

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION



CAUSE NO. FSD: 1142 OF 2018

IN THE MATTER OF THE COMPANIES LAW (2018 REVISION)
AND IN THE MATTER OF DFLM MANAGEMENT LTD.



WINDING-UP PETITION

TO THE GRAND COURT OF THE CAYMAN ISLANDS

THE HUMBLE PETITION of Michele Lenore Fleiger of 11612 139th Street, Edmonton, Alberta T5M 1R8, Canada shows that:

The Company

1. DFLM Management Ltd. (the "Company") was incorporated under the Companies Law of the Cayman Islands as an ordinary resident company on 24th August, 2004 under registered number 13916 and carries on business as Copper Falls Steakhouse pursuant to Trade and Business Licence number 26564.
2. The registered office of the Company is situated at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands.
3. The authorised share capital of the Company is US\$50,000 divided into 50,000 ordinary shares of US\$1.00 par value each.

4. According to the Annual Return filed with the Registrar of Companies on 9th January 2017:
 - (i) The Directors of the Company as at that date were Frank George Fleiger ("Mr. Fleiger"), Dianne Patrice Fleiger nee Parsons ("Ms. Parsons"), Lewin Osgood Parsons and Marilee Jemima Parsons ("Mr. and Mrs. Parsons"). The latter are the parents of Ms. Parsons; and
 - (ii) Prior to his death, Mr. Fleiger and Ms. Parsons were the shareholders of the Company holding two shares each having a par value of US\$1.00 each.

The Petitioner

5. Michele Lenore Fleiger (the "Petitioner") is the Administratrix of the Estate of Frank George Fleiger, deceased (the "Estate") who died on 17th December 2017. Letters of Administration were applied for on 9th January 2018 and granted on 12th February 2018.
6. As at the date of his death, Mr. Fleiger held two of the four issued shares in the Company and they have accordingly devolved on the Petitioner through his death. The Petitioner is therefore a contributory to the Company within the meaning of Part V of the Companies Law and is entitled to present this Petition pursuant to section 94(3)(b)(ii) of the Companies Law (2018 Revision).
7. Since 26th January 2018 and repeatedly thereafter the Petitioner's attorneys have sought information about the Company including, *inter alia*, a copy of the Register of Members. On 27th March 2018, Campbells, then acting for Ms. Parsons and the Company, finally provided the Register noting that it had not been updated to reflect the true position. Mr. Fleiger, Ms. Parsons and Mr. and Mrs. Parsons continued to be shown on the Register as each holding 25% of the shares each notwithstanding that it is agreed that the only true shareholders at Mr. Fleiger's death were Mr. Fleiger and Ms. Parsons who held two shares each. The Petitioner believes that Mr. and Mrs. Parsons ceased to be even nominal shareholders in or about the last quarter of 2015. No updated Register has been provided and the Petitioner has not been notified that the Register has been rectified.

The Copper Falls Steakhouse and the Strand Property

8. Mr. Fleiger and Ms. Parsons were married on 20th December, 2002. In August, 2004 they incorporated the Company to own and operate the Copper Falls Steakhouse. It is a successful business and the Petitioner believes it comprised the main asset of their matrimonial estate. Its success was primarily attributable to the charismatic entrepreneurship of Mr. Fleiger. His wife looked after the books and finances.
9. By a lease dated 12th November, 2004 (the "Lease") Registration Section West Bay Beach South, Block 12C, Parcel 261 (the "Strand Property") was leased to the Company by its then owner Colossus Management Co. Ltd. for a term of eight years. The Strand Property houses the Copper Falls Steakhouse and a rear rental unit that is currently rented to Colossus Management Co. Ltd., which now operates a Mexican restaurant there, called Casa 43. A number of business bank accounts were established with RBC Royal Bank of Canada ("RBC"), Scotiabank & Trust (Cayman) Ltd. and Butterfield Bank (Cayman) Limited some of which are held in the name of the Company and others were held jointly between Mr. Fleiger and Ms. Parsons.
10. In November, 2009, pursuant to an option granted to the Company contained in clause 3(4) of the Lease, the Strand Property was purchased in the name of Mr. Fleiger and Ms. Parsons for a price of CI\$875,000 financed by a mortgage obtained from RBC. It appears that all payments on the mortgage loan for the Strand Property were paid from the Company bank account # RBC #112-949-4 at RBC. The mortgage loan for the purchase of the Strand Property was repaid in full in January 2017.
11. The Petitioner has limited access to corporate documents and Ms. Parsons and her attorneys have refused to disclose Company records but the Balance Sheet for the Company dated as of 30th June, 2017, which the Petitioner believes was initially prepared by Ms. Parsons, includes among the assets of the Company the land and buildings comprising the Strand Property. It assigns a value to them consistent with the Company's beneficial ownership of them.
12. The Petitioner believes the Company to be solvent.

