



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 86 OF 2023 (IKJ)

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF COINFUL CAPITAL FUND, SPC

AND IN THE MATTER OF PIERCE 50 SP

BEFORE THE HON. JUSTICE DAVID DOYLE

IN OPEN COURT

Appearances: Hamid Khanbhai and Christopher Easdon of Campbells for the Petitioner

Before: The Hon. Justice David Doyle

Heard: 5 July 2023

Ex tempore Judgment

delivered: 5 July 2023

Draft transcript circulated: 7 July 2023

Transcript approved: 10 July 2023

HEADNOTE

Determination of winding up petition

JUDGMENT**Introduction**

1. In this case Ser KongWei (the “Petitioner”) seeks the appointment of joint official liquidators over Coinful Capital Fund, SPC (the “Company”) or, in the alternative, the appointment of receivers over the segregated portfolio of the Company known as Pierce 50 SP (“the SP”).
2. Hamid Khanbhai and Christopher Easdon appear for the Petitioner and I am grateful to both of them for their assistance to the Court.
3. The Petitioner says that he is a creditor of the Company and the Company is unable to pay its debts. A statutory demand was hand delivered to the registered office of the Company on 7 February 2023 in the sum of USD12,574,413.37 in respect of the redemption proceeds owed to the Petitioner (the “Statutory Demand”), which acknowledged that the redemption proceeds due would need to reflect any deductions or withholdings that the Company may be entitled to make.
4. The Company has not sought to raise any dispute in respect of the Statutory Demand and the sum owed to the Petitioner.
5. The Company was served with the petition dated 30 March 2023 and the supporting affidavits on 6 April 2023. The Company has not filed any evidence in opposition to the petition. The Petitioner says that the SP is in fact the Company’s only segregated portfolio. In his first affidavit, the Petitioner, at paragraph 9, says that “*the SP is the Company’s only segregated portfolio, and therefore the principles concerning the segregation of portfolios and portfolio assets that usually apply to segregated portfolio companies do not arise in respect of the Company*”. The Company has provided no evidence or submissions to the contrary.

6. The Petitioner says that his shareholding was redeemed on 31 December 2022. He submitted his request on 26 September 2022 and complied with the requirement in the Segregated Portfolio Supplement of the SP dated March 2022 (the “Segregated Portfolio Supplement”) that the Petitioner provide 90 calendar days’ notice in advance of the last day of the calendar quarter ending 31 December 2022. I note that after an initial delay the Company by electronic message dated 29 September 2022 at 10:42 confirmed that “*the redemption is being processed*”.
7. Pursuant to Article 13.10 of the Company’s Articles of Association (the “Articles”), as of 31 December 2022 the Petitioner ceased to be a shareholder and became a creditor of the Company in respect of the redemption proceeds owed.
8. According to the Segregated Portfolio Supplement, redemption proceeds are generally payable within 30 days of the relevant redemption date. Accordingly, the redemption proceeds due to the Petitioner should have been paid by 30 January 2023.
9. There is reference to the Company writing a series of letters to the Petitioner and other investors starting on 27 February 2023. I have considered those letters.
10. The Company refers to a temporary suspension to allow it to undertake urgent investigations and to secure and protect the Company’s assets. The Petitioner says that the Company has not shared full information and supporting documents in this respect. The suspension appears to have been implemented after the sum owed to the Petitioner in respect of the redemption proceeds was already due and owing. The Petitioner adds that the Company has not provided any evidence that the suspension has any impact whatsoever on the Petitioner’s ability to present the petition. The Petitioner also says that it is notable that in the correspondence the Company has not disputed the debt owed to him.
11. In its letter dated 27 February 2023, the Company refers to some liquidity issues in respect of third party custodians. The Company attempted to get the Petitioner, and potentially other redemption creditors, to enter into a standstill agreement to prevent the presentation of any winding up petition but the Petitioner did not enter into such agreement.

12. The Company's correspondence referred to potential interest from an un-named third party investor to provide a mechanism which would address the liquidity issues pending recovery of assets. I considered the email and letter dated 9 March 2023 and I considered the correspondence on 4 April 2023 when it was stated that the Board would "*endeavour to conclude negotiations with the Investor shortly*" and that the "*investors would be contacted within the next 2 weeks to discuss the proposal and the terms by the Investor*". The Petitioner was not contacted.
13. In its letter of 24 April 2023, the Company commented that the filing of the petition had had a "*severe impact*" on the negotiations with the investor but there would be further contact "*over the next days*". The Petitioner was not contacted.
14. The Company, in its letter dated 5 June 2023, stated that "*some progress*" had been made and "*the Board anticipates that the associated documents will be presented to investors by 30 June 2023*". The documents have not been presented to the Petitioner.
15. The Company has filed no affidavit evidence verifying the alleged negotiations with the third party investor nor has it confirmed their identity or the terms of the proposed liquidity deal.

