

CAYMAN ISLANDS GRAND COURT

***Landsdowne Limited and Silex Trust
Company Limited -v- Matador Investments,
Englefield Holdings Corp. and Maritime
Guerrand-Hermès Cause No. FSD 103 of
2011, Quin, J. 23 August 2012***

COMPANIES - INVESTMENT FUNDS -
CONSTITUTIONAL DOCUMENTS - SIDE LETTERS -
PRIVITY - MANNER OF REDEMPTION OF SHARES -
COMPANIES LAW SECTION 37

The Petitioners were investors in Matador Investments Limited, a Cayman Islands investment fund (the "Fund"). The Fund was incorporated with a typical form of memorandum and articles of association. The articles referenced a private placement memorandum ("PPM") that contained a number of detailed provisions, including the power to impose a gate on redemptions in certain circumstances.

The ultimate beneficial owner of the shares held by the Petitioners, Ms. Waters, and the principal of the Fund, Ms. Guerrand-Hermès, were close personal friends. Ms. Guerrand-Hermès was alleged to have made certain representations to her friend to the effect that the gating provisions and other restrictions on redemptions in the constitutional documents would not apply to her investment: she should be able to withdraw as much money from the Fund as she needed each quarter. A shareholder's agreement was contemplated, but never completed. Following a breakdown in the friendship and the retention of a new financial advisor for Ms. Waters, the Petitioners made a redemption request for all their shares in the Fund. The Fund resolved to impose a 10% gate. The Fund entered winding up, and the Petitioners presented proofs of debt for the full redemption value of all their shares. The proofs were rejected by the Liquidator, who relied on the gate provisions.

The Court expressed sympathy for Ms. Waters, acknowledging that she was induced by her friend to place her money with the Fund and describing her as a very naïve and unsophisticated investor. However, the Petitioners were the shareholders in the Fund, and as such any agreement between Ms. Waters and Ms.

Guerrand-Hermès would not bind the Fund or the Liquidator in relation to the redemption requests of the Petitioners. Even if one were to accept the contention that the representations made by Ms. Guerrand-Hermès amounted to a 'side letter', it could not operate to achieve the very opposite of what was expressly contained in the Articles and subscription documents. The Court accepted the submission that Section 37 of the *Companies Law* provides a complete answer to the Petitioners' submissions. This section requires that the manner in which any redemption may be effected must be authorised by or pursuant to the Articles and further the terms and manner of redemption must be set out (or sufficiently set out) in the Articles. The agreement, relied upon by the Petitioners plainly, fell foul of these entrenched rights and for that reason could not bind the Fund or the Liquidator. Any purported agreement was unlawful and of no effect.

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