

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **FINANCIAL SERVICES DIVISION**

3 **CAUSE NO FSD 63 OF 2014 (AJJ)**

4  
5 **Before The Honourable Mr Justice Andrew J. Jones QC**  
6 **In Open Court on 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> November and 5<sup>th</sup> December 2014**

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9 **IN THE MATTER OF THE COMPANIES LAW (2013 REVISION) (AS REVISED)**

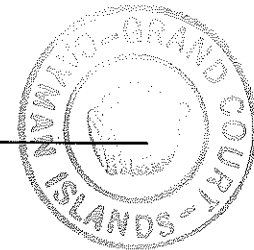
10  
11 **AND IN THE MATTER OF VC COMPUTER HOLDINGS LIMITED (“the Company”)**

12  
13  
14 **APPEARANCES:**

15 Mr Alan Turner and Mrs Charlotte Hoffman of Turners for the Petitioners, Zukiapa Management  
16 Limited and Sakaras Holding Limited (In Liquidation)

17  
18 Mr Paul Murphy of Stuarts for the Company and its parent company, Mertal Overseas SA

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23 **JUDGEMENT**  
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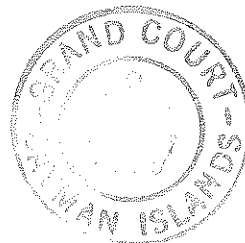
27 **Introduction**

28  
29 1. This is the trial of a creditor’s winding up petition presented by Zukiapa Management  
30 Limited (“Zukiapa”) and Sakaras Holding limited (“Sakaras”) against VC Computer  
31 Holdings Limited (“VC”). Sakaras was incorporated in Malta in 2006 and is the top holding  
32 company of the Verysell Group which had its origins in a joint venture established in the  
33 early 1990’s between a Russian citizen, Mr Mikhail Krasnov (“Mr Krasnov”), and Merisel

1 Inc which was a leading distributor of computer equipment. Zukiapa is incorporated in  
2 Cyprus. It is a wholly owned subsidiary of Sakaras and is an intermediate holding company  
3 within the Verysell Group. Merisel Inc sold its shareholding in 1996 and Mr Krasnov has  
4 been the controlling shareholder and CEO of the Verysell Group throughout the period  
5 relevant to this proceeding. In 2007 the Verysell Group raised new capital in the form of \$30  
6 million convertible loan notes issued by Sakaras to Brava Limited which is part of a private  
7 equity group called RP Capital which is based in London. Having made this investment, one  
8 of its directors, Mr Anatoli Kaminov ("Mr Kaminov") joined Sakaras' board of directors. He  
9 swore an affidavit upon which he was cross-examined at the trial.

10  
11 2. The Verysell Group got into serious financial difficulty. Sakaras defaulted on its obligations  
12 and was put into compulsory liquidation on 4 July 2013 by order of the First Hall Civil Court  
13 of Malta. Dr Olga Finkel ("Dr Finkel") was appointed as official liquidator in which capacity  
14 she was able to secure her appointment as the sole director of Zukiapa. The directors and  
15 former management of Sakaras, Zukiapa and other Verysell Group companies have not co-  
16 operated with Dr Finkel and her attempt to obtain access to all the relevant books and records  
17 is the subject of on-going litigation in Cyprus.

18  
19 3. VC was part of the Verysell Group until 2004 when it was acquired for nominal  
20 consideration by Mertal Overseas SA ("Mertal"), a company owned by Mr Luis Filipe Da  
21 Costa De Sousa Azevedo ("Mr Azevedo"). Why he acquired VC is unclear. His evidence is  
22 that his only economic interest was a commission of \$20,000 per annum. In any event, his  
23 role in the affairs of the company has been very limited. VC had no employees of its own  
24 and, notwithstanding its sale to Mertal, continued as part of the Verysell Group for  
25 operational and managerial purposes. The managing director of the Verysell Group from  
26 2004 to 2013 was Ms Natalia Terekhova ("Ms Terekhova"). She was not a director of VC  
27 but she acted on its behalf pursuant to a power of attorney issued on 15 January 2004. The  
28 evidence points to the conclusion that VC was under the managerial control of Mr Krasnov  
29 and Ms Terekhova at all material times, at least until July 2013 when Ms Terekhova ceased  
30 to be managing director of the Verysell Group. VC has not carried on any business since  
31 2012.



1 4. Those books and records of Sakaras and Zukiapa disclosed to Dr Finkel in her capacity as  
2 official liquidator reflect that the proceeds of the loan notes issued to Brava Limited was lent  
3 by Sakaras to Zukiapa, which in turn lent the money on to VC pursuant to a series of seven  
4 back-to-back loan agreements made between March 2007 and December 2010. For the  
5 purposes of this proceeding the loan agreements between Sakaras and Zukiapa have been  
6 referred to as the “Back-to-Back Agreements” and those between Zukiapa and VC as the  
7 “Loan Agreements”. The relevant bank records reflect that the loans were paid directly by  
8 Sakaras to VC’s bank account. Dr Finkel attempted to obtain information about these loans  
9 from Mr Demedtrios A. Demetriades (“Mr Demetriades”), one of Zukiapa’s former directors,  
10 but he declined to provide any substantive response on the ground that he and his law firm  
11 had acted as “nominee directors”. He would not even identify the persons from whom they  
12 took instructions.

