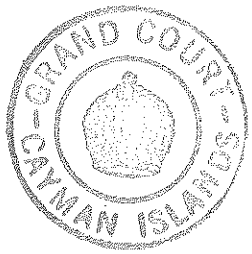
IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD 71/2012

IN THE MATTER OF THE COMPANIES LAW (2010 REVISION)

AND IN THE MATTER OF PAC LTD (IN OFFICIAL LIQUIDATION)



Coram: The Hon. Mr. Justice Angus Foster

Appearances: For the Official Liquidators – Mr. Matthew Goucke and Mr. Peter Kendall of Walkers

For the Liquidation Committee – Mr. Peter McMaster, QC and Mr. Jeremy Snead of Appleby

For two of the Rotana Companies – Mr. Ian Croxford, QC (of the English Bar) instructed by Mr. David Butler of Harneys

Heard: 5th, 6th and 10th November 2015

REASONS FOR ORDER REFUSING SANCTION APPLICATION

1. By Summons dated 25th June 2015 the Joint Official Liquidators (the "JOLs") of PAC Ltd (in Official Liquidation) ("PAC" or "the Company") applied to the Court for sanction by the Court ("the Sanction Application") of a Settlement Agreement dated 16th June 2015 ("the Settlement Agreement"). The Settlement Agreement is between PAC (by the JOLs) and four companies (the "Rotana Companies") which are part of the Rotana Group of companies (the "Rotana Group"), of which PAC is also a member. By the Settlement Agreement substantial claims of PAC against

three of the Rotana Companies are compromised in exchange for a modest payment to PAC together with financing of certain other claims which PAC either has or may have against other actual or potential debtors. The Settlement Agreement is expressly conditional upon the sanction of this Court and is therefore ineffective without such approval. By Order made on 10th November 2015, after three previous adjourned hearings of the JOLs' Sanction Application, I declined to sanction the Settlement Agreement. These are my reasons for doing so.

2. The Sanction Application was brought pursuant to section 110 and Schedule 3 Part 1 of the Companies Law and Order 11 of the Companies Winding Up Rules 2008 (as amended) ("the CWR"). These are well known and I do not think it is necessary to quote their terms here. Their meaning was not in dispute.

3. PAC was incorporated in Cayman on 24th June 1997. The Company was established in order to and did carry on business in Lebanon through a local branch as a television and other media production company, providing programming and other related services mainly to the Lebanese Broadcasting Corporation International SAL ("LBCI). LBCI is a Lebanese company broadcasting television in Lebanon. The sole shareholder of PAC is another Cayman company, Lebanese Media Holding ("LMH"), which is one of the Rotana Companies. The services to LBCI were provided by LMH through PAC. The arrangement between LMH and LBCI was subsequently incorporated into a formal written agreement between them dated 30th

September 2009 (to which PAC was a signatory) known as the Cooperation and Service Agreement ("the CSA Agreement").

4. PAC was registered as a "branch" in Lebanon with the Lebanese Ministry of Economy and Trade and on the Lebanese Register of Commerce. However, according to the Lebanese legal advice obtained by the JOLs that did not make the branch a separate legal entity in Lebanon and under Lebanese law the assets and liabilities of the branch are those of PAC itself. The General Manager of PAC's Lebanese branch was Mr. Pierre El Daher ("Mr. Daher"). Mr. Daher was also and still is the Chairman of LBCI.

5. On 22nd February 2012 Mr. Daher was removed from all management of PAC by LMH as the sole shareholder. On 12th April 2012 PAC was placed into voluntary liquidation by LMH and Joint Voluntary Liquidators ("JVLs") in Cayman and Hong Kong were appointed, including Mr. John Batchelor of FTI Consulting in Hong Kong ("Mr. Batchelor"). However, PAC was unable to pay its debts as they fell due and the directors of PAC declined to sign a declaration of solvency. Accordingly, on 25 April 2012 the JVLs petitioned to bring the liquidation under the supervision of this Court. By order dated 7th May 2012 the JVLs' petition was granted and the JVLs were appointed as Official Liquidators. Among other things, the Court order expressly empowered the JOLs to take all actions necessary to close down PAC's Lebanese branch and to act on PAC's behalf in respect of all its assets in Lebanon.

6. In accordance with Order 9 of the CWR, a Liquidation Committee ("the Liquidation Committee") for PAC was established by the JOLs in July 2012. The LC consists of 4 creditor members. They include Mr. Charbel Khalil representing a creditor, Comedy's Production, which claims approximately USD 889,760.00 and Mr. Geha Elias Anwar, a representative member of a group of 397 former employees of PAC's branch whose creditor claims together total approximately USD 17.3m and who are represented by a Lebanese lawyer, Maitre Georges Kadige.

7. PAC's physical assets are located in Lebanon and principally consist of (i) land and buildings at Adma comprising television studios, warehouses and offices ("the Adma Property"); (ii) plant and equipment, including film-making and other media related equipment, at the Adma Property; (iii) film making equipment and other plant belonging to PAC but which is in the possession of LBCI and held on LBCI's own property. There was and is very little cash. PAC also has substantial receivables, including the potential claims against the Rotana Companies totalling just over USD 44m., which are the subject of the Settlement Agreement, and also an amount of some USD 17.49m due to PAC by LBCI.

8. PAC has significant liabilities of which the principal ones are a total of approximately USD 14.3m in respect of various trade creditors and the total of some USD 17.3m. due to the group of 397 former employees of the Lebanese branch referred to above, who are owed arrears of wages and certain redundancy

related and other entitlements under Lebanese law. There is also a claim of some USD 19m. asserted against PAC by one of the Rotana Companies, LBC SAT Ltd.

9. The principal problem for the JOLs has been the fact that PAC has no significant cash to enable the JOLs to take or follow through the steps necessary to recover and realise assets and to pursue claims in respect of receivables. The JOLs initially hoped to be able to realize PAC's physical assets in order to generate cash to enable them to bring and defend claims and make payments to creditors, particularly the former employees, but their attempts to do so have been constantly obstructed, principally by LBCI. LBCI is occupying (the JOL's contend unlawfully) the Adma Property and is in possession of PAC's assets there. The JOLs have had to instigate litigation in Lebanon against LBCI for removal of LBCI from and for possession of the Adma Property and for recovery of PAC's assets there but the proceedings have been continually thwarted by LBCI and have not yet produced any result. LBCI has also resisted the JOLs' attempts to recover PAC's equipment and plant which is in the unlawful possession of LBCI and kept by LBCI on its own property. Also, as explained above, LBCI is itself indebted to PAC in the sum of USD 17.49m. Despite the JOLs' demands for payment, LBCI has refused to make payment of its indebtedness. The JOLs have initiated litigation in Lebanon against LBCI in an attempt to obtain payment but LBCI continues to resist and the JOLs have not yet been able to obtain judgment.

10. Further difficulties for the JOLs have been created by the fact that certain trade creditors have brought legal proceedings against PAC in the Lebanese courts and have asserted security over some of PAC's assets. In addition, in April 2013 LBCI commenced an arbitration in Paris ("the Paris Arbitration") against LMH pursuant to the CSA Agreement, to which it has joined PAC as a party.

11. In January 2014, LBCI instigated criminal proceedings in Lebanon against members of the Rotana Group, to which it has joined PAC as a defendant, asserting that the winding up of PAC was fraudulently instigated by members of the Rotana Group. It is not clear to me what locus LBCI, which is a debtor and not a creditor of PAC, has to bring such proceedings. However, on 4th July 2015 the former employees, as creditors, represented by Maitre Kadige, instigated criminal proceedings in Lebanon themselves against members of the Rotana Group based on claims of fraudulent bankruptcy of PAC.

12. As a result of having been unable to realize any significant assets to generate cash to enable them to meet the cost of pursuing PAC's legitimate claims and protecting its assets for the benefit of its creditors, the JOLs have to date largely been advancing the cost of the winding up of PAC themselves, They have also not been remunerated to date for their professional services. As at 25 June 2015 the JOLs' remuneration and disbursements, including legal expenses, totalled some USD 2.32m.

13. The Rotana Group is a large conglomerate principally based in Saudi Arabia, some members of which, including PAC, carry on business in Lebanon. The Rotana Group is involved in the production of television, films and music as well operating several hotels and food outlets throughout the Middle East. The Group is part of the Kingdom group of entities, which is also based in Saudi Arabia and ultimately beneficially owned and controlled by a member of the Saudi Royal family.

14. The potential claims of PAC against the three Rotana Companies relate to inter-company debts which, as I have said, amount in total to just over USD 44m. The three Rotana Companies concerned (LBC+ Ltd; Rotana TV Company Limited and LMH) are, like PAC, all Cayman companies and LMH is, as already mentioned, PAC's parent company. PAC's potential claims are based on Deeds of Acknowledgement ("the Deeds") executed by PAC and each of the relevant Rotana Companies on 9th April 2012, by which PAC purported to waive the debts referred to in the Deeds due to PAC by each company. The Deeds were executed only three days before LMH put PAC into voluntary liquidation and at a time when PAC was clearly unable to pay its debts. The timing of the Deeds strongly suggests that they were entered into for the purpose of giving each of the relevant Rotana Companies a preference. Since each of the Rotana Companies and PAC all shared a common shareholder and director they were clearly related parties. The Deeds are each expressly governed by Cayman law and the JOLs' case is that in the circumstances they amounted to voidable preferences under Cayman law and therefore may be set aside. As a result the indebtedness purportedly waived by the Deeds remains due and payable to

PAC. On 26th November 2012 the JOLs, on behalf of PAC, made formal written demand for payment of the indebtedness purportedly waived within 21 days, setting out their case in full and reserving their right to proceed with legal proceedings without further notice if payment was not made. However, the relevant Rotana Companies have not made payment and have disputed the JOLs' claims. Nonetheless, upon legal advice, the JOLs remain of the view that their case, on behalf of PAC, against the relevant Rotana Companies is a strong one.

15. The difficulty for the JOLs, however, was that PAC did not have the money to enable them to fund litigation by PAC against the relevant Rotana Companies. They asked the Liquidation Committee if they were willing to provide funding but without success. They also approached two different professional funding companies in England, again without success in each case. In the circumstances the JOLs considered that the claims would best be resolved by negotiation with the Rotana Companies and a compromise. They accordingly applied to the Court in May 2013 inter alia for power to bring or defend proceedings against or by the relevant Rotana Companies in relation to PAC's claims totaling some USD44m but also for power to compromise those claims on such terms as might be agreed. By Order made on 30th May 2013 such powers were granted to the JOLs. The JOLs subsequently entered into negotiations with a representative company of the Rotana Group which ultimately resulted in the Settlement Agreement of which the JOLs seek sanction by the Sanction Application.

16. The JOL's summons dated 25th June 2015 initiating the Sanction Application was supported principally by the Third Affidavit of Mr. Batchelor ("the Third Batchelor Affidavit") and the First Affidavit of Mr. Kenneth Fung, a senior managing director of FTI Consulting in Hong Kong, who was assisting Mr. Batchelor with the winding up ("the First Fung Affidavit"). In the First Fung Affidavit the principal terms of the Settlement Agreement were summarised but since the Settlement Agreement contained a confidentiality provision the full document was not served with the affidavit.

17. The first hearing of the Sanction Application was on 8th July 2015 but by Order made the same day I adjourned it to a future date to be fixed. This was because very shortly before the hearing an email letter had been received, sent direct to the Court, from Maitre Georges Kadige, the Lebanese lawyer representing the creditor former employees. The email letter stated in no uncertain terms that the former employees "*totally oppose and disagree with the proposed settlement agreement*". Although the Sanction Application had been served by email on members of the Liquidation Committee, I was concerned that, in all the circumstances, in fairness more time should be allowed for the creditors, through the Liquidation Committee, to respond to the Sanction Application in an appropriate way rather than by emails direct to the Court, which is not the procedure in this jurisdiction. It was also agreed at the hearing on 8th July 2015 (although not set out formally in the Order) that the JOLs, through their attorneys, Walkers, should send a detailed letter to the Liquidation Committee explaining fully the practice and procedure relating to the

Sanction Application and recommending that the Liquidation Committee or members thereof should instruct Cayman attorneys to represent them. Such a letter was duly sent approximately one month later by email letter from Walkers dated 7th August 2015.

18. The adjourned hearing of the Sanction Application took place on 1st September 2015. There was no appearance by or on behalf of the Liquidation Committee or any members thereof. However, prior to that hearing date there had been exchanges of emails between (i) Mr. Carlos Abou Jaoude, the Lebanese lawyer representing LBCI (but rather strangely apparently purportedly writing also on behalf also of Maitre Kadige's clients, the former employees), (ii) Maitre Kadige himself and (iii) Walkers for the JOLs. This chain of email correspondence culminated on the day before the hearing, in so far as relevant to the former employee creditors, with a further email, again addressed direct to the Court, from Maitre Kadige and again reiterating at some length the strong objection of his clients to the Settlement Agreement and the reasons why. In the circumstances, and in the absence of anyone appearing at the hearing on behalf of the Liquidation Committee, upon an undertaking to the Court on behalf of the JOLs by their counsel as to the extent of the application towards their own remuneration of the payment of USD 2.5m to be made by the Rotana Companies pursuant to the Settlement Agreement, I approved the JOLs' remuneration. However, as to the Sanction Application, I made what was in effect an Unless Order. I ordered that the Sanction Application was granted but only unless within a specified time frame the

Liquidation Committee or individual members of it failed: (i) to retain Cayman counsel to represent it or them and (ii) to file and serve affidavit evidence setting out the basis of its or their objection to the Sanction Application. If they or it did not fail to do those things, then they or it we to agree, within a further specified time frame thereafter, with the JOLs and the Court a date for the further hearing of the Sanction Application.

