

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN
3

4 CAUSE NO. 830/03

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6 IN THE MATTER OF THE COMPANIES LAW (2003 REVISION)
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8
9 AND IN THE MATTER OF PARMALAT CAPITAL FINANCE LIMITED
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12 **Appearances:** Ms. Sandie Corbett of Walkers for the Petitioning Creditors -
13 Food Holdings Limited and Dairy Holdings Limited
14 Mr. Alan Turner and Ms. Andrea Dunsby of Turner &
15 Roulstone for six creditors
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18 **Before:** Hon. Justice Henderson
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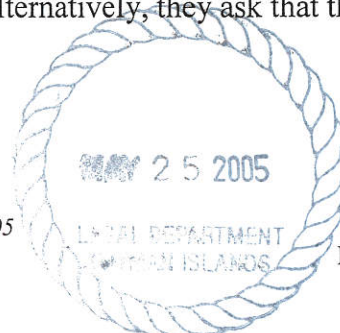
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21 **Heard:** February 4, 2005
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24 **JUDGMENT**
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27 Mssrs. James Cleaver and Gordon McRae of Ernst & Young were appointed provisional
28 liquidators of Parmalat Capital Finance Ltd. ("the Company") by my order on December
29 24th, 2003. Six of the creditors (Parmalat Finance Corporation BV, Olex SA, Parmalat
30 Netherlands BV, Parmalat SpA, Parmalat Participacoes do Brasil Ltda, and Parmalat
31 Soparfi SA) ("the Objecting Creditors") and the Company itself then applied to remove
32 the provisional liquidators and appoint two others in their stead. They were unsuccessful.
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34 The Petitioning Creditors (Food Holdings Limited and Dairy Holdings Limited) now ask
35 for their costs to be paid by the Objecting Creditors; alternatively, they ask that their costs
36 be paid now but from the assets of the Company.



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2 The hearing lasted five days and required extensive preparation by the attorneys
3 involved. The parties are agreed that the Petitioning Creditors must have their costs; the
4 dispute is over who should pay them and when.

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6 The *Insolvency Rules, 1986* are designed to encourage all creditors to make their views
7 known to the court. The proceeding is, of course, conducted for the ultimate benefit of
8 these creditors. On some questions, the court will solicit their views. It would be wrong
9 in principle to set up any unnecessary disincentive to creditor participation in the process.
10 Liability to pay a costs award is one such disincentive.

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12 It is true that in ordinary civil litigation costs usually follow the event. That rule can have
13 only limited application in the special case of an insolvency proceeding. When a creditor
14 has acted reasonably in making its views known on a subject in which it has a legitimate
15 interest, it should not be liable to an award of costs. Where the creditor's views are
16 expressed by means of a formal application to the court and it fails to get what it asks for,
17 the outcome will not, if it has acted reasonably, subject it to liability for the costs of the
18 opposing parties.

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20 By agreement of the parties, my original order appointing the Joint Provisional
21 Liquidators was treated as having been made *ex parte*. As a consequence, the application
22 by the Objecting Creditors in February 2004 was the first opportunity available to them to
23 express their opinion on the identity of the provisional liquidators. There was nothing

1 unreasonable in the manner in which they presented their unsuccessful application. It
2 follows that the application by the Petitioning Creditors for an award of costs against the
3 Objecting Creditors is dismissed.

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5 The Petitioning Creditors are entitled to their costs from the assets of the Company.

6 Should that award be made now, or only after the petition has been heard?

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8 The Italian administrator of the Parmalat Group, Dr. Bondi, has been engaged for some
9 time in an attempt to restructure the Group's affairs and enable it to continue as a going
10 concern. The petition itself may never be heard. If it is, that hearing may take place
11 months or even years in the future. The facts relevant to an award of costs are before the
12 court; there is no reason to think anything more will be learned in the future which bears
13 upon the Petitioning Creditors' entitlement. In these circumstances, I consider that the
14 Petitioning Creditors are entitled to the sort of order commonly made in the Cayman
15 Islands in similar circumstances.

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17 I award to the Petitioning Creditors their costs of the February, 2004 application as costs
18 in the provisional liquidation, to be paid from the assets of the Company.

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20 Dated this 18th day May, 2005

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Henderson, J.

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Henderson, J.

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Judge of the Grand Court