13  
14 5. A statutory demand was served on behalf of Zukiapa at VC’s registered office in Grand  
15 Cayman on 24 February 2014. It demanded payment of the principal sum of US\$36,425,370  
16 and interest of US\$6,683,654. These are the amounts stated in a confirmation letter as being  
17 due and owing by VC to Zukiapa as at 31 December 2011 pursuant to (unspecified) “Long-  
18 term loans”. This confirmation letter was found amongst the books and records disclosed to  
19 Dr Finkel. It is dated 4 May 2012, addressed to VC and signed by Zukiapa’s directors,  
20 namely Mr Demetriades and Loukia Avgousti, another member of Mr Demetriades’ law  
21 firm. A written response to the statutory demand was received from Mr Francisco De Castro  
22 Caldas (“Mr Caldas”) who described himself as a director of VC. He made three substantive  
23 points in his letter. First, he said that “there were no Loan Agreements entered to by [VC]  
24 and [Zukiapa]”. This is a lie. Second, he said that “VC has never received any bank wire  
25 transfers from Zukiapa, whether as loan proceeds or otherwise”. This is true in that the loan  
26 proceeds were paid directly from Sakaras to VC. Third, he said “we can confirm that at no  
27 time has VC confirmed to Zukiapa that any amounts were due from VC to Zukiapa based on  
28 Loan Agreements”. This is accurate in the sense that the confirmation letter is addressed  
29 from Zukiapa to VC, not the other way round. However, it is also disingenuous because  
30 Zukiapa’s nominee directors must have signed the confirmation on the instructions or with

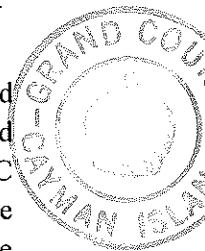


1 the approval of Mr Krasnov and Ms Terekhova who were managing both companies. Mr  
2 Caldas subsequently resigned and has played no further role in this proceeding.

3  
4 6. The winding up petition was presented on 20 June 2014. It is based upon the total debt of  
5 US\$31.8 million plus interest presently due and owing to Zukiapa under the first six of the  
6 Loan Agreements. A further sum of US\$560,000 plus interest falls due on 8 December 2015  
7 under the seventh and last of the Loan Agreements. The evidence in support of the petition is  
8 based entirely upon documents of Sakaras, Zukiapa and VC obtained by Dr Finkel in the  
9 course of performing her duties as official liquidator. Simultaneously with the presentation of  
10 the petition, a summons was issued for the appointment of provisional liquidators. I declined  
11 to make an order *ex parte* and this summons was adjourned for an *inter partes* hearing which  
12 was initially fixed for 30 June and was then adjourned by consent of the parties until 14 July  
13 2014. VC defended the application in reliance upon affidavits sworn by Mr Krasnov and Ms  
14 Terekhova. They accepted that the proceeds of the loan notes had been used by Sakaras to  
15 fund VC's business, but contended that the Loan Agreements (and, by necessary inference,  
16 the Back-to-Back Agreements) were never intended to be performed and did not create any  
17 debt obligations owed by VC to Zukiapa. Ms Terekhova made no attempt in her affidavit to  
18 explain why she had executed sham documents. Mr Krasnov said (in paragraph 8 of his  
19 affidavit) that the purpose of the Loan Agreements was to create a "nominal debt". He said –

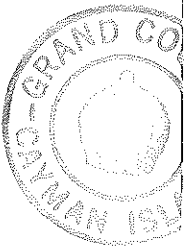
20  
21 "This was required to allow a reserve option to upstream cash flow of expected future profits (if and  
22 when these profits arise) generated by Russian subsidiaries of the Group via VC to Zukiapa and  
23 thereafter to its parent company Sakaras with minimum overhead. This was the reason for both VC  
24 and Zukiapa to enter into these Loan Agreements without intent to perform them and accordingly the  
25 reason why the Loan Agreements have never been actually performed and the loan amounts have  
26 never been provided by Zukiapa to VC. This practice is quite common for many groups and  
27 businesses operating in Russia and involving companies in different jurisdictions."  
28

29 I found this explanation wholly unconvincing and it appears to constitute an admission of  
30 false accounting. It is also inconsistent with the contemporaneous bank records which reflect  
31 that payments were in fact made by reference to these Loan Agreements. I concluded that  
32 Zukiapa had made out a prima facie case for a winding up order and that the appointment of  
33 provisional liquidators was necessary to prevent continued mismanagement and misconduct  
34 in relation to VC. I subsequently gave leave for the petition to be amended. Sakaras was



1 added as a petitioner on the basis that, if it did not pay the loan amounts to VC as paying  
2 agent for Zukiapa (pursuant to clause 5 of the Back-to-Back Agreements), then it must have  
3 made payment as lender. The petition was also amended to plead a debt of US\$12,851,340  
4 payable by VC to Zukiapa (as assignee of Sakaras) on 1 January 2015.

- 5
- 6 7. In my reasons for making an order for the appointment of provisional liquidators, I attached  
7 some significance to the fact that neither Mr Krasnov nor Ms Terekhova had explained the  
8 basis upon which VC admittedly received US\$32.4 million from Sakaras if it was not by way  
9 of loans made pursuant to the Loans Agreements. VC's case, as now revealed in the  
10 affidavits sworn by Mr Azevedo on 15 and 28 August 2014, is that the payments were made  
11 pursuant to a series of seven Supply Agent Agreements purportedly made between Sakaras  
12 and VC on the same dates as the Loan Agreements, between March 2007 and December  
13 2010. Under these agreements, the amounts paid to VC are expressed to be conditional,  
14 whereby VC has no liability to repay unless it has first received payment of the purchase  
15 price for computer equipment sold to the Verysell Group's Russian subsidiaries. Under the  
16 Supply Agent Agreements, VC purportedly granted the purchasers up to two years to pay for  
17 the goods supplied. If they failed to pay within one year of the stated deadline, their debt is  
18 assigned automatically to Sakaras or its subsidiaries so that Sakaras has a receivable from the  
19 Russian subsidiaries for unpaid goods purchased from VC and VC is released from liability.  
20 Dr Finkel's response to Mr Azevedo's evidence is that the Supply Agent Agreements appear  
21 to have been dishonestly fabricated to bolster VC's defence in the light of my conclusion that  
22 the Petitioner had made out a prima facie case. Therefore, the first issue between the parties  
23 is whether the total sum of US\$32.4 million was paid to VC pursuant to the Loan  
24 Agreements or the Supply Agent Agreements. The Petitioners' case is that the  
25 contemporaneous documentary evidence points to the conclusion that the Loan Agreements  
26 are genuine contracts pursuant to which VC is indebted to Zukiapa. VC's case is that the  
27 Loan Agreements are sham documents. With the exception of the last one which is dated 8  
28 December 2008, it is now VC's case that they were all backdated, having been executed in  
29 June 2009, in response to advice from Deloitte & Touche, solely for the purpose of  
30 misleading the Maltese tax and regulatory authorities and that none of them were ever  
31 intended to be performed in accordance with their terms and were not in fact performed, with



1 the result that VC is not indebted to Zukiapa. Whether or not Mr Krasnov and Ms Terekhova  
2 did in fact execute these agreements solely for the purpose of misleading the Maltese  
3 authorities, Mr Krasnov and Mr Azevedo are now asking this Court to accept that they  
4 behaved in a way which can only be regarded as dishonest. This leads me to conclude that  
5 they are not reliable witnesses.

