



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

Neutral Citation Number: [2025] CIGC (FSD) 5

CAUSE NO. FSD 208 OF 2023 (IKJ)

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

**AND IN THE MATTER OF NAVIGATOR GLOBAL FUND MANAGER PLATFORM
SPC**

IN COURT

Before:	The Hon. Justice Kawaley
Appearances:	Mr Bhavesh Patel and Mr Bryan Little of Travers Thorp Alberga for the Petitioner
	The Company did not appear
Heard:	12 December 2024
Date of decision:	12 December 2024
Draft Reasons Circulated:	7 January 2025
Judgment Delivered:	23 January 2025

250123 Navigator Global Fund Manager Platform – FSD 208 of 2023 (IKJ) - Reasons

Just and equitable winding-up petition-unopposed-loss of trust and confidence-need for an investigation-Companies Act (2023 Revision), section 92 (e)-Grand Court Rules (2023 Revision), Order 5 rule 6 (2)-Companies Winding Up Rules (2023 Consolidation), Order 3 rule 12 (1) (d)

REASONS FOR DECISION

Background

1. By a Petition dated 23 July 2023 (sealed on 26 Jul 2023), the Petitioner sought an Order winding-up the Company under section 92 (e) of the Companies Act (2023 Revision) (the “Act”). The Petitioner is a nominee shareholder of the Company for the Safe Hands Plans Trust (the “Trust”). The Trust was established on 6 March 2014 by Safe Hands Plans Limited (in administration), a company incorporated in England and Wales (“Safe Hands”). It was averred that Safe Hands was in the funeral plan business, and established the Trust to protect monies received from clients to fund future funeral expenses. Safe Hands was placed in administration on 23 March 2022.
2. The Trust petitioned primarily as a participating shareholder in 10 of the Company’s segregated portfolios. Safe Hands allegedly entered administration because of insolvency and regulatory changes which meant its business could not be carried on in any event. The Administrators (Ben Stanyon and Nedim Ailyan of FRP Advisory Trading Ltd) upon their appointment investigated a huge shortfall between obligations to Plan Holders and the cash available in the Trust. It was concluded that the acquisition (completed on 5 February 2020) of a majority shareholding in Safe Hands was financed by a dishonest scheme which involved misusing the Trust’s assets. Further misuse of Trust assets was believed to have occurred involving investments made in the Company.
3. The Administrators were averred to have been also appointed on 22 March 2022 as Administrators of SHP Holdings Finance and to have commenced investigations into, *inter alia*, transactions involving the Company, a loan creditor. The Company’s response was to seek to remove the Administrators from office. In early 2023, the closing and suspension of various segregated portfolios was announced which the Petitioner attributes to mismanagement. The following grounds for winding-up were relied upon:
 - (a) a justifiable loss of trust and confidence in the Company’s management;

- (b) a loss of substratum due to the failure of various funds to respond to redemption requests and the cessation of their normal business activities; and
 - (c) the need for an investigation as evidenced in part by the Company's failure to engage with the Administrators' inquiries.
4. Consent Orders for Directions were granted on 15 August 2023, 1 December 2023, 18 December 2023 and 8 January 2024. The Company filed its Defence on 25 September 2023 and the Petitioner filed its Reply on 16 October 2023. The Petitioner's status as a shareholder of the Company was admitted; the allegations of wrongdoing were robustly denied. This Court ordered on 12 August 2024 that the Company's attorneys, Dillon Eustace Cayman, had ceased to act. No replacements were ever retained. Modified trial directions were ordered on 17 September 2024 which provided for the Company to reveal its position within 14 days and for an unopposed trial in the event the Company failed to appoint attorneys to contest the Petition.
5. The Petition was listed for 11-12 December 2024 and proceeded in the event on an unopposed basis on 12 December 2024 when an Order was made winding-up the Company under section 92 (e) of the Act and Martin Trott and Owen Walker of R & H Restructuring (Cayman) Ltd were appointed as Joint Official Liquidators. These are the reasons for that decision.

The issues addressed at the hearing

Adjournment/advertisement

6. Mr Patel very properly ensured that I considered the fact that the Company wished the hearing to be adjourned so that without prejudice discussions, which explained why the Petition had taken over a year to be listed for hearing, could be continued.
7. I readily agreed that having regard to the concerns raised by the Petition, the directions ordered on 17 September 2024, and the fact that the Company could only oppose the Petition if represented by attorneys, the hearing should proceed. The Petitioner placed Grand Court Rules (2023 Revision) Order 5 rule 6 (2) before the Court:

“(2) Except as expressly provided by or under any Law, a body corporate may not begin or carry on or defend any such proceedings otherwise than by an attorney.”

