

## CAYMAN ISLANDS

### GRAND COURT

***Origami Partners III, LP -v- (1) Pursuit Capital Partners (Cayman) Ltd (2) Pursuit Capital Partners Master (Cayman) Ltd (3) Pursuit Investment Management LLC, (Cause No. FSD 36 of 2011 (PCJ)), 5 February 2013***

COMPANIES - SHAREHOLDING REDEMPTION - VALIDITY OF ASSIGNMENT OF REDEEMED SHAREHOLDING - CONSIDERATION OF REDEMPTION AS DEBT OR INTEREST IN SHARES

In this matter the Court considered whether a redeemed shareholding was a debt or an interest in shares and determined the resulting entitlement of the redeemed Shareholder's assignee, Origami (the "Plaintiff"). The Defendants were a Cayman master fund, its Cayman feeder fund and their Delaware investment manager. Monies (in the amount of US\$4.3 million) held back from a redemption were being claimed by the Plaintiff, to whom the interest in the redemption had been assigned. The Defendants argued that the monies held back were not due. The Court considered both the validity of the assignment to the Plaintiff and whether the Plaintiff had standing to bring proceedings as the shareholder's assignee.

With respect to the validity of the assignment, the Defendants argued that the right to receive a redemption payment is an interest in shares. In view of this they argued that the Plaintiff's standing as an assignee meant that it was ineligible to hold the investment under the terms of the relevant articles and, it was incapable of taking an assignment of any interests in the shares without the consent of the fund's Directors (and no such consent was obtained). In a similar argument, it was suggested that there was a prerequisite before payment of the holdback that an audit must take place. Such an audit request could only be made by current or former shareholders.

The Plaintiff asserted that once a shareholder has been redeemed that shareholder is due a debt and that debt can be assigned to someone else (even if that assignee was in a class

of people that could not have been a shareholder under the terms of the company's constitution or otherwise). As such, the Plaintiff asserted it was a creditor of each of the Defendants and that the nature of what was assigned to it were not rights in shares, or a transfer of shares, but the right to a sum equivalent to the money held back, recoverable as a debt.

The Court held that the redeemed shareholding was a debt and the Plaintiff was entitled to the full sum sought, together with interest. The Court noted that the shareholding had been compulsorily redeemed, the shareholders removed from the register and a NAV calculation had settled the amount due. The monies which were not paid created a debt in that amount (less any sums which could be deducted). A settlement document defined how the debt would be paid, and so the Court held that unless the parties had incorporated matters relating to the company's structure and investor eligibility into the settlement document, then such points were irrelevant.

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