- 6
- 7 8. The second issue concerns the assigned debt of US\$12,851,370. VC's case is that the Debt  
8 Restructuring Agreement dated 1 January 2011 does not mean what it says and that the  
9 underlying debts were always conditional and, in the events that happened, no repayment  
10 obligation arises. The conditional nature of these debts (and the amounts purportedly paid  
11 pursuant to the Supply Agent Agreements) is said to have been put beyond any doubt by a  
12 Framework Agreement on Netting purportedly made on 15 December 2010 between Sakaras  
13 and VC ("the Framework Agreement"). Dr Finkel's response is that this Framework  
14 Agreement also has all the hallmarks of a document created recently for the purpose of  
15 misleading this Court.

16

17 **The First Issue: On what basis was US\$32.4 million paid to VC?**

18

19 ***The execution and performance of the Loan Agreements***

- 20 9. Each of the Loan Agreements was signed on behalf of VC by Ms. Terekhova. Her affidavit  
21 was sworn on 16 July 2014. She says (in paragraph 7) that –

22 "In the beginning of 2007 I was approached by Maria Faminskaya, head of management accounts  
23 department of Verysell SA, who requested me to execute the [Loan Agreements] on behalf of VC  
24 acting under the Power of Attorney. Maria Faminskaya stated that the Loan Agreements were  
25 required for accounting purposes only and were not expected to be actually performed."

26

27 This statement is consistent with Mr Krasnov's first affidavit sworn on 8 July 2014, but  
28 inconsistent with his subsequent oral evidence and inconsistent with his second affidavit  
29 sworn 6 November 2014. There is no suggestion in either of these affidavits that the Loan  
30 Agreements were backdated. To the contrary, the only reasonable inference to draw from the  
31 introductory words "In the beginning of 2007..." is that she is saying that they were *not*  
32 backdated. Most importantly, there is no mention in either of these affidavits of any Supply

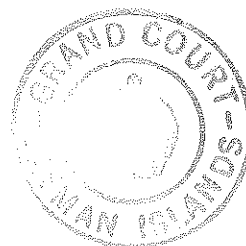


1 Agent Agreements having been executed at all, let alone contemporaneously from March  
2 2007 onwards. Ms Terekhova failed to attend for cross-examination.

3  
4 10. Each of the Loan Agreements was signed on behalf of Zukiapa by Mr Demetriades and  
5 Pantelitsa Athanassiou, who were later described as “nominee directors”. They are both  
6 members of the Cypriot law firm called Demetrios A. Demetriades & Co. The two earliest  
7 Back-to-Back Agreements dated 3 March and 10 July 2007 are signed on behalf of Zukiapa  
8 by Eleni P. Kinani, presumably also a member of the same law firm. The rest are signed by  
9 Messrs Athanassiou and Demetriades. They did not swear any affidavits. The dates of the  
10 Back-to-Back Agreements match the dates and numbering of the Supply Agent Agreements,  
11 save for Supply Agent Agreement No. 4, which matches the date and loan amount of Back-  
12 to-Back Agreement No. 6.

13  
14 11. Mr. Azevedo’s second affidavit contradicts Ms. Terekhova’s recollection. His affidavit  
15 evidence is that the Loan Agreements and Back-to-Back Agreements were in fact signed  
16 after advice was obtained from Deloitte & Touche sometime in 2008. During his oral  
17 evidence Mr. Azevedo said he recalled authorizing the signing of the Loan Agreements but  
18 said he did not understand why they were created and that he had no personal knowledge of  
19 the Deloitte & Touche advice.

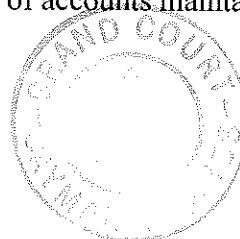
20  
21 12. Mr Krasnov’s first affidavit does not state when the Loan Agreements or Back-to-Back  
22 Agreements were executed. The only explanation he gives in this affidavit is that they were  
23 entered into without any intention to perform them and for the purpose of creating a  
24 “nominal debt” to allow a reserve option to upstream cash flow profits generated by the ROS  
25 with minimum overhead. Mr Krasnov did not explain in his oral evidence what this meant.  
26 Instead, he repeated Mr. Azevedo’s version of events. He was emphatic that the Loan  
27 Agreements and Back-to-Back Agreements were signed in late 2008 or early 2009 in  
28 response to advice from Deloitte & Touche and only for the purposes of deceiving the  
29 Maltese regulatory and tax authorities. This point was not made in his affidavit.



1 13. After his cross-examination had been completed, Mr Krasnov swore a second affidavit  
2 intended to establish that he had given instructions to the Demetrios A. Demetriades & Co  
3 Law Office on 11 June 2009 to execute and backdate the first six of the Loan Agreements.  
4 The instruction takes the form of a memorandum. There is no independent evidence from  
5 which to infer that this memorandum was created on that date or that it was ever sent to the  
6 law firm at all. Also exhibited to this affidavit is a letter dated 19 June 2009 from the law  
7 firm to Ms Terekhova. It simply states "Pleased find enclosed" ... and it then lists the first six  
8 Loan Agreements. There is nothing in the content of this letter from which to infer that it  
9 was written in response to the memorandum dated 11 June 2009 or that the Loan Agreements  
10 were backdated in any way. I gave leave for this affidavit to be admitted in evidence,  
11 notwithstanding that Mr Krasnov had by then left Grand Cayman and so could not be  
12 recalled for further cross-examination.

13  
14 14. There is no evidence from any independent source which can be said to corroborate the  
15 evidence of Mr Azevedo and Mr Krasnov that the Loan Agreements were created and  
16 backdated in response to advice received from Deloitte & Touche. No document from  
17 Deloitte & Touch has been put in evidence. No affidavit has been sworn by any member of  
18 Demetrios A, Demetriades & Co Law Firm. The only correspondence from this law firm is  
19 the letter dated 19 June 2009 which does not corroborate the assertion that its partners or  
20 employees backdated the Loan Agreements. Nor is there any evidence from any other  
21 independent source which corroborates the assertion that the Loan Agreements are a sham.  
22 To the contrary, there is documentary evidence from an independent source from which to  
23 infer that the Loan Agreements and Back-Back Agreements were executed on the dates  
24 stated and that they were in fact partially performed.

25  
26 15. It is not disputed that each of the dollar amounts specified in the Loan Agreements was paid  
27 by Sakaras to VC on or about the date of each agreement. The same dollar amounts are  
28 specified in the Back-to-Back Agreements, the dates of which are either the same or shortly  
29 before the dates of the Loan Agreements. These are the same dollar amounts and the same  
30 dates as those stated in the Supply Agent Agreements. Bank statements and advice notes  
31 generated by Bank of Valletta Plc and UBS SA in respect of accounts maintained in the name





1 of Sakaras have been put in evidence. The authenticity of these documents is not in issue.  
2 There are a series of debit advices which reflect that the amounts specified in the Loan  
3 Agreements and Back-to-Back Agreements were paid by Sakaras to VC on or about the dates  
4 of the agreements. In each case the payment detail states "Loan Agreement" and the  
5 agreement number (with one exception), the date and loan amount corresponds with that of  
6 the related Back-to-Back Agreement. The payment detail on the bank advice must reproduce  
7 the payment detail on the instruction received from Sakaras. In my judgment, the only  
8 reasonable inference to draw from the documents generated by UBS is that they reproduce  
9 the instructions received from Sakaras and that Sakaras intended to make payment to VC  
10 pursuant to the Loan Agreements.

11  
12 16. The debt advices relating to Sakaras' account with UBS SA reveal one inconsistency upon  
13 which counsel for the VC and Mertal placed great weight. The payment detail on the debit  
14 advice dated 11 July 2007 (in the amount of \$5,990,000) refers to "Loan Agreement No. 4  
15 DD 10.07.2007". The corresponding Back-to-Back Agreement dated 10 July 2007 is entitled  
16 Loan Agreement No. 6 and the corresponding Loan Agreement dated 11 July 2007 is entitled  
17 Loan Agreement No. 6A. However, the corresponding Supply Agent Agreement is numbered  
18 4 in line with the debit advice. Having regard to the evidence as a whole, I infer that this  
19 debit advice must reflect a mistake. Whoever prepared the instructions to the bank must have  
20 referred to the wrong loan agreement number by mistake. This evidence also points to the  
21 conclusion that Supply Agent Agreement No.4 is not a genuine document and that it was  
22 created after the event in terms intended to correspond with the bank advice. Whoever  
23 drafted the Supply Agent Agreement reproduced the original mistake in order to match it up  
24 with the bank advice.

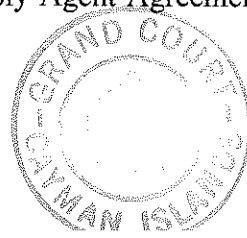
25  
26 17. The credit and debit advices issued by UBS AG in respect of Zupiaka's account also  
27 constitute clear evidence that the Loan Agreements and Back-to-Back Agreements were in  
28 fact performed. For example, a credit advice dated 18 December 2009 that the Company paid  
29 \$30,000 to Zupiaka in respect of "Partial Reimbursement of Loan Agreement No.3A". This  
30 is one of several advice notes reflecting partial repayment of capital due under the Loan  
31 Agreements. A credit advice dated 18 June 2009 reflects that the Company paid \$2,052.39 to



1 Zukiapa in respect of "Interest payment on Loan Agreement No. 3A less invoices paid  
2 2007". There is no interest payable under the Supply Agent Agreements. There is no bank  
3 advice which refers to a payment having been made or received pursuant to a Supply Agent  
4 Agreement. In my judgment these bank records constitute compelling evidence that the Loan  
5 Agreements reflect genuine transactions which were intended to be performed and were in  
6 fact partially performed.

7  
8 *The understanding of the Sakaras' board of directors*

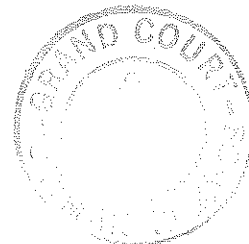
9 18. In his oral evidence, Mr. Krasnov said that the Sakaras' board of directors, including Mr.  
10 Kaminov, knew that the relationship between VC and Sakaras was governed by the Supply  
11 Agent Agreements and knew that its obligation to repay the sums received from Sakaras was  
12 conditional. Mr Kaminov denied having known about the Supply Agents Agreements and  
13 Framework Agreement until they were produced as exhibits to Mr Azevedo's affidavit. I  
14 prefer the evidence of Mr Kaminov on this point. Mr Krasnov's evidence is inconsistent with  
15 the very lengthy, detailed minutes of the board meetings. These minutes contain no reference  
16 to the Supply Agent Agreements or Framework Agreement. Furthermore, the minutes  
17 contain acknowledgements of the debt owed by Zukiapa under the Back-to-Back  
18 Agreements. On 16 May 2012, members of the board sought more detailed information about  
19 the necessity of writing off loan receivables due to Zukiapa which in turn necessitated  
20 writing off receivables due from Zukiapa to Sakaras. Mr. Kaminov is recorded as having  
21 said that "in light of VC's status as a major debtor of Zukiapa, the directors of Sakaras had  
22 the right to KYC information on VC..." Mr. Krasnov's response is significant. If the  
23 relationship between VC and Sakaras had been governed by the Supply Agent Agreements,  
24 as he now contends, one would expect him to have explained that it was not relevant to  
25 obtain KYC about VC because it was no longer a debtor. VC's case is that the last payment  
26 of \$560,000 received from Sakaras on 15 December 2010 was pursuant to Supply Agent  
27 Agreement No. 17 dated 8 December 2010. If the Supply Agent Agreements had been the  
28 governing contracts, by the time of the board meeting in May 2012 unpaid debts due from  
29 the Russian operating subsidiaries would have been assigned automatically from the VC to  
30 Sakaras and VC would not have been referred to as a debtor at all. Instead, the minutes  
31 reflect that Mr Krasnov made no reference to the Supply Agent Agreements and responded



1 as if VC was still indebted to Zukiapa (which I conclude was in fact the case). The minutes  
2 of Sakaras' board meetings are very detailed and lengthy. They contain no reference to the  
3 Supply Agents Agreements but they do contain statements which are inconsistent with the  
4 existence of the Supply Agent Agreements.

