



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

**CAUSE NO. FSD 316 OF 2024 (IKJ)**

**IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)**

**AND IN THE MATTER OF LV II INVESTMENT MANAGEMENT LIMITED (IN OFFICIAL LIQUIDATION)**

**B E T W E E N:**

- (1) LV II INVESTMENT MANAGEMENT LIMITED (IN OFFICIAL LIQUIDATION)**
- (2) KAREN SCOTT AND RUSSELL HOMER AS JOINT OFFICIAL LIQUIDATORS OF LV II INVESTMENT MANAGEMENT LIMITED (IN OFFICIAL LIQUIDATION)**

Plaintiffs

- and -

- (1) FLOREAT PRIVATE LIMITED (FLOREAT PRIVATE SA) (FLOREAT PRIVATE AG)**
- (2) MUTAZ OTAIBI**
- (3) DANIELA LUNARDO**

Defendants

**Before:** The Hon. Justice Kawaley (in Chambers)

**Appearances:** Mr John Harris of Nelsons Legal on behalf of the Plaintiffs

*241011 In the matter of LVII Investment Management Ltd (in Official Liquidation) & Ors -v- Floreat Private Ltd & Ors  
FSD 316 of 2024 (IKJ)- Ex Tempore Ruling*

**Heard:** 11 October 2024

**Delivered:** 11 October 2024

*Originating Summons-substantive application for declaration that disposition of company's assets-post-winding-up was void-application for leave to serve out of the jurisdiction and for interim injunctive relief-Companies Act (2023 Revision), sections 99 (2), 100 (2)-Grand Court Rules (2023 Revision) Order 11 rule 1 (1) (c), (ff)*

### **Ex Tempore Ruling**

#### **Introduction**

1. I have dealt this morning with an urgent *ex parte* application seeking leave to serve the Originating Summons in this matter out of the jurisdiction and also seeking interim injunctive relief.
2. The matter has come before me before the matter has been formally assigned, and has been dealt with on the assumption that by the time any Order that it is made is drawn up the matter will have been formally assigned to me by the Chief Justice<sup>1</sup>.
3. The Originating Summons, which is dated 11 October 2024 (today's date), is issued by the Plaintiffs, LV II Investment Management Limited (In Official Liquidation) and Karen Scott and Russell Holmer as Joint Official Liquidators (the "JOLs") of LV II Investment Management Limited (In Official Liquidation) against three Defendants (1) Floreat Private Limited (Floreat Private SA) (Floreat Private AG), (2) Mutaz Otaibi and (3) Daniela Lunardo.
4. The primary relief that is sought is:

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<sup>1</sup> Electronic notification of the assignment was circulated before the end of the hearing.

*“1. A declaration that a deed of assignment dated 30 September 2024 (“Deed”) and made between LV II Investment Management Limited as assignor and Floreat Private Limited as assignee, is void upon the grounds that:*

*1.1 it was made after the commencement of the winding up of the company and is more pursuant to section 99 of the Companies Act (2023 Revision).”*

5. Other grounds of invalidity are advanced which I did not find it necessary to fully consider for the purposes of today's application. But the Originating Summons included the prayer for declarations that the 2<sup>nd</sup> Defendant had no authority to execute the deed of assignment or to instruct attorneys in Geneva to represent the 1<sup>st</sup> Plaintiff, the Company.

6. The Ex Parte Summons seeks three main heads of relief:

*“1. Permission pursuant to Order 11 rule 1(1) of the Grand Court Rules to serve the Originating Summons herein on the Defendants out of the jurisdiction.*

*[2. An Order for substituted service an application which was not ultimately pursued.]*

*3. An Order that, until trial or further order, the Defendants be restrained from holding themselves out as having any interest in or authority to deal with the Assigned Rights (as defined in a Deed of Assignment dated 30 September 2024 and made between the First Plaintiff as Assignor and the First Defendant as Assignee (the “Deed of Assignment”).*

*4. An Order that the First and Second Defendants do within 7 days of service of this Order serve on the Plaintiffs an affidavit detailing: (1) full details of the First Defendant including its shareholders, directors and ultimate beneficial owner; (2) full details of the circumstances in which the Deed of Assignment was negotiated, agreed and executed, identifying the individuals or, if the same be not individuals, the persons involved.*

