

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO FSD 174 OF 2012 (AJJ)

The Hon Mr. Justice Andrew J. Jones QC
In Chambers, 17 January 2013

IN THE MATTER of the Companies Law (2012 Revision)

AND IN THE MATTER of Sea Breeze (7 Mile Beach) Ltd ("the Company")



BETWEEN:

STEVEN M. BRETTELL

Petitioner

- And -

RICHARD BAIER and DANIEL CARR

Respondents

- And -

HCB REAL HOLDINGS LLC

Added Respondent

ORDER FOR DIRECTIONS

UPON THE APPLICATION of the Petitioner by Summons for Directions dated 27 December 2012

AND UPON the Petitioner's summons for the appointment of provisional liquidators having been withdrawn

AND UPON HEARING Counsel for the Petitioner, Counsel for Richard Baier and Daniel Carr and Counsel for HCB Real Holdings LLC

AND UPON READING the First and Second Affidavits of the Petitioner, the First Affidavit of Russel S Homer and the First Affidavit of Kim Lund

AND UPON HCB Real Holdings LLC, a secured creditor of the Company, applying to be joined as a party to the proceeding

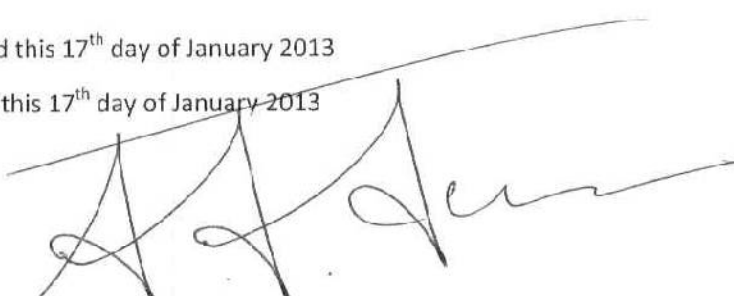
IT IS DIRECTED as follows:

1. The Company is not properly able to participate in the Petition and shall be treated merely as the subject matter of the Petition.

2. The Petition shall be treated as an *inter partes* proceeding between Mr. Steven M. Bettell, a member of the Company, as petitioner and Messrs Richard Baier and Daniel Carr, the remaining members of the Company, as respondents (referred to as "the Petitioner" and "the Respondents" respectively)
3. HCB Real Holdings LLC ("the Added Respondent") shall be joined as an additional respondent.
4. The Petition shall be amended (in the form of the draft attached hereto) and re-served within three days of this Order.
5. The Petition shall not be advertised.
6. The Petitioner shall serve a written submission and any further affidavit evidence (to which shall be exhibited any further documents intended to be relied upon) no later than 25 January 2013.
7. Respondents shall serve a written submission in reply and supporting affidavit(s) (to which shall be exhibited any documents intended to be relied upon) no later than 22 February 2013.
8. If the Added Respondent wishes to make a written submission or adduce any affidavit evidence, it shall be served no later than 1 March 2013.
9. The Petitioner and Respondents shall attend for cross-examination.
10. The trial of the petition shall take place on 15 April 2013.
11. A case management conference will take place (by telephone) on 5 March at a time to be fixed.
12. Costs in the cause.

Dated this 17th day of January 2013

Filed this 17th day of January 2013



THE HON. MR. JUSTICE ANDREW J. JONES QC
JUDGE OF THE GRAND COURT



This Order was filed by Bodden & Bodden whose address for service is 81 West Church Street, PO Box 742, Grand Cayman KY1-1303, Cayman Islands, attorneys for the Petitioner

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: 174 OF 2012

IN THE MATTER OF the *Companies Law (2012 Revision)*

AND IN THE MATTER OF Sea Breeze (7 Mile Beach) Ltd.