5  
6 *The books and records and financial statements of Zukiapa and VC*

7 19. The audited financial statements of Zukiapa for the period from 18 August 2006 to 31  
8 December 2007 and for the years ended 31 December 2008 to 2011 inclusive are in evidence.  
9 These financial statements have been audited by Rotsas & Co Ltd, a firm of English qualified  
10 chartered accountants with offices in London and Cyprus. The 2006/7 balance sheet reflects  
11 'Trade and other receivables' of \$21,639,188 which is not the same thing as long term loan  
12 receivables. The liability side of the balance sheet does reflect 'Long-term loans' of  
13 \$21,584,279 which is consistent with the existence of the Back-to-Back Agreements  
14 although the amounts are not the same. VC's financial statements have not been disclosed  
15 (in breach of the directors' obligations under the provisional winding up order). Mr Krasnov  
16 produced a document entitled 'Report on the Balance Sheet of VC as an Agent of Verysell  
17 Group' but he did not explain how it has been compiled. It is dated 14 January 2013 and  
18 appears to reflect the consolidated position of VC and Zupiaka. It recognizes the existence of  
19 the loan liability from Zupiaka to Sakaras and in this respect appears to be consistent with the  
20 existence of the Back-to-Back Agreements and inconsistent with the existence of the Supply  
21 Agent Agreements. The loan liabilities are characterized as 'Nominal Loan Zukiapa  
22 (Sakaras)' and are consistent with the 'Long-term loan' liabilities reflected in Zupiaka's  
23 audited financial statements. Mr Krasnov's oral evidence was that this was false accounting  
24 and the audited financial statements do not reflect the true position. On VC's case, its only  
25 liability was to Sakaras under the Supply Agent Agreements, but this is inconsistent with  
26 Zukiapa's financial statements which reflect that it was liable to Sakaras in respect of long-  
27 term loan obligations. When asked to address this inconsistency, Mr. Krasnov relied instead  
28 on the proposition that VC did not confirm that any debt was payable to Zukiapa, regardless  
29 of what is shown in the accounts.



1 20. The confirmation letter dated 4th May 2012 upon which the statutory demand was based  
2 states as follows –

3  
4 "In reply to the request of VC Computer Holdings Ltd in connection with the finalization of its  
5 accounts for the year 2011, herewith we confirm that as of December 31, 2011 the balance between  
6 VC Computer Holdings Ltd and Zukiapa Management Limited was as follows:

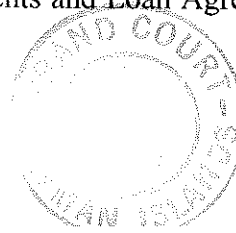
7  
8 Accounts due to Zukiapa Management Limited from VC Computer Holdings Ltd  
9 Long-term loans USD36'425'369.83  
10 Interest USD3'927'800.22 "

11  
12 Mr Krasnov accepts (in paragraph 15 of his affidavit) that this confirmation letter was signed  
13 by Zukiapa's directors, but he appears to dismiss it as mere false accounting. He says –

14  
15 "Although the petitioner refers to letter signed by Zukiapa directors, this is a unilateral statement  
16 issued by the creditor and not the debtor. The business reason for Zukiapa directors to issue such  
17 letter was confirmation of said "nominal debt" for books and records of the Group and not as an  
18 acknowledgement of actual VC indebtedness before Zukiapa".

19  
20 In effect, Mr Krasnov is asserting that the content of this confirmation letter is false and that  
21 the directors of Zukiapa were instructed to sign it only for the purpose of supporting false  
22 accounting in the Vercell Group.

23  
24 21. Counsel for VC also relies upon a decision made at a meeting of Sakaras' board of directors  
25 on 20 June 2012. The board discussed Sakaras' single entity (non-consolidated) financial  
26 statements for the year ended 31 December 2010. It was decided to "impair" receivables of  
27 \$39.3 million. It is perfectly clear from the minutes that the directors were talking about  
28 making a provision for debts which were thought to be irrecoverable or doubtfully  
29 recoverable. It is equally clear that making a provision in Sakaras' accounts did not have the  
30 effect, and was not intended to have the effect, of discharging the legal liabilities. This point  
31 was expressly made by certain directors in the context of an injunction restraining Sakaras  
32 from alienating its assets. The minutes record that making a provision in respect of a  
33 receivable in its balance sheet did not constitute the alienation of the asset in question. This  
34 discussion does not lead to the conclusion that Zukiapa's obligations to Sakaras or VC's  
35 obligations to Zukiapa under the Back-to-Back Agreements and Loan Agreements had been



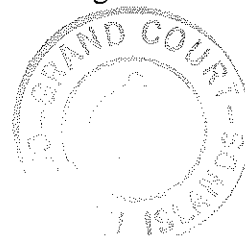
1 released and discharged. However, it is of course further evidence that the board of directors  
2 knew nothing about the Supply Agent Agreements or the Framework Agreement. If the  
3 Back-to-Back Agreements and the Loan Agreements were a sham and Sakaras was party to  
4 the Supply Agent Agreements and the Framework Agreement, the discussion at this board  
5 meeting would have been entirely different.

6  
7 *The form and content of the Loan Agreements*

8 22. Counsel for VC made the submission that the Loan Agreements should be regarded as  
9 “unreliable and nonsensical documents” because their form and content is such that they do  
10 not have the appearance of legitimate commercial loan agreements. I disagree with this  
11 submission. They contain all the information necessary to create a binding loan agreement.  
12 They each state the principal amount of the loan, the rate of interest, the repayment terms, a  
13 provision relating to collateral, the governing law and the fact that they are executed in two  
14 counterparts. They are expressed to be governed the law of Switzerland which is where the  
15 Verysell Group’s administrative office was located. Bearing in mind that the lender and  
16 borrower are related parties under common management, I do not find it surprising that these  
17 are simple, straightforward documents without any detailed recitals. Nor do I find it  
18 surprising that VC’s capital requirements should be met by loans from a Verysell Group  
19 company. To my mind there is nothing “nonsensical” about these documents.

20  
21 *The execution of Supply Agent Agreements*

22 23. There is no evidence which positively corroborates that the Supply Agent Agreements  
23 existed on the dates on which they purport to have been executed but there is evidence which  
24 tends to suggest that they did not come into existence until August 2014. The statutory  
25 demand is based upon the confirmation of loan term loans, which can only mean the long  
26 term loans made pursuant to the Loan Agreements. Given the way in which VC’s case is now  
27 put, one would have expected Mr Caldas’ reply to have said that the Loan Agreements were  
28 not intended to be acted upon and that the actual business relationship between the company  
29 and the Verysell Group is governed by the Supply Agent Agreements and the Framework  
30 Agreement. Instead, he lied about the existence of the Loan Agreements and made no  
31 reference to the Supply Agent Agreements or the Framework Agreement at all. He stated –



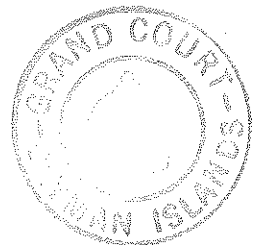
1 “We object and claim that there were no Loan Agreements entered into by VC Computer Holdings  
2 (“VC”) and Zukiapa Management Limited (hereafter “Zukiapa”) to which you refer as the basis for  
3 your claim, neither at any VC confirmed in writing to Zukiapa that such amounts were due from VC  
4 to Zukiapa.”  
5

6 This statement was untrue. It is now admitted that the Loan Agreements did in fact exist  
7 when this letter was written. If the Supply Agent Agreements had in fact existed, it would not  
8 have been necessary to lie about the existence of the Loan Agreements. Mr Caldas could  
9 have explained that the Supply Agent Agreements were the governing documents and that  
10 the Loan Agreements were not intended to create any actual liabilities.  
11

12 24. VC opposed the application for the appointment of provisional liquidators on the basis of the  
13 evidence of Mr. Krasnov and Ms. Terekhova. As I have already observed, their affidavits  
14 make no mention of the Supply Agent Agreements or the Framework Agreement. These  
15 documents are mentioned for the first time in the list of documents exhibited to Mr  
16 Azevedo’s first affidavit sworn on 13 August 2014. No contemporaneous documentary  
17 evidence reflecting the existence of these agreements was produced to Dr Finkel at any time  
18 prior to the date on which Mr Azevedo swore this affidavit. The bank advices refer to the  
19 Loan Agreements, but there is no reference to any Supply Agent Agreements. The minutes of  
20 the board meetings make no reference to these agreements. Mr. Krasnov said in his oral  
21 evidence that the Supply Agent Agreements were in fact shown to Mr. Kaminov in a meeting  
22 some time in 2012. However, the minutes of the board meetings contain no reference to them  
23 and Mr. Kaminov denies that these agreements were ever produced to him.  
24

25 25. Counsel for VC attaches considerable significance to a document called *Report on*  
26 *Reconciliation as of 21.03.2013*. This is an internally generated document produced for the  
27 first time in August 2014 as an exhibit to Mr Azevedo’s second affidavit. Appendix 5 of this  
28 document is entitled *Reconciliation between VC and Sakaras, 1.01.2007 – 31.12.2012*. The  
29 first two line items are as follows –  
30

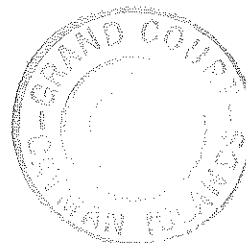
31 “03.27.2007 Funds from Sakaras, SAAgr No.3 10001 Rosbank USD -10,000,000.00  
32 07.10.2007 Funds from Sakaras, SAAgr No.4 10001 Rosbank USD - 5,990,000.00”



1 This document records the funds paid from Sakaras' account with UBS SA, Lausanne to  
2 VC's account with Rosbank (Switzerland) SA. Mr Azevedo has produced copies of debit  
3 advices relating to VC's account with Rosbank, but he has not produced any of the credit  
4 advices reflecting the receipt of the seven principal payments of which these are the first two.  
5 However, six out of the seven the debit advices generated by UBS in respect of these  
6 transactions are in evidence, including that relating to the payment of \$5,990,000 made on 10  
7 July 2007. The debit advice states – "Details of payment LOAN AGREEMENT NO 4 DD  
8 10.07.2007". This must reflect what was stated in the payment instruction which must have  
9 been prepared and signed by or with the authority of Ms Terekhova and/or Mr Krasnov who  
10 were respectively the managing director and chief executive officer of the Verysell Group at  
11 the time. Counsel would have me believe that this must be a mistake because Mr Krasnov's  
12 evidence is that the Loan Agreements were not executed (and backdated) until two years later  
13 in June 2009. He relies upon the fact that the reconciliation document refers to "SAAgr  
14 No.4" as evidence that the payment must have been made by reference to a Supply Agent  
15 Agreement, not a Loan Agreement. However, counsel also accepts that there is no  
16 documentary evidence before the Court generated from an *independent* source which  
17 corroborates the assertion that the Supply Agent Agreements existed prior to August 2014 or  
18 that any payments were made pursuant to a Supply Agent Agreement. This evidence leads  
19 me to the conclusion that it is the UBS debit advices, not the Report on Reconciliation, which  
20 reflects the way in which the transactions were actually characterized by Mr Krasnov and Ms  
21 Terekhova at the time they took place. Bearing in mind that Mr Krasnov admits having  
22 engaged in false accounting, it is reasonable to infer that the Report on Reconciliation has  
23 been recently amended to include references to "SAAgr".  
24

25 ***The Framework Agreement on Netting***

26 26. The Framework Agreement is dated 15 December 2010 and it is signed by Mr Krasnov on  
27 behalf of Sakaras and by Ms Terekhova on behalf of VC. If it is an authentic document  
28 which constitutes a genuine contract between the parties, it would constitute a complete  
29 defence to this petition. It is so important to VC's case that it seems to me inherently unlikely  
30 that it would have been completely overlooked in both Mr Caldas' response to the statutory



1 demand and in the affidavits sworn by Messrs Kasnov and Terekhova in response to the  
2 application for the appointment of provisional liquidators.