19. Two members of the Liquidation Committee, namely (i) Mr. Anwar, the representative member of the former employees, represented by Maitre Kadige, and (ii) Mr. Khalil, the representative of Comedy's Production ("together the Objectors"), in compliance with the "unless" terms of the Order dated 1st September 2015, subsequently instructed Cayman attorneys, namely Appleby. An affidavit by Mr. Carlos Abou Jaoude, ("the Abou Jaoude Affidavit"), the Lebanese lawyer representing LBCI, was also served, purportedly on behalf of the Objectors but clearly also on behalf of LBCI, setting out objections to the Settlement Agreement and the Sanction Application. It was also thereafter agreed that the further hearing of the Sanction Application would be on 5th October 2015.

20. At the hearing on 5th October the Objectors were represented by their newly instructed Cayman attorneys, Appleby. On their application and on an undertaking given to the Court by their leading counsel regarding continuing confidentiality, a complete, un-redacted copy of the Settlement Agreement was ordered to be disclosed by the JOLs to Appleby as the Objectors' attorneys on certain terms and

conditions. Further, in light of the Objectors request for a further short adjournment of the hearing to enable discussion(s) with the JOLS regarding possible funding of litigation of PAC's claims against the Rotana Companies, by order dated 7th October 2015 the hearing of the Sanction Application was further adjourned for a month to 5th November 2015. The adjournment was expressly conditional on various terms and directions. These included a direction that the JOLs should take up the Objectors' invitation to attend a meeting or meetings by a specified date to consider and discuss the possible funding by an unidentified funder of the cost of litigation of, rather than the compromise of, PAC's claims against the Rotana Companies. It was also an express condition of the Order that the proposed funder was not LBCI in view of the obvious conflict of interest between the Objectors (and all other creditors of PAC) on the one hand and LBCI as a significant debtor on the other hand. Other directions were also included in the Order in relation to the details of the said meeting(s) and discussion(s).

21. It was and remains obvious that LBCI, and therefore also its lawyer, Mr Abou Jaoude, has a clear conflict of interest with the creditors of PAC, including the former employees. LBCI is a significant debtor of PAC in an amount of USD17.49m. It is also in unlawful occupation of PAC's property at Adma and in unlawful possession of PAC's equipment and plant, both that held at Adma and that held at LBCI's own premises. LBCI has been obstructive to the JOL's attempts to recover and realise PAC's assets in order to enable them to pursue claims and ultimately to pay creditors. LBCI has a very obvious interest of its own in seeking to prevent

sanction of the Settlement Agreement because, as explained below, the Settlement Agreement provides for PAC to be funded by LMH in pursuing its claim against LBCI in the Paris Arbitration. Furthermore, Mr. Daher, as chairman of LBCI obviously would not want LMH to assist PAC through the JOLs to make any claim against him based on his alleged mismanagement as former general manager of PAC. In the circumstances it seems to me wholly inappropriate for Mr. Abou Jaoude to purport to speak for the former employees and other creditors of PAC as he sought to do in the Abou Jaoude Affidavit. He and LBCI are irrelevant to the question whether the Settlement Agreement should be sanctioned by this Court; that is solely an issue for the creditors of PAC and the JOLs.

22. At the hearing on 5th November 2015 the majority of the Liquidation Committee as a whole appeared by the same Cayman counsel, Appleby. In addition PAC's parent company, LMH, as the sole contributory, together with LBC SAT Ltd, as a purported creditor in respect of its claim of USD 19m, both appeared by leading counsel from London, who applied for leave to be heard on the Sanction Application. Both LMH and LBC SAT Ltd are, of course, also party to the Settlement Agreement. It was agreed by all counsel that since PAC is clearly insolvent, LMH, as a contributory, should not be heard on the Sanction Application. However, the JOLs accepted that, at least for that purpose, LBC SAT Ltd, may be treated as a potential creditor. Having then heard argument, in in the exercise of my discretion in the circumstances, I gave leave for leading counsel to be heard on behalf of LBC SAT Ltd *de bene esse* and duly heard his submissions. This was on the basis that he would

then withdraw from the rest of the hearing because matters concerning the merits of PAC's claims against the Rotana Companies and of the Settlement Agreement would be discussed as part of the Sanction Application.

23. Since LBC SAT Ltd, as a party to the Settlement Agreement, had an obvious interest in it being sanctioned, it was clearly not an independent creditor. Furthermore, as leading counsel for the Liquidation Committee pointed out, the Settlement Agreement expressly provides not only that it is in full and final settlement of all and any claims which PAC may have against the Rotana Companies but also of all and any claims which the Rotana Companies may have against PAC. The latter part of the provision would obviously include any claim which LBC SAT Ltd has against PAC, namely its possible claim for USD 19m. LBC SAT Ltd would therefore cease to be a creditor if the Settlement Agreement was sanctioned. For a purported creditor to support sanction of a compromise whereby it ceased to be a creditor at all is hardly a convincing position for a creditor, which seeks to appear and make representations as such, to take. In the whole circumstances I did not attribute any significant weight to the submissions of leading counsel for LBC SAT Ltd in support of the Sanction Application in reaching my conclusion.

