

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO. C 448/94

IN THE MATTER OF UNIVERSAL TOURS LIMITED

AND

IN THE MATTER OF THE COMPANIES LAW

For the petitioner: Mr. Olivaire Watler

HARRE CJ.

JUDGMENT

In my judgment the purpose and effect of S. 85 of the Companies Law (R) is identical with that of S. 425 of the English Companies Act 1985 which in turn reenacts S. 206 of the 1948 Act. It is to empower the court, on application, to order a meeting of creditors or members and, upon such meeting having been held, to sanction a compromise or arrangement approved by a three fourths majority so that it becomes binding on the company, its members and creditors, and any liquidator and contributories.

In this application it was argued that the section can also be used by analogy to obtain the sanction of the court for an arrangement approved by the sole shareholder and the only known creditor without any of this procedure having been gone through. It became clear during the submissions ably made by Mr. Olivaire Watler that the real purpose of the application was to obtain consequential orders under S.

86, in particular an order that the Cayman company involved in the arrangement be dissolved without winding up.

That in my view is not the purpose of SS 85 and 86 at all. S.86 presupposes that an order sanctioning a compromise or arrangement has been made and that order is only properly made in accordance with the procedure set out in S. 85. The purpose of S. 85 is to remedy, by recourse to the procedure thereby prescribed, the absence of that individual agreement by every member of the class to be bound by a scheme which would otherwise be necessary to give it validity.

In this case, all parties agree to what is proposed. It is unnecessary to invoke S. 85 and this application is misconceived. It is consequently dismissed. It is for the parties in such circumstances to devise the arrangements which are binding upon them.

That said, it may be of some use to those concerned if I end this ruling by saying against that my refusal of sanction under S. 85 is purely for the reason that I think that it is unnecessary, and not because of any perceived objection by the Court to the arrangement.



29th December 1994

G.E. Harre
Chief Justice