

IN THE GRAND COURT OF THE CAYMAN ISLANDS

426
CAUSE NO. OF 2005

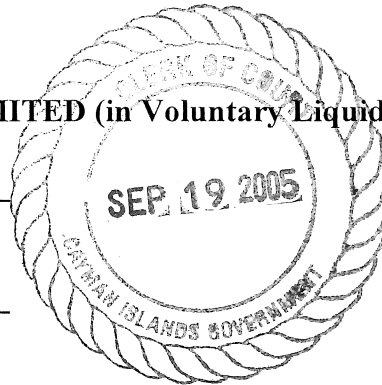
IN THE MATTER OF THE COMPANIES LAW (2004 Revision)

AND

IN THE MATTER OF ARCHITECTS OF WINE LIMITED (in Voluntary Liquidation)



PETITION



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

The Humble Petition of Architects of Wine Ltd (in voluntary liquidation) of PO Box 2499 GT, George Town, Grand Cayman, Cayman Islands, British West Indies.

SHOWETH as follows: -

1. **ARCHITECTS OF WINE LTD** ("the Company") was incorporated on 9th July 2002 as Artisans & Architects Limited and changed its name to Architects of Wine Ltd on 6th September 2002.
2. The registered office of the Company is situated at Chris Johnson Associates Ltd, PO Box 2499 GT, George Town, Grand Cayman, Cayman Islands.
3. The Company passed a Special Resolution on 13th October 2004 thereby placing itself into Voluntary Liquidation. Mr Christopher Dorrien Johnson was appointed the Voluntary Liquidator on that date. The Company passed a Special Resolution on 13th September 2005 appointing Mr. Russell Smith as Joint Voluntary Liquidator on that date. The Petitioner seeks an Order of this Honourable Court that the Company is to continue in

Voluntary Liquidation subject to the Supervision of this Court pursuant to Section 150 of the Companies Law (2004 Revision).

4. The Company forms part of a group of companies which were operated and controlled by Robert John Middlemiss (“Middlemiss”), of Unit 1, Laguna Del Mar, George Town, Grand Cayman, an Australian national residing in Grand Cayman. Through the various corporate vehicles which he set up, Middlemiss had orchestrated a fraudulent scheme, namely, an international program for selling wine contracts to individuals who would in turn be entitled to resell the product or would be entitled to offer to sell the contracted wine to a subsidiary of the company.

5. Middlemiss operated or caused to be operated this unlicensed investment scheme, selling investment contracts for the purchase of wine futures to the public, from the Cayman Islands between 2003 and mid-September, 2004, in contravention of the Securities Investment Business Law (2004 Revision) (the “Law”), thereby breaching the provisions of Section 5(1) of the Law. The Law imposes criminal liability on whoever carries on securities business without a licence to do so with a maximum fine of CI\$100,000 and 1 years’ imprisonment, and in the case of a continuing offence, as is the case here, a daily fine of CI\$10,000 during which the offence continues. Quite apart from the criminal liability that the Company has, these securities contracts are prohibited by Statute and as the object of these prohibitions on the sale of unlicensed securities is consumer protection then the contracts will be illegal. This proposition derives from the so called ‘English money lender cases’, an example of which is *Victorian Daylesford Synicate Limited v. Dott* [1905] 2 Ch. 624, quoted with approval in the leading case of *Ontario (Securities Commission) v. British Canadian Commodity Options Ltd.* 22 O.R (2d) 278.

6. These Cayman Islands companies included the Company, Paradigm Holdings Ltd (In Official Liquidation) (“PHL”), AVE International Ltd (In Voluntary Liquidation)(“AVE”), Paradigm Wine International Ltd. (in Voluntary Liquidation)(“PWIL”), Paradigm Logistics Ltd (in Voluntary Liquidation)(“PLL”), Worldwide Wine Ltd (in Voluntary Liquidation) (“WWL”), Ultimate Wine Ltd (in Voluntary Liquidation)(“UWL”), and AVE North America Ltd (in Voluntary Liquidation)(“AVE NA”).

7. Sums invested by the investors in the above scheme to any of the above companies were routinely transferred between the accounts of two or more of the said companies kept by Caledonian Bank and First Caribbean Bank in Grand Cayman. The Company was the largest and most active of the group of companies and funds paid to the Company by investors paid for the expenses of the group of companies. The Company was the recipient and onward distributor of the vast majority of funds received from investors in the scheme. Funds paid by the investors were kept circulating between the said accounts. The Company entered into unlawful contracts with consumers for what the Company described as, “Wine Forward Sales”. These contracts were in fact futures contracts requiring the Company to be licenced under the Law. The Company’s failure to seek or obtain such a licence under the Law renders all of the said futures contracts unenforceable and all of the monies paid to the Company returnable to the investors.

