



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**Cause No. FSD 354 of 2024 (DDJ)**

**IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)  
AND IN THE MATTER OF CLO SEA 2 LTD (IN VOLUNTARY LIQUIDATION)**

**Cause No. FSD 355 of 2024 (DDJ)**

**IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)  
AND IN THE MATTER OF SEA S SEA LTD (IN VOLUNTARY LIQUIDATION)**

**Cause No. FSD 356 of 2024 (DDJ)**

**IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)  
AND IN THE MATTER OF SEASENSE LLC (IN VOLUNTARY LIQUIDATION)**

**Cause No. FSD 357 of 2024 (DDJ)**

**IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)  
AND IN THE MATTER OF SENSELESS LTD (IN VOLUNTARY LIQUIDATION)**

**Cause No. FSD 358 of 2024 (DDJ)**

**IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)  
AND IN THE MATTER OF NONSENSE LTD (IN VOLUNTARY LIQUIDATION)**

**Before:** The Hon. Justice David Doyle

**Appearances:** Andrew Lomas and Sebastian Gollins of Kobre & Kim (Cayman) for the Petitioner  
Kai McGrielle of KSG for the Respondents

**Heard:** 6 December 2024

**Ex Tempore Judgment Delivered:** 6 December 2024

**Draft Transcript of Ex Tempore Judgment circulated:** 10 December 2024

**Transcript approved:** 12 December 2024

*Determination of urgent applications to defer corporate dissolutions*

## **JUDGMENT**

### **Introduction**

1. In these matters Fortress Credit Corp (the “Petitioner”) seeks an urgent order that the dissolution date of various companies listed above (the “Companies”) (which for all but one of them the Petitioner says is Monday 9 December 2024) be deferred pursuant to section 151(3) of the Companies Act (2023 Revision) (the “Companies Act”) until 3 June 2025.
2. Under section 151(3) of the Companies Act the court may, on the application of the liquidator or any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect to such date as the court thinks fit.
3. Some of the background to these matters is covered in the judgment I delivered on 31 October 2024 when granting *Norwich Pharmacal* relief.

4. Subsequent to the order made on that date the Petitioner has acquired certain documentation and information.
5. It appears that the Petitioner only became aware of potential voidable transactions on 2 December 2024 when KSG disclosed to the Petitioner that Mr Cohen (or employees acting on his behalf) gave instructions for the transfers and consideration was stated as “\$10 and other valuable consideration”.
6. Kobre & Kim wrote a letter dated 1 December 2024 to Peter de Vere (the liquidator of the Companies) (the “Liquidator”) sent by email requesting a response by 4pm on 3 December 2024 “*failing which we will proceed to file an application under s.151 (3) without further recourse to you.*”
7. KSG responded by email dated 2 December 2024 11:22am and indicated that they were instructed by the Liquidator and stated that they “will respond to your letter shortly.”
8. By letter dated 3 December 2024 KSG complained of deadlines and concluded: “*until such time as your client can show that they have standing to pursue an Order pursuant to section 151 (3) ..., our client must oppose any such application given his duty as a liquidator of the Companies*”. KSG requested that their client be notified in advance of any such application being made so that the Liquidator “*can be certain that the Court is fully informed of the lack of standing of your client.*” KSG wrote a further email on 4 December 2024 5:42pm. Kobre & Kim responded on 4 December 2024 8:13pm with further arguments on standing and referring to *Exten Investment Fund* (Mangatal J unreported judgment 23 June 2017) (“*Exten*”) (albeit without a full citation). They asked that the petitions be “*disposed of by consent.*”
9. Andrew Lomas of Kobre & Kim in his email dated 4 December 2024 at 10:38am referred to “*having positive discussions with counsel for the respondents overnight and this morning*” and by subsequent email at 1:50pm he copied the emails to Kai McGriele at KSG amongst others.
10. I make no criticism of the Petitioner and its advisers for the timing of the filing of the petitions. The majority were hard up against the dissolution date of Monday 9 December 2024. However, the Petitioner and its advisers have only recently (2 December 2024) been provided with information which has enabled them to present the petitions dated 3 December 2024. Praise to

attorneys, where praise is due. Rather than criticising the team at Kobre & Kim for the timing of the filing of the petitions, I commend them (especially Andrew Lomas and Sebastian Gollins) for the professionalism, speed and efficiency in which they have placed the petitions and connected documentation before the court. Under great time pressure they have not permitted their high professional standards to slip. Moreover, I am extremely grateful to them for the production of the hearing bundles before the deadline specified, i.e. 11am yesterday. I also congratulate them on the production of a concise (just 8 pages) and extremely well-focused and helpful skeleton argument dated 5 December 2024. I note the email from Mr Gollins dated 5 December 2024 is timed at 1:39AM and confirms that various documents had been uploaded to the court's e-filing portal. A necessary and impressive burning of the midnight oil. I hope Mr Gollins is given some time off over the Christmas and New Year break.

### The petitions

11. The Petitioner is the same in respect of all 5 petitions:

- (1) In 354 of 2024 (DDJ) there is reference to a potentially voidable transaction (stated to be a transfer of Clo Sea to Aquila Sea Ltd shortly prior to the initiation of liquidation proceedings for what appears to be a nominal consideration). It is stated that “*unwinding the transfer would require the Company to exist and not to have been dissolved.*” The Petitioner says it is an “*interested person*” for the purposes of section 151(3) of the Companies Act as it “*has a pecuniary or proprietary interest in deferring the dissolution of the Company, in the sense that claims it might be advised to bring are likely to involve the Company as a necessary party and/or involve its documents.*” It is also said that “*proceeding in this manner is more appropriate, and likely to prove less of a strain on the time and resources of this Honourable Court than the Petitioner attempting (if so advised) to reinstate the Company later, after it has been dissolved.*” I note the jurisdiction to restore a dissolved company and the difficulties in obtaining a restoration order (see for example my judgment in *Porton* (unreported 24 March 2022) and Kawaley J’s judgment in *Real Estate and Finance Fund* (unreported judgment 24 August 2022)). It is stated that the dissolution of the Company is scheduled to take place on 9 December 2024.

The Petitioner adds that there is no prejudice to the Company or the liquidator in deferring the dissolution to 3 June 2025 as dissolution of the Company will still occur (albeit later) should the Petitioner take no further steps against or involving the Company.

- (2) In 355 of 2024 (DDJ) the same points are made in respect of a transfer of Sea S Sea to Centaurus Sea Ltd.
- (3) In 356 of 2024 (DDJ) the same points are made in respect of a transfer of M/Y Seasense to Andromeda Sea Ltd.
- (4) In 357 of 2024 (DDJ) the same points are made in respect of a transfer of Senseless to Cygnus Sea Ltd.
- (5) In 358 of 2024 (DDJ) similar points are made in respect of the transfer of Nonsense to Crux Sea Ltd. In this case however the Petitioner refers to the “*date of dissolution of the Company scheduled to take effect no sooner than three months after 23 September 2024*”.

### **The position of the Liquidator**

12. At 5:37pm, Thursday 5 December 2024, last night, KSG sent a letter addressed to Kobre & Kim “*Attention Sebastian Gollins*” which commenced “*Dear Ms Clare*” and at the foot of the letter the following appears “*cc: Ms Bridget Clare, FSD Registrar.*” The letter was in the following terms:

*“We refer to recent correspondence in relation to this matter and most recently the letter of Kobre & Kim dated 4 December 2024 and adopt the definitions therein.*

*We confirm that our client Mr. Peter A. De Vere, as Liquidator of each of the Companies, does not consent to orders being made under Section 151(3) of the Companies Act as he does not accept that the Petitioner has established the requisite standing to permit it to seek relief under Section 151(3) of the Companies Act.*

*However, we are also instructed not to attend the hearing and as such will not be presenting legal arguments to minimize legal costs, but we wanted to confirm our client’s position and trust that no issue is caused by our non-attendance. We wish to make clear that our client*

*holds the Court in the highest regard and has no intention of causing disrespect. We would respectfully remind your offices, and note to the Court, that your client was not a creditor of any of the Companies;*

- (i) when any of the maritime assets were transferred;*
- (ii) at the time the respective voluntary liquidations commenced;*
- (iii) on the respective dates for creditors to file their claims during the liquidation process; or*
- (iv) as of today's date.*

*Your client has not provided any evidence to the Liquidator that the liquidation processes should not continue on a voluntary basis, nor have they alleged to have any right to have any of the Companies reinstated, let alone to have an Official Liquidator appointed. Absolutely no evidence of the existence of any creditors has been presented, let any that any creditor has been defrauded.*

*The Liquidator has sought confirmation from US counsel to Mr Charles S Cohen as to the status of the proceedings in the US Court. The Liquidator has been advised that no final and unappealable monetary judgment has been granted against Mr Charles S Cohen by any US Court. That letter from US counsel to Mr Charles S Cohen will follow in the near future and we wanted to send this letter in the interim, so that you were made aware that our client will not be presenting oral arguments tomorrow and so that matters can be addressed on the papers only.”*

