IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

Neutral Citation Number: [2025] CIGC (FSD) 96

CAUSE NO. FSD 175 of 2016 (CRJ)

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF SAFEGUARD SECURITY SERVICES LTD. (IN OFFICIAL LIQUIDATION)

BETWEEN:

MR. ADRIEN BRIGGS

PETITIONER

AND

(1) THE SECURITY CENTRE LIMITED

FIRST RESPONDENT

(2) SAFEGUARD SECURITY SERVICES LIMITED

SECOND RESPONDENT

Appearances:	**Ms. Alice Carver of Nelsons Legal for the Petitioner**
	Mr. Colin McKie KC and Mr. Kerrie Cox of HSM for the First Respondent
Before:	**The Hon. Justice Cheryll Richards KC**
Draft Judgment:	**30th September 2025**

JUDGMENT

1. This is an application for costs of the Petition which is opposed by the First Respondent, The Security Centre Limited ("TSCL"). By Petition filed 21st October 2016, the Petitioner, Mr. Adrien Briggs sought the winding up of the Second Respondent, Safeguard Security Services Limited ("the Company"), pursuant to s.95 (e) of the ***Companies Act*** (2021 Revision) and the appointment of Joint Official Liquidators. The Company is not a substantive participant in these proceedings. The proceedings are inter partes between the Petitioner and TSCL who are the only members of the Company.

2. By agreement between the parties in May 2022, the Petition was amended to include the alternative of winding up by the Court by virtue of a special resolution passed by 100% of the members of the Company pursuant to s.95 (a) of the ***Companies Act***.

3. TSCL asserts in effect that because the winding up order was made pursuant to the amended alternative, the Petitioner has not been successful and is not entitled to costs in accordance with the general rule.

4. Given the arguments on costs, it is perhaps necessary to consider at least in summary form, the nature of the unproven Petition and in particular the chronology of events. The import of the Petition for this purpose is that it sets out the ultimate aim of the Petitioner and the issues.

5. The Petition was brought on the just and equitable ground on the basis that there was a loss of the substratum of the Company and an alleged want of probity and or justifiable loss of confidence in the conduct and management of the Company.

6. The Petition was verified by the Affidavit of Mr. Briggs, sworn on the 19th October 2016. It was asserted in the Petition that the Company is an ordinary resident company incorporated in the Cayman Islands. It carried on the business of providing security and guarding services. TSCL was engaged in similar business activities.

7. At the date of its incorporation in 1994, the Petitioner held all of the 100 issued shares of the Company. In November 2005, he transferred 10 shares to his daughter Katherine Briggs. In 2005 the Company entered into a Memorandum of Understanding with TSCL to pool resources into a joint business. The joint business was intended to be called Safeguard Security Limited and to be

owned 60/40 between TSCL and the Company. The security guard aspect of TSCL business was to be transferred and merged with the Company.

8. Ultimately no new entity was formed. Ms. Briggs transferred her ten shares in the Company to TSCL and Mr. Briggs transferred fifty of his shares in the Company to TSCL. By this means as was agreed, TSCL became the holder of 60% of the shares of the Company.

9. The parties entered into a Shareholders Agreement in July 2006. By this Agreement it was formally agreed to merge the security services of the Company and those of TSCL in a joint venture. It also set out various arrangements including for information entitlements and the running of the joint business. In May 2007, the Petitioner caused a loan to be made to the Company of $234,000. In July 2013, the loan was increased to $400,000 by way of a reduction of the dividend which was to be paid to the Petitioner.

10. In 2013 and 2014 the Petitioner and Ms. Briggs raised concerns about the management of the Company, the payments of certain expenses ("Cross Charges") by the Company to TSCL and other financial matters. The Petitioner's concern in part was stated to be that the Company was being charged expenses which were attributable to separate businesses owned and exclusively operated by TSCL.

11. In October 2014, TSCL provided the Petitioner with a review of the Shareholders Agreement which in effect stated that the Company's business had been "organically transferred to TSCL" and that the Company as a legal entity now contained no active trading activity. TSCL offered to purchase the Petitioner's shares in the Company, repay the working capital advanced and pay sums due to the Petitioner by way of unpaid dividends.[1]

12. In April 2016, through his attorneys the Petitioner offered to sell his shares in the Company to TSCL after a proper accounting and inquiry had been undertaken.

