

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

594  
CAUSE NO. OF 2000

In the Matter of the s.94(d) of THE COMPANIES LAW (1998 Revision)

And In the Matter of INTERNATIONAL HOTELS (OVERSEAS) LIMITED



PETITION



TO: The Grand Court of the Cayman Islands

The Petition of The Jamaica Mutual Life Assurance Society shows that:

1. International Hotels (Overseas) Limited ("the Company") was incorporated on 14<sup>th</sup> March 1992 under the Companies Law as an exempted limited company.
2. The registered office of the Company is at the offices of Royal Bank of Canada Trust Company (Cayman) Limited, 2<sup>nd</sup> Floor, Royal Bank Building, Cardinal Avenue, P.O. Box 245GT, George Town, Grand Cayman, Cayman Islands.
3. The capital of the Company is US\$900,000 divided into 900,000 shares of a nominal or par value of US\$1 each. A total of 1,188 shares are issued, all of which are credited as fully paid in the books of the Company, as to 594 in the name of the Petitioner, and as to 594 in the name of Superclubs International Limited ("SIL"), a company incorporated in the Cayman Islands.
4. The Company was established to carry on a joint venture project between the Petitioner and Village Resorts Limited ("VRL") (or its nominees), a company incorporated in Jamaica and owned and controlled by Mr. John Issa. The project is the development of property in St. Lucia known as Honeymoon Beach Vieux Fort, Parcel 1621B1 and 1621B2/1 and consisting of 53 acres and approximately 10 acres respectively of beachfront land. Parcel No. 1621B1 has been valued in its present (undeveloped) state to be worth US\$7,048,888; I do not have the benefit of a valuation of Parcel No. 1621B2/1.
5. At all material times until the events hereinafter described there existed mutual trust and confidence between the Petitioner and Mr. Issa and therefore between the Petitioner and VRL and/or its nominee SIL.
6. Initially the Company was wholly owned by International Hotels Limited ("IHL"), a company incorporated in Jamaica, and in turn IHL was jointly and equally owned by the Petitioner and VRL. Subsequently IHL was taken out of

the ownership structure in relation to the Company by the following means. The shares in the Company were transferred from IHL to the Petitioner and to SIL respectively in equal shares. SIL held the shares in the Company as nominee for VRL.

7. Some years later, the Petitioner's 50% shareholding in IHL was then transferred to VRL.
8. At all material times the intention of the Petitioner and VRL was that each of the Petitioner and VRL would have equal representation in terms of votes on the board of directors of the Company. To that end, at the subscribers meeting of 19<sup>th</sup> March 1992 and in accordance with the Company's Articles of Association, eight directors were appointed to the board of directors of the Company, four of whom were chosen by the Petitioner and four of whom were chosen by VRL.
9. Further, the equality of control on the board of the Company was expressly agreed by the Petitioner and Mr. Issa (acting on behalf of VRL) during oral communications between Mr. Issa and the Petitioner's Mr. Robert Cranston (acting on behalf of the Petitioner) on or around the date of incorporation of the Company. It was further expressly agreed between Mr. Issa and the Petitioner that insofar as any chairman might be appointed he or she would not have a casting vote. Accordingly, the appointment of a chairman for the subsequent meetings of the board of directors was made ad hoc at each meeting and no chairman was ever given a casting vote.
10. Various meetings of the directors of the Company have been held since its incorporation. In particular, meetings took place on 30<sup>th</sup> March 1992, 28<sup>th</sup> April 1994, 31<sup>st</sup> May 1995, 10<sup>th</sup> July 1995, 30<sup>th</sup> November 1995, 19<sup>th</sup> February 1996, 18<sup>th</sup> May 1996, 9<sup>th</sup> May 1996 and 23<sup>rd</sup> March 2000 respectively. At two of those meetings additional or replacement directors were appointed, that is, on 10<sup>th</sup> July 1995 and 8<sup>th</sup> May 1996. Save for the aforesaid appointments the Petitioner and VRL have at all material times proceeded on the basis that directors could be removed and/or appointed simply by notification to the secretary of the Company, Royal Bank of Canada Trust Company (Cayman) Limited, although no such procedure is included in the Company's Articles of Association.
11. In particular and without prejudice to the generality of the foregoing, the appointment of Mr. Thomas Turula by letter to the Company's secretary dated 3<sup>rd</sup> September 1999, the appointment of Ms. Audrey Robinson by letter dated 26<sup>th</sup> October 1999 and the appointment of Mr. Aston Smith by letter dated 26<sup>th</sup> January 1999 were at all material times accepted and acted upon by the Company and VRL as valid appointments to the board, notwithstanding that no such procedure is laid down in the Company's Articles of Association. Subsequent to the aforesaid letters of appointment, the said Mr. Thomas Turula, Ms. Audrey Robinson and Mr. Aston Smith were invited to and participated in a meeting of the board of directors of the Company on 23<sup>rd</sup> March 2000. No objection was taken to their attendance as directors thereat, and their presence as directors resulted in equality of votes at that meeting.

12. At the said board meeting of 23<sup>rd</sup> March 2000 the principal item on the agenda was the treatment of certain inter-company positions. Specifically, the four directors representing VRL wanted to treat a sum of US\$456,464.41 as a loan owed by the Company to IHL, whereas the four directors representing the Petitioner took the view that the sum was not a loan but an equity investment made by IHL in the Company. The four directors representing VRL wanted to set off the said sum against a loan of US\$465,575.52 owed to the Company by IHL. The four directors representing the Petitioner were in favour of the said sum of US\$465,575.52 being repaid by IHL and distributed to the shareholders of the Company after payment of a sum of US\$50,000 due by the Company to a third party. The meeting ended in deadlock and no decision was reached.
13. On 10<sup>th</sup> May 2000 the Company secretary gave notice of a further meeting of the Company's board of directors for 18<sup>th</sup> May 2000 at 11:30 a.m., principally to resolve the aforesaid issue. The Notice was initially given erroneously by the Company secretary to Kurtis Bray, Aston Smith and Robert Cranston. The Company secretary was then informed of the resignation of Kurtis Bray and the appointment of Audrey Robinson, and was reminded of the appointment of Thomas Turula, of whose appointment the Company secretary had previously been notified by letter date 3<sup>rd</sup> September 1999. Thereupon the Company secretary gave Notice of the said meeting to Aston Smith, Robert Cranston, Thomas Turula and Audrey Robinson by fax dated 16<sup>th</sup> May 2000.
14. Notwithstanding the above, on 15<sup>th</sup> May 2000 Mr. Issa suggested for the first time that there appeared to be some uncertainty as to the identity of the directors. He and his companies VRL and SIL now contend that the three directors referred to in paragraph 10 above, all of whom are appointees of the Petitioner, have not been validly appointed by the Company or the board of directors and therefore cannot attend and participate at board meetings.
15. By the said fax of 16<sup>th</sup> May 2000 addressed to all four of the Petitioner's directors as aforesaid, the Company secretary suggested a meeting on 19<sup>th</sup> May 2000, a date convenient for those directors, subject to certain conditions. The Petitioner's four directors were asked to accept those conditions as directors of the Company. On the same day by a subsequent fax the Company secretary maintained that three out of the Petitioner's four directors (being the three directors referred to in paragraph 10) had not been duly appointed to the board of directors of the Company and as such were not entitled to attend the directors' meeting.
16. Accordingly on 18<sup>th</sup> May 2000 the Petitioner commenced proceedings in the Supreme Court of Jamaica against SIL (the registered owner of 50% of the Company's shares) and the four directors representing VRL, namely Mr. John Issa, Mr. Stuart Fisher, Ms. Muna Issa and Cameron Burnet, by way of Originating Summons, seeking:
  - (1) A declaration that Audrey Robinson, Aston Smith and Thomas Turula are directors of International Hotels (Overseas) Limited.
  - (2) Alternatively a declaration that the third named Defendant Stuart Fisher

and the fourth named Defendant Muna Issa are not directors of International Hotels (Overseas) Limited.

- (3) An Order that the Defendants be restrained from causing or allowing a meeting of the board of directors of International Hotels (Overseas) Limited to be convened without notice being given to Robert Cranston, Audrey Robinson, Aston Smith and Thomas Turula and without their being allowed an opportunity to attend, participate and vote.
  - (4) Such further or other relief as the court may consider appropriate.
17. On the same day the Petitioner obtained an interlocutory injunction preventing the Defendants or any of them, by themselves, their servants or agents or otherwise howsoever from

“Causing or allowing a meeting of the board of directors of International Hotels (Overseas) Limited to be convened without notice being given to Robert Cranston, Audrey Robinson, Aston Smith and Thomas Turula without their being allowed an opportunity to attend, participate and vote”.

The said injunction expired on 1<sup>st</sup> June 2000.

18. The injunction was successfully served on all of the Defendants prior to the prescribed time of the board meeting on 18<sup>th</sup> May 2000, being 11:30 a.m. Notwithstanding the said injunction, the Defendants have refused to confirm that the meeting was cancelled. The Petitioner is not aware of whether the meeting was held and if so what took place at the purported meeting.
19. The Petitioner is currently involved in other joint ventures with Mr. Issa and/or companies owned or controlled by him. There are presently two lawsuits between, inter alia, the Petitioner and Mr. Issa arising out of such joint ventures. Relations between the Petitioner and Mr. Issa are very poor and there is very little prospect of future business harmony.
20. In the premises the Petitioner contends:
  - 20.1 That the Company is and was at all material times a quasi-partnership. In particular and without prejudice to the Petitioner's reliance on the aforesaid facts to establish the same, the Petitioner relies upon the following:
    - 20.1.1 the Company was formed and/or continued on the basis of a personal relationship involving mutual confidence.
    - 20.1.2 it was agreed and/or understood that both the Petitioner and VRL would participate equally in the conduct of the business.
    - 20.1.3 the Company was formed and/or continued as a vehicle whereby the Petitioner and VRL would carry out a single joint venture project.

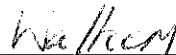
- 20.1.4 the Company is a private company.
- 20.1.5 the Petitioner's 50% shareholding is not readily saleable to a third party, alternatively not at a value reflecting 50% of the underlying assets.
- 20.2 The mutual trust and confidence between the Petitioner and VRL has broken down and it is not just and equitable that the said state of affairs in the Company's management should be allowed to continue.
- 20.3 Further and in the alternative, the Petitioner will aver that regardless of whether the Company is a quasi-partnership it would be contrary to justice and equity for the Company to continue under the control of VRL, and/or SIL and/or Mr. Issa.
21. In the circumstances it is just and equitable that the Company should be wound up.

The Petitioner therefore prays as follows:

- (1) That International Hotels (Overseas) Limited may be wound up by the Court under the provisions of the Companies Law; or
- (2) That such other Order may be made as the Court thinks fit.

**Note:** It is intended to serve this Petition upon International Hotels (Overseas) Limited and Superclubs International Limited.

DATED this 20<sup>th</sup> day of July 2000



---

WALKERS

Attorneys-at-Law for the Petitioner

This PETITION was filed by Walkers, Attorneys-at-Law, P.O. Box 265GT, Walker House, George Town, Grand Cayman, Attorneys-at-Law for the Petitioner herein whose address for service is that of their said Attorneys-at-Law.