AMENDED WINDING UP PETITION



To the Grand Court

The humble petition of Mr. Steven M. Brettell of 5700 Mission Drive Mission Hills KS 66208 United States of America ("the Petitioner") shows that:-

- 1) Sea Breeze (7 Mile Beach) Ltd. ("the Company") is a Cayman Islands Exempted Company:
 - a) The Company was incorporated on 21 September 2006;
 - b) The Company's registration number is MC137471;
 - c) The Company has three directors, all based in the United States of America:
 - i) Steven M. Brettell – Managing Director;
 - ii) Richard Baier; and
 - iii) Daniel Carr.
 - d) The Company's shareholders are Steven M. Brettell (50%), Richard Baier (25%) and Daniel Carr (25%); and
 - e) The Company's registered office is Maples Corporate Services Limited, PO Box 309, Uglund House, Grand Cayman, KYI-1104, Cayman Islands.
- 2) The Company's sole main asset is its interest in a condominium development locally known as Sea Breeze, located at 2187 West Bay Road, Grand Cayman, Cayman Islands ("the Property"). It also has an interest in a counterclaim and a third party in a U.S. action known as the "Kansas Action" as described more fully below.
- 3) The Company does business solely in the Cayman Islands.
- 4) ~~Two of the Company's Directors have called a Board Meeting which is scheduled to take place on 27 December 2012 at 10:30 am Cayman time. The Board is considering whether to enter into a settlement agreement which absolves two of the shareholders and directors, namely, Messrs Baier and Carr, of their responsibilities to the Company's lender, HCB Real Holdings LLC. Messrs Baier and Carr, in breach of their fiduciary duties to the Company, are~~

A handwritten signature in black ink, appearing to be "S. M. Brettell", is written over the bottom portion of the text in item 4.

~~attempting to use their position on the Board to force the Company to enter into arrangements which benefit only themselves to the detriment of the Company and the Petitioner.~~

- 4) By a Charge dated 1 September 2008 ("the Charge") the Company charged the Property to HCB Real Holdings LLC ("the Chargee") with repayment of the sum of US\$17,290,000.00 ("the Principal Sum") together with interest. The Petitioner will refer to the Charge at the trial hereof for its full terms and effect.
- 5) By a Promissory Note undated but executed on behalf of the Company on or about 1 September 2008 ("the Note") the Company promised to repay to the Chargee the Principal Sum on 1 February 2010 subject to the option of the Company to extend the repayment date to 1 August 2010 together with interest in the meantime. The Petitioner will refer to the Note at the trial hereof full terms and effect.
- 6) By a Guaranty undated but executed on behalf of the parties thereto on or about 1 September 2008 ("the Guaranty"), the Petitioner and Messrs Baier and Carr and their respective wives guaranteed in favour of the Chargee, inter alia, repayment of the Principal Sum together with interest. The Petitioner will refer to the Guaranty at the trial hereof for its full terms and effect.
- 7) In or about June 2011, the Chargee commenced proceedings in the District Court of Johnson County, Kansas ("the Kansas Action"), against the Company on the Note for repayment of the Principal Sum, interest and fees and against the Petitioner, Messrs Baier and Carr and their respective wives on the Guaranty for similar amounts. By Counterclaim, the defendants to the Kansas Action sought, inter alia, specific performance of an agreement alleged to have been reached with the Chargee for the payment to the Chargee of US\$12,000,000 in full satisfaction of the Chargee's claims against the Property, the Company, the Petitioner, Messrs Baier and Carr and the respective wives of the Petitioner and Messrs Baier and Carr. The Petitioner will refer at the trial hereof to the pleadings in the Kansas Action for their full terms and effect.
- 8) By a Board Resolution dated 27 December 2012 ("the Resolution"), carried on the votes of Messrs Baier and Carr, the Petitioner opposing, the Company resolved to enter a Settlement and Release Agreement in the form of the draft circulated prior to the meeting.
- 9) By a Settlement and Release Agreement dated 28 December 2012 ("the Agreement") and made between the Chargee, NBH Bank, N.A., the Company, Messrs Baier and Carr and their respective wives, it was provided, inter alia, as follows:
 - (1) Messrs Baier and Carr would deliver to the Chargee a promissory note in the sum of US\$3,000,000 payable on 31 December 2015 together with interest in the meantime;



- (2) Messrs Baier and Carr should have the option to pay US\$1,500,000 to the Chargee on or before 28 February 2013 in consideration of the Chargee executing a discharge of the Charge over Unit 5 of the Property. Concurrent with such payment the Company would execute a transfer of Unit 5 to Messrs Baier and Carr. Failing such payment, the Chargee could transfer title to Unit 5 to itself;
 - (3) Concurrently with the execution of the Agreement the Company would transfer title to the balance of the Property (other than Unit 5) to the Chargee;
 - (4) The Chargee released all claims against the defendants to the Kansas Action (other than the Petitioner and his wife) including all claims under the Note and the Guaranty and the defendants to the Kansas Action released all claims against the Chargee;
 - (5) The Company, Messrs Baier and Carr and the respective wives of Messrs Baier and Carr agreed to cooperate in providing truthful testimony in the Chargee's defence of the Petitioner's claims in the Kansas Action.
- 10) The Property consists of nine (9) units on five (5) floors, each floor consisting of two (2) units, one the mirror of the other, save for the fifth floor which consists of a single unit. The units are currently being marketed at US\$2,495,000 (ground and second floors), US\$2,499,995 (Unit 5), US\$2,495,000 (Unit 6 and fourth floor) and US\$3,485,000 (fifth floor), an aggregate of US\$23,449,995. It is the Petitioner's contention that these listed prices are reasonable given current market conditions and represent a fair view of the value of the Property. The Amount outstanding to the Chargee is alleged, by the Chargee's Cayman Islands' attorneys, to be US\$20,696,824.80.
- 11) In the premises:
- (1) A sale of Unit 5 to Messrs Baier and Carr at a price of US\$1,500,000 would constitute a sale at an undervalue;
 - (2) Further or alternatively, a transfer of the Property to the Chargee at a value equal to the amount outstanding from the Company to the Chargee would constitute a sale at an undervalue;
- 12) In voting for the Resolution, Messrs Baier and Carr were favouring their own interests in preference to those of the Company. They are involved with a proposed public stock offering which requires the approval of the SEC which approval will not be forthcoming so long as they are the object of the claims in the Kansas Action. Their aim in promoting the Agreement was to terminate their involvement in the Kansas Action at any costs irrespective of the interests of the Company.



13) The business of the Company was managed on the basis of the mutual confidence which formerly existed between the Petitioner and Messrs Baier and Carr. The matters pleaded in paragraphs 8)-9) and 11)-12) above have destroyed that mutual confidence such that it is just and equitable for the Company to be wound up.

~~13)~~ 14) There will be a surplus in the liquidation available for distribution to shareholders.

~~5)-14)~~ 15) -Christopher Dorrien Johnson and Russell Homer, both qualified insolvency practitioners with Chris Johnson Associates Ltd., have agreed to act as official liquidators.

Your Petitioner therefore humbly prays that:-

(1) The Company be wound up in accordance with the Companies Law.

(2) Christopher Dorrien Johnson and Russell Homer of Chris Johnson Associates Ltd. PO Box 2499, 80 Elizabethan Square, George Town, Grand Cayman, Cayman Islands KY1-1104 be appointed as official liquidators of the Company.

~~(3) The Court grant an order appointing Christopher Dorrien Johnson and Russell Homer as provisional liquidators.~~

(3A) Alternatively, orders pursuant to section 95(3) of the Companies Law (2012 Revision):

(a) restraining the Chargee from registering any transfer of Unit 5 to Messrs Baier and Carr on payment to the Chargee of US\$1,500,000 or of any sum less than US\$2,499,995 or of such lesser sum as the Court thinks fit;

(b) alternatively, setting aside any such transfer;

(a) (c) restraining the Chargee from registering any transfer of the Property (other than Unit 5) from the Company to the Chargee save in consideration of a sum of US\$20,950,000 or such lesser sum as the Court thinks fit (less, in either case, any amounts owed by the Company to the Chargee)

(4) The Court grant directions pursuant to a summons for directions to consider the matters set out at O. 3, r. 11 of the Companies Winding Up Rules, as amended.

(5) The Petitioner be entitled to his costs of this Petition.

AND your Petitioner will ever pray etc.

Dated the 27th day of December 2012.

Amended this day of 2013.



Bodden & Bodden
Counsel for the Petitioner

NOTE: This petition is intended to be served on the Company and Richard Baier, ~~318 South Shore Drive, Greenwood, MO 64034, United States of America~~ and Daniel Carr, ~~1932 High Drive, Liberty, MO 64068 United States of America~~ c/o Emburys Attorneys, Queensgate House, 5th Floor, 113 S. Church Street, Grand Cayman and the Chargee c/o Giglioli & Company, Fourth Floor, Kirk House, George Town, Grand Cayman

This Petition was presented by Bodden & Bodden whose address for service is 81 West Church Street, P.O. Box 742, Grand Cayman, KY1-1303 Cayman Islands, attorneys for the Petitioner [Ref. 1255-0001/DRD/SPS].

