

CAYMAN ISLANDS GRAND COURT

In the Matter of the Companies Law (2011 Revision) and In the Matter of Merchantbridge Managers Inc. Cause No. FSD 5 of 12, per Smellie CJ (9 February 2012)

COMPANIES - WINDING UP - LOSS OF
SUBSTRATUM - INJUNCTION TO RESTRAIN
DISPOSAL OF SHARES

The Respondent Company, which is the management company of an investment consortium, was characterised as a quasi-partnership between four persons. Two of the founders were killed in an air accident and one of them was subsequently bought out by the other. The family members of one of the deceased participants were appointed to the board of the Company by the sole surviving shareholder, director and partner of the group, and they promptly removed him from the board. With the removal of the last remaining active participant in the management company, it is alleged that the Company had been effectively paralyzed, as there was no one left with the capacity to carry on its functions and as a result the substratum of the Company has failed.

The Applicant filed (but has not yet served) a petition to wind up the company. The Applicant immediately brought an, *ex parte*, application for an injunction to prevent the board of the Company from removing him as a director of nine special purpose vehicles which are the investment holding companies of the consortium. He also sought an injunction to restrain the management company from disposing of its shares in the holding company through which the investment consortium was constituted and through which their shares are held. The injunctions were intended to retain the status quo until the petition for winding up can be heard or until further order of the Court.

Considering the tests laid out in *American Cyanamid Co.-v-Ethicom Ltd.*, the Court found that there is a serious issue to be tried. There was material to support the contention that a quasi-partnership existed (notwithstanding the fact that the legal

structure employed by the founders was, in form, a company). The removal of the Applicant from the board could be found to justify his loss of confidence and trust, such that a petition to wind up on the just and equitable ground may be sustainable. The just and equitable ground is wide enough to found relief where there is a good reason for loss of confidence and trust leading to a breakdown of relationships underpinning a company formed and operated in the nature of a quasi-partnership.

The balance of convenience lies with granting the injunctions to preserve the status quo until the petition can be heard. Relief granted and directions for service issued.

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