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Cause No. FSD 0275 of 2010 (AJJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

BEFORE MR JUSTICE ANDREW JONES QC  
DATED MONDAY 14 JANUARY 2013



BETWEEN:

(1) IRVING H. PICARD  
(TRUSTEE FOR THE LIQUIDATION OF BERNARD  
L. MADOFF INVESTMENT SECURITIES LLC)  
(2) BERNARD L. MADOFF INVESTMENT SECURITIES LLC  
(IN SECURITIES INVESTOR PROTECTION ACT LIQUIDATION)

Plaintiffs

-and-

PRIMEO FUND (IN OFFICIAL LIQUIDATION)

Defendant

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ORDER

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UPON THE TRIAL of the Preliminary Issues identified in the Order of Mr Justice Andrew Jones QC dated 19 January 2011

AND UPON HEARING Leading Counsel for the Plaintiffs and Leading Counsel for the Defendant

AND UPON READING the evidence

AND UPON THE PLAINTIFFS having conceded that the claims made in Section XII of the Statement of Claim under section 147 of the Companies Law (fraudulent trading) must fail by reason of the fact that section 147 did not come into force until 1 March 2009

**IT IS ORDERED AND DECLARED** that:

Preliminary Issue 1

1. The Grand Court is not able to apply U.S. insolvency law under section 241 and/or section 242 of the Companies Law or at common law.

Preliminary Issue 2

2. The Grand Court has jurisdiction at common law to apply avoidance provisions of Cayman Islands insolvency law in aid of a foreign insolvency proceeding, irrespective of whether the Grand Court would have jurisdiction under section 91 of the Companies Law to make a winding up order in respect of the foreign company in question.

3. The Grand Court does not have jurisdiction under sections 241 and 242 of the Companies Law to apply avoidance provisions of Cayman Islands insolvency law in aid of a foreign insolvency proceeding.

Preliminary Issue 3

4. Preliminary Issue 3 no longer falls to be decided.



Preliminary Issue 4

5. Section VI of the Statement of Claim is hereby struck out as disclosing no reasonable cause of action.

6. Section XII of the Statement of Claim is hereby struck out as disclosing no reasonable cause of action.



Preliminary Issue 5

7. In the event that the Plaintiffs (or either of them) have valid non-proprietary avoidance claims against the Defendant as pleaded in the Statement of Claim ("the Plaintiffs' Claims"), any sums due from the Defendant to the Plaintiffs (or either of them) in respect of such claims would not be off-set pursuant to section 140 of the Companies Law against sums due from the Plaintiffs (or either of them) in respect of any claims sounding in debt, damages, equitable compensation or restitution which the Defendant may have against the Plaintiffs (or either of them) in respect of investments made with the Second Plaintiff by or on behalf of the Defendant ("the Defendant's Claims").

Preliminary Issue 6

8. Since there would be no off-set pursuant to section 140 of the Companies Law between Defendants' Claims, (i) the rule in *Cherry v Boultbee* (1839) 4 My & Cr 442 would not apply, (ii) the liquidators of the Defendant would not have a right of quasi-retainer exercisable against the Plaintiffs (or either of them), and (iii) the Defendant would not be entitled to retain dividends otherwise payable by the Defendant to the Plaintiffs (or either of them) in respect of the Plaintiffs' Claims.

Preliminary Issue 7

9. As a result of the Court's determination of Preliminary Issue 6, it is not necessary for the Court to consider the question raised by Preliminary Issue 7.

Costs

10. The costs of the Preliminary Issues be costs in the proceedings.

The Honourable Mr Justice Andrew J Jones QC  
JUDGE OF THE GRAND COURT

*[Handwritten signature]*

Dated 14 January 2013  
Filed 17 January 2013



12. The parties have liberty to apply.

Liberty to apply

11. The parties having indicated that they intend to appeal in respect of the determinations of Preliminary Issues 1 and 2, the proceedings are hereby stayed pending the determination of such appeals.

Stay pending appeal

Agreed as to form and content

*Higgs & Johnson*  
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Higgs & Johnson

Higgs & Johnson  
Attorneys for the Plaintiffs

*Mourant Ozannes*  
\_\_\_\_\_  
Mourant Ozannes

Mourant Ozannes  
Attorneys for the Defendant

