

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

3 Cause No: FSD 16/2014

4 **IN THE MATTER OF THE COMPANIES LAW**
5 **AND IN THE MATTER OF WIMBLEDON FINANCING FUND LTD**

6
7 **BETWEEN:**

- 8 1. **HERBERT S. FEINBERG IRA;**
- 9 2. **DVFG BENEFITS, INC. PENSION**
10 **PLAN;**
- 11 3. **CLAIRE ANNECHINI IRA;**
- 12 4. **LESTER CLIPPINGER IRA;**
- 13 5. **SERAVALLI FINANCIAL GROUP**
14 **INC. PSP;**
- 15 6. **THE BELK FOUNDATION;**
- 16 7. **THE BENEDICT FOUNDATION FOR**
17 **INDEPENDENT SCHOOLS;**
- 18 8. **LILLY THOMA IRA;**
- 19 9. **WARREN A. HUNTER IRA**

20
21 **PETITIONERS**

22
23 **AND:**

24
25 **WIMBLEDON FINANCING FUND LTD.**

26
27 **THE COMPANY**

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29 **Appearances:**

30 **Mr. Kyle Broadhurst of Broadhurst LLC on**
31 **behalf of the Petitioners**

32 **Mr. Hector Robinson of Mourant Ozannes**
33 **on behalf of the Company**

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35 **In attendance:**

36 **Mrs. Gail Johnson-Goring on behalf of the**
37 **Cayman Islands Monetary Authority**
38 **(CIMA)**

39 **Mr. Todd A. Kellerman, Mr. Christopher**
40 **D. Johnson and Mr. Russell S. Homer**

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42 **Before:**

The Hon. Mr. Justice Charles Quin

43 **Heard:**

15th May 2014

44 **EXTEMPORE RULING**

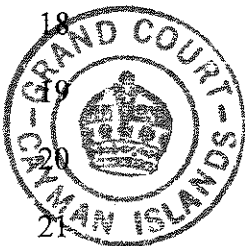
1 1. This is the hearing of the Winding Up Petition presented to the Court on the 24th
2 February 2014 for Wimbledon Financing Fund Ltd. (“the Company”) to be wound
3 up in accordance with s.92(d) and or (e) of the Companies Law (2013 Revision).

4 2. On the 25th March 2014 I made an order for directions, *inter alia*, for service of the
5 Petition on the shareholders and creditors of the Company and on CIMA. I further
6 ordered that the petition be advertised in the Cayman Islands and in the Wall Street
7 Journal not less than seven (7) days prior to the hearing date of the petition. I note
8 from the affidavits of Rozlyn Glanfield, dated the 30th April 2014, and Melissa
9 Solomon, dated the 12th March 2014, that there has been compliance with these
10 directions.

11 3. Counsel for the Petitioners, Kyle Broadhurst, has confirmed that no evidence has
12 been filed by the Company to challenge the Petition and no other party has come
13 forward to challenge the hearing of the Petition to date.

14 4. I note that both Mr. Johnson and Mr. Homer have filed affidavits confirming that
15 they are qualified insolvency practitioners as defined by Regulation 5 of the
16 Insolvency Practitioners’ Regulations 2010.

17 5. From my reading of Mr. Kellerman’s affidavit it is apparent that the Company has
18 permanently suspended redemptions and its ability to accept new subscriptions has
19 also been permanently terminated. Mr. Kellerman’s affidavit makes it clear that the
20 Company’s object of investing in investment pools managed by investment
21 managers is no longer possible. Furthermore the Company is no longer carrying on
22 investment business in accordance with the reasonable expectations of its
23 participating shareholders.



1 6. I agree with Mr. Broadhurst that the foregoing facts alone justify the Court
2 exercising its discretion to wind up the Company.

3 7. Accordingly, I follow the now long established dicta of Henderson J. *In the matter*
4 *of Philadelphia Alternative Asset Fund Limited*¹ where he held

5 “As the substratum of the company had gone, the petitioners were entitled to a
6 winding-up order even if it were contrary to the wishes of the majority of
7 shareholders or creditors.”

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9 8. Henderson J’s Judgment in *Philadelphia* has been followed by the Grand Court in
10 *Lancelot Investors Fund*², *Re Belmont Limited*³ and in several other Grand Court
11 decisions.