24. The evidence at the hearing on 5th November was that no meeting had in fact taken place between the Liquidation Committee and/or its representatives and the JOLs and/or their representatives as directed by the Order dated 7th October. Instead there had been a discussion between the former employees' Lebanese and Cayman

lawyers (Maitre Kadige and Appleby respectively) on the one hand and the JOLs' Cayman lawyers (Walkers) on the other hand by telephone and video conference shortly before the deadline directed by the Order. The position as stated in that discussion and as clarified and expanded upon in subsequent correspondence, which was produced at the hearing, and in the submissions of leading counsel for the Liquidation Committee at the hearing was that a group of 60 or 70 of the former employee creditors had recently obtained from a Lebanese bank an offer of a loan of up to USD 1m. to be used to finance the cost of litigating the claims against the relevant Rotana Companies in Lebanon. The former employees proposed that the litigation should take place in Lebanon rather than in Cayman and that the proceedings would be pursued by means of the JOLs joining as complainants in the former employees' existing criminal proceedings against the Rotana Companies. Alternatively, the JOLs could commence their own proceedings in Lebanon which could be joined to the former employees' proceedings. It was accepted by all parties that litigating PACs' claims against the relevant Rotana Companies in Cayman would be very much more expensive and likely to cost considerably more than USD 1m. Given the logistical problems of litigating the claims in Cayman, the former employees considered that attempting to do so would not justify the substantially greater expense, funding of which was anyway not available. The position in Lebanon is entirely different. Proceedings there would be very significantly less expensive and litigation funding of up to USD 1m. would be more than sufficient to enable the claims against the Rotana Companies

to be litigated there. The former employees propose too that the funding which they have obtained would be used also to meet the JOLs' future expenses and remuneration in pursuing the relevant Rotana Companies in Lebanon. The former employees and their legal adviser, Maitre Kadige, firmly believe that having the JOLs join their proceedings against the Rotana Companies in Lebanon would considerably enhance their prospects of extracting a favourable settlement from the Rotana Companies, whereas the full and final settlement of all claims by PAC against the Rotana Companies as provided for by the Settlement Agreement would very significantly worsen their position in the existing Lebanese proceedings.

25. The Settlement Agreement is subject to a confidentiality provision but, as made clear by the Order dated 5th October 2015, the Liquidation Committee had been provided by the JOLs with summaries of the principal terms of the Settlement Agreement by the JOLs on previous occasions and also by the JOLs' affidavit evidence as served. The Order authorized the Liquidation Committee to be advised on the Settlement Agreement by their Cayman attorneys, Appleby, on the basis of those summaries, albeit only Appleby were, pursuant to the Order, to be provided with a full copy of the Settlement Agreement subject to a confidentiality undertaking. However, both leading counsel for the Liquidation Committee and counsel for the JOLs did refer in detail to the whole terms of the Settlement Agreement at the hearing on 5th November 2015.

26. The Settlement Agreement provides for a payment by the Rotana Companies to PAC of a sum of USD 2.5 m. It also provides, subject to various terms and conditions, that LMH's English solicitors, Allen & Overy, will act for PAC as well as LMH, at LMH's cost, against LBCI in the Paris Arbitration and also in possible future proceedings against Mr. Daher in respect of his alleged mismanagement as former general manager of PAC. As already explained, PAC's claim against LBCI is for approximately USD 17.3m. The Settlement Agreement is to be in full and final settlement of PACs' claims against the Rotana Companies which total just over USD 44m.

27. As pointed out in detail by leading counsel for the Liquidation Committee, the Settlement Agreement contains provisions which in effect pass conduct and control of PAC's claim against LBCI in the Paris Arbitration entirely to the Rotana Companies, LMH in particular. This includes the unfettered power to settle the claim against LBCI without the consent of the JOLs or the sanction of this Court. Also, in the event of a settlement agreement between LMH and LBCI the amount payable to PAC is capped at USD 4.5m. There is not only considerable uncertainty for PAC in relation to its claim against LBCI but also in relation to the possible claim against Mr. Daher. Furthermore, the payment of USD 2.5m to be made under the Settlement Agreement would be enough to settle the JOL's expenses and remuneration and very little, if anything, more. It would provide nothing for the creditors.

28. However, *"It is not for the court to speculate whether the terms of the proposed compromise were the best that could have been obtained; or whether the proposed compromise would have been better if it did not contain all the terms that it does contain."* (per Chadwick LJ in *Re Greenhaven Motors Ltd (in liquidation)* 1999 BCLC 635 at 643). As counsel for the JOLs said, the Settlement Agreement is what has been negotiated by the JOLs and it is that of which they seek sanction.

29. This is an unusual case because, while the JOLs obviously seek sanction of the Settlement Agreement, the creditors, as represented by the Liquidation Committee, are emphatically opposed to the Settlement Agreement. They contend that it would be of no benefit to them as the stakeholders in the liquidation. The payment to be made pursuant to the Settlement Agreement would do no more than pay the JOLs. PAC's claims against the Rotana Companies totalling some USD 41m, which they say are strong ones, would be waived and it's claim against LBCI would be effectively put into the hands of LMH who could settle it for its own reasons without recourse to the JOLs, in which event PAC would receive a maximum of USD 4.5m; a relatively nominal sum in the circumstances and unlikely to be of any significant benefit to them. They submit that overall the Settlement Agreement offers no reliable prospect of any recovery by the former employees and other creditors represented on and by the Liquidation Committee. They also argue that if the Court sanctions the Settlement Agreement it would be highly prejudicial to the prospects of any recovery against the Rotana Companies in Lebanon because its terms would provide the Rotana Companies with a defence to

those and any other claims. The creditors consider that sanction of the Settlement Agreement will imperil what they regard as their only realistic chance of recovery.

30. The JOLs themselves have, since an early stage in the winding up of PAC, been of the view, based on legal advice, that the case against the Rotana Companies is a strong one. As I have already mentioned, by Order dated 30 May 2013 the JOLs obtained the authorization of the Court to bring legal proceedings in the name and on behalf of PAC against the Rotana Companies for recovery of the debt totalling some USD 44m. That was on the basis of the JOLs' submissions that they had a good case which warranted being pursued. Even after the JOLs had negotiated, agreed and signed the Settlement Agreement they nonetheless remained of the view that there was a strong case against the Rotana Companies. In their evidence in support of the Sanction Application they said that they *"remain highly sceptical of the legitimacy of the transactions* [the Deeds] *effected by the Rotana Group immediately prior to the Company's liquidation which give rise to* [PAC's claims against the Rotana Companies]" (see: First Affidavit of Kenneth Fung sworn on 25th June 2015, para 13).

31. While the JOLs identified some other factors weighing against successful litigation against the relevant Rotana Companies, it is plain that they were relatively insignificant in the JOLs' considerations and that the real reason for the JOLs not pursuing such litigation was their inability to fund it. In the JOLS' principal affidavit in support of the Sanction Application it was made clear that, notwithstanding the

other factors mentioned, *"to the extent that there were funds available to the Liquidators to pursue such proceedings then such a strategy would have been capable of being considered more closely, noting the size of the potential claim against the* [relevant Rotana Companies]" (see: First Affidavit of Kenneth Fung, para 13).

32. As explained above, the JOLs attempted to obtain funding for such litigation from the members of the Liquidation Committee and subsequently they attempted to obtain professional litigation funding from 2 such sources in the UK, in each case without success. At the time when the JOLs applied to the Court in May 2013 for authorisation to bring proceedings against the Rotana Companies, they also applied for and were granted the power to compromise the debts owed by the Rotana Companies. However, in the JOLs's evidence in support of that application they said *"It is possible that after litigation has commenced the* [Rotana Companies] *may wish to enter into settlement discussions in order to avoid protracted and costly litigation"* (my emphasis) (see: Third Affidavit of John Batchelor sworn on 9th May 2013, para 38).). At that stage the JOLs seem to have anticipated settlement discussions after they had commenced proceedings against the Rotana Companies but of course they never did commence such proceedings because they did not have the funds to enable them to do so. It was the lack of finance available to them that caused the JOLs to enter into the Settlement Agreement. Although there was no evidence at that time of the cost of litigating against the Rotana Companies in Lebanon, it would have been clear was that the cost of litigating the claims in

Cayman could be as much as USD 2m, a sum which was clearly not available to the JOLs at that time.

33. These were the circumstances when the Sanction Application first came before the Court on 8th July 2015. However, over the course of the four months thereafter, as explained above, culminating with the final hearing on 6th November 2015, the circumstances had changed significantly and it was the circumstances at the time of the hearing on 6th November 2015 which, in my opinion, were relevant.

34. In particular, since the hearing on 8th July, the Liquidation Committee have, appropriately, instructed Cayman attorneys and made their continuing strong opposition to the Settlement Agreement quite clear. They have also demonstrated their clear preference for the claims against the Rotana Companies to be pursued rather than waived as by the Settlement Agreement. Moreover, a group of the principal creditors, the former employees, have obtained an agreement for bank financing of up to USD 1m of litigation by the JOLs against the relevant Rotana Companies in Lebanon. Since lack of financing was the JOLs principal reason for not pursuing the Company's claims against the Rotana Companies and was the cause for their entering into the Settlement Agreement instead, this seems to me to be to a very material change in the relevant circumstances.

