



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

CAUSE NO. FSD 49 OF 2018 (IKJ)

**IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)
AND IN THE MATTER OF WORLD PROPERTIES LTD. (IN OFFICIAL LIQUIDATION)**

IN CHAMBERS

Before: The Hon. Justice Kawaley

Appearances: Mr Nigel Smith of Carey Olsen for the Joint Official Liquidators (“JOLs”)

Date of hearing: 28 March 2024

Date of Decision: 28 March 2024

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Stay of solvent winding-up proceedings-jurisdictional requirements-Companies Act (2023 Revision), section 111(1)

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EX TEMPORE JUDGMENT

Introduction

1. The liquidation in this matter commenced with a Supervision Order being made on the 9 May 2018. The reason for that Order was essentially this. The Company was established to be a holding vehicle for two underlying companies that were owned by the patriarch of the family, who can conveniently be described as the Founder. After the Founder's death, the children fell into two camps, that have been referred to in these proceedings as the 'Majority' and the 'Minority', and the Company was unable to continue to operate functionally.
2. Various reports have been filed with the Court, and various applications made. With great difficulty, it seems to me, a successful compromise was reached as a result of which the Minority shareholders agreed to sell their shares to one member of the Majority, Mr James Morrisroe. That settlement agreement was approved by the Court on 18 December 2023, on terms which contemplated that the present application to stay the winding-up proceedings would be made.
3. In the event, the Summons to stay the proceedings and also for approval of the costs of the JOLs and a Replacement Director, and for certain directions was filed on 11 March 2024..The various settlement agreements constituting separate share purchase agreements had four conditions for them to take full effect. Three of the conditions have been met, as explained in the Fourteenth Affidavit of Mr. David Griffin and one, the stay of these proceedings, remains outstanding.
4. That issue has been resolved by my signifying, a few minutes ago, that I proposed to grant the Order in which the JOLs seek.

Jurisdiction to stay winding-up proceedings

5. The jurisdiction to grant the stay arises under Section 111(1) of the Companies Act (2023 Revision) which reads as follows:

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"111. (1) The Court may at any time after an order for winding up, on the application either of the liquidator or any creditor or contributory, and on proof to the satisfaction

of the Court that all proceedings in the winding up ought to be stayed, make an order staying the proceedings either all together or for a limited time, on such terms and conditions as the Court thinks fit."

6. Mr Smith indicated that he was unable to identify any local authorities on this and, to assist the Court, he provided extracts from two legal textbooks dealing with its jurisdiction. The first text is French's *'Applications to Wind Up Companies'* 4th Ed., and counsel referred to the following extracts. First of all, at paragraph 6.95, an application for a stay of all proceedings in a winding-up should be accompanied by evidence of:

"(a) whether creditors, liquidators and contributories agree to the stay;

(b) the circumstances in which the company was wound up;

(c) the company's business and financial position; and

(d) how any failures of directors to comply with regulatory requirements will be addressed."

7. Secondly, at paragraph 6.100:

"Interests to be considered

The Court must consider the rights and interests of persons who may be affected by its Decisions. Depending on the circumstances, they may include the company's present creditors, persons who may become creditors in the future, its liquidator and its contributories (members, shareholders), and there may be a public interest which may be considered. There may be other persons whose rights and interests are to be considered. There is no absolute right to full protection of the position which any person has in the winding up: 'What is reasonable protection for any person with an interest must depend on the nature of that interest, the nature of any other interests and the whole other circumstances of the particular case.'"

8. I should also mention, that *French* (at paragraph 6.88) appears to consider that the effect of a stay is conceptually difficult, but that concern does not properly arise for consideration as it is not the task of a Court to question the wisdom of the Legislature.

Merits of application

9. In the present case, it seems to me to be obvious that the key stakeholders in a company that has been confirmed to be solvent at an earlier stage of these winding up proceedings are the contributories and the liquidators. In this case the application is made by the JOLs while the contributories all support the application.
10. There is no identifiable public interest to be concerned about. Very properly it is pointed out that there was initially some form of delinquency in terms of the lack of books of account, but those difficulties have been resolved but the Joint Official Liquidators.
11. The other authority which Mr Smith referred to was McPherson & Keay '*The Law of Company Liquidation*', 4th Ed. I found that *McPherson's* treatment of the topic raised no material concerns about the merits of the present application. It is true that it is stated at paragraph 17-007 that:

“an applicant for a stay must make out a convincing case, and if a court is in doubt, a stay should not be ordered. For the most part a stay will not be ordered unless there are fair and acceptable proposals for satisfying all creditors and there is consent from all the members and the liquidator.”

12. Those requirements are in fact met in the present case. In the JOLs' Skeleton at paragraph 18, reasons were set out in support of the stay. In summary, the application was made by the JOLs who considered the stay to be in the best interests of the Company and the contributories. The application was supported by all interested stakeholders and the Company is solvent, and has never been insolvent.

Summary

13. For these reasons, despite the absence of any local precedent for exercising the jurisdiction conferred by section 111 (1), I am satisfied that it is appropriate to grant the stay sought. The issue of fees was in my view uncontroversial.



THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT