

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

3 Cause No: FSD 59/2014

4 **IN THE MATTER OF THE COMPANIES LAW**

5 **AND IN THE MATTER OF WIMBLEDON FINANCING MASTER FUND LTD**

6
7 **BETWEEN:**

- 8 1. DAVID LEE MOLNER
9 2. SCREEN CAPITAL INTERNATIONAL
10 CORP.
11 3. ARAMID CAPITAL PARTNERS LLC

12
13 APPLICANTS

14
15 **AND:**



16
17 WIMBLEDON FINANCING MASTER FUND
18 LTD.

19
20 THE COMPANY

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22 **Appearances:**

23 Mr. Ben Hobden of Conyers Dill & Pearman
24 for the Applicants

25 Mr. Kyle Broadhurst and Ms. Kate
26 McClymont of Broadhurst LLC on behalf of
27 the Respondent JOLs/The Company

28 **Before:**

The Hon. Mr. Justice Charles Quin Q.C.

29 **Heard:**

18th April 2016

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31 **JUDGMENT**

- 1 1. This is a Ruling in relation to the Summons issued by David Lee Molner (“Mr.
2 Molner”), Screen Capital International Corp and Aramid Capital Partners LLC (the
3 “Applicants”).
- 4 2. In their Summons issued on the 6th January 2016, and heard by this Court on the 18th
5 April 2016, the Applicants seek an order that that the Joint Official Liquidators (JOLs)
6 do not have sanction to continue proceedings against the Applicants brought in the
7 Central District of Los Angeles in Case No. BC466001 (the “California
8 Proceedings”) and further, that the JOLs will take steps to withdraw the California
9 Proceedings within ten days.
- 10 3. The Application is supported by the First and Second Affidavits of Mr. Molner sworn
11 on the 6th January 2016 and the 22nd February 2016, respectively.
- 12 4. The Summons is opposed by the JOLs and their position is grounded by the Second
13 Affidavit of one of the two JOLs, Mr. Russell S. Homer (“Mr. Homer”) sworn on 12th
14 February 2016.
- 15 5. The Applicants are the First, Second and Third Defendants in the California
16 proceedings. Mr. Molner is the First Defendant and is a US citizen residing in Beverly
17 Hills California. The Second Defendant is Screen Capital International Corp (“Screen
18 Capital”) – a Company incorporated under the laws of the State of Delaware. The
19 Third Defendant, Aramid Capital Partners LLC (“Aramid Capital”), is a limited
20 liability partnership, with its principal place of business in the United Kingdom.

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RELEVANT CHRONOLOGY

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- 2 6. On the 22nd July 2011 the Company, Wimbledon Financing Master Fund Limited (“the
3 Company”) and Still Water Market Neutral Fund III SPC (“Still Water”) commenced
4 proceedings against the Applicants as the first three Defendants in California in the
5 Superior Court of the State of California, County of Los Angeles Central District.
- 6 7. This claim brought by the Company and Still Water is for, *inter alia*, damages for
7 breaches of fiduciary duty, breach of implied covenant of good faith and fair dealing,
8 fraud, and tortious interference with contract.
- 9 8. Mr. Homer’s Second Affidavit sets out a short history of the California proceedings.
- 10 9. On the 16th September 2011 the Applicants removed the California proceedings to the
11 United States District Court for Central District of California and then moved to
12 dismiss the California proceedings and to compel arbitration. The Company
13 subsequently amended its Complaint to remove any claims to arbitration.
- 14 10. On the 25th May 2012 the Applicants filed a Motion to compel Arbitration.
- 15 11. On the 12th July 2012 the United States District Court denied the Applicants’ Motion.
- 16 12. On the 18th July 2012 the Applicants filed a Notice of Appeal of the District Court’s
17 Order which was rejected by the US Court of Appeals for the Ninth Circuit on the 12th
18 June 2014.



1 13. On the 18th June 2014 Mr. Chris Johnson (“Mr. Johnson”) and Mr. Homer were
2 appointed as Joint Provisional Liquidators of the Company with express power to take
3 such steps as the then Joint Provisional Liquidators considered appropriate with respect
4 to the California proceedings.