Divorce and the Ancillary Order

13. Mr. Fleiger and Ms. Parsons were divorced in September 2015 after twelve years of marriage. Mr. Fleiger was unrepresented in the divorce proceedings. Ms. Parsons and her then attorneys, Samson & McGrath, prepared the Statement of Information and the consent Ancillary Order based upon it.

14. The Ancillary Order dated 30th September, 2015 in the divorce proceedings (the "Ancillary Order") provided, inter alia, that:
 - a. The Strand Property – Copper Falls Steakhouse and the rear rental unit (which are collectively defined as "the Business") would continue to operate as it did while the parties would remain jointly and severally liable on the mortgage with RBC in respect of the building and land which would be paid out the Company's account RBC #112-949-3.
 - b. The Company's rental income from the rear rental unit (part of the Strand Property and leased from the Company) would be paid into the RBC joint account #706-402-5 of Mr. Fleiger and Ms. Parsons. Once the parties had built up a minimum reserve of C\$50,000 in the account, any monies exceeding that amount was to be shared equally between them.
 - c. Rental expenses for the rear rental unit would be paid from the same account or from the Company's accounts as feasible.
 - d. Mr. Fleiger and Ms. Parsons would each work 3 nights a week in the restaurant.
 - e. Profit sharing "in respect of the dividends from the Business" would be split as to 10% to Ms. Parsons' parents while the remaining 90% would be split 60/40 between Mr. Fleiger and Ms. Parsons. Mr. Parsons was to transfer his 25% shareholding to his daughter and Mrs. Parsons 25% to Mr. Fleiger, following that the shares in "the Business" would be held 50/50 (two shares each) between Mr. Fleiger and Ms. Parsons.

15. The Petitioner reserves the right to refer further to the Ancillary Order on the hearing of the Petition. For the avoidance of doubt, the Petitioner's case is that the Ancillary Order (including its

Recitals) makes it plain that the Strand Property was not to devolve by right of survivorship to Ms. Parsons.

Mr. Fleiger's Death and Transfer of Strand Property

16. On 17th December 2017, Mr. Fleiger died in West Bay, Grand Cayman, intestate. On 5th January, 2018, Ms. Parsons transferred the Strand Property into her sole name as registered proprietor without any prior discussion with or notice to the Petitioner notwithstanding that they had been in close communication following Mr. Fleiger's death and Ms. Parsons knew of the intention to take out Letters of Administration.

Refusal of information or Acknowledgment of the Petitioner's True Interest.

17. Following a telephone conversation with the then attorney for Ms. Parsons, Mr. James Stenning, the Petitioner's attorney, Mr. Watler, wrote to him on 26th January 2018. This letter notified him that, on a true reading of the statement of information and Ancillary Order and upon inspection of the parcels file for the Strand Property at the Land Registry, the transfer of the Strand Property into Ms. Parsons' sole name, made without notice to or any discussion with the heirs of the Estate, was improper and that the Strand Property was an asset of the Business (as defined in the Ancillary Order) and held on trust by Mr. Fleiger and Ms. Parsons in equal shares. Mr. Watler invited an amicable solution to save costs and requested copies of the corporate records of the Company including the Memorandum and Articles of Association, the Register of Members, the Register of Directors and Officers and the Register of Mortgages and Charges.
18. On 31st January 2018 Mr. Paul Keeble of Hampson and Company wrote to Mr. Watler that his firm was now acting for Ms. Parsons and that he would revert to Mr. Watler more substantively shortly. On 20th February 2018, Campbells wrote to Mr. Watler advising him that they had recently been instructed by the Company, and would respond "in due course" to his letter of 26th January 2018. They asked for a copy of the Grant of Letters of Administration which Mr. Watler provided to them. On the same day Mr. Watler also provided Hampson and Company with a copy and followed up on his earlier letter. They responded that they were no longer instructed by Ms. Parsons in the matter and had no indication of her present attorneys.

19. By letter dated 27th February, 2018, Campbells informed Mr. Watler that they were now acting for both the Company and Ms. Parsons in her personal capacity. They responded to his 26th January, 2018 letter, in summary, as follows:

- a. As title to the Strand Property had always been registered under the names of Mr. Fleiger and Ms. Parsons it was therefore not an asset of the Company;
- b. Prior to Mr. Fleiger's death, it was held by Mr. Fleiger and Ms. Parsons as joint tenants. Rules of survivorship applied so the transfer of the Strand Property into Ms. Parsons' sole name was proper.
- c. There was no evidence that the Strand Property was held on trust;
- d. No mortgage remained on the Strand Property;
- e. The various bank accounts held in the names of Mr. Fleiger and Ms. Parsons were joint bank accounts and as such, in accordance with the usual rules of survivorship Ms. Parsons was entitled to have those accounts transferred into her sole name; and
- f. Pursuant to Article 114 of the Articles of Association of the Company¹, the Directors declined to authorise the disclosure of Company books or records to the Administrator.
- g. In accordance with section 29 of the Companies Law (2018 Revision), however, they enclosed a copy of the Company's Memorandum and Articles of Association.

Stonewalling and Delay

20. On 6th March 2018, Mr. Watler responded by letter asking for an explanation of the refusal to provide a copy of the Register of Members given section 44(2) of the Companies Law and whether or not the Board had met to decide to withhold information from the Petitioner, a personal representative in a quasi-partnership, and the reasons for this. He pointed out the refusal to provide any information about the underlying assets and the business(es) of the Company seemed designed to make it difficult and costly for the Petitioner to perform her duties as Administrator, in particular to prepare an inventory of the Estate, swear an affidavit as to its value and collect in the assets of the Estate and pay its liabilities. He also pointed out that the current course was leading to litigation. He again invited the Company and Campbells to reconsider Campbells'

¹ "no member shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by the Company in general meeting"

position and the need for independent advice. He highlighted concerns that Company assets might be being used for Ms. Parsons' private gain, e.g. in legal fees.

21. There being no response, on 14th March, 2018, Mr. Watler again wrote to Campbells seeking information and documentation including the Register of Members, the Register of Directors and Officers, the most recent Balance Sheet and Profit and Loss Statement for the Company, minutes of all General Meetings of the Company and any Directors' meetings attended by Mr. Fleiger, confirmation whether any funds belonging to the Company have been used/are being used to pay for legal advice and assistance to Ms. Parsons in her personal capacity. He asked for evidence of a loan Campbells alleged in their 27th February 2018 letter was given to Mr. Fleiger and Ms. Parsons by the Company. In the absence of satisfactory response on disclosure (the refusal of which disabled the Petitioner from legitimate participation in the Company or realization of the fair value of the shares which had devolved on the Estate) Mr. Watler reserved the Petitioner's rights including the right to bring proceedings including winding up proceedings.
22. On 13th April, 2018, and on 27th April, 2018 Mr. Watler wrote to Campbells summarising the Petitioner's position and illustrating the systematic delay with which she had been met. He again asked for a breakdown of legal fees paid by the Company since Mr. Fleiger's death. On 2nd May 2018, Campbells finally responded indicating that they were meeting with the Directors of the Company next day and would revert "in due course".
23. On 8th May, 2018, having heard nothing further from Campbells, Mr. Watler wrote prompting further consideration of Campbells' position and conclusion on the Company's rights to the property. Mr. Watler pointed out that the existing attitude to the Petitioner left her with little choice but to petition to wind up the Company.
24. Faced with winding-up proceedings, Campbells on 16th May 2018 responded substantively to Mr. Watler's letter of two months before. They reiterated that the Petitioner, even were she to be registered as a shareholder, would have no automatic right to the Company's books and records. They thus reasserted Ms. Parsons unfettered *de facto* control of the Company. The Company offered however to consider providing "certain information" if the Petitioner entered into a non-

disclosure agreement that would be drawn up by the Company. An offer was made in respect of investigation of the Strand Property issue as set out in paragraph 37 below.