35. The principal authority establishing the appropriate approach to be taken by the Court when considering an application for sanction of a compromise by liquidators is the *Greenhaven Motors* case (supra). The leading judgment of the Court in that

case, which was in the English Court of Appeal, was by Chadwick LJ, who is now the President of the Cayman Islands Court of Appeal. That judgment has also been cited with approval by the Cayman Islands Court of Appeal itself in *Re High Risk Opportunities Hub Fund Limited In Liquidation* (24th June 2004, unreported) and has also been relied upon in several cases at first instance in this Court since: (see: *Trident Microsystems (Far East) Limited* [2012 (1) CILR 424]; *DD Growth Premium 2X Fund* [2013 (2) CILR 361] and *Re ICP Strategic Credit Income Fund Limited and Another* [2014 (1) CILR 314], all of which I have fully considered. The *Greenhaven Motors* case, like the present case, concerned a settlement agreement compromising and releasing claims of the company in liquidation which the liquidator could not enter into without the sanction of the Court. In his judgment Chadwick LJ said (p. 643) that in his view the correct approach was identified in an earlier case, *Re Edennote Ltd (No 2)* [1997] 2 BCLC 89 in which the judge (Lightman J) said (p. 92):

> *"Where a liquidator seeks the sanction of the court and takes the view that a compromise is in the best interest of the creditors, in any ordinary case, where (as in this case) there is no suggestion of lack of good faith by the liquidator or that he is partisan the court will attach considerable weight to the liquidator's views unless the evidence reveals substantial reasons why it should not do so, or that for some reason or other his view is flawed."*

Chadwick LJ then went on to say in the *Greenhaven Motors* case:

"In deciding whether or not to sanction a proposed compromise the court must consider whether the interests of those, whether creditors or contributories, who have a real interest in the assets of a company in liquidation are likely to be best served (i) by permitting the company to enter into that compromise with all the terms that it contains; or (ii) by not permitting the company to enter into that compromise. It is not for the court to speculate whether the terms of the compromise were the best that could have been obtained; or whether the proposed compromise would have been better if if it did not contain all the terms that it does that contain. Unless it is satisfied that, if the company is not permitted to enter into the compromise on the terms which the liquidator has negotiated, there will then be better terms or some other compromise on offer, the decision is the proposed compromise or no compromise at all.

In reaching that decision, the court may have to weigh the different interests of creditors and contributories and, perhaps, the different interests of preferential and non-preferential creditors. It will not give weight to the wishes of those who will be unaffected whichever way the decision goes; for example, the interests of contributories who have no realistic prospect of receiving a distribution in any foreseeable circumstances, or the wishes of preferential or secure creditors who will be paid in full in any event. Subject to that, the court will give weight to the wishes of creditors and contributories whose interests it has to consider, for the reason that creditors

and contributories, if uninfluenced by extraneous considerations, are likely to be good judges of of where their own best interests lie. For the same reason the court will give weight to the views of the liquidator, who may, and normally will, be in the best position to take an informed and objective view. But, as I have said, at the end of the day it is for the court to decide whether or not to sanction the compromise."

36. In reaching my conclusion that in the exercise of my discretion I should not sanction the Settlement Agreement having regard to all the unusual circumstances of this case, I applied the principles explained in the *Greenhaven Motors* judgment as set out above and as adopted and considered in the other Cayman cases which I have mentioned.

37. In the present case, as I have already mentioned, it was agreed by all counsel at the hearing of the Sanction Application that, since this is an insolvent liquidation, the sole contributory (PAC's parent company, LMH), which is a party to and beneficiary of the Settlement Agreement as a debtor, should not heard on the Sanction Application. In my view, in the circumstances, the present sole contributory as such did not have any realistic prospect of receiving a distribution from PAC's liquidation estate and its views should not be given any weight. Accordingly, it seemed to me that in the circumstances of this case it was the differing views of the JOLs and the wishes of the creditors which I should weigh in reaching a decision on the Sanction Application.

38. The JOLs themselves clearly considered that PAC has strong claims against the relevant Rotana Companies for a total of just over USD 44m. Their principal reason for seeking to compromise those claims on the terms of the Settlement Agreement was their lack of available funding with which to finance litigation of the claims. In reality they had no practical alternative at the time but to seek a compromise of the claims. The terms on which they have done so provide for a payment of USD 2.5m which will enable them to meet their own arrears of fees and expenses but little, if anything, more. It will certainly not leave anything at all for the creditors. The JOLs emphasised that the principal rationale of the Settlement Agreement was to enable PAC's claim against LBCI for USD 17.49m. in the Paris Arbitration (it was not clear to me but I assumed that it is in fact a counter-claim since the Paris Arbitration was initiated by LBCI against LMH pursuant to the CSA Agreement and PAC was joined as a party by LBCI) to be funded by PAC's parent, LMH. The JOLs point out too that the Settlement Agreement also provides for LMH to fund a possible future claim by PAC against Mr. Daher in respect of his alleged mismanagement of PAC, although no detail of such a claim, the basis for it or what value it may have has been provided either in the Settlement Agreement or otherwise. However, as I have already mentioned, the Settlement Agreement is not anyway as simple as this. In reality it provides for the conduct and control of PAC's claim against LBCI in the Paris Arbitration, including any settlement thereof, to be taken over entirely by LMH. The JOLs would have no direct, and little indirect, involvement. As leading counsel for the Liquidation Committee put it, there is a cumulative exclusion of the

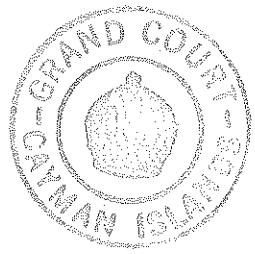
JOLs from any meaningful participation on behalf of PAC in the Paris Arbitration. The JOLs would not even have any right to veto any settlement between LMH and LBCI of PAC's claim, which, it is provided, may be agreed by LMH without the JOLs' consent and implemented without any Court sanction. As far as a possible claim against Mr. Daher is concerned, as I have already said, there was no evidence of the basis for it; of the supposed prospects of success or that it has significant value.

39. In my view the wishes of the creditors, particularly those of the former employees, who together form the largest creditor group, were, in the circumstances of this case, of greater weight. As stated in the *Greenhaven Motors* judgment quoted above, the Court will give weight to the wishes of the creditors for the reason that they are likely to be good judges of where their own best interests lie. The creditors are strongly opposed to the Settlement Agreement. They see no benefit from it for themselves, as creditors, in waiving strong claims for some USD 44m. against the relevant Rotana Companies and substantial prejudice to their proceedings in Lebanon in doing so. They have now arranged litigation funding to enable those claims to be pursued by the JOLs in Lebanon. The JOLs were critical of the proposal that the litigation should take place in Lebanon. However, in my opinion it is not for this Court to comment on an unfamiliar system of substantive and procedural law or to second guess the views of the creditors, on legal advice from Maitre Kadige, as to the likelihood of success, including by obtaining a substantial settlement, in proceedings in Lebanon. To my mind, in the circumstances here, the prospect of success in Lebanon against the Rotana Companies outweighs no prospect at all in

Cayman. The JOLs also argue that there is no proposed funding by the creditors of the claim for USD 17.49m. against LBCI. However, there is no proposal that that claim should be waived and if the JOLs succeed in recovering substantial funds from the Rotana Companies in proceedings in Lebanon they would have the resources to be able to pursue that claim. The JOLs also have claims underway in Lebanon against LBCI for recovery of the Adma Property and for possession of PAC's plant and equipment held by LBCI, as mentioned above. In any event, in the final analysis, as was pointed out, a strong claim for USD 44m. is worth substantially more to the liquidation estate than a claim for USD17.49m.

40. I have, of course, attached considerable weight to the views of the JOLs but in my opinion this is not an ordinary case and, as I have already said, some of the circumstances have changed since the JOLs negotiated the Settlement Agreement. I agree with the JOLs that the approach of the Liquidation Committee since then, in practical terms, has been unsatisfactory, particularly their significant delay in reacting appropriately to the Sanction Application and the extraordinary purported involvement of LBCI through Mr. Abou Jaoude despite its very clear conflict of interest with the creditors. Nonetheless, in the end of the day it is the creditors, as represented by the Liquidation Committee, who have the interest in the assets of PAC and it is ultimately they who, in my view, are the best judges of where their own interests lie in the circumstances of this case. They have now obtained funding to enable their interests, as they perceive them, to be pursued by the JOLs. Although it is for the Court to decide whether or not to sanction the proposed

compromise as reflected in the Settlement Agreement and the wishes of the creditors are obviously not conclusive, the Court must consider whether the interests of the creditors are likely to be best served by sanctioning the Settlement Agreement or not doing so. In carrying out that exercise the Court will clearly give significant weight to the views of the creditors. In all the circumstances of the present case, for the reasons set out above, I concluded that I should not sanction the Settlement Agreement. Accordingly I refused the Sanction Application.



11 th December 2015

The Hon. Mr. Justice Angus Foster