director of ours".

5. As will be apparent from this case, it is not suggested by or on behalf of any of the corporate entities identified, including but not limited to Lidman Holdings Ltd, and Das Holdings AG, that they were appointed according to the corporate governance structures that apply to Kea Investments Ltd. On the contrary, are asserting they were, in effect, self-appointed directors or, at any rate, were appointed by -- as directors by the individual or individuals who control those corporate entities.

6. As has been consistently held in any number of authorities going back now, regrettably, a large number of months, this is a legal absurdity. That is so for the reasons that I summarised in paragraph 8 of the judgment I gave in Eurohome UK Mortgages 2007/1 Plc and Others v Intertrust Management Limited and Others, [2022] EWHC 2105 (Comm), where, at paragraph 8, referring on to previous authority, I said this:

7. "The articles of association of the Eurohome companies specify how directors could be appointed and removed. It is not suggested on behalf of the entities or individuals to which I have referred that they were appointed directors using that methodology, hence they assert they are de facto directors. Regrettably, this is the latest in an increasingly long line of cases featuring a similar modus operandi using various Marshall Island registered companies, thought to have been orchestrated by an individual called Mr Hussain. In one of these earlier cases, BMF Assets No. 1 Ltd v Sanne Group Plc and Others [2021] EWHC 3306 Chancery, Miles,~J addresses these issues comprehensively. He concluded that there was no serious issue to be tried in that case, but before persons or entities who describe themselves as de facto directors of the relevant companies had become directors. The underlying principle of law is identified in paragraph 50 of Miles,~J' judgment where he says this, 'What is entirely clear is that people cannot make themselves directors of companies simply by saying that they are prepared to assume that

position. It is legally nonsensical to think that a stranger to a company could, by a unilateral act, by saying they are prepared to assume the position, become a director of a company. It would mean that anyone could become a director of any company simply by saying so, regardless of the constitutional, regulatory and corporate governance requirements'. This is legally absurd. What it seems to me has happened here is that the four de facto directors, as they call themselves, a corporate cahoot, are trying to push themselves into the issuers and holdings and forcing out the true directors. There is no basis in law for that'.

8. "Similar conclusions have been reached in similar cases that have been decided subsequently, notably by His Honour Judge Matthews in Mansard Mortgages v Beyat Holdings [2021] EWHC 225 Chancery, and see in particular paragraph 67 of his judgment, and my judgment in Eurosail UK 2007-4BL Plc and Others v Wilmington Trust SP Services London Ltd and Others [2022] EWHC 1319 (Inaudible) paragraph 5. The key point for present purposes is once that conclusion is reached then the whole of the house of cards that is this litigation must necessarily collapse to the ground. It therefore follows this claim must be struck out under CPR rule 3.4(a) on the basis that there is no reasonable grounds for bringing the claim".

9. This issue from my decision in Eurosail UK 2007-4BL Plc v Wilmington Trust SP Services London Limited, there was an application to the Court of Appeal for permission to appeal. That came before Males, LJ and his judgment in dismissing that application is reported at [2022] EWHC 1019 (Comm) where, having set out the necessary background, he referred to the fact that I had described the claim as legally absurd, and he confirmed that in so describing it (Inaudible) judges who dealt with similar claims made by the same or a similar set of so-called shadow, or de facto directors, and there was then a reference to the judgment of Miles,~J that I set out earlier in my first instance judgment.

10. Males,~LJ then said at paragraph 5 that I described that case as being the latest in a long line of similar spurious claims, and then he summarised further the background in relation to Mr

Hussain and referred to the direction that I gave in that case, that any further applications issued by or in the name of key counsel Paul Anthony would have to be supported by a witness statement exhibiting a copy of their passport. It will be recalled I made a similar order in these proceedings at the directions stage.

11. The judge then referred -- Males,~LJ then referred to the application for permission to appeal by key cards and then said -- then dealt with various issues concerning alleged directors and the fact that nobody appeared on the hearing of the application for permission to appeal, notwithstanding it had been listed, and then the judge held at paragraph 22:

12. "Moreover it ..."

13. That is to say the application for permission to appeal:

14. " ... fails to engage with the fact that in condition at the moment proceedings against Mr Hussain ...

15. Forget that paragraph, and then -- he then held at paragraph 23 that it is clear that this was vexatious and abusive litigation, and that I was right to say what I said in the passage I referred to earlier concerning legal absurdity. Thus, the position in relation to these applications is as follows; firstly, it has been consistently held by judges across both the Chancery Division and the Commercial Court that it is legally absurd to suggest that someone can self-appoint themselves as the director of another company in the way that has been -- the respondents to the present strike out -- in the way that has happened in this case, and secondly it has been held at Court of Appeal level that it is not really -- that the case to the contrary is not realistically arguable.

16. Third, in the circumstances of this case it is not even suggested by those who claim to be directors that they have been appointed as such in accordance with the corporate governance requirements of Kea Investments Ltd, and fourth, the true state of the board of directors of Kea Investments is that set out in the register of directors maintained by the corporate registrars who

act for Kea Investments. All this leads, necessarily, to the conclusion that each and every step taken in the name of Kea by those who purport to be but are not, in fact, lawfully appointed directors of Kea Investments, had no authority to act, and therefore had no authority to commence these proceedings. In that regard, this action is like every other which has gone before and which is similar in nature.

17. The remaining question is whether or not the corporate directors that have been joined as claimants in the proceedings are entitled to maintain a claim in the alternative to that advanced in the name of Kea. Manifestly they are not. They purport to act as corporate directors having been self-appointed as such by the individuals who stand, ultimately, behind them. They have no interest in these claims other than an apparent -- an alleged director of Kea. As I have held, they are not, in fact, directors of Kea. They have no interest in this litigation. They have no claims to maintain against the applicants. This is litigation which is abusive for the reasons that I identified in the euro homes litigation, and the claims must be struck out accordingly.