Compromised Position of the Company's Attorneys

25. Earlier, on 27th March 2018, Campbells had responded to Mr. Watler's letter of 6th March 2018 (referred to in paragraph 20 above) on the question of conflict of interest. They asserted there was clearly no conflict of interest as between the Company and Ms. Parsons in her personal capacity but they were reviewing the position. They took the opportunity to deny the Petitioner a right to information as the Estate was not currently a member and as such it had no right to inspect any account or book or document of the Company and stating that, even if the Estate were a member, it was not a director and therefore would have no right to inspect any account, book or document of the Company. They again referred Mr. Watler to Article 114.

26. On 6th April 2018, Campbells finally conceded that there may, or in the future may be, a conflict of interest between Ms. Parsons in her personal capacity and the Company. Instead, however, of ensuring the Company was not compromised, they would continue to act for the Company and Appleby was instructed to act for Ms. Parsons in her personal capacity. In his response letter dated 9th April 2018, Mr. Watler illustrated how Campbells were compromised by reference to the steps they had taken. The action taken to deal with conflict was plainly unsatisfactory and a purely cosmetic change was unacceptable. Campbells had been in Ms. Parsons' camp and was fixed with the advice it had given to the Company whilst in her camp. No further substantive response has been received.

Ms. Parsons acting by Appleby

27. On 10th April, 2018, Mr. Watler wrote to Appleby confirming the contention, that Ms. Parsons, had acted in breach of trust and/or duty in having the Strand Property transferred to her claiming to be its sole beneficial owner of the Strand Property. He stated the Company beneficially owns the misappropriated property, 50% being legally owned by the Estate, or, alternatively, the property was legally and beneficially owned by Mr. Fleiger and Ms. Parsons in equal shares. Three days later, Appleby responded providing a requested undertaking not to dispose of the Strand

Property until court order. It stated Ms. Parsons' would be away for the next seven to ten days and they intended to use this time to get up to speed on the background.

28. On 26th April 2018, having heard nothing further from Appleby, Mr Watler wrote pointing out that two weeks had elapsed since their last correspondence and asking when he could expect a substantive response. Twelve days later, Appleby wrote to Mr. Watler indicating that they had now met with Ms. Parsons and were continuing to take instructions and would respond to Mr. Watler as soon as they are in a position to do so.

29. On 8th May 2018, Mr. Watler wrote again pointing out that Ms. Parsons had then instructed Appleby on this matter for over one month. He required substantive response on the various matters raised absent which the Petitioner would have little choice but to petition to wind up the Company. As at the date of Petition no response has been received.

Just and Equitable Grounds for Winding Up

30. The Petitioner seeks the appointment of liquidators on a number of grounds, as set out below. In summary there are no means by which the Petitioner can exercise her legitimate right to participate in the management and affairs of the Company or receive fair value for her shares. She has been met with refusal to acknowledge her rights, refusal to disclose information and belatedly only a qualified agreement to provide some information and a denial of means to protect her interest. Ms. Parsons inequitably treats the Company as her property to control.

31. The Company was set up as a vehicle to run a family restaurant. Its affairs have been interwoven with those of Mr Fleiger and Ms. Parsons as illustrated by the Ancillary Order. It was plainly always envisaged as a quasi-partnership with corresponding equal rights of involvement in management. Mr. Fleiger and Ms. Parsons as quasi-partners could never have envisaged that in the event of the death of one the other would be entitled to treat the Company and its assets as their private property and that his or her heirs and successors would be excluded. Thus, the arrangement by which both parties participated in the management and direction of the Company survived the

death of Mr Fleiger. The Petitioner is being kept out of her legitimate expectation to participate in management of the Company.