3  
4 27. There is no documentary evidence before the Court from any independent source which  
5 corroborates that the Framework Agreement came into existence on or about 15 December  
6 2010. Indeed there is no internally generated documentation pointing to its existence prior to  
7 August 2014. It is first mentioned in the index of documents exhibited to Mr Azevedo's first  
8 affidavit sworn on 13 August 2014. He stated (at paragraph 95) that "This document explains  
9 why the Loan Agreements were in place and definitively establishes that the Loan  
10 Agreements were not intended to be binding contracts." Mr. Azevedo's affidavit evidence  
11 (paragraphs 102 and 103) is that he participated personally in the preparation of the  
12 Framework Agreement and specifically asked for the inclusion of clause 1.9 which required  
13 that the Loan Agreements be amended to reflect that the payment obligations were intended  
14 to be conditional. He says that no one followed up on this point. However, when asked about  
15 the Framework Agreement during re-examination, Mr. Azevedo appeared to be unfamiliar  
16 with the document.

17  
18 28. I agree with counsel for the Petitioners that the content of the Framework Agreement has all  
19 the hallmarks of a document produced after the event for the purpose of bolstering VC's case  
20 and overcoming the adverse findings contained in my Reasons published on 2 August 2014.  
21 The recitals read like an affidavit drafted to meet the Petitioners' case. To put it into context,  
22 it is important to remember that the parties to the Framework Agreement had common  
23 management. If this document had in fact been executed by Mr Krasnov and Ms Terekhova  
24 on or about 15 December 2010, there would have been no need for them to recite in detail a  
25 factual history which would, if true, have been perfectly well known to both of them at the  
26 time. If it had been known to them at the time, they would have set it out in their respective  
27 affidavits sworn in July 2014.

28  
29 29. The contrast between the form and content of the Loan Agreements and the Framework  
30 Agreement is instructive. As I have already observed, the Loan Agreements are simple,  
31 straightforward documents which do no more than is necessary to document loan transactions  
32 made between related parties under common management. In contrast, the Framework





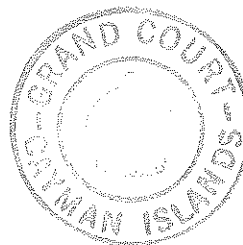
1 Agreement contains an elaborate narrative which seems out of place in this context. It  
2 appears contrived.

3  
4 30. Taken as a whole, the evidence leads me to the conclusion that both the Supply Agent  
5 Agreements and the Framework Agreement are not contemporaneous documents and were  
6 probably created in August 2014 for the purposes of bolstering VC's case and attempting to  
7 overcome the adverse findings contained in my Reasons published on 2 August 2014.  
8

9 **The Second Issue: Is the US\$12.8 million debt conditional?**

10  
11 31. By an Assignment and Set-Off Agreement made on 15 December 2010 between each of  
12 Verysell SA and CAT SA (indirect subsidiaries of Sakaras) as assignors and Sakaras as  
13 assignee, trade debts owed by VC in the total amount of US\$12,851,339.79 were assigned  
14 from Verysell and CAT to Sakaras. By an Assignment Agreement made on 27 December  
15 2010 between Sakaras as assignor and Zukiapa as assignee, these trade debts were further  
16 assigned to Zukiapa. VC, as debtor, is made a party to the agreement and by Section 1.03  
17 expressly acknowledges that after the effective date thereof it will owe this debt to Zukiapa.  
18 It was signed on behalf of the Company by Ms Terekhova. Also, on 27 December 2010, the  
19 parties to the Assignment Agreement entered into a deed of amendment. VC accepts that this  
20 Assignment Agreement is valid and enforceable in accordance with its terms – it is not said  
21 to be a sham document. It is expressed to be governed by Swiss law and by Section 5.02 it  
22 was expressly agreed that “This Agreement may not be altered other than by agreement of  
23 the Parties expressed in a written document signed by all the Parties”. It follows that, even if  
24 the Framework Agreement is an authentic document it could not affect Zukiapa's rights as  
25 assignee of these debts because Zukiapa is not party to the Framework Agreement.  
26

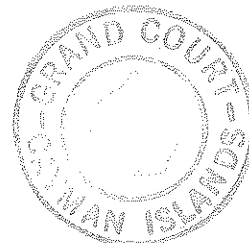
27 32. By a Debt Restructuring Agreement made on 1 January 2011 between Zukiapa as creditor  
28 and VC as debtor, the trade debts of US\$12, 851,339.79 were converted into a loan repayable  
29 on 1 January 2015 together with interest at 3.75% per annum. This transaction was formally  
30 approved by a resolution of Zukiapa's board of directors passed on the same day and there is  
31 no suggestion that this agreement was a sham.



1 33. The terms of this Debt Restructuring Agreement are important. Recital B states that ‘the  
2 Claim’ (meaning the trade debts of US\$12,851,339.79) is then due and outstanding. Recital  
3 C says that the Debtor (meaning VC) does not have sufficient funds to discharge the Claim  
4 and that seizure of its assets would entail the termination of VC’s activity making repayment  
5 unfeasible. VC expressly acknowledges the Claim at Recital D.  
6

7 34. VC’s case, set out on paragraphs 102 and 103 of Mr Azavedo’s second affidavit, is that the  
8 Restructured Debt is conditional. His argument is that the underlying trade debts originally  
9 owed to CAT SA and Verysell SA were conditional pursuant to the terms of (a) a supply  
10 agreement dated 11 May 2004 and made between CAT and VC and (b) a supply agreement  
11 dated 24 August 2007 and made between Verysell and VC, as subsequently amended in both  
12 cases. As originally executed, neither of these supply agreements was stated to be  
13 conditional. VC’s case is that they were both amended subsequently to the effect that its  
14 obligation to pay for the goods supplied became conditional. The CAT agreement was  
15 purportedly amended by an agreement dated 30 July 2004 and signed by Ms. Terekhova for  
16 VC and by Mr. Krasnov for CAT. The reason for the amendment is said to be that VC had  
17 been sold out of the Verysell Group between May (when it was executed) and July (when it  
18 was amended). If this is true, one might have expected that the Verysell agreement (which  
19 was first executed on 24 August 2007) would have been expressed to be conditional from the  
20 outset but it was not. It was purportedly amended on 1 December 2008 by letter signed by  
21 Mr. Maroun of Verysell.  
22

23 35. Whether or not these supply agreements were in fact amended to the effect that VC’s  
24 obligation to pay for the goods supplied became conditional, the recitals of the Debt  
25 Restructuring Agreement (dated 1 January 2011) state categorically that the debts totaling  
26 US\$12,851,339.79 were then due and owing. If VC’s obligation to pay had become  
27 conditional upon receiving payment from its own purchasers, there would be no need to enter  
28 into any debt restructuring agreement at all. I agree with counsel for the Petitioners that the  
29 Restructuring Agreement constitutes an unequivocal acknowledgement by VC that these  
30 trade debts were due and payable.

