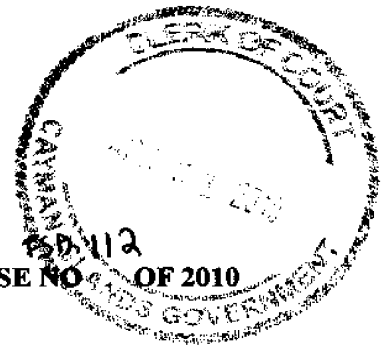
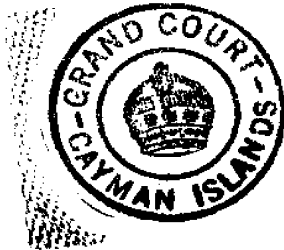


**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

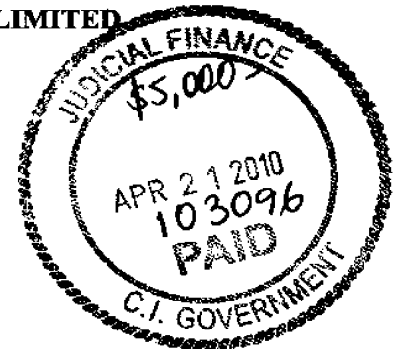
CAUSE NO. 112 OF 2010



**IN THE MATTER OF THE COMPANIES LAW (2009 REVISION)
AND IN THE MATTER OF HURLEY'S (GRAND HARBOUR) LIMITED**



WINDING UP PETITION



TO THE GRAND COURT

The humble petition of L. Michael Bell of PO Box 30236 SMB, Grand Cayman, Cayman Islands (the "Petitioner") shows that:

- 1 Hurley's (Grand Harbour) Limited (the "Company") was incorporated and registered as an ordinary Resident company on 1 April 1998 pursuant to the Companies Law (1995 Revision) under registration number 80789.
- 2 The registered office of the Company is situated at Stuarts' Corporate Services Ltd, PO Box 2510, 4th Floor, Cayman Financial Centre, 36A Dr. Roy's Drive, George Town, Grand Cayman KY1-1104, Cayman Islands.
- 3 The share capital of the Company is US\$50,000 divided into 40,000 "A" shares, and 10,000 "B" shares each with a nominal or par value of US\$1.00. According to the Company's Register of Members there are 100 issued shares; 80 Ordinary "A" Class shares issued (but not fully paid up) to K. Leonie Merren and 20 Ordinary "B" Class shares issued (but not fully paid up) to the Petitioner, representing 20% of the Company's issued share capital.
- 4 The holders of the Class A shares and Class B shares have the right to receive notice of, attend, speak and vote at general meetings of the Company. The

articles provide for the appointment of three "A" directors and one "B" director. Only Class A shareholders may vote in relation to the appointment or removal of an "A" director and only Class B shareholders may vote in relation to the appointment or removal of a "B" director.

- 5 The Company's Memorandum of Association provides that the objects for which the Company was established are unrestricted and that the Company has full power and authority to carry out any object not prohibited by law. The principal objects for which the Company was established are to operate (I think this contradicts other points), a supermarket business known as Hurley's and located at Grand Harbour, Grand Cayman.
- 6 The 'A' directors of the Company are K. Leonie Merren, Randy Merren and Bryce Merren.
- 7 The Petitioner was appointed as a 'B' director on 22 September 2009.
- 8 The Petitioner relies upon the facts and matters set out below in support of its prayer that it is just and equitable that the Company be wound up.

Background

- 9 The Petitioner, via his 100% ownership of Caribbeus Architectural Developments Ltd, was and remains the developer and builder of the Grand Harbour Development, a mixed residential and commercial real estate project at Red Bay, Grand Cayman. In that capacity, the Petitioner assisted the Merren family to establish and finance the Hurley's Grand Harbour Supermarket as both an investor in and a shareholder of the Company for that purpose. The Merren family needed financial assistance to bring the supermarket into operation.
- 10 The Petitioner contributed to the Company the developed land and building, which was valued at 21 July 1999 at approximately US\$8.2 million. The Petitioner's contribution to the establishment of the Company was valued at US\$2.703 million, for which the Petitioner was issued the 20 "B" class shares

referred to above. The balance was funded by way of a loan to the Company of approximately US\$5.5 million, which the Company is currently repaying.

- 11 The Company effectively became a quasi partnership between the Merren family and the Petitioner.

Participation in Management of the Company

- 12 The Company, to the best of the Petitioner's knowledge, information and belief, did not hold a General Meeting (either Annual or Extraordinary) from at least September 2004 until an Extraordinary General Meeting which was held on 9 October 2009. The Petitioner attended this meeting by proxy with the hope of addressing various concerns about the management of the Company, but the meeting was a formality at which the other shareholder was represented by a proxy and none of the directors attended. No opportunity was afforded to the Petitioner to raise questions or receive information.
- 13 The Company has failed to provide full and frank disclosure of financial information relating to the Company's business, including cash reconciliation statements, or accounts to the Petitioner despite repeated requests since at least 2003. Some information has been provided, which has led to additional questions, many of which remain unanswered.
- 14 Faced with repeated refusals or failures to respond to requests for further information, the Petitioner was appointed as 'B' director on 22 September 2009. Despite this appointment as a director, the Company continues to provide incomplete and selective information in relation to the management of the Company.
- 15 Following the appointment of the Petitioner as a director, the Company has refused to release specific information to the Petitioner concerning the Company's financial position. The Company has sought to justify this refusal on the grounds that the Petitioner's concerns qua shareholder mean that the information will be used to breach fiduciary duties owed by the Petitioner, qua director. The Petitioner avers that steps taken qua director to investigate the conduct of the other directors and the financial position of the Company

generally are entirely consistent with the fiduciary duties owed to the Company as a director.

- 16 Requests made by the Petitioner for release of financial and other information held by the Company's bankers, First Caribbean International Bank ("FCIB") have met with refusal.
- 17 Further, since the Petitioner's appointment as a director no board meetings have taken place, save for one board meeting at which no substantive business was conducted.
- 18 Accordingly, the Petitioner is being denied the right to receive information about the Company and participate in the management of the Company in breach of the understanding between the Petitioner and the Merren family at the commencement of their business relationship.

Financial Standing

- 19 On the strength of the financial statements now made available to the Petitioner it appears that the Company has recorded the following profit (loss) figures:
 - 19.1 2005 - \$2,149,250
 - 19.2 2006 - \$328,556
 - 19.3 2007 - \$(106,854)
 - 19.4 2008 - \$(611,547) (11mth period) extrapolated to 12mths - \$(667,142)
 - 19.5 2009 - \$219,928
- 20 It is also apparent that:
 - 20.1 Salary and wage expenses increased from 13-14% of sales (consistent with a US Benchmark figure of 12%) to 19% for the financial year 2008 and 17% for financial year 2009. Salary and wage expenses are 16% of sales for the first quarter of the financial year 2010. No

reasonable explanation has been given for this discrepancy in the level of salary and wage expenses.

- 20.2 Margins have reduced and total costs as a percentage of sales have increased by 10% since 2005 (on declining sales figures). This analysis shows a deteriorating financial position and indicates that the Company may be experiencing liquidity problems, with a current ratio in June 2008 of 0.56 (ideal 1.0 or more) and a 'Quick' ratio of 0.38. These ratios remain largely unchanged at November 2009, being current ratio 0.61 and quick ratio 0.41.
- 20.3 Sales figures for the second quarter of the 2010 financial year indicate a continuing decline in Gross Sales.
- 20.4 Possibly in response to concerns raised by the Petitioner, operating expenses have decreased by \$90,000 (7.8% of total operating expenses) in the first half of the financial year 2010.
- 21 Despite declining sales, the Company has apparently been able to stabilize the overdraft at \$1.1m, reduce trade payables and loans payable. No reliable explanation has been given for this apparent stabilization.
- 22 No information has been made available to the Petitioner, despite repeated requests, as to the ageing profile of trade creditors, but it is assumed that the Company does not allow trade creditors to become pressing, and the Company seems able to satisfy pressing creditors upon demand.
- 23 Given these discrepancies in the Company's financial performance the Petitioner has concerns about the management and financial standing of the Company.
- 24 It would appear that management has only started to address performance of the business since the Petitioner began to express concerns in relation to the operation of the Company's business. The Petitioner has no information that any steps taken to date are sufficient or sustainable.

Related Party Transactions

- 25 The Petitioner is concerned that related entities within the Merren family's business holdings (including but not limited to Hurley's Entertainment, Cayman Imports, Infinity and Beacon Trucking) may have been used to siphon profits from the Company.
- 26 Amongst other things, the Petitioner says that the:
- 26.1 Company has purchased vehicles which have been used exclusively by Cayman Imports;
 - 26.2 Company purchases stock from Cayman Imports and the Petitioner verily believes that Cayman Imports has performed with inordinate success since the opening of the Grand Harbour store. Despite frequently requesting details of the company's dealings with Cayman Imports, no information has been provided;
 - 26.3 inter-company loans have been made within the Hurley's Group which cannot be properly explained or justified as being in the interests of the Company. The Petitioner has been given no explanation for the substantial receivable due from Hurley's Entertainment of \$373,000, it is apparent that this receivable is not being serviced by Hurley's Entertainment, nor do the financial statements record any interest accruing on this sum;
 - 26.4 as at 31 May 2008 the total amount due from related parties was \$373,000, and by 31 August 2009 this had reached \$456,000. Despite requests, the Petitioner has received no explanation for this inter-company debt. The Petitioner is also concerned about apparent discrepancies between the notes to the Financial Statement for the financial year 2009 and the figure entered on the balance sheet; and
 - 26.5 the Petitioner is concerned that inter-company corporate office expenses shared with related entities may have been allocated disproportionately to the detriment of the Company. Requests for

information aimed at addressing this point have met with no response, or no satisfactory response, but since the Petitioner raised these concerns the costs have significantly reduced.

- 27 It is apparent from the most recent financial statements (covering the first half of financial year 2010) that since the Petitioner began to express his concerns to the other directors of the Company, profit has increased substantially on previous years in a climate of declining sales (financial statements for the first two quarters of the financial year 2010 indicate that sales have decreased by 6% against the same period in the previous year and profit margins have remained at approximately 32%). This increase in profit appears to have been achieved, in part, by a substantial reduction in operating expenses, particularly directors' remuneration, corporate office salary expenses and advertising.
- 28 The notes to the latest accounts also indicate that this increase in profit has been achieved by "price mark downs and additional discounts to customers", which implies that products must have been sourced for a reduced price as margins have remained constant.

Proposed Expansion

- 29 The Petitioner has been informed, and verily believes, that the Merren family is now preparing to build a new Hurley's branded supermarket. Given the financial standing of the Company, and the paucity of any cash reserves as indicated in the balance sheet, such proposed expansion would defy commercial logic and would amount to an unjustified risk by the Company to the detriment of the Petitioner.

Conclusion

- 30 In these circumstances your Petitioner submits that the affairs of the Company are being conducted in a manner which is unfairly prejudicial to the interests of your Petitioner.
- 31 In the premises, the affairs of the Company have been conducted in such a way:

- 31.1 as to be in breach of the common understanding between the Petitioner and the Merren family;
 - 31.2 as to be in breach of the Petitioner's legitimate expectations held in connection with his participation in the Company; and
 - 31.3 as to be prejudicial and oppressive to the Petitioner.
- 32 The quasi-partnership between the Petitioner and the Merren family has as a consequence irretrievably broken down, and the Petitioner has justifiably lost all confidence in the probity and competence of the Merren family in their management of the Company's affairs.

Nomination of Official Liquidators

- 33 The Petitioner nominates Ken Krys and Tim Le Cornu of Krys & Associates Cayman Ltd. of Governors Square, Building 6, 2nd Floor, 23 Lime Tree Bay Ave., P.O. Box 31237 Grand Cayman KY1-1205 Cayman Islands for appointment as official liquidators of the Company.

THE PETITIONER therefore prays as follows: -

- 1 that the Company be wound up in accordance with the Companies Law (2009 Revision);
- 2 Ken Krys and Tim Le Cornu of Krys & Associates Cayman Ltd. of Governors Square, Building 6, 2nd Floor, 23 Lime Tree Bay Ave., P.O. Box 31237 Grand Cayman KY1-1205 Cayman Islands be appointed as official liquidators of the Company; or alternatively
- 3 that the Company be ordered to purchase the Petitioner's shares at a fair value to be determined by the Court by reference to the true assets, profitability and future prospects of the Company and without discount for the fact that the Petitioner's shareholding is a minority shareholding, after the taking of the accounts and making of the inquiries below and/or to include compensation for and/or payment of such dividends as are found to have been due and payable; and

- 4 that there be an inquiry ordered as to what dividends ought to have been declared by the Company for such period as this Honourable Court thinks fit and an order for the payment of those dividends together with interest thereon if they are not to be included in the valuation of the Company as prayed in paragraph (2) above; and
- 5 all necessary inquiries and accounts as to sums properly due to the Company from the directors and/or related entities and an Order for the repayment of those sums to the Company; or alternatively
- 6 such other relief granted pursuant to section 95(3)(a) as the Court considers fit; and
- 7 the costs of this Petition be provided for.

AND your Petitioner will every pray etc.

Dated the 20th day of April, 2010.



TURNER & ROULSTONE

NOTE: This petition is intended to be served upon the Company at its last known registered office.

THIS PETITION was presented by Turner & Roulstone, attorneys for the Petitioner, whose address for service is 90 North Church Street, Strathvale House, PO Box 2636, Grand Cayman KY1-1102, CAYMAN ISLANDS.

Appendix 1

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, on 2010 at am.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman KY1-1106, telephone 345 949 4296.