32. Further or alternatively, the Petitioner, who is the successor to Mr Fleiger and owns 50 % of the shares, has been denied practically all pertinent information concerning the Company that would allow her to monitor the business and affairs of the Company and value the shareholding of the Estate. Whilst the Petitioner is the co-owner of the Company, Ms. Parsons improperly treats it as her own. She excludes the Petitioner from participation by her control of the Board of Directors, which is no longer susceptible to removal or appointment by the members.
33. Under Article 44 of the Articles of Association the Company is required to have annual general meetings. Despite the repeated requests of the Petitioner Ms. Parsons and her attorneys have refused to supply any information concerning when the last general meeting was held or when it is intended to hold the next general meeting except belatedly to offer a meeting for a specific purpose when confronted with the threat of a petition to wind up the Company.
34. The deliberate exclusion of the Petitioner who has an equal shareholding is unfair, prejudicial and oppressive. Ms. Parsons has seized *de facto* control of the Company and will not relax that control in any way. The Company's Articles provide no means by which the Petitioner can assert her rights. The affairs of the Company have no independent direction to balance against the personal interests of Ms. Parsons. The Company's potential claims against her have not been and are not protected at all. The Petitioner has been subject to a campaign of delay and intransigence. She has justifiably lost confidence in Ms. Parsons.
35. The Petitioner has also justifiably lost confidence in the proper management of the Company. Further she has justifiably lost confidence in the impartiality and bona fides of the Board. Alternatively, the true purpose for which the Company was formed can no longer be achieved.

Conflict of Interest

36. Ms. Parsons has a serious and irreconcilable conflict of interest as a Director of the Company who has appropriated the Strand Property to which the Company is beneficially entitled or, at the minimum, has a strong claim that should be independently investigated. In doing so the Petitioner

contends that Ms. Parsons has acted as agent to the Company. The Company has potential claims for recovery of property and against Ms. Parsons for breach of trust, or of her fiduciary duties, which should be investigated by an official liquidator and pursued if appropriate.

Independent Investigation

37. In their Letter dated 16th May 2018 Campbells offered that the current directors would appoint an “independent” professional director with the mandate and power to investigate a claim to the Strand Property who would “recommend” to the Board as to whether a claim should be made and at some time in the future a General Meeting would be called to vote on whether to appoint the same. However, as Mr. Watler pointed out to Campbells in his letter of 22nd May, 2018, the Petitioner believes the Board comprises Ms. Parsons and her two parents, which would therefore take the matter, back within the sphere of conflict of interest.
38. The Petitioner explained, in Mr. Watler’s letter indicated that while she was not in principle opposed to the appointment of an independent director. Without prejudice to her right to present this Petition, she advanced the necessary terms for an investigation other than that of Liquidators.
39. For an independent director to be a viable option, the Petitioner required a number of issues to be addressed including:
- a. That the Independent Director should have the same skill set that one would require of a liquidator including forensic accounting skills;
 - b. His terms of reference should be jointly agreed; they should include not only the Strand property issue but the propriety of Company payments;
 - c. He should have access to independent legal advice (which could not be Campbells);
 - d. There should be sufficient undertakings of cooperation by the existing directors and full access to records;
 - e. In the event that it was found that the Company had a valid claim to the Strand Property or any other irregularity or mismanagement was found, that the Company and the shareholders should all be bound by his determination. There should be no opportunity for further delay, prevarication or obfuscation.

- f. The Petitioner further suggested that she should nominate the director subject to the approval of the Board so that the Petitioner could have confidence in his impartiality. Further, in the event of a finding of irregularity or mismanagement Ms. Parsons should pay his fees. To ensure impartiality and the independent director's unfettered control of the issue, the Petitioner suggested the existing Board of Directors should resign *pro tem* while he carried out his terms of reference.

40. In their response of 5th June, 2018 Campbells failed to address any of the points raised by Mr. Watler saying only that the appropriate forum for discussion of those issues was the General Meeting, notice of which would be circulated "in due course". No such notice has been given to date. Campbells also claimed to have offered a reasonable alternative remedy for establishing whether it has a claim to the Strand Property (i.e. the appointment of an independent director) along, for the first time, with an offer to purchase the shares from the Petitioner at fair value once that issue is resolved. Campbells asserted a winding up petition would be premature if presented before the independent director can conclude his investigations. They did not offer equality of information, which is a necessary pre-requisite to a share purchase offer. This purported solution fails to deal with whether or not all payments and decisions of the company have been regular and proper. There is no agreement to be bound by any finding. It is a recipe for further delay and prevarication.

Denial of Access to Information Required to Realise the Fair Value of Shares

41. Despite many requests by Mr Watler to the attorneys for the Company and for Ms. Parsons for corporate information, the Directors of the Company, citing Article 114, refused to provide any save a copy of the Memorandum and Articles of Association and an out-of-date copy of the Register of Members. The Directors' first instinct was to withhold the Register of Members notwithstanding section 44(2) of the Companies Law. It has now agreed a qualified access to "certain information" on terms in the face of a threat to wind up the Company but full access to books and records is necessary for the Petitioner to protect her interest. The Directors have failed to keep the Petitioner fully and accurately informed about the true state of the Company's finances.

