

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

CAUSE NO. FSD 9 OF 2018 (IKJ)

IN THE MATTER OF THE COMPANIES LAW (2016 REVISION) (AS AMENDED)

AND

IN THE MATTER OF LEYOU, INC.

IN CHAMBERS

Appearances:

Mr Stephen Atherton QC and Mr Jan Golaszewski of Carey Olsen for
CDB-CITIC (“**the Applicant**”)

Mr James Eldridge and Mr Malachi Sweetman of Maples and Calder on
behalf of Leyou, Inc (“**the Company**”)

Mr Chris Keefe of Walkers on behalf of Carlyle Asia Growth Partners
IV, L.P. and CAGP IV Co-Investment L.P. (“**the Petitioners**”)

Before: **The Hon. Justice Kawaley**

Heard: **29 May 2018**

Date of Decision: **30 May 2018**

Draft Ruling circulated: **30 May 2018**

Ruling delivered: **31 May 2018**



HEADNOTE

Winding-up petition-original petitioners compromising debt as part of merger-substitution application

SUMMARY RULING ON APPLICATION TO BE SUBSTITUTED AS PETITIONER

1. The Petitioners are unpaid redemption creditors who after petitioning to wind up the Company as creditors on the grounds of insolvency agreed to compromise their debts and permit the Company to implement a merger agreement ("the Merger"), on terms that they would receive a reduced payment and seek the dismissal of their Petition. All preferred shareholders save for the Applicant have apparently followed a similar course. The original Petition now stands adjourned to July 23, 2018.
2. The Petition was first heard on February 28, 2018 and adjourned to yesterday's date to enable the Applicant, the sole redeemer not to have compromised its claim, to pursue a substitution application. That application was made by Summons dated May 15, 2018, which was listed for hearing on May 29, 2018. Counsel did well to compress their arguments into just over 2 hours, but nevertheless I felt compelled to reserve judgment.
3. The Applicant contends that it is either a preference shareholder or a redemption creditor. Although it served a redemption request which the Company belatedly honoured paying in full the amount the Applicant now accepts is due, the Applicant asserts that it lawfully withdrew its redemption request before it was honoured and that the monies tendered on behalf of the Company by its subsidiary could not lawfully have been paid by the Company (the Applicant declined to accept the monies). Its draft Petition essentially complains about the Company's conduct in responding to its redemption request, in particular in refusing to acknowledge it was still a shareholder and depriving it of its rights to dissent to the Merger.
4. The Merger which I am satisfied will potentially rescue the Company from insolvency cannot proceed with the Sword of Damocles in the form of a winding-up petition hanging over it. The substitution application required the Court to decide two headline issues:
 - (a) whether the Applicant had been validly redeemed, or whether the Applicant was still a shareholder/redemption creditor with standing to be substituted for the Petitioners and exercise dissenting rights in respect of the Merger;
 - (b) if the Applicant had standing to petition, should the Court exercise its discretion to grant or refuse the application?
5. The first broad question involved complicated legal issues upon which I found it impossible to reach a quick concluded view. On the other hand it was pellucidly clear that the discretionary factors weighing against permitting substitution (most obviously alternative remedies and a draft Petition the merits of which appeared extremely tenuous) far outweighed those in favour. In these circumstances, justice appears to me to require an expedited decision on the substitution application so that the parties involved with promoting the Merger can know where they stand as soon as possible.



6. Accordingly for reasons which I will flesh out in my Judgment on the issue of standing, which is further reserved along with the issue of costs, the substitution application is refused in any event.



HON. JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT

