

Part I - Commencing an Action Against Companies under Administration – A Review of United Capital Trustees Limited v. Nigerian International Securities Limited & 4 Ors.

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Introduction

Company administration is a strategic approach for restructuring businesses facing difficulties and involves the appointment of an independent professional (often called an administrator or manager) who takes control of the company for a set period. This process aims to prevent the company's collapse or to enhance returns for creditors. In Nigeria, the Companies and Allied Matters Act 2020 outlines the procedures for appointing an administrator, whether by court order, through a holder of a floating charge, or directly by the company or its directors, particularly when the company cannot fulfil its debt obligations.¹

It is crucial for business managers, insolvency officers, business recovery practitioners, and investors to grasp the full implications of dealing with a company under administration, especially when such a company is involved in legal disputes.

The Central Role of Jurisdiction in Litigation

Jurisdiction forms the cornerstone of legal disputes, empowering courts to resolve cases presented by the parties involved. When a company under administration faces litigation, challenges to the court's jurisdiction can significantly affect the company's operations adversely.

Frequently, complexities arise when a company under administration is already entangled in litigation while other disputes emerge involving third parties. These situations raise questions about whether there are specific legal prerequisites that aggrieved parties must meet before they can successfully seek redress in court. What are the consequences of not meeting these prerequisites? Are there legal remedies available for parties in dispute with a company under administration?

Case Review: United Capital Trustees Limited v. Nigerian International Securities Ltd & 4 Others

In the case of United Capital Trustees Limited v. Nigerian International Securities Ltd & 4 Ors.², where SimmonsCooper Partners (SCP) represented the 4th Defendant (Mr. Rasheed Adeyemi Jaiyeola) the Federal High Court provided critical insights into handling cases involving companies under administration.

¹ Section 443 of Companies & Allied Matters Act, 2020 (as Amended)

² Suit No: FHC/L/Cs/2219/2022

Plaintiff's Position: United Capital Trustees Limited ("United Capital" or "the Plaintiff") initiated legal action on November 16, 2022, by filing an originating summons to recover a substantial debt amounting to N8,570,694,081.88. This debt stemmed from an investment contract with Nigerian International Securities Limited ("NISL" or "the 1st Defendant"). The suit also implicated NISL Ventures Limited ("NISL Ventures" or "the 2nd Defendant"), along with both former and current directors including Benjamin Wilcox (3rd Defendant), Rasheed Adeyemi Jaiyeola (4th Defendant), and Gregory Ozoya (5th Defendant).

According to United Capital Trustees Ltd, NISL had invited them to invest in the "NVL High Yield Fixed Income Product" in September 2020, guaranteeing the return of their principal along with significant interest. Despite receiving initial returns and reinvesting their funds, United Capital faced issues when they chose to withdraw their investment at its maturity. Despite multiple requests and reminders, NISL failed to liquidate the investment. United Capital accused NISL Ventures of being the conduit for the transaction, and Mr. Wilcox, Mr. Jaiyeola and Mr. Ozoya of misappropriating the investment funds for personal use. Alongside the lawsuit, United Capital obtained a court order to freeze all the Defendants' bank accounts and appoint a receiver/manager for asset recovery.

Response from NISL and NISL Ventures: These Defendants contested United Capital's actions, requesting the court to lift the freezing order and dismiss the case citing lack of jurisdiction and procedural misuse. They argued that both entities were already under administration due to an existing court order from the Federal High Court in Abuja related to another creditor action. They alleged that United Capital knew about the subsisting administration yet proceeded with the lawsuit, in violation of Section 480(4) of the Companies and Allied Matters Act (CAMA), which prohibits initiating or continuing actions against companies under administration.

Response from Mr. Wilcox and Mr. Jaiyeola: On behalf of Mr. Jaiyeola, SCP submitted a preliminary objection to substantive suit, arguing that the claims were primarily about debt recovery from a simple contract, thus outside the Federal High Court's jurisdiction. We also argued that the lawsuit was an abuse of process, as it sought to extend the receiver/manager's authority to the personal assets of Mr. Wilcox and Mr. Jaiyeola, who are individuals, contrary to the laws that limit such powers to corporate assets. Mr. Wilcox's lawyers filed a similar objection, reflecting the arguments raised by Mr. Jaiyeola's legal team.

