

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 611 ✓ OF 2002

IN THE MATTER OF THE COMPANIES LAW (2002 Revision)

AND

IN THE MATTER OF VELOX RETAIL HOLDINGS

PETITION



TO: HER MAJESTY'S GRAND COURT OF THE CAYMAN ISLANDS

The Humble Petition of **KONINKLIJKE AHOLD N.V.** ("the Petitioner"), of Albert Heijnweg 1, NL-1507 RH Zaandam, The Netherlands (postal address: PO Box 3050, NL-1500 HB Zaandam, the Netherlands)

SHOWETH as follows: -

1. **VELOX RETAIL HOLDINGS** ("the Company") was incorporated on 5th November, 1997 under the Companies Law ("the Companies Law").
2. The registered office of the Company is situated at PO Box 309GT, Ugland House, South Church Street, George Town, Cayman Islands.
3. The Company is indebted to the Petitioner in the amount of US\$84,076,661.00. The Company has neglected to pay or satisfy the said sum or any part thereof or to make any offer to the Petitioner to secure or compound the same.
4. The debt arose as set out below.
5. On 13th January, 1998 the Petitioner entered into an Agreement with the Company (the "Shareholders' Agreement") for a joint venture between the Petitioner and the Company to create

a holding company for various supermarket chains in Argentina, Chile, Paraguay and Peru. The holding company was called Disco Ahold International Holdings N.V. ("DAIH").

6. On 13th January, 1998 Ahold USA Inc. (currently known as Croesus Inc.) loaned to the Company US\$100,000,000 at an annual rate of interest of 6% with total payment due on 13th January, 2008. This loan was evidenced in a Term Loan Promissory Note and Agreement dated 13th January, 1998 ("the Term Loan"). As security for the Term Loan, pursuant to a Pledge Agreement dated 13th January, 1998 ("the Pledge") the Company pledged to Ahold USA Inc. 500 Class A shares in DAIH.
7. On 3rd August, 1998 Ahold USA Inc., the Petitioner, the Company, Stichting Philips Pensioenfonds ("SPP") and Nationale-Nederlanden Levensverzekering Maatschappij N.V. ("NN") entered into a Note Sale Agreement and Transfer Deed whereby Ahold USA Inc. transferred all of its rights under the Note and all other rights relating thereto (including the rights of Ahold USA Inc. under the Pledge) to SPP and NN as purchasers (hereinafter "the Purchasers"). In connection with the Note Sale Agreement and Transfer Deed, the Petitioner and the Purchasers entered into a Note Guarantee and Purchase Agreement on 3rd August, 1998 which entitled them to sell, assign and transfer the rights (as defined in the Note Guarantee) to the Petitioner upon the occurrence of certain events, including the event of default under the Note.
8. On 16th July, 2002 the Petitioner received a Notice from ABN Amro Bank N.V. advising that the Company had defaulted under various loans from ABN Amro Bank N.V. Pursuant to Section 2.1(b) of the Note Guarantee and Purchase Agreement the Petitioner gave notice on 17th July, 2002 that a put trigger event as defined in Section 2.1(a) of the Note Guarantee and Purchase Agreement had occurred.
9. On 22nd July, 2002 the Petitioner received notice on behalf of the Purchasers that pursuant to the Note Guarantee and Purchase Agreement they were exercising their right to sell, assign and transfer the Rights (as defined in the Note Guarantee) to the Petitioner. Consequently, on 24th July, 2002 the Petitioner and each of the Purchasers entered into Assignment and Transfer Deeds which provided for the assignment and transfer to the Petitioner of the Rights pursuant to the Note Guarantee and Purchase Agreement dated 3rd August, 1998. In consideration for the assignment and transfer of the Rights, on 24th July, 2002 the Petitioner paid an amount of US\$ 106,892,900 to the Purchasers.

