IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 273 OF 2024 (IKJ)

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF INTERNATIONAL AIRFINANCE CORPORATION

IN CHAMBERS

Before: The Hon. Justice Kawaley

Heard: On the papers

Ruling delivered: 9 December 2024

CASE MANAGEMENT RULING ON LISTING OF RESPONDENT'S SUMMONS FOR DIRECTIONS

Introductory

1. In my 10 October 2024 Ruling on the Petitioner's Summons for Directions, I held:

> "*24. In these circumstances, I accordingly am satisfied (subject to the qualification explained below) that there is no sensible basis for a two-staged approach to deciding whether or not the Company is liable to be wound-up and, if so, what value a buyout should be based on. A "full trial" of the merits of the winding-up grounds presently pleaded is not required based on my provisional findings as to the applicable law. Although it appeared to be common ground that the Respondent should be permitted to file a Defence, and I*

grant leave for a Defence to be filed within the period proposed by the Petitioner, bare denials will in my judgment suffice.

25. This finding is subject to the following qualification. Either party may apply by letter within 21 days of the date of delivery of the present Ruling, for a direction that a full trial on the merits of the Petitioner's complaints is indeed legally required because:

(a) a deadlock does not constitute a sufficient legal basis for a just and equitable winding-up; and/or

(b) an irretrievable breakdown of trust and confidence in a two-party quasi-partnership can only legally be made out by proving the merits of allegations of misconduct; since proof of an irretrievable breakdown absent fault is insufficient."

2. On 31 October 2024 Points of Defence were filed supported by the Respondent's First Affidavit of the same date. On the same day, Ogier wrote to the Court requesting a trial of the issue as to whether the Company should be wound-up, in summary, on the following grounds:

"*…Mr Alaoui denies that Mr Ghodbane is entitled to any relief, including because the Company is not in a state of genuine functional deadlock and because there has not been any irretrievable breakdown in trust and confidence and, in any event, if and to the extent that there is any such deadlock and/or loss of trust and confidence, that state of affairs would be attributable to the conduct of Mr Ghodbane (rather than any conduct of Mr Alaoui)…*"

3. In light of the incontrovertible documentary evidence before the Court on the hearing of the Summons for Directions, the plea that no genuine deadlock existed seemed almost hopeless on its face and only marginally unsuitable for summary determination. On the other hand, the assertion that, in effect the Petitioner had manufactured the state of which he complained was arguable on its face. Even though no allegations of serious misconduct were advanced against the Respondent, fairness appeared to me to require affording the Respondent to demonstrate he was blameless in the affair. However, it seemed an improbable result that, in the case of a quasi-partnership, the Court would find that an irretrievable breakdown of trust and confidence and/or deadlock had

occurred, but decline to make a winding-up order because the Petitioner (as opposed to the Respondent) was to blame.

4. A collateral purpose defence is a ground for the Court refusing to exercise the discretion to grant relief (or a basis for striking-out on abuse of process grounds), not a defence to the merits of a winding-up ground. Here, it is accepted that the Petitioner wishes to obtain a winding-up order and the legitimate benefits which flow from it. Complaint is fundamentally made about the veracity of the grounds relied upon by the Petitioner, as bland as they may be.

5. For these reasons, which I regretfully did not give at the time, on 12 November 2024 I somewhat reluctantly acceded to the Respondent's request for the issue of whether grounds for winding-up could be established to be tried. On 15 November 2024 the Directions Order following the 10 October 2024 Ruling was perfected providing for a single trial and voluntary discovery.

6. On 3 December 2024, the Petitioner requested a trial date via an email to the Court which attached 22 November 2024 letters of resignation as a director of the Company from the Petitioner to the Respondent and the Company. The resignation grounds were, in essence:

    (a) "further" refusals by the Respondent to cooperate in management decision;

    (b) recently causing the Company over the Petitioner's objections to file proceedings in Dubai against a former employee implicating the Petitioner in dishonesty; and

    (c) co-opting a senior employee to give false and/or misleading evidence against the Respondent in these proceedings (the 31 October 2024 First Affidavit of Marian Pistik).

7. On 4 December 2024, the Respondent issued a Summons which on superficial analysis appeared to be seeking directions I had recently declined to give, on the basis that the Directions Order perfected on 15 November 2024 based on my 10 October 2024 Ruling had been superseded by the 12 November 2024 direction for a trial of the winding-up issue. The Petitioner contended I should summarily reject this request while the Respondent sought a full day's oral hearing of his Summons.