Summary of the Court's Decision

On July 5, 2023, the court delivered its judgments concerning the various preliminary objections submitted by the defendants in the case involving United Capital Trustees Limited and others.

Ruling on the Application of NISL and NISL Ventures: The court agreed with NISL and NISL Ventures' positions, determining that the freezing order had been secured through misrepresentation and the omission of crucial facts, particularly the pre-existing administration of the companies under a court order. The court also held that it lacked jurisdiction to entertain United Capital's claims since both NISL and NISL Ventures were already under administration, and no new lawsuits could be initiated against them without the consent of either the appointed Administrator or the Administration Court. Consequently, the court dismissed the suit for lack of jurisdiction and for being an abuse of court process.

Ruling on the Applications of Mr. Wilcox and Mr. Jaiyeola: The court accepted our arguments that it lacks jurisdiction over United Capital's claims. The court acknowledged its authority over the appointment of receivers but clarified that this does not extend to overarching claims of debt recovery in cases like this, where the underlying dispute is a simple contract. The court agreed that United Capital's claims constituted an abuse of court process, as it improperly sought to extend the powers of the Receiver/Manager to the personal assets of Mr. Jaiyeola, who was involved in his capacity as an individual. Therefore, the suit was struck out for lack of jurisdiction and recognized as an abuse of court process. This reasoning was similarly applied in the court's ruling concerning Mr. Wilcox's application.

Practical Implications and Key Takeaways from the Court's Decision

The court's decision provides essential insights that highlight the complexities and nuances of navigating jurisdiction in corporate legal disputes:

1. **Distinguishing Principal from Ancillary Reliefs:** One of the standout points from this case is the importance of identifying and distinguishing between principal and ancillary reliefs in legal documents and arguments. This differentiation is key as jurisdiction fundamentally depends on the primary relief sought. The court made it clear that ancillary reliefs do not confer jurisdiction if the principal relief is outside the court's statutory bounds.
2. **Jurisdictional Competence Over Contractual Disputes:** The case reiterates that jurisdictional competence must be examined based on the nature of the claim. Despite the inclusion of claims related to the appointment of a receiver/manager, the Federal High Court determined it does not have jurisdiction over simple contractual disputes. The court clarified the principles for determining its jurisdiction as follows: (a) The court

must be properly constituted with the correct number and qualifications of members, none of whom are disqualified; (b) The subject matter must fall within the court's statutory jurisdiction, and there should be no factors that inhibit this jurisdiction; and (c) The case must proceed by due process of law and meet any conditions precedent for the exercise of jurisdiction.³

3. **Strategic Sequence in Litigation:** The decision highlights the importance of adopting a strategic approach in litigation involving corporate insolvency or administration—initially securing a court order for appointing a receiver or manager and then pursuing substantive claims for debt recovery in the appropriate court. This sequence is vital to ensure compliance with procedural norms and jurisdictional mandates.
4. **Impact of Misrepresentation in Jurisdictional Claims:** The decision also highlights how misrepresentation or failure to disclose essential information can impact jurisdictional claims. Practitioners must ensure all relevant facts are disclosed to avoid the risk of a case being struck out for abuse of court process, as seen with the freezing order obtained by the Plaintiff.

Navigating Jurisdictional Challenges in Company Administration

The court's decision in the case of *United Capital Trustees Limited v. Nigerian International Securities Limited & Ors.* highlights the jurisdictional nuances and the conditions under which legal proceedings can be initiated against such companies. Ensuring that all procedural prerequisites are met and that cases are filed in the appropriate courts are fundamental steps that cannot be overlooked.

In the first part of this series, we have discussed how jurisdiction plays a fundamental role in determining the course of legal disputes involving companies under administration. This analysis has highlighted the importance of understanding which court has the authority to hear such cases and the implications this has for all parties involved. By grasping the principles of jurisdiction, stakeholders—ranging from legal professionals to company directors—can better prepare for the complexities that arise when a company enters administration. In Part II of this series, we will explore the conditions under which legal proceedings can be initiated against companies under administration, highlighting how these foundational jurisdictional considerations set the stage for more detailed discussions on maintaining legal compliance and protecting the interests of all entities involved in the administration process.

For further details on this topic or any related inquiries, please contact us at info@scp-law.com.

³ *Madukolu V. Nkemdilim* (1962)2 SCNLR 341