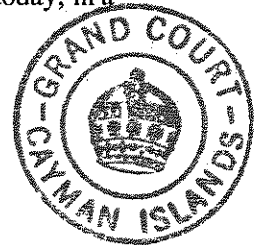
12 9. Accordingly, following Henderson J’s decision in *Philadelphia*, I find that, as there
13 has been a loss of the substratum of the Company the Petitioners are entitled to a
14 Winding Up Order.

15 10. In addition, I have the read the letter of Mrs. Johnson-Goring, counsel on behalf of
16 CIMA, dated the 7th May 2014. It is clear from the contents of Mrs. Johnson-
17 Goring’s letter that this matter is of regulatory concern to CIMA. Mrs. Johnson
18 Goring has confirmed that the Fund is in breach of s.8(1) and (2) of the Mutual
19 Funds Law for failure to prepare and submit audited accounts for 2011 and 2012.
20 Furthermore, the Fund is in breach of s.9(1) of the Mutual Funds Law for non-
21 payment of its annual registration fees. I note that although CIMA is not, today, in a

¹ Unreported - dated the 22nd February 2006. (2006) CILR Note 7

² (2009) CILR 7

³ (2010) 1 CILR 83



1 position to tender any substantial evidence in support of the grounds for winding
2 up, CIMA is of the view that there “*may be compelling reasons for support of the*
3 *application of the Petitioners as well as the application for the appointment of the*
4 *persons nominated for appointment as Official Liquidators.*” The Court is grateful
5 to Mrs. Johnson-Goring for her attendance today and for this confirmation.

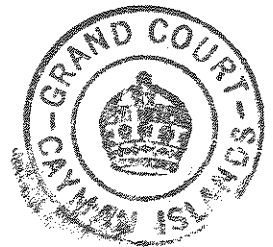
6 11. In the matter of *Heriot African Trade Finance Fund Limited*⁴ my brother judge,
7 Jones J. addressed the failure to file audited accounts in accordance with the Mutual
8 Funds Law and stated at paragraph 15 on page 11:

9 *“In my judgment a continuing failure to file audited financial statements after*
10 *the statutory deadline, or after the expiry of any extensions of time allowed by*
11 *CIMA, is a serious matter. It constitutes a criminal offence under section 8(3)*
12 *of the Mutual Funds Law. A failure to produce financial statements and/or*
13 *secure an audited opinion in a timely manner “raises a red flag”. It is usually*
14 *indicative of financial difficulties and failings on the part of management. Nor*
15 *can such a breach of duty be regarded as a purely technical matter*
16 *because CIMA can, and frequently does, grant extensions of time for*
17 *good cause”.*

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19 12. The Court notes that the location of the Company’s assets is unknown and the
20 directors have acknowledged that they are unable to take any action as a result of
21 lack of funding.

22 13. The contents of CIMA’s letter and the evidence contained in Mr. Kellerman’s
23 affidavit, demonstrate that there is an urgent need for the liquidators to make
24 appropriate investigations to protect the interests of the shareholders and creditors
25 of the Company.

⁴ (2011) CILR 1



1 14. It is apparent from the evidence set before the Court that the Company is also
2 unable to pay its debts. The Company has wholly failed to pay its annual fees and I
3 find that that, in itself, is another sufficient ground on which to order the winding
4 up of the Company.

5 15. I am satisfied on reading the affidavit of Todd Kellerman and the exhibits that the
6 Petitioners have made out their case and that it is a proper case for the final order to
7 wind up the Company and to appoint professional liquidators.

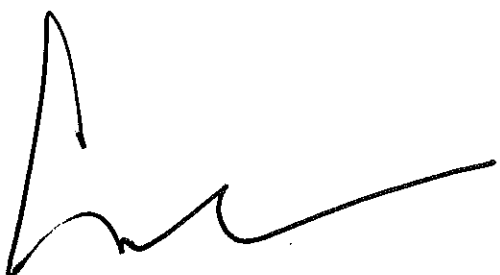
8 16. Accordingly, I order the winding up of the Company in the terms prayed and I
9 appoint Messrs. Christopher Johnson and Russell Homer of Johnson and Associates
10 as the Joint Liquidators of the Company.

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14 **Dated this the 15th day of May 2014**

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Honourable Mr. Justice Charles Quin
Judge of the Grand Court