8. It is against this background that I decide how to deal with the Respondent's 4 December 2024 Summons.

The Respondent's 4 December 2024 Summons

9. The Summons seeks an Order that:

> "*1. The current procedural timetable, as set out in the Directions Order approved on 15 November 2024 (and dated 10 October 2024) (the Directions Order) be stayed pending the determination of the matters set out in paragraphs 2 to 10 below.*
>
> *2. By no later than 4 pm on 31 January 2025, the Petitioner and the First Respondent shall disclose by way of lists the documents which are likely to support or adversely affect their claim or defence (as the case may be) or that of another party in relation to the issues identified in the Schedule 1 to the draft order filed with this Summons (Issues for Disclosure);*
>
> *3. For the purposes of giving disclosure in accordance with paragraph 2 above, the Petitioner and the First Respondent shall conduct their searches by reference to the custodians, keywords and date ranges to be determined at the hearing of this summons;*
>
> *4. By no later than 4 pm on 31 January 2025, the Petitioner and the First Respondent shall provide copies to each other of all documents disclosed pursuant to paragraph 2 above;*
>
> *5. If so advised, by no later than 4 pm on 28 February 2025, the Petitioner and the First Respondent shall serve any supplemental statements of witnesses of fact;*
>
> *6. The issue of whether International Airfinance Corporation (Company) should be wound up and/or whether the Court should exercise its jurisdiction to make an order requiring one shareholder to purchase the shares of another pursuant to section 95(3) of the Companies Act be heard at an initial hearing on liability issues only (Liability Issues), with the question of the valuation of the shares to be determined (if necessary) at a separate quantum hearing (Quantum Issue);*

7. As part of its determination of the Liability Issues, the Court shall decide what (if any) adjustments need to be accounted for in any valuation of the shares in the Company (Shares) for the purposes of any order under section 95(3) of the Companies Act;

8. The trial of the Liability Issues shall take place on the first available date after 14 March 2025, with a time estimate of nine days, including one day for the Judge's pre-reading and two days upon which it is proposed that the Court shall not sit for the preparation, lodging and reading of written closing submissions (and paragraph 15 of the Directions Order is varied accordingly);

9. In the event that the Court decides to exercise its jurisdiction under section 95(3) of the Companies Act, directions for the trial of the Quantum Issue, including as to the date by reference to which the Shares should be valued, shall be given following the handing down of judgment on the Liability Issues;

10. Paragraphs 10 to 13 (inclusive) of the Directions Order are set aside;

11. The Petitioner and the First Respondent have liberty to apply for further directions;

12. The costs arising from and in connection to this summons be paid by the Petitioner on the indemnity basis; and

13. Such further or other directions as the Court sees fit."

10. This Summons is breath-taking for how blatantly it seeks to ride a coach and horses through the letter and spirit of the case management principles set out in the 10 October 2024 Ruling under the guise of responding to the direction as to whether or not grounds for winding-up ought not to be summarily decided in favour of the Petitioner. It is aggravated by the fact this is the second occasion on which an attempt has been made by the Respondent to invite the Court to reconsider a matter it has just decided against him. Paragraphs 34-55 of the 10 October 2024 Ruling gives reasons for rejecting the Respondent's application for a direction that the Petition should not be placed on the public file. I was required to decide summarily a further informal confidentiality application seeking to prevent that Ruling from being publicised.

11. The Summons is perhaps mitigated somewhat by my failure to explain on 12 November 2024 when agreeing that a full trial should take place on the 'are grounds for winding-up made out' issue what I envisaged by so directing. However, the views I expressed on 10 October 2024 still stand today:

> "*20. My strong provisional view is that proof of the validity of the complaints the Petitioner relies on to seek a just and equitable winding-up is not an essential requirement of establishing that either a functional deadlock exists or that the relationship of trust and confidence which is essential to the proper functioning of this particular quasi-partnership has irretrievably broken down. The Respondent admitted on 7 July 2024 that there was a deadlock sufficiently serious that the quasi-partners had a duty to notify the board of the Fund which the Company managed of the deadlock. He proposed a solution which the Petitioner contended was misconceived because he did not want to work with the Respondent any longer. Absent some contractual mandatory obligation to refer all disputes to arbitration or mediation, the portrait of breakdown presented by incontrovertible documentary evidence does not seem to require casting either protagonist as the villain of the piece*."