7. The Ex Parte Summons is supported by the Affidavit of Mr. Homer, and that Affidavit significantly avers as follows. Firstly, the Petition which placed the 1<sup>st</sup> Plaintiff into liquidation was presented on the 26 of April 2024. And, secondly, the Affidavit exhibits a Deed of Assignment which is signed on behalf of the Company by the 2<sup>nd</sup> Defendant and on behalf of the 1<sup>st</sup> Defendant by the 3<sup>rd</sup>

Defendant and dated 30 September 2024 (the “Deed”). The Deed purports to transfer to the 1<sup>st</sup> Defendant the rights attaching to a substantial arbitration award (the “Award”) which had been obtained by the Company.

8. The Company was, in fact, wound-up by Order dated 1 October 2024 (“Winding-up Order’), and one can speculate that Mr. Otaibi may have lacked an appreciation of the retrospective legal effect of that Order.

### **The merits of the Plaintiffs’ primary invalidity claim**

9. The legal consequences of the Winding-up Order were very clear and obvious to anyone with a fleeting acquaintance with English-based winding-up law. Because section 100 of the Companies Act (2023 Revision) provides, in terms which are derived from the Companies Act 1948 (UK)<sup>2</sup> (and perhaps even earlier company legislation of the United Kingdom):

***“Commencement of winding up by the Court***

*100. (1) ...*

*(2) In any other circumstance not specified in subsection (1), the winding up of a company by the Court is deemed to commence at the time of the presentation of the petition for winding up.”*

10. Section 99 then provides:

***“Avoidance of property dispositions, etc.***

*99. When a winding up order has been made, any disposition of the company s property and any transfer of shares or alteration in the status of the company’s members made after the commencement of the winding up is, unless the Court otherwise orders, void.”*

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<sup>2</sup> Section 100 (2) of the Act is derived from section 229 (2) of the 1948 UK Act. Section 99 is derived from section 227 of the 1948 UK Act.

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11. Section 99 is a provision which is quite fundamental to the efficacy of winding-up proceedings. If it did not exist, persons seeking to wind-up companies would have the relief that they were seeking defeated, because unscrupulous directors would simply dispose of the company's assets before a winding-up order was made. And so, this provision operates in the following way. Once a petition is presented, no assets of the respondent company can safely be disposed of without the Court granting a validation order under Section 99, or until such time as the petition is dismissed.
12. The primary relief that the Originating Summons seeks, could not be more strongly made out in all the circumstances of the present case. Because it is a matter of record that the winding-up of the 1<sup>st</sup> Plaintiff commenced on 26 April 2024 (when the Petition was sealed and thus formally presented). The disposition of assets which the Originating Summons seeks to have declared void under section 99 took place on 30 September 2024, long after the deemed commencement of the winding-up on the date the Petition was presented.
13. In these circumstances, the relief that the Plaintiff sought became very straightforward indeed as far as the application for leave to serve the Defendants out of the jurisdiction is concerned. In a nutshell, it was necessary for the Plaintiffs to demonstrate a serious issue to be tried on the merits of the substantive claim, which requirement was easily made out. And, secondly, a good arguable case on one of the various gateways in Order 11 r. 1(1) of the Grand Court Rules had to be demonstrated. In this case, primary reliance was very sensibly placed on Order 11, r 1 (ff) which provides as follows:

*“(ff) the claim is brought against a person who is or was a director, officer or member of a company registered within the jurisdiction or who is or was a partner of a partnership, whether general or limited, which is governed by the laws of the Islands and the subject matter of the claim relates in any way to such company or partnership or to the status, rights or duties of such director, officer, member or partner in relation thereto;”*

14. The relevant assignment which is impeached in these proceedings is executed by the 2<sup>nd</sup> Defendant on the face of the Deed as a director of a Cayman Islands company, and so a clear case is made out for granting leave to serve the 2<sup>nd</sup> Defendant out of the jurisdiction as he is shown to be, on the face of the relevant Deed, a director of the Company.