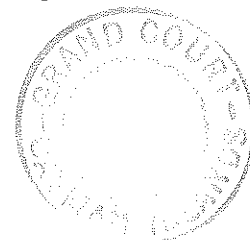


1 36. When asked about the recitals to the Debt Restructuring Agreement in cross-examination,  
2 Mr. Krasnov merely pointed to the Framework Agreement which he indicated explained the  
3 true conditional nature of the debt. Even if I had believed that Framework Agreement is a  
4 genuine contract executed on or about 15 December 2010, it was not executed on behalf of  
5 Zukiapa and so cannot have the effect of forgiving a debt owed by VC to Zukiapa as  
6 assignee. If the Verysell Group management had ever genuinely believed that VC's  
7 obligation to pay US\$12,851,339.79 for goods supplied had become conditional or that the  
8 obligation had been released by the Framework Agreement, Ms Terekhova, would never  
9 have executed any debt restructuring agreement which states in unequivocal terms that VC  
10 does owe US\$12,851,339.79 to Zukiapa.

11  
12 37. Neither Mr Krasnov nor Ms Terekhova have suggested that the Debt Restructuring  
13 Agreement is a sham document intended to give the false impression that the trade debts had  
14 been converted into a loan repayable on 1 January 2015. I conclude that VC owes the  
15 principal sum of US\$12,851,339.79 to Zukiapa and that it will fall due for payment on 1  
16 January 2015 together with interest at 3.75% per annum for four years from 1 January 2011.

## 17 18 **Conclusions**

19  
20 38. Mr Krasnov and Mr Azevedo would have the Court believe that the Loans Agreements are  
21 backdated and were executed in June 2009 solely for the purpose of misleading the Maltese  
22 tax and regulatory authorities and that they were never intended to be performed and  
23 enforced in accordance with their terms. This assertion is not corroborated by contemporary  
24 documentary evidence. To the extent that there is any contemporary evidence from an  
25 independent source, namely the UBS bank advice notes, it points unequivocally to the  
26 opposite conclusion. I do not doubt that Mr Krasnov and Ms Terekhova are ready to backdate  
27 documents and engage in false accounting when the need arises, but the evidence leads me to  
28 the conclusion that it is the Supply Agent Agreements and the Framework Agreement which  
29 have been backdated and executed for the purpose of misleading the Court.



1 39. I am satisfied on the balance of probabilities that VC is indebted to Zukiapa in the sums of  
2 US\$32.4 million plus interest due under the Loan Agreements and US\$12,851,370 plus  
3 interest due under the Debt Restructuring Agreement. Of these amounts, the sum of  
4 US\$31,840,000 plus interest is presently due and owing.

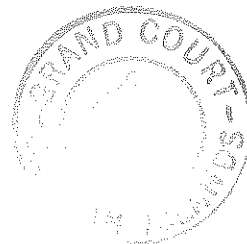
5  
6 40. I am also satisfied that VC is insolvent. It ceased to carry on business about two years ago.  
7 There is no evidence that VC has any other liabilities apart from the sums payable under the  
8 costs orders made in this proceeding and a sum of \$43,700 owing to its former lawyers who  
9 now support the making of a winding up order. Counsel for VC asserted at an earlier stage of  
10 the proceedings that VC's only realizable asset is a sum of approximately \$5,000 credited to  
11 its bank account. The provisional liquidators have not identified any other realizable assets.  
12 Mr Azevedo's evidence is that he incorporated Meral for the purpose of buying VC. The  
13 price paid was \$1,287.50 being the amount of its issued share capital. His evidence is that he  
14 attributed some potential value to a judgment debt in the sum of \$462,000 which is still  
15 outstanding, but when asked about it in cross-examination he said that he now assumed that  
16 the debtor has no assets. On the basis of this evidence there can be no doubt that the VC is in  
17 fact insolvent.

18  
19 41. I should mention that Mr Azevedo produced a "Letter of Intent" dated 29 April 2014 and a  
20 "Memorandum of Intent" dated 1 June 2014 which are intended to establish that VC was in  
21 the process of negotiating valuable contracts at the time when the order for the appointment  
22 of provisional liquidators was made. Even if this was true, which seems inherently unlikely,  
23 it does not detract from the conclusion that VC is insolvent.

24  
25 42. It follows that Zukiapa is entitled to a winding up order.

26  
27 43. I will appoint Messrs Kris Beighton and Alexander Lawson of KPMG as official liquidators.

28  
29 44. I will make the usual order pursuant to CWR Order 24, rule 8(1) that the Petitioners' costs of  
30 the proceedings be paid out of VC's assets, such costs to be taxed on the indemnity basis if  
31 not agreed with the official liquidators.



1 45. Mr Azevedo is on notice of the Petitioners' intention to seek an order for the costs against  
2 Meral and against him personally. I shall direct that any such application must be made by  
3 summons which must be issued and served no later than Monday 5 January 2015, together  
4 with a written submission and an affidavit setting out any evidence upon which the  
5 Petitioners intend to rely. In the event that Stuarts Walker Hersant are not instructed to accept  
6 service on behalf of Mr Azevedo, I shall make an order for substituted service.

7  
8 46. Orders accordingly.

9  
10 DATED this 5<sup>th</sup> day of December 2014

11  
12  
13  
14 

15 **The Honourable Mr. Justice Andrew J. Jones QC**  
16 **JUDGE OF THE GRAND COURT**