12. Against this background, and now accepting fairness requires the Respondent be given a chance to show that the breakdown of trust and confidence which has obviously now occurred is not 'down to him', the plea for a 9 day trial on this narrow issue alone deserves a place in the Guiness Book of World Records in a new category of abusive litigating. The primary rationale for rejecting a split-trial was expedition in circumstances where it was agreed that commercial damage was being caused to the Company so long as the present dispute continued. This concern is confirmed by the Respondent's own witness, who deposes "*The Petition and Mr Ghodbane's actions have caused significant disruption to the Company*" (paragraph 56), although he also avers that "*the Company has been able to continue to operate*" (paragraph 57). Mr Pistik squarely blames the Petitioner for turning peaceful waters into troubled ones, so the Respondent's case on blame is clearly stronger than it initially appeared to be.

13. However if he wishes to portray himself as a paragon of corporate virtue, the Respondent should be mindful of the apparent logical inconsistency between such a characterisation and the way in which he advances his case before the Court. If the Petitioner is the 'scoundrel' the Respondent

implicitly contends he is, the Respondent ought logically to be embracing the shortest possible route to ending the commercial relationship. More directly relevant to case management considerations is the Respondent's obligation to assist the Court to achieve the Overriding Objective; fair hearing rights by definition do not entitle a litigant to pursue a strategy which results in an unfair trial. The Preamble to the Grand Court Rules provides most pertinently, it bears recalling:

"**1.** ***The Overriding objective***

1.1 The overriding objective of these Rules is to enable the Court to deal with every cause or matter in a just, expeditious and economical way.
1.2 Dealing with a cause or matter justly includes, as far as is practicable —

(a) ensuring that the substantive law is rendered effective and that it is carried out;

(b) ensuring that the normal advancement of the proceeding is facilitated rather than delayed;

(c) saving expense;

(d) dealing with the cause or matter in ways which are proportionate

(i) to the amount of money involved;
(ii) to the importance of the case; and
(iii) to the complexity of the issues;

(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other proceedings...

4. Court's duty to manage proceedings

4.1 The Court must further the overriding objective by actively managing proceedings…

> *4.3 Whenever a proceeding comes before the Court, whether on a summons for directions or otherwise, the Court will consider making orders on its own motion for the purpose of giving effect to the overriding objectives of the rules.*"

Disposition

14. Unreasonable litigants often obscure the merits of their case. In the post-Covid-19 era, I have observed a distinct uptick in the number of litigants who seem motivated to reducing judicial utterances to incoherent babblings of outrage. In reality, of course, such is unlikely to be the real motivation for what litigants are likely convinced is appropriate conduct. It may simply be that more litigants feel more passionately about their cases, and litigants who litigate with undue passivity may risk ending up in the unemployment line. If notions of normality have shifted in the commercial world, however, it is surely the function of the Court to adhere, so far as is reasonably possible (and comprehensible to lay litigants), to traditional standards of substantive and procedural law.

15. The present Summons is not just abusive in seeking a split-trial in circumstances where a single one is more consistent with both parties' legitimate commercial interests and rational case management. Around the edges it bears the marks of 'over-litigating'. It begins with a prayer for the existing timetable to be suspended, accompanied by a request for an in-person hearing occupying a full day which will have to be scheduled. It proposes an unrealistically tight schedule for discovery, which makes a proposed March trial an obviously unrealistic prospect in real world terms. And it finally seeks costs against the Petitioner on an indemnity basis. While I summarily dismiss the application for the relief set out in paragraphs 1-10 and 12 of the Summons, I decline to strike-out the Summons in its entirety.

16. The contested trial on the winding-up issue has indeed moved the discovery goalposts to a material extent, just not to another field altogether as the Respondent's Summons implies. The Respondent's contention that some modification to the voluntary discovery regime presently in place is required has merit to this extent. The Respondent should have an opportunity to apply for specific discovery in relation to issues 3 and 4 on the List of Issues appended to Ogier's letter of 3 December 2024 to Mourant, in the event relevant documents believed to exist are not produced under the existing discovery regime. It seems clear, in general terms at least, that those issues can only fairly be determined if the Petitioner gives discovery of any relevant documents which may exist.

17. Accordingly, and on this basis, I would otherwise adjourn the Respondent's Summons and decline to list it for hearing at this stage and reserve costs.

THE HONOURABLE JUSTICE IAN KAWALEY
JUDGE OF THE GRAND COURT