13. At 9.39am this morning KSG emailed a 3 page affidavit from the Liquidator sworn on 6 December 2024 who at paragraph 6 refers to “*my client, Mr Cohen*” and exhibits 50 pages of documents including two letters dated 5 December 2024 the contents of which I have noted. I note in particular the view of Mr Cohen’s US counsel that the Petitioner’s claim that there is a possible fraudulent disposition claim or claims is “*manufactured and baseless. Such a mischaracterization of Mr Cohen’s actions must be rejected.*”
14. Despite KSG’s letter dated 5 December 2024, Kai McGrielle did in fact appear for the Liquidator this morning. He says that the Petitioner has no standing. He says in effect that Mr Cohen has sufficient assets to discharge the New York Summary Judgment and the Petitioner has no legitimate

interest in deferring the dissolutions. On behalf of the Liquidator it is submitted in effect that there is no good reason to defer the dissolutions.

### **The position of the Petitioner**

15. Mr Andrew Lomas and Mr Sebastian Gollins appeared for the Petitioner this morning and I am grateful to them for their assistance. I note the persuasive arguments on the standing issue presented on behalf of the Petitioner by Mr Lomas.
16. Mr Lomas in effect says that the Petitioner does not need to establish itself as a creditor (contingent or otherwise) and that is clear from the authorities.
17. I note carefully the submissions of Mr Lomas in respect of the interest of the Petitioner and the potential claims that are worthy of further investigation. Mr Lomas in a nutshell makes 3 main points:
  - (1) the deferrals are necessary to enable further investigations to take place while the Companies are still in existence;
  - (2) the Companies need to remain in existence to preserve documents and potential claims;
  - (3) there is no prejudice in deferring the dissolutions.

### **Determination**

18. I turn now to the determination of the various issues presently before the court. The Liquidator does not complain about the convening of a short notice hearing but I should make the court's position clear in that respect.
19. In my judgment it was necessary for the petitions to be listed urgently especially as 4 of the 5 petitions referred to date of dissolution as Monday 9 December 2024 and the fifth to a possible date later in December close to the Christmas and New Year vacation. The Petitioner acted expeditiously once relevant information came to its attention on 2 December 2024.

20. It appears that on from at least 3 December 2024 the Liquidator has had notice of the potential filing of the petitions and his attorneys were informed by email dated 4 December 2024 12:25pm of a potential hearing on the morning of today, Friday 6 December 2024, absent agreement between the parties to resolve the petitions. No agreement was forthcoming.
21. In my judgment it was necessary for the petitions to be heard at short notice and as a matter of urgency.

### **The issues for determination**

22. I agree with the Petitioner that there are 3 main issues for determination: (1) whether the petitions should be heard together (“Issue 1”); (2) whether the Petitioner has standing (“Issue 2”) and (3) whether the court should defer the dissolution of the Companies (“Issue 3”).

#### *Issue 1*

23. Having considered the submissions, Order 24 rule 1(5) of the Companies Winding Up Rules (2023 Consolidation), and *Exten* I had no hesitation in concluding that all five petitions which raise the same or substantially similar issues and share a common underlying basis, should be heard at the same time.

#### *Issue 2*

24. On the evidence presently before the court it does appear to the Court that the Petitioner is “interested” and properly has legal standing to request the relief requested. In arriving at this conclusion I have considered the wording of section 151 (3) of the Companies Act and the very helpful judgment of Mangatal J in *Exten*. Mangatal J in *Exten* considered applications for deferral under section 151 (3) of the Companies Act and in particular the issue of standing.
25. Mangatal J in *Exten* reviewed the law on standing in the context of dissolution deferral cases considering section 151 (3) of the Companies Act, section 201 (3) of the English Insolvency Act 1986 and what she described as its predecessors, section 651 of the Companies Act 1985 and section 352 (3) of the Companies Act 1948. Mangatal J referred to Megarry J in *Re Test Holdings (Clifton) Ltd* [1969] 3 ALL ER 517 describing the phrase “any person who appears to the Court to be



*interested*” as one of “*great amplitude*” It appears to have been intended to cover entities in addition to creditors and members. Megarry J shed further light on the meaning of the phrase in *Re Wood and Martin (Bricklaying Contractors) Ltd* [1971] 1 ALL ER 732 at 736 when he referred to those who have an interest of “a proprietary or pecuniary nature resuscitating the company” and the possibility of claims: “*It does not, I think, have to be shown that the interest is one which is firmly established or highly likely to prevail; provided it is not merely shadowy, I think it suffices for the purposes of s352*”.

26. Mangatal J at [28] referred to 4 Cayman Islands cases where a court had exercised the power to defer a dissolution but there had been no “written rulings.”

27. At [29] Mangatal J referred to “section 248 (4) of the Hong Kong Companies Ordinance Cap. 32” and at paragraph 30 to the judgment of Kwan J in *The Commission of Inland Revenue v Fullbright Co Ltd* HCCW 208/2008 and the comment at [17] to the effect that “*it is necessary to show there is still some aspect of the company’s business which has not come to a conclusion ...*”

28. At [31] Mangatal J referred to “the decision of the Hong Kong Court of Appeal in *Kelso Enterprises Limited v Liu Yiu Keung* CACV 303/2006” and in particular the judgment of Rogers VP. Rogers VP at [13] referred to the question “*what it is hoped, and what is likely, to be achieved by deferring the dissolution ...*” and the need for the court to consider “*whether there is likely to be any detriment to any party by deferring the dissolution*”. Obviously a detriment to a wrongdoer would not be a reason for not deferring a dissolution. In *Kelso* although it was by no means certain that it would be possible to show any particular wrongdoing it was clear on the basis of the public interest alone that there were matters that required “*proper investigation*”. Mangatal J applied the principles in these authorities and referred to the need for an investigation in the cases before her and the fact that if the companies were dissolved they would not be able to pursue any recoveries in respect of certain suspect payments to which they may be entitled.

29. Mangatal J added:

“48. *The Petitioner is prepared to fund the costs of court supervised liquidations of the Companies. As discussed in the Kelso decision, it is obvious that the Petitioner is prepared to expend more its funds, after already sufferent losses. This is a sign*

*that it considers that there are important matters outstanding that require investigation.*

49. *In my view, importantly, no detriment to any party will flow from the deferrals. Obviously if there has been wrongdoing, then those accountable may have to answer for their deeds, but that is not the true meaning of detriment when considering this type of application. It was for these reasons that I granted the Petitioner's deferral applications."*

30. Mr Lomas in his oral submissions also brought the court's attention to *Skye Assets Fund SPC (in voluntary liquidation)* 2021 (2) CILR 190. I should add that the Liquidator does not suggest that the Petitioner has brought these petitions to put undue commercial pressure on Mr Cohen or the Liquidator. For the avoidance of doubt I find on the evidence before the court that the Petitioner has acted properly in filing the petitions and has not been engaged in any abuse of process.

31. In the cases presently before me I am satisfied that the Petitioner has a clear interest. It is certainly not a "merely shadowy" interest. It has a potential financial interest. The Petitioner has an appropriate interest in preventing dissolution of the Companies until certain further investigations are concluded. The Petitioner has also in fact put its money where its mouth is in presenting the petitions. I do not decline to deal with the petitions on lack of standing. In my judgment the Petitioner has standing. The issues raised by the Petitioner require further investigation.

### *Issue 3*

32. In my judgment, taking into account the interests of justice and considering the balance of convenience and prejudice the balance comes firmly down in favour of making the orders and deferring the dissolutions. The Petitioner has provided good reason for a deferral of the dissolutions. Time for further investigations is plainly necessary. The Liquidator refers to no urgent need for the dissolutions to take place this month. The Liquidator refers to no prejudice arising if the dissolutions are deferred. Justice is best achieved by deferring the dissolutions pursuant to section 151 (3) of the Companies Act to 3 June 2025.

**The Orders**

33. I am therefore content to make orders substantially in terms of the draft. I raise a couple of points:
- (1) In the last recital where there is reference to “*counsel for the parties*” I think that should simply read “*Counsel for the Petitioners and the Liquidator*”;
  - (2) On the liberty to apply to further defer the date of dissolution point, the Petitioner should not leave it until just a couple of days before 3 June 2025 as there is no guarantee that the court will have availability to turn it round so quickly with all its other commitments. The Petitioner best apply before the end of May if an extension is required. The dissolutions cannot however be delayed indefinitely or for an unreasonable length of time and hopefully investigations will be progressed expeditiously. It may be that the possible fraudulent disposition claims are of some merit or it may be as Mr Cohen’s US counsel allege they turn out to be “*manufactured and baseless*”. Time will tell in respect of any claims;
  - (3) Paragraph 4 in respect of 7 days clear notice, insert the word “*written*” before the word “*notice*”.

David Doyle

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**THE HON. JUSTICE DAVID DOYLE**  
**JUDGE OF THE GRAND COURT**