42. The Petitioner is denied information concerning the Company's bank accounts and the state of the Company's finances generally including its assets and liabilities which would enable her to assess the value of Mr. Fleiger's shareholding in the Company, to make decisions regarding her shareholding or to obtain fair value for the same in the exercise of her duties as Administratrix of the Estate. She is unable even to ensure that the Estate receives the dividends from the Company, which are due in respect of Mr. Fleiger's shares. This refusal is aggravated by the fact that the affairs of the Company were interwoven with those of Mr. Fleiger and Ms. Parsons.
43. In his letter of 13th June 2018, Mr. Watler explained that the offer to provide only the Register of Members, Register of Directors and Balance Sheet dated as of 30th June, 2017 subject to the Petitioner signing a non-disclosure agreement was unacceptable as it sought to impose unduly restrictive terms on a very limited disclosure. Furthermore, production of the Register of Members is a statutory obligation on the Company and each of its Directors and could not be made subject to any condition and the Company each Director remained in breach of section 40(2) of the Companies Law for failing to produce the same.

Breakdown of Trust and Confidence

44. Ms. Parsons did not provide full information to the Company's attorneys about Company documents relevant to a claim on the Strand Property prior to her unilateral transfer into her sole name. The Board allowed Campbells to contend for Ms. Parsons' position (contrary to the Company's interest) concealing from them a financial document, namely a balance sheet prepared by Ms. Parsons, that supported a Company claim. Only liquidators with statutory powers may be able to secure all necessary documentation.
45. In all the circumstances there has been a breakdown in trust and confidence between the Petitioner and the Directors. The Petitioner has been met with a campaign of delay, the concealment of information and the failure to concede the importance of the Company independently protecting its interests. This has been compounded by the personal hostility and vindictiveness expressed by Ms. Parsons in denying the Petitioner and her brother, both siblings of Mr. Fleiger, the right to dine at Copper Falls Steakhouse by e-mail on 28th March, 2018.

Disposal of Assets of the Company

46. The Company's attorneys have failed to respond to enquiries whether the Company's funds have been or are being used to pay for advice to Ms. Parsons in her personal capacity, Denial of information (even historic information to which Mr. Fleiger must have been entitled if alive) means it is unclear what is happening to the finances of the Company. Independent Liquidators are necessary to confirm that the Company's assets have been used appropriately and to protect the position of the Petitioner who has an equal financial interest in the Company.

Company Control and Legal Advice

47. Not only has the Petitioner improperly been excluded from management of the Company but also she has been denied any means to find out what is happening in it. As half owner of the company she has a legitimate expectation that she will be included in decision-making, in fact she is denied the ability even to obtain adequate information.

Failure to Register Transmission of Mr. Fleiger's Shares to the Petitioner

48. The Directors have failed to register the transmission of Mr. Fleiger's shares to the Petitioner. As a registered member of the Company, the Petitioner would have the right to requisition a meeting of the Company and nominate someone to be appointed as Director in place of Mr. Fleiger. Article 27 of the Company's Articles of Association provides that she cannot exercise any right in relation to meetings unless registered. However, even if the Petitioner were registered as the holder of Mr. Fleiger's shares and requisitioned a meeting, Article 51 of the Company's Articles of Association provides that if there is no quorum within half an hour the meeting is dissolved, and a quorum requires two shareholders to be present.
49. The Company and its directors have been in continuous breach of s. 40 of the Companies Law in failing properly to keep a Register of Members.

Continued Management Issues

50. By Article 94 directors hold office for the period determined by the General Meeting. The Petitioner does not know what if any period was specified. Since request made by Mr Watler on 14th March, 2018 she has been denied access to any minutes. She does not know who has been appointed. By Articles 70, 94 and 100 the General Meeting can appoint and remove directors. By

Article 49 however unless the election of directors is in place of those retiring, resolutions to remove and appoint directors even at ordinary meetings are deemed special business. What is more by Articles 52 and 56 even in the case of equality of votes, the Chairman of the meeting i.e. the Chairman of the Board has a casting vote. Thus, Ms. Parsons exerts an unbreakable control over the Company to the exclusion of the Petitioner.

51. Further or alternatively, there has been a complete departure from what was originally intended and understood by this domestic Company's members. Ms. Parsons treats and intends to treat the Company and its affairs as if it is her private property and it is impossible for the Petitioner as joint owner to retain any confidence in the impartiality or probity of its administration.
52. The Petitioner's shares cannot be realised for value and are unsaleable and because Ms. Parsons fortuitously now controls the Board she is in a position to negate the participation that a co-owner is entitled to expect. The Petitioner is not in a position to know if her economic interests are being fairly served. She has received no dividends though the Petitioner understands that dividends were formerly declared on a regular basis. It was never intended that the mechanism of the Articles would enable one party to obtain sole control of the Company's affairs.
53. Further, even were the Petitioner to be able to obtain a directorship, which in the circumstances is a hopeless objective, it is quite plain that she and the Parsons would be unable to work together and confidence is lost. In any event the animosity is so great that only deadlock could be anticipated. The relationship should come to an end.

The Company Attorneys

54. The situation is aggravated by position taken by Campbells, the Company's attorneys. The Company and they refuse to accept that they are in any way compromised in that capacity notwithstanding they advised Ms. Parsons personally on the Strand Property issue. When at length Campbells finally accepted it was untenable that they acted for both her and the Company, they accepted her instructions to continue to act for the Company. The Company and Campbells repeatedly refuse to alter their position. Ms. Parsons as a director with fiduciary duty should herself ensure that systems and appointments are in place to divorce the Company from her own interests. She has failed to do so.

55. It is impossible for the Petitioner to have confidence that that the Company can receive dispassionate and objective advice, uncoloured by Campbells' previous involvement.

Valuation and Purchase of Shares

56. The Directors have therefore excluded the Petitioner from participation in the Company without any offer to purchase Mr. Fleiger's shares in the Company or permitting the Petitioner the necessary information to assess the fair value of the shares. The Petitioner is not even in a position to decide whether or not the shares should be disposed of.

57. Ms. Parsons cannot be relied upon to give unvarnished and complete information or act impartially as a director. She has refused to provide to the Petitioner the most elementary corporate information. She and her attorneys have stonewalled all attempts to obtain information. It is quite evident that from the outset Ms. Parsons concern has been to secure her own position. Within 19 days after Mr. Fleiger's death (and over the Christmas and New Year period) she had secured transfer of the Strand Property into her name.

Purchase of the Petitioner's Shares and Equality of Information

58. In principle, the Petitioner may be satisfied by a purchase of her shares at a fair price. No offer has been made. Until the issue of the beneficial ownership of the Strand Property is independently resolved, the shares cannot be valued. Until she is sure that there has been no irregularity or improper disposal of assets the Petitioner cannot know if the shares should be sold or at what value. The sale of the Petitioner's shares at a fair value depends on equality of information not only about the current state of the Company but also about outflows from the Company. Ms. Parsons is intent on depriving the Petitioner of any relevant information. Her concealment of the Balance Sheet disclosing that she regarded the Strand Property as an asset of the Company suggests that only an independent Liquidator can properly investigate a central valuation issue. Until this issue is resolved, valuation is moot.

59. A valuer would not be in a position to verify information without investigation and the powers to ensure it was sufficiently thorough. The Petitioner legitimately has no confidence that the

Company under Ms. Parsons' control can be relied on to give equal and necessary access to accurate information.

60. This reasonable concern is given point by the discrepancy discovered in the Statement of Information and the Ancillary Order drawn up by Ms. Parsons (and to which Mr Fleiger consented). Paragraphs 9-12 of the Ancillary Order related to a parcel of land described therein as Land 2. It was misidentified as parcel 911 rather than 511. It was said to be subject of a mortgage details of which and provision for repayment was specified. Campbells indicated that as at December 2017 CI\$113,716.17 was outstanding on this mortgage. The Petitioner's attorneys discovered there was no such mortgage registered. Mr. Watler also discovered that the property had in fact been sold for CI\$250,000 in September, 2016. He supplied Campbells with a copy of Land Transfer and first page of Sale Agreement. Since his letter to Campbells of 21st March 2018 Mr. Watler has sought an explanation. None has been forthcoming.
61. In their letter of 27th February, 2018 Campbells asserted that a loan with an outstanding balance of CI\$30,212.44 as of December 2017 half of which is due and payable by the Estate to the Company for renovations to a property. Despite requests from 6th March 2018 they have not provided any evidence of the loan such as a loan agreement, board resolutions, evidence of disbursement and evidence that the renovations were done or any evidence of the outstanding balance.
62. The review and consideration of these substantial issues and the conduct and response to be adopted by the Company calls for the objectivity and independence of a qualified insolvency practitioner as official liquidator with statutory powers of investigation. Only Liquidators can properly investigate that Company assets have not historically been wrongly alienated and be in a position to consider, conduct and manage the claims in the interests of both shareholders of the Company and not of one shareholder only.

Order Sought

34. In all the circumstances it is just and equitable that the Company be wound up by the Court pursuant to section 92(e) of the Companies Law (2018 Revision).

AND YOUR PETITIONER THEREFORE HUMBLY PRAYS

1. That the Company be wound up by the Court in accordance with the Companies Law (2018 Revision) and such further or alternative relief as this Honourable Court shall think fit.
2. That Russell Homer and Christopher D. Johnson of Chris Johnson Associates Ltd., Elizabethan Square, P. O. Box 2499, 80 Shedden Road, George Town, Grand Cayman KY1-1104, Cayman Islands (to hold their offices jointly and severally) be appointed Joint Official Liquidators of the Company.
3. That the Joint Official Liquidators shall have the power to act jointly and severally.
4. That the Joint Official Liquidators shall not be required to give security for their appointment.
5. In addition to the powers set out in Part II of Schedule 3 of the Companies Law (2018 Revision), the Joint Official Liquidators shall have the power without further sanction of the Court to:
 - a. carry on the business of the Company so far as may be necessary for its beneficial winding up;
 - b. engage staff (whether or not as employees of the Company) to assist them in the performance of their functions; and
 - c. engage attorneys and other professionally qualified persons, in the Cayman Islands or elsewhere, to assist them in the performance of their functions in accordance with CWR Order 25.
6. That the Joint Official Liquidators shall take all such steps as may be necessary or appropriate to take possession, custody and control of the assets, books and records of the Company.
7. That the Joint Official Liquidators shall be entitled to receive remuneration for their services by reference to the time properly given by them and their staff in attending to matters arising in the winding-up and the hourly rates and the amount of remuneration shall be determined in accordance with the Insolvency Practitioners Regulations 2008 (as amended).

8. That the Joint Official Liquidators be at liberty to pay themselves (up to 80% of the Joint Official Liquidators' remuneration pending approval by the Court), their agents, employees, attorneys, solicitors and whomsoever else they may employ or instruct, remuneration and costs, and for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as expenses of the liquidation out of the assets of the Company in accordance with Parts III and IV of the Insolvency Practitioner's Regulations.
9. The Joint Official Liquidators be at liberty to apply for further directions relating to the winding-up of the affairs of the Company the distribution of its assets.
10. Alternatively, that an order be made that the shares of the Petitioner are purchased for a fair price by Ms. Parsons or alternatively the Company and all consequential orders for discovery and valuation.
11. That the costs of the Petition and the Petitioner be paid by Ms. Parsons, or, alternatively, the Company or such other order as to costs be made as this Honourable Court shall think fit.
12. Such further and other relief as this Honourable Court deems appropriate.

AND YOUR PETITIONER will ever pray etc.

DATED this 24th day of July, 2018



Olivaire Watler, Attorney-at-Law
Attorneys for the Petitioner, Michele Lenore Fleiger

NOTE: This Petition is intended to be served on (i) the Company; (ii) Ms. Dianne Patrice Parsons.

THIS PETITION is presented by Mr. Olivaire Watler, Attorney-at-Law, Attorney for the Petitioner, whose address for service is 2nd Floor, Zephyr House, 122 Mary Street, PO Box 11540, George Town. Grand Cayman KY1-1009, Cayman Islands

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on _____ 2018 at _____ a.m./p.m.

Any correspondence or communication with the Court relating to the hearing of the Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at P.O. Box 495. Grand Cayman KY1-1106. Telephone: (345) 949-4296.