10. On 24th July, 2002 the Petitioner notified the Company of the Assignment and Transfer Deeds and on that same date the Petitioner gave notice by way of facsimile to the Company that the Note was immediately payable and due in the amount of US\$103,189,400.
11. As of 5th August 2002, the Petitioner, the Company and DAIH entered into a Deed of Transfer of Shares whereby the Company sold and transferred the 500 shares in DAIH which had been pledged to the Petitioner (as a result of the transfer of the Rights). Pursuant to the provisions of the Pledge the purchase price for these shares was to be the fair market value of the shares and was agreed between the parties at an amount of US\$40,000 per share. The total consideration of US\$20,000,000 was credited against amounts owed by the Company to the Petitioner, thereby reducing the amounts owed to the Petitioner thereunder.
12. Also, as of 5th August 2002, the Petitioner, the Company and DAIH entered into a Share Purchase Agreement and Deed of Transfer of Shares whereby the Company sold and transferred 115 shares in DAIH which had originally been pledged to various banks, but which were then unencumbered after settlement by the Petitioner of amounts outstanding between the Company and the various banks. The purchase price for the 115 shares in DAIH was to be the fair market value and was agreed between the parties at an amount of US\$ 40,000 per share. The total consideration of US\$ 4,600,000 was credited against amounts owed by the Company to the Petitioner.
13. The amount, as at 12th August, 2002, to which the Company is indebted to the Petitioner pursuant to the Note is US\$78,964,283.00. The additional interest payable per day from 12th August, 2002 is US\$17,520.36.
14. In addition to the amount owed by the Company to the Petitioner pursuant to the Note, the Company is also indebted to the Petitioner under a Facility Agreement dated 27th March, 2002 (the Facility Agreement). The amount, which the Petitioner lent to the Company under the Facility Agreement, became immediately due and payable as a result of the default of the Company under the Note. The amount to which the Company is indebted to the Petitioner under the Facility Agreement is US\$5,112,378.52.

15. In the context of the amount presently due and owing to the Petitioner and the events of default committed by the Company, the Petitioner is of the belief that the Company is unable to pay its debts as and when they fall due.

16. In the circumstances, it is just and equitable that the Company should be wound up.

THE PETITIONER THEREFORE HUMBLY PRAYS as follows: -

- (1) That the Company be wound up by the Court subject to the provisions of the Companies Law (2002 Revision);
- (2) Christopher Dorien Johnson and Nicholas Freeland of PricewaterhouseCoopers, Cayman Islands, Chartered Accountants, be appointed Joint Official Liquidators of the Company and that the Joint Official Liquidators be authorised to do any acts or things considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs;
- (3) That the Joint Official Liquidators be authorised to exercise all the powers set out in Section 109 of the Companies Law (2002 Revision) without further sanction or intervention of this Honourable Court;
- (4) That the Joint Official Liquidators do file with the Clerk of the Court a report in writing of the position of, and the progress made with, the winding up of the Company and with the realisation of the assets thereof, and as to any other matters connected to the winding up of the Company, every twelve calendar months or as the Court may from time to time direct;
- (5) That the Joint Official Liquidators be at liberty to employ attorneys, counsel and professional advisors whether in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit;
- (6) That the Joint Official Liquidators and their staff be remunerated out of the assets of the Company at their normal commercial rates and that such remuneration and any expenses of the Joint Official Liquidators be approved by the Court.
- (7) Such further and/or other relief as this Honourable Court deems appropriate.

AND YOUR PETITIONER will ever pray etc.

DATED this 13th day of August, 2002.

Walker

**FOR AND ON BEHALF OF
KONINKLIJKE AHOLD N.V**

NOTE: This Petition is intended to be served on the Company and the Registrar of Companies

ENDORSEMENT

This Petition, having been presented to the Grand Court of the Cayman Islands on the 13th day of August, 2002 will be heard at the Grand Court of the Cayman Islands on:

DATE:

TIME:

(or as soon thereafter as the petition can be heard).

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