

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



CR-2023-001758

Before ICC Judge Burton

10 May 2023

**IN THE MATTERS OF CANTILLON LIMITED, A.J. MORRISROE & SONS
LIMITED AND GSS PILING LTD**

**AND IN THE MATTER OF THE COMPANY DIRECTORS DISQUALIFICATION
ACT 1986**

BETWEEN:

PAUL CLUSKEY

Claimant

and

THE COMPETITION AND MARKETS AUTHORITY

Defendant

ORDER

UPON THE CLAIM of the above-named Claimant by Claim Form issued on 3 April 2023 for permission pursuant to section 17 of the Company Directors Disqualification Act 1986 to (1) act as a director of, and take part in the management of, Cantillon Limited (company number 00916538) (**'Cantillon'**), and (2) take part in the management of A.J. Morrisroe & Sons Limited (company number 01300615) (**'A J Morrisroe'**) and GSS Piling Ltd (company number 05707807) (**'GSS Piling'**)

AND UPON a disqualification undertaking having been given by the Claimant and accepted by the Defendant on 20 February 2023 for a period of 4 years and 6 months, commencing on 1 May 2023 (**'the Undertaking'**)

AND UPON the Claimant having been granted interim permission to act pending the final hearing of the Claim

AND UPON the Defendant agreeing that the Claimant's roles in A J Morrisroe and/or GSS Piling (as set out in paragraphs 88 to 102 of the First Affidavit of the Claimant and paragraph 41 of the Affidavit of Brian Morrisroe, both sworn on 30 March 2023) do not involve the Claimant in any way, whether directly or indirectly, being concerned or taking part in the management of A J Morrisroe and/or GSS Piling and do not (a) involve the Claimant breaching the terms of the Undertaking or (b) require permission under section 17 of the Company Directors Disqualification Act 1986

AND UPON the Claimant no longer pursuing his application for permission to take part in the management of A J Morrisroe and GSS Piling

AND UPON the Claimant having stepped down as Managing Director of Cantillon

AND UPON Adrian Luto ('**Mr Luto**') having been appointed as a non-executive director of Cantillon

AND UPON Paul Moody ('**Mr Moody**') and Jim O'Sullivan ('**Mr O'Sullivan**') having been appointed as directors of Cantillon

AND UPON Jenny Fowler ('**Ms Fowler**') having been appointed as the competition compliance officer for Cantillon

AND UPON HEARING Mr C Buckley, Counsel for the Claimant, and Mr A Cook KC, Counsel for the Defendant

AND UPON READING the evidence

IT IS ORDERED that:

1. The hearing of the Claim be adjourned for oral judgment on 25 May 2023 at 9.30am.

2. Notwithstanding the disqualification undertaking accepted by the Defendant on 20 February 2023, the Claimant has permission until the conclusion of the hearing to be listed in accordance with paragraph 1 above to act as a director of, and take part in the management of, Cantillon, subject to the following conditions:

2.1. the Claimant shall not act as a director of any other company;

2.2. the Claimant shall not perform the position or role of “Managing Director” of Cantillon, or be held out by Cantillon as having that position or role;

2.3. Cantillon shall not act as a director of any company;

2.4. subject to condition 2.5 below:

(a) Mr Luto shall remain a non-executive director of Cantillon;

(b) Brian Morrisroe (**‘Mr Morrisroe’**), Gerard Marapao (**‘Mr Marapao’**), Mr Moody and Mr O’Sullivan shall remain directors of Cantillon;

(c) Ms Fowler shall remain the competition compliance officer for Cantillon;

2.5. with the permission of the Court:

(a) Mr Luto may be replaced as a non-executive director of Cantillon;

(b) Mr Morrisroe, Mr Marapao, Mr Moody and/or Mr O’Sullivan may be replaced as directors of Cantillon;

(c) Ms Fowler may be replaced as the competition compliance officer for Cantillon.

Any application for such permission shall be made on notice to the Defendant;

2.6. Mr Luto, or his replacement, shall:

- (a) supervise compliance with competition law by Cantillon and the Claimant;
- (b) meet with the Claimant no less than four times a year to consider and discuss the Claimant's compliance with competition law; and
- (c) report to the board of directors of Cantillon every quarter, and the Defendant on reasonable request with no less than 14 days' notice, on compliance with competition law by Cantillon and the Claimant;

2.7. the Claimant shall procure that face to face (or video, following any relevant government regulations and/or recommendations) competition compliance training is conducted annually for:

- (a) staff employed by Cantillon who are identified by Mr Luto as being at a higher risk of non-compliance; and
- (b) all directors of Cantillon;

2.8. at the discretion of, and under the supervision of, Mr Luto or his replacement:

- (a) no less than twice a year, all email servers within the custody or control of Cantillon shall be searched for high risk terms relating to potential competition law breaches; and
- (b) no less than twice a year, samples of the electronic copies of the Claimant's text and call records shall be reviewed and all text exchanges identified as being with a competitor shall be reviewed;

and if Mr Luto, or his replacement, has any concerns following their investigations, such concerns shall be reported to the CMA in writing;

2.9. Cantillon shall hold minuted board meetings at which its compliance with competition law and any concerns raised by Mr Luto or his replacement are

considered on a quarterly basis. In addition, the appointed competition compliance officer shall provide a report to every board meeting which shall (a) include details of any competition law compliance training undertaken within Cantillon since the last board meeting and (b) include details of any matters or reports that such officer has become aware of under the applicable competition compliance policy and/or whistleblowing policy;

2.10. by 11.59 pm on 12 May 2023:

- (a) Cantillon's Competition Law Compliance Policy shall be amended to provide that any concerns should be raised with Mr Luto, rather than Ms Fowler;
- (b) Cantillon's Whistle Blowing Policy Statement shall be amended to provide that any concerns relating to compliance with competition law should be raised with Mr Luto.

PROVIDED THAT the permission hereby granted shall cease immediately and without further Order upon any of the aforementioned conditions not being complied with and any permission shall not without further Order be capable of reinstatement by the subsequent fulfilment of the condition.

SAVE THAT should the Claimant issue and serve an application either pursuant to condition 2.5 above or for permission to continue to act prior to or within 7 days of knowledge of the breach of any condition(s), the permission shall continue until the close of the first hearing of such application which shall be listed before an Insolvency and Companies Court Judge, if available Insolvency and Companies Court Judge Burton, in the urgent applications list no later than 14 days after issuing, subject to further Order of the Court.

3. Costs reserved.

4. This order shall be served by the Claimant on the Defendant.

Dated: 10 May 2023

Service of Order

The court has provided sealed copies of this Order to the serving party:

Fieldfisher LLP
Riverbank House
2 Swan Lane
London
EC4R 3TT