5 14. On the 18th July 2014 the Company was put into Official Liquidation and the Joint
6 Provisional Liquidators of the Company were appointed as JOLs, and again, to take
7 whatever steps they considered appropriate in respect of the Company in the California
8 proceedings.



9 15. On the 28th July 2014 the US counsel for the JOLs, Kaplan Rice LLP, (“Kaplan Rice”)
10 filed a Notice of Appearance in the California proceedings.

11 16. On the 12th November 2014 the US District Court remitted the case back to the State
12 Court.

13 17. On the 2nd June 2015 the California State Court held a preliminary conference and
14 stayed discovery pending the appearance of new counsel for the Company’s co-
15 Plaintiff, Still Water.

16 18. On the 30th September 2015 and on the advice of Kaplan Rice an Amended Complaint
17 was filed by the JOLs against the Applicants. In light of issues regarding the co-
18 Plaintiff, Still Water, in the California proceedings, the Court stayed the Applicants’
19 time to answer the Company’s Amended Complaint.

20 19. On the 17th December 2015 and after several conferences the California Court
21 dismissed the co-Plaintiff, Still Water, from the case and lifted the stay.

1 20. On the 19th January 2016 the Applicants filed their answer to the JOLs' Amended
2 Complaint.

3 21. On the 3rd February 2016 the Applicants filed an Amended Answer to the JOLs' Third
4 Amended Complaint.

5 22. The California Superior Court has given directions for discovery and the trial date has
6 been set for the 6th December 2016.

7 *DEED OF ACKNOWLEDGMENT AND WAIVER*

8 23. Mr. Molner is the Managing Director of Screen Capital and Aramid Capital – the
9 Second and Third Defendants in the California proceedings. He avers at paragraph 7 of
10 his First Affidavit that the Company holds an investment in Aramid Entertainment
11 Fund Ltd. (“Aramid Entertainment”)

12 24. Mr. Molner avers that the Company's investment was made through Fortis Bank
13 (Cayman) Limited (“Fortis”) acting as the Company's custodian. Mr. Molner avers
14 that in and around September 2011 at the request of the Company, Fortis transferred
15 the legal title in its investment in Aramid Entertainment to the Company so that the
16 Company is the legal owner of the shares held in Aramid Entertainment.

17 25. At paragraph 8 of Mr. Molner's First Affidavit he avers that as a condition to Aramid
18 Entertainment consenting to the transfer of shares from Fortis to the Company, both
19 Fortis and the Company entered into a Deed of Acknowledgment and Waiver (“the
20 Deed”) with both Aramid Entertainment and its directors.



1 26. Mr. Molner avers that the Company executed the Deed on the 28th November 2011
2 with both Aramid Entertainment and its directors. Mr. Molner specifically refers to
3 Clause 3 of the Deed which reads:

4 *“With effect from the date of this deed, the Transferor (Fortis) and the Transferee*
5 *(Wimbledon) each wholly releases, waives and forever discharges the Company*
6 *(i.e. Aramid Entertainment) its directors, ACP and any other person or entity, who*
7 *or which has provided services of any kind whatsoever to the Company, from any*
8 *direct, indirect or derivative obligation, liability, action, claim and/or demand*
9 *under or in respect of the Articles of Association of the Company and/or any*
10 *offering memorandum issued for, by and/or on behalf of the Company or with*
11 *respect to the business of the Company, which existed up to and including the date*
12 *when the Company approves the requested transfer irrespective of when any such*
13 *obligation, liability, action, claim, and/or demand arises, and whether or not they*
14 *each are now or in the future aware of any facts and circumstances relating to any*
15 *other obligation, liability, action, claim and/or demand is owed to or vested in the*
16 *Transferor or the Transferee or in any other person including the Company.”*

17 27. Mr. Molner informs the Court that he actively advised Aramid Entertainment and
18 participated in the drafting of the Deed and the exchanges with Wimbledon that
19 preceded the execution of the Deed. Mr. Molner avers to the fact that he was at
20 relevant times a director or Managing Director of both Screen Capital and Aramid
21 Capital and that the Deed was deliberately drafted in broad terms.

22 28. In addition, at paragraph 10 of his First Affidavit Mr. Molner refers the Court to
23 Clause 7 of the Deed which reads:



1 33. Furthermore, the Applicants contend that they are considering a Counterclaim against
2 the JOLs, and, as such, that would render the Applicants Contingent Creditors –
3 enabling them to fall squarely within the express provisions of O.11 r.1 of the
4 Companies Winding Up Rules 2008.

5 34. Accordingly, the Applicants ask that the JOLs waste no further valuable time and
6 money by continuing in the California proceedings against them.

7 *JOLS' POSITION*

8 35. The JOLs oppose the Applicants' application. The JOLs contend that this is an attempt
9 by the Applicants to circumvent an unwelcome determination by the California Court
10 against the Applicants.

11 36. The JOLs contend that the Applicants have no *locus standi* and, further, that the
12 sanction obtained by the JOLs was properly obtained and appropriate.

13 *ANALYSIS OF STANDING OF THE APPLICANTS*

14 37. I turn now to the question of the standing of the Applicants to bring this application
15 seeking a withdrawal or a stay of the California proceedings.

16 38. On their appointment as Joint Provisional Liquidators on the 18th June 2014, and then
17 on their appointment as JOLs on the 15th July 2014 the JOLs obtained this Court's
18 sanction to continue the proceedings brought by the Company in the Superior Court of
19 the State of California in the County of Los Angeles Central District. This case is
20 #BC466001 and the trial of the action between the JOLs and Applicants is set down for
21 trial before the California Court on the 6th December 2016.



1 39. It is open to the Applicants to plead the Deed in defence of the action brought by the
2 JOLs, and the California Court will determine that issue and all other issues raised by
3 the parties in the California proceedings.

4 40. The JOLs obtained the sanction of this Court to continue the California proceedings
5 pursuant to s.110 of the Companies Law of the Cayman Islands (“the Law”). Section
6 110 (2)(b) of the Law reads:

7 *“2) The official liquidator may-*

8 *(a) with the sanction of the Court, exercise any of the powers specified in Part*
9 *I of Schedule 3; and*

10 *(b) with or without that sanction, exercise any of the general powers specified*
11 *in Part II of Schedule 3.”*
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13 41. The Third Schedule sets out the powers of liquidators and their power under the title
14 “Powers Exercisable with Sanction” is the first power to bring or to defend any action
15 or other legal proceedings in the name and on behalf of the Company.

16 42. Section 110(3) of the Companies Law reads:

17 *“(3) The exercise by the liquidator of the powers conferred by this section is*
18 *subject to the control of the Court, and subject to subsection (5), any*
19 *creditor or contributory may apply to the Court with respect to the*
20 *exercise or proposed exercise of such powers... ”.*
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22 43. Order 11 r.1 of the Companies Winding Up Rules (CWR) is the rule relating to
23 Sanction Applications. CWR O.11 r.1 reads:



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“Introduction (O.11, r.1)



- 1. (1) Any application to Court made by –
 - (a) the official liquidator for a order sanctioning his exercise or proposed exercise of any power conferred upon him by Part I of the Third Schedule of the Law or otherwise; or
 - (b) a creditor or contributory for an order directing the official liquidator to exercise or refrain from exercising any of his powers in a particular way,is referred to in these Rules as a "sanction application".

44. At paragraph 7 of Mr. Homer’s Second Affidavit he avers that the “JOLs have performed a review of their records and to the best of the knowledge of the JOLs the Applicants are not creditors or contributors of the Company.” The Applicants have not challenged this averment.

45. The Applicants do not come before this Court as creditors or contributories. In light of that fact and the aforesaid provisions of s.10 of the Law as read with Part 1 of Schedule 3 of the Law and CWR O.11 r.1, as set out above, I find that the Applicants have no standing to bring this application asking the Court to direct that the JOLs withdraw their proceedings in California.

46. For the sake of completeness I add that the validity or otherwise of the Deed is a matter for the California Court to determine in the trial of the action between the Company and the Applicants which is set down for hearing on the 6th December 2016.

1 47. Accordingly, I dismiss the Applicants' applications. As costs follow the event I order
2 that the JOLs' costs are to be paid by the Applicants and to be taxed on a standard
3 basis if not agreed.

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6 **Dated this the 20th day of May 2016**

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Honourable Mr. Justice Charles Quin Q.C.
Judge of the Grand Court