15. The position of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants must therefore be considered on a somewhat different basis. It seems to me that the most straightforward basis for granting leave to serve out against the 3<sup>rd</sup> Defendant would be Order 11 rule 1(1) (c); because the claim is brought against “*a person who has been, or will be, duly served within or out of the jurisdiction and the person out of the jurisdiction is a necessary or proper party thereto*”. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants are, in my judgment, clearly necessary and proper parties to the present proceedings, being the assignee and its agent.
16. The other requirement which must be considered when granting leave to serve out is the question, set out helpfully in Mr. Harris’ skeleton at paragraph 9, of whether “*the Cayman Islands is clearly and distinctly the most appropriate forum*”<sup>3</sup>. It is said almost irresistibly that it is, because the claim concerns:
- (a) the property of a Caymanian company;
  - (b) the application of Cayman Islands law, namely section 99 of the Companies Act (and also issues concerning the capacity of the Company and the authority of its directors); and
  - (c) it is said that a breach of fiduciary duties imposed by the law of the Cayman Islands, is involved.
17. Reliance is placed in this regard on Segal J’s observations about the significance of matters concerning the internal constitution of a local company for this sort of forum analysis in *Re China Agrotech* 2019 (2) CILR 302 (at paragraph 68):

*“(a) Particular weight is to be given to the fact that the dispute relates to the conduct of a meeting of shareholders of a Cayman company. The rights and responsibilities of shareholders and the chairman of the EGM are subject to and governed by the company’s constitution and are governed by Cayman law. This court is usually the most appropriate*

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<sup>3</sup> At paragraph 10 of counsel’s ‘Outline Submissions’, it was argued that Mr. Otaibi’s residence, the governing law of the Deed and the situs of the Arbitration were connections with England and Wales which were not significant.

forum for dealing with such disputes (see, for example, Grand Court Rules, O.11, r.1(1) (ff) which permits service out of the jurisdiction of claims brought against members of a Cayman company where the subject matter of the claim relates in any way to the company)..." [Emphasis added]

18. So I am satisfied that the relevant requirements for granting leave to serve out under Order 11, r 1 (1) (ff) (2<sup>nd</sup> Defendant) and rule 1(1) (c) (1<sup>st</sup> and 3<sup>rd</sup> Defendant) are met.

### **Injunctive relief**

19. The need for the injunctive relief was demonstrated primarily by reference to the fact that by letter dated 10 October 2024, a Swiss lawyer not instructed by the JOLs wrote to the Swiss Court claiming to represent the Company and placing positive reliance on the Deed. The timing of the JOLs' application was informed by their understanding that a hearing in the Swiss attachment proceedings, which were commenced in part to enforce the purportedly assigned Award, was scheduled for 4 November 2024.
20. The injunctive relief sought implicitly relies upon the Court's jurisdiction to grant interim interlocutory relief applying *American Cyanamid-v-Ethicon* [1975] A.C. 396 principles. And it follows from my findings in relation to the Order 11 application that a serious issue to be tried on the merits has been made out. It is self-evident that having regard to the strength of the Plaintiffs' case for a declaration that the impugned assignment was void and of no effect, that the Court should grant interim injunctive relief with a view to supporting the efficacy of the substantive relief which the Plaintiffs seek. And the ancillary relief that is sought is clearly relief that can only effectively be granted by way of an interim injunction.
21. Damages would not be an adequate remedy and the balance of convenience (to the extent that any need to consider the balance arises) clearly favours granting the relief sought at this stage. And that is simply:

- (a) restraining the Defendants from holding themselves out as having any right, interest or authority to deal with the assigned rights; and

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(b) requiring them to provide information which is relevant to both the substance of the Section 99 claim and to any ancillary restitutionary relief.

22. It is, I should say, commonplace in this jurisdiction for ‘information orders’ to be made as part of interim injunctive relief.

### **Conclusion**

23. And so, for these reasons, I make the Orders sought under Order 11, r 1(1)(ff) and (c), granting the Plaintiffs leave to serve the Defendants out of the jurisdiction, and further granting the interim injunctive relief sought in paragraphs 3 and 4 of the Ex Parte Summons.



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**The Honourable Justice Ian RC Kawaley**  
**Judge of the Grand Court**