13. In May 2016 TSCL responded refuting some of the accounting concerns raised by the Petitioner and offered to purchase the shares of the Company for a specific amount which it said was based on the calculations of auditors.

[1] Paragraph 29 of the Petition

14. The Petition asserted that that there was a shareholder's relationship which consisted of a quasi-partnership and that TSCL had wrongly appropriated the Company's business and goodwill. It alleged that the shareholder relationship based upon trust and goodwill had been irretrievably broken as a consequence of the wrongful enjoyment of the benefit of assets of the Company without payment or proper accounting, and the exclusion of the Petitioner and his nominated director Ms. Briggs from the management of the Company.

15. Under the grounds for seeking relief the Petition in summary said that TSCL and or its directors had wrongfully diverted business away from the Company and or was wrongfully competing against it, used the assets of the Company for its own business without accounting or making payment to the Company, wrongfully levied a Cross Charge against the Company, charged the Company for rental for premises which it did not need, and excluded the Petitioner and his nominated director from participating effectively in the management of the Company. It concluded:

> "In the premises: there has been a loss of substratum of the Company and it has become impossible and or impractical for the business of the Company (i.e. the pursuit of the joint venture as pleaded above) to be carried on in accordance with the reasonable expectations of and understandings between the shareholders, the express terms of the Shareholders Agreement and the aforesaid "quasi-partnership".

16. The alternative was stated to be that there had been a want of probity in the conduct and management of the Company and that in the circumstances it is just and equitable that the Company be wound up by the Court pursuant to section 92 (e) of the ***Companies Act*** and liquidators appointed.

17. TSCL filed detailed Points of Defence on the 28th July 2017. Each allegation of mismanagement and accounting deficiency was denied. The allegation of a quasi-partnership was challenged as were the interpretations placed on the Memorandum of Understanding and the Shareholders Agreement. Under the heading "Just and Equitable Ground", it was contended that in the circumstances where each side had the ability to appoint one director and by agreement a third independent director, there could not have been any unfair prejudice by a majority against a minority. Additionality it was said that the complaints as to the management functions of TSCL

failed to establish any unfair prejudice so as to make it just and equitable for the Company to be wound up.

CHRONOLOGY OF EVENTS

18. I set out below the sequence of events which is said by the parties to be relevant to the issue of costs.

19. By Summons for Directions dated 21st October 2016 the Petitioner sought directions that the Company be treated as the subject matter of the proceeding and the proceeding be treated as an inter partes proceeding between the members of the Company with Mr. Briggs as the Petitioner and the other member of the Company TSCL as First Respondent. The Summons was issued pursuant to Order 3 r. 12 (1) (a) and (b) of the Companies Winding Up Rules ("the CWR") .

20. By judgment dated 30th June 2017 Mangatal J ruled that the Company be treated as the subject matter of the proceedings and the proceedings be treated as an inter partes proceeding between Mr. Briggs, the Petitioner and the other member of the Company, TSCL the First Respondent.

21. The learned Judge referred to the principles set out in the case of ***Re Freerider Limited***[2] that a company's funds should not be expended on what is in reality a dispute between shareholders.

22. The conclusion with respect to the instant case was that it was obvious that this is in reality a dispute between shareholders. There is no claim against the Company itself which is no more than a nominal party with no separate or independent position from that of the shareholders

23. Paragraph 7 of the resulting Order stated:

> " The Company is not to participate substantively in the proceeding and has merely been joined as a party to the proceeding so that it may provide disclosure of relevant documents to the Petitioner and the First Respondent and so that it may be bound by any determination of this Court in this proceeding."

[2] [2009] CILR 604

24. By letter dated 24th September 2021, attorneys on behalf of the Petitioner urged a practical resolution to the issues which are the subject of the Petition by way of the appointment of joint experts to conduct a proper investigation into the affairs of the Company. It was said that the circumstances were that all of the business of the Company had been appropriated and was being operated under the TSCL brand. Counsel stated: -

> "We have tried this repeatedly over the last five years with proposals to appoint joint experts and proposals to appoint an inspector, all of which have been unsuccessful. As such we proposed a person under the supervision of the Court who would have full access to all books and records required to conduct a valuation, namely joint provisional liquidators."

25. The letter also stated: -

> "The reality is that every possible option of agreeing this proposal without the intervention of the Court has been canvassed and failed. Our client is now entitled to seek to liquidate the Company in circumstances where all are agreed that it is just and equitable that the Company be wound up. This is clearly necessary so that a full and proper investigation of the management of the Company can be undertaken."

26. There was a case management conference for the proceedings. Arising therefrom, by Order made on the 1st October 2021, the matter was to be listed for a one-day hearing to determine whether the Company should be wound up or whether an order should be made that one member should purchase the shares of the other. The October Order was made in part upon the basis that *"the parties being agreed that it is just and equitable that an order should be made under Part V of the Companies Act (2021 Revision)"*. Directions were given in preparation for the hearing, and the costs were ordered to be in the Petition.

27. By letter dated 16th February 2022**,** Attorneys for TSCL indicated opposition to the appointment of Joint Provisional Liquidators to carry out an investigation into the affairs of the Company: -

> " As we previously informed in our letter to you dated 14th September 2021, our client will be opposing any attempt to have Joint Provisional Liquidators ("JPLs") appointed to carry out an investigation into the affairs of Safeguard."

28. The reason for the opposition was said to be that there was no dispute that from at least March 2007, the Company had existed only an as employment vehicle for the purposes of holding work permits for its employees and for staffing plan issues. It was stated: -

> "Safeguard has been effectively 'dormant' as a company, with the guarding business being managed, operated and administered as the 'Uniformed Guards Division' of TSCL".

29. The concern was thus said to be that any investigation other than a narrowly subscribed one would necessarily include the affairs of TSCL.

30. The offer for the appointment of a joint expert with a limited scope of enquiry was rejected by the Petitioner by letter dated 21st February 2022 and the indication given that it was intended to proceed with the Petition.

31. The winding up Petition was listed for hearing on the 30th May 2022.

32. Just short of three weeks before the Petition was to be heard, Attorneys on behalf of TSCL wrote on the 12th May 2022 proposing that the Petitioner consider a special resolution for the winding up of the Company in accordance with s. 92 (a) of the ***Companies Act*** and agreeing to the appointment of Liquidators.

33. It was stated: -

> "While TSCL does not accept a number of the allegations set out in the petition, it nevertheless accepts that no useful purpose would be served in keeping the Company in operation (to the extent that it has any operations at all) and that it is just and equitable that the Company be would up. In the circumstances, no useful purpose would be served in asking the Court to determine the disputed facts contained in the Petition and therefore our client TSCL, will not object to the winding up of the Company and placing it in liquidation."

34. The reason for the suggested route was said to be that it avoids the presentation of any evidence (other than the Resolution). Under the heading 'Appointment of Liquidator' it was stated: -

> "As concerns the appointment of a Liquidator, it is in the common interest of both parties that any appointed liquidator will conduct the process in the most efficient and cost effective manner. **In seeking to avoid any further contest on the appointment, our client confirms that it would support the appointment of a licensed insolvency practitioner** from…." (emphasis added).

35. The Petitioner agreed with the suggested course. The Petition was subsequently amended by agreement to include a heading of 'Recent Developments'. Under this heading there was recounted the partial agreement of TSCL in October 2021, the new indication of agreement in the 12th May 2022 correspondence and the fact that on 20th June 2022, both members of the Company had signed a resolution resolving to place the Company into a Court supervised liquidation. Pursuant to the resolution Elizabeth Mackay and Paula Richmond of Kalo were proposed to be appointed as Joint Official Liquidators.

36. The issue then as to the costs of the Petition turns on who is the successful party in the context of how the Petition has been resolved.

THE HEARING

37. At the time of the hearing leave was granted to amend the Petition to include the alternative route of a special resolution as had been agreed between the parties. There was substantial agreement as to a draft winding up order for the consideration of the Court. The only substantive issue was whether the Joint Official Liquidators on appointment should have the power to carry on the business of the Company.

38. Counsel for TSCL objected on the basis that there was no evidence that there was any business to be carried on. Counsel relied on the case of ***In the Matter of UCF Fund Limited***[3] and submitted that in the absence of evidence the application was premature.

39. Counsel for the Petitioner submitted that the Shareholders Agreement preserves the position that there is an existing business. Counsel nevertheless accepted that while the Petitioner strongly feels that there is an existing business, it is likely the case that the existing work permits for

[3] [2011] 1 CILR 305

guards who were employed to the Company, some forty or so at the time of the Agreement had now been transferred over to TSCL.

40. The Court noted that it having been pleaded in the Petition verified by the Affidavit of the Petitioner that the business had been appropriated by TSCL and that there was a loss of substratum, in the absence of further evidence to the contrary the submissions of the Counsel for TSCL were of some force.

THE LEGAL PROVISIONS

41. Section 92 provides a number of avenues by which a company may be wound up by the Court.

> " A company may be wound up by the Court if —
>
> (a) the company has passed a special resolution requiring the company to be wound up by the Court;
>
> (b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
>
> (c) the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be wound up; (d) the company is unable to pay its debts; or
>
> (e) the Court is of opinion that it is just and equitable that the company should be wound up."

42. The process for petitions for winding up is dealt by the CWR O.3. The costs arising from petitions presented pursuant to the CWR O.3 are dealt with by O.24, r.8, which provides as follows: -

> 8. (1) The general rule is that the costs incurred by a person who successfully presents a creditor's winding up petition under Order 3, Part II or creditor's petition for a supervision order under Order 15, rule 3 should have that person's costs paid out of the assets of the company, such costs to be taxed on an indemnity basis unless agreed with the official liquidator.

(2) In the case of a contributory's winding up petition under Order 3, Part III, the general rules are that —

i. if the Court has directed that the company itself is properly able to participate in the proceeding, the general rule is that the costs of a successful petitioner be paid out of the assets of the company; or

ii. if the Court has directed that the winding up petition be treated as an inter partes proceeding between one or more members of the other members or members of the company as respondents, the general rule is that none of the costs should be paid out of the assets of the company and the unsuccessful parties should pay the costs of the successful party, such costs to be taxed on the standard basis unless agreed."

COSTS

THE SUBMISSIONS OF THE PETITIONER

43. Counsel for the Petitioner submitted that the Petitioner is the successful party having achieved its objective of obtaining a winding up order. Counsel said that the manner in which this was achieved is irrelevant.

44. Counsel urged the Court not to take an issue-based approach but said that even if this is taken, the Petitioner is clearly the successful party. Counsel submitted that loss of substratum was pleaded at paragraph 45 of the Petition and paragraph 30 referred to a review which had been carried out by TSCL which stated in part that: -

> "TSCL proposed that there should be (inter alia) an acknowledgement and agreement that the book of business of [the Company] has in effect, organically transferred to TSCL over the past several years with the result that from the 1st April 2014 [the Company] as a legal entity now contains no active trading activity."

45. Counsel said that the defence response to this at paragraph 36 of the Points of Defence was to admit the document referenced and to say that it was a negotiating document driven by the fact

that for years TSCL had been working for the benefit of the Company without input from the Petitioner or Ms. Briggs. There was a bare denial as to the loss of substratum.

46. Counsel said that the effect of this is that from the outset it was accepted that there was a loss of substratum yet the Petition continued to be vehemently defended right up to the end of last year. This was something which could have been conceded much earlier that the Company should be wound up. Counsel said that the first time this was conceded was in the letter of the 12th May 2022 which was very late in the day.

47. On a non-issues basis, Counsel asked the Court to note that the concession of TSCL is that it is just and equitable that the Company be wound up. Counsel said that it is irrelevant on what basis the Order was thereafter made. Despite making the concession at the case management hearing that it was just and equitable that the Company be wound up, TSCL did not concede a winding up order at that time.

48. Counsel submitted that TSCL was being disingenuous in its approach. They proposed the alternative of a shareholder's resolution in their letter of 12th May and said that no useful purpose would be served by calling evidence. Counsel said that the Petitioner took this at face value and as a genuine attempt to resolve the issues and is now being told that the general rule does not apply and that because they agreed to the alternative, they will lose their costs. Had they known this, they would have proceeded on a contested petition rather than lose their costs.

49. Counsel submitted that this would set a bad precedent for the Court and for the costs of other parties and that disentitlement to costs would likely mean that parties would proceed with petitions rather than attempt to reach resolutions.

50. Counsel said that the general rule should apply at least up the 12th May 2022. TSCL should pay costs on the standard basis up to the time when the concession was made. Thereafter it could be said that they were working for the class of members.

THE SUBMISSIONS OF THE FIRST RESPONDENT

51. Counsel for TSCL submitted that the proper conclusion should be no order for costs. Counsel referenced the Petition in some detail and submitted in summary that the matters relied on in the Petition were not proved by evidence. Counsel said that s.92 (a) is quite a separate basis from s.92 (e).

52. Counsel submitted that the Petitioner sought an order that the Company be wound up on the just and equitable basis, which is a very wide jurisdiction under which a number of circumstances can be advanced. This is a contributory Petition which has to be pleaded and proved. The Petitioner relied on two circumstances, the loss of substratum and the basis that there was a breach of trust and confidence arising from what was the operation of a quasi-partnership. There were allegations of serious wrongdoing against directors in support of these grounds. All of these were denied. Whether it was in fact a quasi-partnership or there was a breakdown of trust between quasi partners needed to be established by evidence. A trial would have been necessary in order to establish whether the facts were made out. Counsel said that although there may be some facts and matters within the Petition which were not contested, that is not to say that the Petitioner would have succeeded at trial.

53. Counsel noted that there were facts pleaded as to the alternative ground for seeking relief of loss of substratum of the Company and said that although there was a meeting of the minds since 2016 that the Court would be likely to find that it was just and equitable to wind up the Company, there was still the requirement to establish the allegations by evidence.

54. Counsel said that there was a recognition by May 2022 that given the events of the year there was no useful purpose to be served in allowing the Company to continue. In order to avoid having a trial it was suggested that there was an alternative means by which a winding up order could be made that would have involved very little evidence. The Petitioner had accepted after 12th May that a trial seeking to establish just and equitable grounds would be a time-consuming and difficult exercise and had taken up the offer of a much simpler way to achieve the objective. The resolution then having been passed, it was a straightforward matter to seek the winding up of the Company.

55. Counsel said that the effect of this is that the Petitioner had not succeeded on the just and equitable ground whatsoever. There has been no trial. The Petition now proceeds on three bases. The only basis today is not the trial of the just and equitable Petition. It is winding up by way of a resolution.

56. Counsel said that the CWR O. 24, r.8 is a general rule, but this is not a trial on the just and equitable ground and that the general rule is not easily transferable to the present scenario here – a petition under s.92 (a).

57. Counsel said that the cases relied on by the Petitioner such as the case of ***In the Matter of Wyser–Pratte Eurovalue Fund Limited***[4] are very different from the present circumstances. That case dealt with a winding up petition under s.92 (e) of the ***Companies Act*** and the company participated.

58. Counsel's submission is that the Petitioner having not succeeded on the primary ground, it would be unjust and disproportionate to burden TSCL with the costs of defending the Petition under s.92 (e) and that the appropriate order is no order for costs. Counsel said that TSCL could seek an order for costs against the Petitioner for having failed but does not seek to do so.

59. Counsel said further that as for the costs of the Amended Petition under s.92 (a), given that the Petitioner and TSCL are the only two shareholders, the appropriate order is that there be no order as to the costs of today. No order is sought against the Company when the Company itself has not done anything to bring about costs, as to do so would be unfair.

DISCUSSION

60. Counsel for the Petitioner relied on two cases. In the case of ***In the Matter of Wyser–Pratte Eurovalue Fund Limited***, the petitioner had sought a winding up order of a company on the just and equitable ground. The Court found that the petitioner had made out a case but made alternative orders rather than an immediate winding up order. The petitioner was granted its costs out of the assets of the Company. One of the issues was whether this was on an indemnity basis such that it would include the costs of legal fees payable to overseas attorneys.

[4] [2010] (2) CILR 233

61. The Court distilled the applicable principles in the following way. Where a petitioning creditor or a contributory in cases where the Court has directed that proceeding is against the company, is successful, such petitioner would be entitled to costs out of the company's assets. The Court held that: -

> "The reason for this was that such a petitioner was invoking class rights: any order made as a result of the petition would be for the benefit of, and binding upon, the whole body of creditors, and a successful petitioner should not effectively be required to subsidize the other members of the class benefiting from the order. In circumstances such as these, in which the petition was brought by a contributory on just and equitable grounds and was heard, pursuant to a court order under O.3, r.11(2), as a proceeding against the company in which the company was properly able to participate, O.24, r.8(2)(a) put a successful contributory, such as the petitioner in these proceedings, in effectively the same position as a creditor under r.8(1). Rule 8(2)(a) provided that such a contributory was to be paid out of the company's assets, and although it did not specify on which basis its costs would be taxed, the same principle—that the petitioner should not be required to subsidize other members of the class benefiting from the order."

62. The Court stated that the CWR O.24, r.8 (2) (a) applied in such circumstances to place the contributary in the same position as a petitioning creditor and the costs ought to be paid on an indemnity basis.

63. The Court stated that different policy considerations apply where the Court has directed that a contributory's petition should be treated as an inter-partes proceeding. In such a case the proceeding is characterised as ordinary adversarial litigation between individual shareholders. By virtue of the CWR O. 24 r 8 2 (b) the parties will be subject to the same cost regime as applies to ordinary litigants. This is governed by the Grand Court Rules O.62. Indemnity costs could exceptionally be ordered if the paying party had conducted the proceeding "improperly, unreasonably or negligently".

64. In the case of ***In the matter of Heriot African Trade Finance Fund Limited***,[5] the Petitioner presented a petition for winding up on the just and equitable ground on the 5th June 2009. The basis was stated to be a breach of duties on the part the company's directors and investment advisor such that there was a justifiable loss of confidence in the management of the fund. It was listed to be heard on the 16th June 2010. The petition was not heard, and leave was subsequently granted to make amendments to the petition, the last being to add a claim based on loss of substratum.

65. The petitioner was granted its costs notwithstanding the amendment because it was held to have been ultimately successful. The Court said this: -

> "Having ultimately succeeded on its winding-up petition, albeit only as a result of amending it to include the claim based upon the fact that the fund is no longer viable because it is practically impossible to carry on its business, I think that Aris is entitled to an order for costs on the indemnity basis pursuant to the Companies Winding Up Rules, O.24, r.8(2)(a). Aris can be criticized for amending its petition more than once and failing to pursue it diligently, but I am not satisfied that these criticisms amount to exceptional and special circumstances which would justify making some other order or no order for costs on the petition."

66. I note that this was a petition on the just and equitable ground which so remained even after the amendment. I nevertheless accept the submission of Counsel for the Petitioner in the instant case that it is of importance that the conclusion of the Court was that notwithstanding the change in approach by way of the amendment, the petitioner was entitled to its costs.

67. I have set out above in some detail the positions of the parties in the instant case. From its Points of Defence and the correspondence exchanged, it is evident that TSCL was asserting that effectively the Company had no business. It resisted the appointment of liquidators and any such appointment, as well as various routes of investigation and inquiry such as inspectors which might be similar and not limited in scope. It did so for a very long time. It appears that this was the core of what the Petitioner sought and at the heart of TSCL's resistance.

[5] [2011] 1 CILR 1

68. TSCL's concern appears to have been that as there was no business being carried on by the Company in reality, any such investigation would inevitably trespass on TSCL' s own business and books. This is relevant to the issue of loss of substratum. I accept the submissions of Counsel for the Petitioner on this point.

69. As to the wider context, significantly TSCL agreed as far back as October 2021 that it was just and equitable that the Company be wound up yet continued to resist the appointment of liquidators. It was not until the 12th May letter that this position changed.

70. I am satisfied that on the 12th May 2022 the Petitioner achieved his objective. I accept the submissions of Counsel for the Petitioner that the Petitioner is the successful party and that the usual rules apply. The Petitioner ultimately succeeded in obtaining a winding up order and the appointment of Joint Official Liquidators which he had sought all along. I do not think that the change in the route to achieve this end is determinative.

71. Moreover, even if entirely a discretionary issue, I would have said that the Petitioner's submissions carry some resonance. Given the chronology of events and the attendant matters which are not in dispute, it appears to me that for the Petitioner not to receive his costs in these circumstances would be deeply unjust.

72. Counsel for TSCL's submission is that the Petitioner failed to establish the just and equitable ground so that it would be unjust and disproportionate to burden TSCL with the costs of the Petition. This submission perhaps overlooks the fact that it was conceded by TSCL that the Petition *would succeed* on this ground. The recital of October 2021 makes this clear. It seems to me not to be a strong argument to say that the primary factor and measure of success should now be that the Petitioner did not succeed on that ground when plainly the inevitability of success was very likely the driving force behind the concession made in May.

73. It also seems to me in the face of this that to point to the fact that the details of the allegations in the Petition are unproven by evidence is also not a strong argument. It cannot be strong in the face of the concession that the Petition was likely to succeed on the just and equitable ground.

74. As to the cost of this hearing, I accept the submissions of Counsel for TSCL, that there being only two members of the Company, there should be no order as to costs, so that each party bears their own costs.

75. The Petitioner is awarded costs on the standard basis to be taxed if not agreed up to the 12th May 2022.

Dated this the 3rd day of February 2026

The Hon. Justice Cheryll Richards KC
Judge of the Grand Court