8. The Company entered into a licencing agreement with Seed International Ltd (“SIL”), a Cayman Islands company, on 10th October 2002 (amended and continued by agreement dated 18th September 2003) to utilize SIL’s customer list for the purpose of selling the abovementioned securities contracts to those customers. The Company did use this customer list to offer securities contracts and at the time the Company being placed into Voluntary Liquidation a substantial number of former SIL customers had entered into the said unlawful securities contracts.

9. As the vast majority of investors were citizens of the United States of America, the Securities regulatory bodies in certain States the Companies' contracts with its citizens fell within their ambit. The State of Mississippi Business Division issued a Cease and Desist Order against the Company on 1st April 2003 on the grounds of violations of the Mississippi Securities Act, in that, the so-called "Wine Forward Sales" contract fell within the definition of a "security" rendering those contracts unenforceable. This was followed by action by the United States Department of the Treasury, Office of the Comptroller of Currency issuing a nationwide bank alert as to the Company. As a result of this alert, the Bank of New Year, the Company's correspondent bank in the USA, terminated its banking relationship with the Company.

10. As stated at paragraph 4 above, the group of companies were completely controlled by Middlemiss. They were devised and intended by Middlemiss to facilitate and carry out the selling of unlicensed futures contracts ("unlicensed securities") described herein and they were used for that purpose. It appears that these companies were merely different corporate entities set up by Middlemiss to accomplish the same unlawful enterprise, namely to enable Middlemiss to induce unwitting investors to invest in the wine purchasing scheme, thereby allowing the sale of unlicensed securities without interference by any regulatory body which could ensure that no misrepresentation or fraudulent activity was transpiring in the sale of these securities to the public. The group companies had no purpose or activity other than the carrying out of the selling of unlicensed securities. There was no legitimate part to them.

11. The Company, and the group of companies that it forms a part of, are one factual entity. As a result of the fact that the group of companies purported to have, as their major asset, the amounts owed in installment payments from investors in the wine futures contracts, and

the fact that as a consequence of Section 5(7) of the Law, as well as by operation of law, the investors can seek rescission and damages for misrepresentation, the group of companies is hopelessly insolvent.

12. It is, moreover, in the interests of all victims of the fraudulent scheme carried out in the Cayman Islands that the Joint Voluntary Liquidators be permitted to continue to liquidate the Company subject to the Court's supervision.
13. The estimated liabilities of the group companies and of each one of them towards the victims of the above fraudulent scheme, including the petitioner, may well exceed US\$25 million.

THE PETITIONER THEREFORE HUMBL Y PRAYS as follows:

- (1) That the Company should continue in Voluntarily Liquidation subject to the Court's Supervision pursuant to the provisions of the Companies law (2004 Revision)
- (2) Christopher Dorian Johnson and Russell Smith of Chris Johnson Associates Ltd, Cayman Islands, Chartered Accountants, be permitted to continue on as Joint Voluntary Liquidators of the Company and that they be authorized to do any acts or things considered by them to be necessary or desirable in their capacity as Joint Voluntary Liquidators;
- (3) That the Joint Voluntary 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;
- (4) That the Joint Voluntary Liquidators and their staff be entitled to receive remuneration for his services by reference to the time properly given by he and his staff in attending to matters arising in the winding up and that the hourly rates and the amount of such remuneration be determined in accordance with Rules 4.127 to R. 131 of the Insolvency Rules 1986, or as the Court may direct.

(5) Such further and/or other relief as this Honourable Court deems appropriate.

AND YOUR PETITIONER will ever pray etc.

DATED this th day of September 2005.



**FOR AND ON BEHALF OF
ARCHITECTS OF WINE LTD (in Voluntary Liquidation)**

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 th day of September 2005 will be heard at the Grand Court of the Cayman Islands on:

DATE: 9th November 2005

TIME: 10.00 am.

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

This PETITION is filed by Broadhurst Barristers, attorneys-at-law for the Petitioner, whose address for service is 40 Linwood Street, P.O. Box 2503, George Town, Grand Cayman, Cayman Islands, B.W.I. (ref: 2K4-121)