

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Brilla Capital Investment Master Fund SPC Limited (a Cayman Islands segregated portfolio company, for and on behalf of Brilla Cap Juluca Segregated Portfolio M, a segregated portfolio thereof) et al -v- John Greenwood (Acting as Liquidator appointed to Leeward Isles Resorts Limited (In Liquidation) by Order dated 4 May 2014 et al Claim No. AXAHCVAP2013/0007

CIVIL APPEAL - INTERLOCUTORY APPEAL - REMOVAL OF LIQUIDATOR - WHETHER MASTER ERRED IN REFUSING APPLICATION TO GIVE DIRECTIONS TO A LIQUIDATOR/REMOVE A LIQUIDATOR - TEST FOR REMOVAL OF LIQUIDATOR - SECTION 10 OF ALIENS LAND HOLDING REGULATION ACT

This was an appeal against the refusal by a master to remove John Greenwood as liquidator of Leeward Isles Resorts Limited. The Court allowed the Appeal and held that when deciding whether to exercise its discretion to remove a liquidator, the court must be satisfied that the retention of the liquidator will be adverse to the ongoing liquidation or, conversely, that the removal of the liquidator is in the interests of the liquidation. In making this determination, the court should follow a three-stage process. Firstly, it must determine whether the applicant has the standing to apply for the removal of the liquidator. Secondly, the court has to decide whether due cause has been shown for the removal of the liquidator. Due cause does not necessarily mean that there is misconduct on the part of the liquidator or unfitness for purpose, but rather the court should consider all the circumstances and decide whether, on the whole, the liquidator should be removed. Thirdly, if due cause has been shown, the court should then decide whether to exercise its discretion to remove the liquidator.

In this case, the Court held that the liquidator should be removed for cause. The liquidator had failed to report to the creditors on the progress of the liquidation, failed to comply with the requisite statutory provisions in relation to the sale of property to a

foreigner and his overall lack of vigour in dealing with the issues surrounding the liquidation.

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