Determination

16. I turn now to my determination of the petition.
17. I am satisfied that the Petitioner is a creditor and has standing. At the very least, the Petitioner is a contingent creditor, but the evidence goes further than that and supports the position that the Petitioner is in fact an actual creditor.
18. I note the relevant provisions of the Articles, including Articles 13.10, 13.7 and 13.8, and the Segregated Portfolio Supplement. I note section 37(3)(c) of the Companies Act and *Culross Global SPC Limited v Strategic Turnaround Master Partnership Limited* 2010 (2) CILR 364 (JCPC) and *Herald Fund SPC* 2016 (2) CILR 330 (CICA) and 2017 (2) CILR 75 (JCPC). I am satisfied that the Company is unable to pay its debts.
19. Clause 44 of the subscription applications does not prevent the Petitioner from presenting the petition. The debt is immediately due and payable to the Petitioner. Moreover, the Petitioner is presenting the petition in his capacity as a creditor and not in his capacity as a member.

20. I am satisfied that I should exercise my discretion in favour of making a winding up order. There is no special or good reason to adjourn and indeed, no request for an adjournment has been put before the Court by the Company.
21. In particular, I note the advantages of a winding up order and the limitations of a receivership order and the difficulties that may be encountered in that respect. I am satisfied that in the particular circumstances of this case, a winding up order is the most appropriate form of relief. The evidence put before me indicates that the Company has a single segregated portfolio.
22. For the Court record on the formalities, I can confirm that I am satisfied as to the verifying affidavit, the affidavits of the proposed joint official liquidators and the evidence as to notice and advertisement in the Cayman Islands Gazette on 22 May 2023. I note also service on the Company and the Cayman Islands Monetary Authority on 6 April 2023 of the petition and supporting evidence under covering letters expressly stating that the matter was listed to be heard today, 5 July 2023 at 10am. In the Company's letter dated 24 April 2023 in paragraph 2 there is reference to notification of the petition having been received on 6 April 2023. There is no argument that the Company is unaware of these proceedings and the hearing today.
23. The Company acknowledges the Petitioner as a creditor but says that the winding up petition is premature and detrimental to the interest of investors without condescending into any detail in that respect.
24. In the letter of 5 June 2023, the Company states it has obtained "*limited legal advice*". The Company has not appeared today. The Company has put no evidence before the Court. No opposition has been presented to the making of a winding up order.
25. I intend to make an order substantially in terms of the amended draft forwarded to the Court by Campbells' email on 4 July 2023 at 4:06pm with minor amendments. The reference to the Judge in open court at the top left on page 1; in para 5 delete "JOLs" and insert "Liquidators"; in para 6 exercise their powers under "this Order", delete the word "any", delete the words "granted pursuant to this petition".

26. I make an order in those terms.

27. The following order was made:

- “1. *The Company be wound up by the Court in accordance with the Companies Act (2023 Revision) (the “Companies Act”).*
2. *Mr Andrew Childe and Ms Anna Silver of FFP Limited be appointed as joint official liquidators of the Company (the “Liquidators”).*
3. *The Liquidators shall not be required to give security for their appointment.*
4. *The Liquidators shall have the power to act jointly and severally in their capacity as joint official liquidators of the Company.*
5. *The Liquidators be at liberty to appoint such counsel, attorneys, professional advisors whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties in accordance with Order 25 of the Companies Winding Up Rules (2023 Consolidation).*
6. *No disposition of the property of the Company by or with the authority of the Liquidators in carrying out their duties and functions and the exercise of their powers under this Order shall be voided by virtue of Section 99 of the Companies Act.*
7. *Subject to Section 109(2) of the Companies Act and the Insolvency Practitioners' Regulations (2023 Consolidation), the Liquidators shall be authorised to render and pay invoices out of the assets of the Company for their own remuneration.*
8. *The Liquidators shall be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as an expense of the liquidation.*
9. *The Liquidators shall be at liberty to apply generally.*

10. *The Petitioner's costs of and incidental to the Petition shall be paid forthwith out of the assets of the Company as an expense of the liquidation, such costs to be taxed on the indemnity basis if not agreed with the Liquidators."*

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT