

## CAYMAN ISLANDS GRAND COURT

***In the Matter of Medley Opportunity Fund Ltd. Cause No. FSD 23 of 2012, Quin J June 21, 2012***

COMPANIES - INVESTMENT FUNDS -  
CONSTITUTIONAL DOCUMENTS - SIDE LETTERS -  
PRIVITY OF CONTRACT

Fintan Master Fund (“Fintan”) invested in Medley Opportunity Fund (the “Fund”) through its nominee, Nautical Nominees (“Nautical”). Nautical was the registered shareholder. Fintan had, in its own right and name, entered into an agreement (the “Side Letter”) with the Fund. The Side Letter provided that all distributions to Fintan upon redemption, liquidation or otherwise shall be paid in cash and, if cash is not immediately available, through securities held in a separate liquidation account on Fintan’s behalf, the proceeds of which will be distributed to Fintan in cash as such securities are liquidated.

During the financial crisis the Fund faced a run on redemptions and presented its investors with two successive restructuring plans. In both cases, Nautical, on behalf of Fintan, elected to stay in its share class, rescind all previous redemption requests, and benefit from orderly payouts through quarterly distributions.

Fintan became dissatisfied with the pace of the winding down of the Fund and Nautical submitted a redemption request on behalf of Fintan requesting the redemption of all its shares. Fintan took the position that the restructurings had not modified its redemption rights under the Side Letter. The Fund argued that Nautical was not a party to the Side Letter and thus could not rely on it. The Fund further argued that the effect of entering into the restructuring agreements was to replace any pre-existing redemption rights.

The Court determined that while Nautical was the nominee for Fintan and Fintan was the ultimate beneficiary, Nautical was the shareholder. The Side Letter, to which Nautical was not a party, did not provide Nautical with any enhanced rights or favoured status as a registered member of the Fund. Nautical had the

same rights and obligations as any other registered shareholder under the Articles.

The underlying commercial purpose of the restructuring was to require Nautical to exchange its existing redemption rights for periodic cash distributions effected pro rata with all other investors accepting this option. This allowed the Fund to minimize a liquidity squeeze and avoided a fire sale of assets and allowed the members to benefit from the expected recovery in asset prices and avoid a disorderly scramble for assets under liquidation. Nautical understood these terms and opted to accept them and is therefore bound by them. The redemption request was declared invalid and of no effect.

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