8. I recalled that I had considered the importance of this rule in *Re Xingxuan Life Technology Ltd*, FSD 227/2017 (IKJ), Judgment dated 9 January 2024 (unreported, at paragraphs 11-21).
9. Near the end of the hearing, I queried whether the need to advertise the Petition had been properly considered. Mr Patel submitted:
 - (a) advertisement was not required and had already been dispensed with by the Court;
 - (b) in just and equitable winding-up petition proceedings, the assumption was that the Company would notify all shareholders about the proceedings; and
 - (c) the hearing had been published in the Court’s list so any interested stakeholder could have discovered the hearing and attended.
10. Companies Winding Up Rules (2023 Consolidation) Order 3 rule 12 (1) (d) obliges the Court on the hearing of the Summons for Directions on a contributory’s petition to consider *“whether, and if so by what means, the petition is to be advertised”*. The Consent Order of 16 August 2023 ordered on an agreed basis:

“13. In the event the Company does not file and serve its Defence and/or evidence in response to the Petition by Friday, 22 September 2023, the Petition shall be listed to be heard on the first available date, and in that event the Petition shall be advertised in accordance with the Companies Winding Up Rules.”

11. The 17 September 2024 Directions Order did not require the Petition to be advertised, however in approving the draft Order proposed by the Petitioner on that application, I did not consciously consider the advertisement issue. Considering the issue directly for the first time near the end of the unopposed trial, I was persuaded that it was appropriate to conclude that:

- (a) it was inherently unlikely that any significant stakeholder in the Company would have been unaware of the existence of the proceedings which had been pending for over one year;
- (b) it was inherently unlikely that if significant stakeholders existed who were opposed to a winding-up, the Company's management would have failed to encourage them to appear and oppose once the Petition was final listed for hearing; and
- (c) the Trust was probably the main investor in the Company independent of the Company's management and the suspected wrongdoing, as implied by the Petitioner's evidence. Further and in any event, the Petitioner's pleaded case was that it was the sole investor in 8 of the Company's 13 segregated portfolios (Reply, paragraph 13).

Merits of Petition

12. The Petitioner rightly submitted that the jurisdiction to wind-up an entire segregated portfolio company on the petition of a shareholder in relation to one or more portfolios was not in doubt: *In the matter of Virginia Solution SPC Ltd*, FSD 0005/2020 (MRHJ), Judgment dated 10 February 2022 (unreported, Ramsay -Hale J as she then was).
13. Mr Patel also rightly submitted in oral argument that as regards the loss of confidence ground, no need to prove the allegations of misconduct existed. He referred to my decision in another (ultimately) unopposed winding-up case, *Re Principal Investing Fund I Limited et al*, FSD 268-270/2021 (IKJ), Judgment dated 12 June 2023 (unreported) where I held:

“10...But the Court must properly consider whether it is appropriate to make findings of serious misconduct against non-appearing persons based on positive submissions and having concluded that it is fair to draw adverse inferences from those persons' departure from the case...”

14. The Petitioner's Skeleton Argument made it clear that the Petitioner's loss of confidence plea was not based on the validity of the pleaded mismanagement allegations. Instead, reliance was placed on *“the action or lack of action on the part of the Company's directors”* in response to the *250123 Navigator Global Fund Manager Platform – FSD 208 of 2023 (IKJ) - Reasons*

Administrators' investigations (paragraph 22). Mr Patel reviewed the evidence in some detail, persuading me that both:

- (a) a reasonable basis existed for the Administrators' belief that misconduct had occurred; and
- (b) that the Court could properly place more weight on concerns expressed by independent officers of the English Court than on concerns advanced by partisan commercial actors.

15. I accepted that in these circumstances, and in the context of an unopposed Petition, I could fairly find that a justifiable loss of confidence had occurred without formally adjudicating the most serious allegations of mismanagement involving dishonesty. Less serious complaints, pleaded in paragraph 81 a. of the Petition included the deliberate failure to give information about Trust assets (paragraph 81 a. v), and interfering with the Administrators' functions in relation to SHP Holdings (paragraph 81 a. vi) was also relied upon. I found that these allegations were made out.

16. The Petitioner's counsel also relied in oral argument upon the need for an independent investigation as a freestanding winding-up ground, supported in terms of legal principle in a case involving broadly analogous factual concerns: *Re Aubit International*, FSD 0721/2023 (DDJ), Judgment dated 19 October 2023 (unreported) per Doyle J at paragraphs 34-35. This ground was in my judgment very clearly made out on the facts of the case where:

- (a) (foreign) Court-appointed Administrators had concluded that the Company had been used as a vehicle for dishonest conduct; and
- (b) having contested the Petition for over a year, the Company had ultimately been unable to even retain counsel to oppose it, despite having been given some three months' notice of the effective hearing date for the Petition.

17. This ground would have justified a winding-up order even if it was not legally permissible for me to conclude that a justifiable loss of confidence had occurred.

18. I did not consider it necessary to fully consider the third winding-up ground, loss of substratum in relation to some of the Company's segregated portfolios, as a freestanding further alternative on the hypothesis that each of the other grounds was not made out. I accepted that the factual basis for this plea was made out, but viewed the relevant matters (cessation of business/unpaid redemptions) as most relevant because they were supportive of the loss of confidence and need for an investigation winding-up grounds.

Summary

19. For these reasons on 12 December 2024, I granted the Petitioner's application to wind-up the Company on just and equitable grounds.



THE HONOURABLE JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT