IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO. 268, 269, 270 OF 2021 (IKJ)

IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)

AND IN THE MATTER OF PRINCIPAL INVESTING FUND I LIMITED

AND IN THE MATTER OF LONG VIEW II LIMITED

AND IN THE MATTER OF GLOBAL FIXED INCOME FUND I LIMITED

CREDIT SUISSE LONDON NOMINEES LIMITED

Petitioner

- and -

PRINCIPAL INVESTING FUND I LIMITED
LONG VIEW II LIMITED
GLOBAL FIXED INCOME FUND I LIMITED

First Respondents

- and -

FLOREAT PRINCIPAL INVESTMENT MANAGEMENT LIMITED
LV II INVESTMENT MANAGEMENT LIMITED
FLOREAT INVESTMENT MANAGEMENT LIMITED

Second Respondents

IN OPEN COURT

Appearances:

Mr Stephen Rubin KC and Mr James Collins KC instructed by Mr David Lee and Mr David Lewis-Hall of Appleby (Cayman) Limited for the Petitioner

Mr Michael Bloch KC instructed by Mr Ben Hobden and Mr Alan Quigley of Forbes Hare for the Second Respondents

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Mr Peter Tyers-Smith of Kobre & Kim for the Series 8 Investors

Mr Ben Valentin KC instructed by Mr Jason Mbakwe of Carey Olsen for the Joint Provisional Liquidators ("JPLs")

The Series 7 Investors did not appear

Before: The Hon. Justice Kawaley

Heard: 12 May 2023

Draft Reasons circulated: 5 June 2023

Reasons Delivered: 12 June 2023

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Just and equitable winding-up orders made on an unopposed basis after partial trial-jurisdiction of Court to decide to give reasons for its winding-up decision after signifying decision in principle that winding-up orders should be made-dispute in related foreign proceedings as to basis on which orders made- inherent jurisdiction to protect the integrity of Court orders-need for an investigation-loss of trust and confidence

REASONS FOR DECISION

Introductory

1. The three Petitions were listed for hearing on a fully contested matter for trial scheduled to start on 3 April 2023 and conclude on 12 May 2023. The three 1st Respondents are Principal Investing Fund I Limited ("PIF"), Long View II Limited ("Long View"), and Global Fixed Income Fund I Limited ("GFIF"). After a series of almost dizzying procedural twists and turns, on 12 May 2023 on an uncontested basis, I (a) granted winding-up orders in respect of PIF and Long View and (b) indicated that GFIF was liable to be wound-up subject to the right of the Series 7 Investors to contend at a subsequent hearing that a winding-up order should not be made.

2. I granted that relief after confirming that I was dismissing the 2nd Respondents' strike-out application, heard the previous day, for summary reasons set out in a Judgment delivered on 12

May 2023 shortly before the resumed hearing of the Petitions in open Court. Once Mr Bloch KC confirmed that his clients would not (as previously foreshadowed) be calling any further evidence or opposing the making of Winding-Up Orders, Mr Rubin KC for the Petitioner formally called his remaining witnesses and invited me to make the Orders without advancing any substantive submissions on the law or evidence. With all leading counsel scheduled to leave the jurisdiction later that Friday afternoon, attention turned to supplementary directions which were in the event left to be resolved between counsel as soon as possible.

3. In these circumstances, having granted relief on an uncontested basis without articulating any reasons, I failed to do what in hindsight I ought to have done which was to indicate that I would give summary reasons later. In many (if not most) cases when a winding-up order is made on an uncontested basis the grounds for making the orders will be either self-evident or immaterial. In the present case the Petitions had been amended shortly after the beginning of the trial and ultimately relied upon two alternative grounds. It was clear from the outset that the Petitioner would legitimately wish to rely on any favourable decision in this jurisdiction in arbitration and court proceedings abroad concerning overlapping issues. It was clear by the end of the trial that the 2nd Respondents wished to avoid a situation where this Court fully investigated the factual merits of the Petitions and delivered a full final judgment recording findings in relation to, *inter alia*, their principal witnesses who were never made available for cross-examination.

4. My concerns about the need for reasons to clarify the basis for the 12 May 2023 Orders (as regards PIF and Long View) were communicated to counsel in a 25 May 2023 email dealing with various aspects of the draft Orders:

> "*1. The Judge is willing if required to give short reasons explaining the specific grounds on which he decided to make the Order in the absence of opposition…*"

5. On 1 June 2023, while I was abroad on leave, the Petitioner's counsel requested the Court to "*give short reasons explaining the specific grounds on which he decided to make the Order in the absence of opposition.*" This was because an affiliate of the 2nd Respondents had reportedly asserted in the BVI Proceedings involving Real Assets Global Opportunity Fund I Limited ("RAGOF") that the Winding-Up Orders granted on 12 May 2023 were made "*without findings of misconduct but on the basis of the need to investigate.*" I asked my Personal Assistant to confirm that I would do so, before commencing a two-day journey home on 2 June 2023. Ordinarily, I would have awaited for

the 2nd Respondents' response to the Petitioner's request before signifying how I proposed to respond to it.

6. On 2 June 2023, the 2nd Respondents' counsel sent the following communication objecting to reasons being delivered:

> "*It is unfortunate that Appleby elected to send the email below without first receiving the response of FRE Jersey in the BVI. We believe that response has now been provided and the passage referenced has been withdrawn from the skeleton filed in the BVI proceedings. FRE Jersey have expressly stated that insofar as this issue is concerned, they rely solely on the sworn evidence of Mr. Cooke which at paragraph 19 notes that the winding up orders were "unopposed without findings of misconduct." That is an accurate description of the basis on which the orders were made by His Lordship. Mr Cooke's evidence also noted that the Court did not fully hear the evidence of any of the parties to these proceedings. Nor were any of the Petitioner's allegations put to the Floreat Principals, from whom the Court did not hear evidence. The Petitioner did not urge the Court to take any different course. Further reasons are not only unnecessary, but it would be wrong in principle to give them in those circumstances.*
>
> *It is clear that the Petitioner wishes to obtain reasons from the Cayman Court so that they may be deployed in other proceedings. The Petitioner has already sought to deploy His Lordship's orders in the BVI via a very late Ladd v Marshall application. On behalf of the Second Respondent to the Long View proceedings, we can also confirm that Mr Wang's related parties sought to introduce the orders into the arbitration in support of an application made on the first day of the arbitration hearing. We shall say no more about that unless it becomes necessary to do so. Claims have also been brought by the JPLs in England against the Floreat Principals personally, as well as other parties alleged to be responsible for the misconduct about which the Petitioner complains. The Second Respondents are concerned that the Petitioner and JPLs will seek to short-circuit those various proceedings on the basis of any reasons the Cayman Court might give.*
>
> *As His Lordship noted on day 1 of the trial, he could have determined that the Funds should be wound up due to a need for an investigation. We would respectfully suggest that His Lordship should be reluctant to make any findings as to factual or legal matters that trespass upon points which are in issue in the proceedings brought by the JPLs in England,*

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or in the winding up proceedings in the BVI. Insofar as any reasons are given, given that the Cayman Court did not hear all of the relevant evidence or submissions on that evidence prior to making the winding up orders, it could only be that the Funds were wound up due to a need to investigate. If the product of any continued investigations is that the proceedings in England are maintained, those proceedings will be the correct and proper forum for the allegations of misconduct to be determined with the benefit of disclosure and evidence.

As a final point, we note that His Lordship will recall that the petitions initially included a wide-ranging raft of allegations in respect of the Floreat Principals and their relationship with Mr. Wang. It was those allegations which the Second Respondents initially defended, having applied to be joined (the Petitioner not having joined any party other than the Funds, which could not have been expected to oppose). It was only after these allegations were abandoned mid-way through the trial that both this Court and the Second Respondents could be certain as to the case that the Court was asked to determine."

7. While I summarily reject any suggestion that it is in some general way impermissible for a successful litigant to rely upon orders it has obtained in other proceedings, I fully accept the concerns articulated by Forbes Hare about the need for caution about recording findings on, in particular, matters which the Court has not fully investigated. In addition, I consider it would be inappropriate for me to analyse for the first time material which I did not actually or constructively have in mind on 12 May 2023. That said it is obvious that the Court should explain why it made what were on any view commercially significant decisions in circumstances where the basis on which the Winding-Up Orders were made is unclear. It is now common ground that GFIF should also be wound-up although the final Order has yet to be perfected. I propose to address the following topics:

(a) the reasons for these reasons;

(b) the pleadings (substantially based on a summary I prepared when preparing for the trial);

(c) the agreed governing legal principles;

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(d) the evidence of the main witnesses who attended for cross-examination and my impressions of their evidence (substantially based on outlines I prepared in advance of and during the trial); and

(e) the grounds on which the Orders were made.

The reasons for these reasons

8. There can be little doubt that this Court possesses the inherent jurisdiction to deliver reasons for a decision irrespective of whether the parties wish a judgment to be delivered. This is the position in relation to proceedings settled after the conclusion of a trial. In Re *Torchlight Fund LP*, FSD 103 of 2015 (RMJ), Judgment dated September 13, 2018 (unreported), a reserved judgment following an inter partes hearing devoted to the specific issue of whether the judgment in relation to a just and equitable winding-up petition could be delivered, McMillan J found that he had jurisdiction to deliver it. He concluded (based on a review of highly persuasive authority):

> "*24. The Court affirms that it has the overarching discretion to proceed to give a full Judgment notwithstanding the prior disposal of a case. The Court also rules that it has jurisdiction to do so, and in the particular circumstances of these proceedings for the specific reasons identified it is in the interests of justice to give the Judgment.*"

9. That was a case where there was a public interest in recording 'findings' exonerating parties who had been publicly accused of misconduct. I confirmed my own support for this open justice-inspired jurisdiction in *Torchlight GP Limited -v- Millinium Asset Services Pty et al,* FSD 114 of 2016 (IKJ), Judgment dated 27 October 2020 (unreported, at paragraphs 34-47). Here, the terrain is far more familiar. Just and equitable winding-up proceedings have been disposed of, albeit without a fully completed trial, by uncontested Winding-Up Orders being made without reasons being given. Less than a week after two of the three draft Orders were perfected, a dispute has arisen about the precise basis on which the Orders were made which is directly attributable to the absence of reasons. The problem is compounded by the fact that much of what ought to have been an open Court hearing, for reasons of confidentiality, took place in private. In these present circumstances, this Court must possess the inherent jurisdiction to deliver reasons with a view to protecting the integrity of its processes and the efficacy of the Orders which it has granted. As it happens, I offered to provide reasons before any of the Orders were perfected and the successful party has taken up that invitation.

10. Because the Orders were signified on 12 May 2023 without full argument, reasons must in fairness be limited to matters which were actually or constructively within the Court's knowledge as of that date. In addition, I consider it is appropriate to have formed a concluded view on certain specific matters which were canvassed in cross-examination and to record findings which are not in any realistic way capable of being undermined (or explained away) by those witnesses the 2nd Respondents elected not to call. I do not consider it appropriate to retrospectively record findings on matters which were not fully canvassed at the hearing. Parties cannot escape adverse findings by simply throwing in the towel. But the Court must properly consider whether it is appropriate to make findings of serious misconduct against non-appearing persons based on positive submissions and having concluded that it is fair to draw adverse inferences from those persons' departure from the case. That did not happen in this case.

The pleadings

FSD 268 of 2021- Principal Investing Fund I Limited

Re-re-Amended Winding-up Petition

11. The Petition was presented on 14 September 2021, amended on 20 September 2021 and re-amended on 1 June 2022. It was re-re-amended shortly after the commencement of the trial. The Petitioner is Credit Suisse London Nominees Limited acting by the Receivers of the 47,713.11 Participating Shares it holds in PIF for Mr Chia Hsing Wang ("Mr Wang"). The combined effect these beneficial interests and those subject to separate nominee arrangements is said to make Mr Wang the sole beneficial owner of all of PIF's shares. Mr Wang is said to be "*an ultra-high net worth individual, having been gifted by his father a substantial portfolio of assets*".

12. The grounds for seeking a just and equitable winding-up are summarised in paragraph 10 of the Petition as follows:

> "*(a) <u>There has been a justifiable and irretrievable loss of confidence in the management of the Fund, being the Floreat Management (defined below), due to serious issues of mismanagement and wrongdoing, including a lack of probity and /or oppression.</u>*
>
> *(b)The Fund has been used as a device from its inception to wrongly exploit Mr Wang's assets. It was not formed with the principal purpose of generating investment returns as claimed, but was instead formed with the principal purpose of enabling the Floreat Management (defined below) and the Floreat Principals (defined below) to wrongly obtain*

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access to Mr Wang's assets and then to charge fees and otherwise exploit those assets as their own.

(c) The Floreat Management (defined below) have utilised their absolute voting power to oppress the Petitioner and Mr Wang.

(d) The Fund is akin to a quasi-partnership, in which the Floreat Management (defined below) and the Floreat Principals (defined below) have purported to contribute their investment contributed the capital. That quasi-partnership and the personal relationship on which it was founded has completely and irretrievably broken down such that it is not possible for the partners to continue their association.

(e) In all the circumstances, and in any event, there is an urgent need for an independent investigation of the affairs of the Fund." [Emphasis added]

13. Paragraph 10 (b) and (d) were formally and /or informally abandoned at trial and I considered the central averments to those summarised in paragraphs 10 (a) and (e).

14. FFP (Cayman) Limited ("FFP") reported on the Funds' management in March 2021 ("FFP Review") and the FFP Review is said to have identified serious management issues including "serious wrongdoing". The justifiable loss of confidence ground is based on the following main allegations:

(a) the Floreat Funds are said to have been managed with "*serious unmitigated conflicts of interest*";

(b) the acquisition (through the BVI-domiciled RAGOF and management of Springs Farm, a 300 acre property in Berkshire, England, is said to have been, *inter alia*, contrary to the interests of RAGOF;

(c) the "RAGOF Redemptions" are said to have been improper;

(d) art owned by the Fund is said to have been misappropriated and misused;

(e) the Global Fixed Income Fund I Limited ("GFIF") structure is said to have been improperly exploited by, inter alia, investing in "Aviation Notes"; and

(f) through a 22 April 2021 letter Mr Wang was threatened with serious consequences if he did not agree an "*amicable separation*".

15. General allegations made include the use of voting power in relation to PIF in an oppressive manner, accounting and regulatory infractions and excessive fees.

FSD 269 of 2021: Long View II Limited

<u>Re-Amended Petition</u>

16. The Petitioner sues in the same capacity as in the case of FSD 268 of 2021. In this instance, it is averred that Mr Wang beneficially owns 100% of the Participating Shares in Long View. The summary grounds for winding-up are the same. The FFP Review together with the same allegations of misconduct in relation to RAGOF, PIF and GFIF pleaded in the first Petition are relied upon for the purposes of this Petition as well. Similar general allegations of mismanagement are made.

FSD 270 of 2021: Global Fixed Income Fund I Limited

<u>Re-Amended Petition</u>

17. The Petitioner sues in the same capacity as before in respect of 36,900 Participating Shares in GFIF. Separate nomineeship arrangements are said to make him 100% beneficial owner in GFIF as regards Series 1, 3 and 5 Shares. The summary grounds of winding-up are the same as in the other two Petitions. The FFP Review together with the same allegations of misconduct in relation to RAGOF and PIF pleaded in the first Petition are relied upon for the purposes of this Petition as well. The complaints in relation to the Aviation Notes (and the Holbox Transaction) are made directly as regards this Fund. Similar general allegations of mismanagement are made to those set out in the previous two Petitions.

The governing legal principles

18. Section 92 of the Companies Act (2023 Revision) provides:

> "*A company may be wound up by the Court if – …*
>
> *(e) the Court is of opinion that it is just and equitable that the company should be wound up*"

19. The Petitioner's standing to petition as a contributory was not in dispute. In the Skeleton Argument for the Petitioner, the just and equitable ground was, inter alia, defined by reference to the following principles:

> "*119. The overriding question is simply whether it is just and equitable that the company should be wound up.*[191] *As Lord Wilberforce emphasised in his seminal judgment in*

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Ebrahimi v Westbourne Galleries,[192] *a restrictive interpretation of the provision is to be rejected:*

'There has been a tendency to create categories or headings under which cases must be brought if the clause is to apply. This is wrong. Illustrations may be used, but general words should remain general and not be reduced to the sum of particular instances.'

120. This passage from Ebrahimi was recently cited with approval by Kawaley J in In re XiO Diamond LP193 (at [44]), endorsing a submission that '…the umbrella just and equitable ground relied upon is a jurisdiction which applies to an infinite variety of facts". The court went on to state (at [45]) that:

'If a flexible approach should be taken to the just and equitable jurisdiction, where a petitioner for illustrative purposes relies upon a recognized category of case, the legal focus must properly be on whether the facts justify winding up, not whether they match the facts of previous cases based on broadly similar grounds.'

121. It is therefore plain that each case turns on its facts and that the proper unconstrained focus for the Court should be on whether those facts justify winding up. That said, it can nevertheless be useful for illustrative purposes to consider the types of circumstance in which the courts have previously considered it appropriate to wind up a company on the just and equitable ground. This is addressed in the following sections.

122. The Petitioner's pleaded case is that each of the Cayman Funds was a quasi-partnership. Given the strength of the case for a just and equitable winding up more generally, there is no need for the Court to make any findings as to the existence or otherwise of any quasi-partnership, and accordingly that point is not pursued.

(2) Lack of probity leading to a justifiable loss of trust and confidence

123. A justifiable loss of trust and confidence in the company's management due to a lack of probity is a well-recognised circumstance in which it will be just and equitable to wind up a company.

(b) The general principle

124. The leading case is the decision of the Privy Council in Loch v John Blackwood Limited. At p788 Lord Shaw gave the following guidance (emphasis added):

'It is undoubtedly true that at the foundation of applications for winding up, on the 'just and equitable' rule, there must lie a justifiable lack of confidence in the conduct and management of the company's affairs. But this lack of confidence must be grounded on conduct of the directors, not in regard to their private life or affairs, but in regard to the company's business. Furthermore the lack of confidence must spring not from the former is justified by the latter, and it is under the statute just and equitable that the company be wound up.'…

(d) Standard of proof

129. A loss of trust and confidence based on lack of probity does not require the petitioner to prove the conduct on which it relies on the balance of probabilities:

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129.1. In Loch itself, the Privy Council approved the finding of the trial judge that the directors, by omitting to hold general meetings, submit accounts and recommend a dividend, had 'laid themselves open to the suspicion that…their object was to keep the petitioners in ignorance of the truth and acquire their shares at an undervalue', and that it was just and equitable to wind up the company.

129.2. In Ebrahimi, the petitioner relied on his removal as director as justifying a winding-up. The respondent contended that this had been done in good faith in the interests of the company and that the petitioner was required to prove the contrary. Lord Wilberforce gave that argument short shrift, holding that '[t]o confine the application of the just and equitable clause to proved cases of mala fides would be to negative the generality of the words'.

129.3. More recently in the Scottish case of Hyndman v RC Hyndman Ltd 1989 SCLR 294, the pursuer sought the winding-up of a company on the just and equitable ground, in reliance among other things on a suspicion of lack of probity. The respondent contended that this was insufficient and that, if the ground for the petition was fraud on the part of the directors, then fraud had to be specifically averred. The court rejected that submission as contrary to Loch, which "show[ed] that mere suspicion of wrongdoing may suffice if it leads to a justified lack of confidence in the way the company is being run" (p298), a proposition also held to be supported by the passage from Ebrahami quoted in the previous subparagraph.

129.4. The same principles have been established in Hong Kong, Australia and Canada…

(5) The need for an independent investigation into the company's affairs

144. The need for an investigation into the affairs of a company is well established in this jurisdiction as a free-standing basis for the making of a winding-up order, including on the just and equitable ground."

20. In oral argument, Mr Bloch KC accepted there was no serious dispute about the governing principles of law. In the 2nd Respondents' Skeleton Argument for trial, after suggesting that the bar for establishing a loss of confidence was a very high one, it was submitted:

"*258. In Re Washington Special Opportunity Fund Inc (unreported, 1 March 2016), Mangatal J reviewed the authorities and approved the following summary of what needed to be established under this ground for winding-up:*

'an unfair abuse of powers and an impairment of confidence in the probity with which the company's affairs are being conducted … a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely.' "

21. However, in oral argument Mr Bloch KC lucidly submitted:

> "*To resolve the question of whether there has been a breakdown of trust and confidence which renders it appropriate to wind up a fund such as GFIF, PIF or Long View, the Court may simply consider whether there has been a breakdown of trust and confidence in the round and, if so, whether that breakdown of trust and confidence makes it appropriate for the Court to intervene. I characterise the test as one of appropriateness. Other terms, of course, are used. However, in our submission, it's unlikely to make a great deal of difference which particular term one alights on…*"[1]

22. The need for an investigation ground was not mentioned orally at all, and was only cursorily considered in the 2nd Respondents' Skeleton For Trial. This confirmed my initial sense, expressed on the opening day of the trial, that this was the Petitioner's easiest route to goal:

> "*I mean, one of the odd things about the focus that seems to be taking place on both sides on misconduct is that one of the grounds is that there's simply a need for an investigation, and that part of the case seems to me to be the easiest. If a judge was looking for an easy way out, that ground seems to depend far less on which side is an angel and which side is a devil but more on whether this isn't an unholy mess where there should be a winding up simply so the affairs can be investigated and let the investigation lead to whatever it leads to…*"[2]

23. These very legalistic ruminations, of course, overlooked whatever tactical advantages of obtaining findings of positive misconduct might inure to the benefit of the Petitioner in its wider global legal campaign against the Floreat 'Empire'. Unsurprisingly, these remarks were on 2 June 2023 endorsed by the 2nd Respondents' counsel as pointing to the sole ground which I should now confirm was made out on 12 May 2023.

The evidence

Petitioner's Evidence

<u>Chia Hsing Wang ("Bruno"/ "Mr Wang")</u>

24. Mr Wang's Ninth Affidavit dated 5 March 2023 contains the main trial evidence of the Petitioner's beneficial owner, who was born in Taiwan in 1966 as the eldest child of Andrew Wang, who at his death was a billionaire in US dollar terms. Most of Mr Wang's father's wealth (the "Portfolio") was generated through a commission received for brokering the acquisition by the Taiwanese

[1] Transcript Day 6, page 2 lines 2-14.
[2] Transcript Day 1, page 40 line 16 – page 41 line 3

Ministry of Defence of six French 'Lafayette' frigates in 1991. Following a change of government in Taiwan in 2000, Andrew Wang was indicted on charges of bribery and corruption which resulted in his assets in, *inter alia*, the Cayman Islands and Switzerland being frozen for several years. The family became exiles and Andrew Wang was diagnosed with kidney cancer in Switzerland in around 2000. In accordance with Taiwanese custom, but prompted by this diagnosis, Bruno Wang as the eldest child was gifted with his father's Portfolio later that year. Andrew Wang was actively involved with his own business affairs until 2013 when his health seriously declined.

25. Mr Wang asserts, controversially in this litigation, that throughout this time "*I knew very little about financial matters. The knowledge I have now, I have gained primarily through various proceedings with Floreat*" (paragraph 39). The Floreat connection was, by his account, initially made when Bruno travelled to Basel in July 2013 to attend a large faith healing event led by "John of God". This was prompted by concerns about the health challenges then being faced by his partner and his father. The UK contact for the event was James Wilcox ("James"), and at a dinner James mentioned that his business partner Hussam Otaibi ("Hussam") knew Bruno. Back in London, Bruno, his partner and James grew close and in May 2014 at Harry's Bar James and Hussam "*pitched Floreat*" to Bruno. Floreat was to provide family office services to him along with other "*select, handpicked families…It seemed to me that it was like a secret society of the super-rich and powerful that could help each other*" (paragraphs 73.2, 73.5). Because of the Taiwanese problems, substantial assets were frozen in different jurisdictions and Bruno did not have a UK bank account. Bruno would soon become close to Hussam as well as James. Floreat's initial role was to take over the management and payment of Bruno's family expenses and reviewing the performance of the Portfolio. In late 2014, Bruno entered into an Investment Advisory Agreement with Floreat Merchant Banking Limited ("FMB") and a company now named Floreat Wealth Management Limited ("FWM") (the "2014 IAA"). A Supply of Services Agreement was entered into with Floreat Private Limited ("FPL") (the "2014 SOSA"). The investments in the Floreat Funds are said to have taken place against this background.

26. The first Floreat Fund which Mr Wang invested in was the British Virgin Islands ("BVI") company, Real Assets (RA) Global Opportunity Fund I Ltd ("RAGOF"), in January 2015. He was keen to invest in real estate as a safe, long-term investment. He insists that he did not know that RAGOF, as opposed to Hussam, owned Springs Farm, a point of some controversy between the parties. The second and third Funds were Long View II Limited ("Long View") and Global Fixed Income Fund I Limited ("GFIF"), in July and August 2015, respectively. Long View, Bruno understood, would

invest in "*listed equities*" and GFIF was to "*invest in debt to generate fixed returns*". The fourth Fund was Principal Investing Fund I Limited ("PIF"); Bruno invested in this in September 2015, but claims to have no recollection of his reason for doing so. He then describes, *inter alia*:

(a) four separate loan transactions which he avers he entered into in light of the "Loan Assurances" he was given by Hussam;

(b) why he believed Springs Farms belonged to Hussam, and not to RAGOF;

(c) the establishment of Shanti, which means "peace" in Sanskrit, to "*build a collection of mainly Chinese contemporary art*";

(d) the investment in the Aviation Notes; and

(e) the PIF Redemption.

27. In Mr Wang's Tenth Affidavit dated 5 March 2023, he replies to the 2nd Respondents' evidence. Bruno reiterates that he has no recollection of meeting Hussam prior to 2014 and disputes minor details about their early interactions. He firmly denies that the relationship with Floreat was shaped by his own liquidity problems, averring that his primary motivation was to achieve better investment returns than he was making with Swiss Banks. As regards the Peachtree Transaction, Bruno insists that Floreat has never satisfactorily explained what happened to the £22 million which was transferred to Peachtree and contends that the loan he is said to have never repaid was in fact his own money. Bruno also disputes Hussam's and James' accounts of the background to the 2014 IAA and the 2014 SOSA. Bruno also insists that Floreat knew that he lacked financial sophistication, his version of why the relationship broke down is correct and that Hussam always presented Springs Farm as his own property. He avers that Shanti was "*not following any particular art investment strategy. It was simply holding art and objects that I had intended to purchase for myself*" (paragraph 126). Bruno also insists that it was Hussam who encouraged him to invest in the Aviation Notes.

<u>Impressions of Witness' oral testimony</u>

28. The quiet spoken and clearly gentle and sensitive Mr Wang gave his evidence in a somewhat variable manner. Overall he appeared to be an honest witness attempting to give truthful evidence.

When asked hypothetical questions designed to yield tactically awkward answers, it was difficult to avoid the impression that he was on occasion feigning incomprehension. On other occasions it was easy to accept that he was genuinely unable to understand somewhat elaborate lawyerly questions requiring answers based on assumed facts. He was confronted with the covertly recorded disputed phone conversation with Michael Pearson (on 21 September 2020) in which he was said to have indicated he wanted Mr Borelli to "*bring them* [Floreat] *down*", pivotal to the collateral purpose defence. Rather than offering a robust denial, he essentially denied having any recollection of what happened on that day:

> "*Q. That may or may not have been the state of mind that you had on 8 September 2020 but after the meeting on 21 September the fact is, isn't it, you were very angry with them?*
> *A. I don't quite remember what happened on that day, though.*
> *Q. Is it not at least possible that you were both angry with them and that you wanted to bring them down?*
> *A. I don't think I would want to bring them down. I don't think I would like to harm them.*
> *Q. Is that true even today?*
> *A. I still hope that we could have an amicable closure really. I don't want to have enemies for life. I want the both of us can move on and be free.*"

29. I found him to be a credible witness overall, but because of the huge financial interest he has in the outcome of the present litigation I approach the most contentious aspects of his evidence with care. I also approach controversial aspects of his Affidavits with care because it seemed obvious that it was unlikely that, despite the best efforts of his lawyers, he actually focussed on each and every word so as to verify their complete accuracy.

<u>Michael Pearson</u>

30. The Eighth Affidavit of Michael Pearson dated 21 November 2022 ("Pearson 8") sets out the deponent's main trial evidence. The Ninth Affidavit of Michael Pearson is sworn by way of reply. Mr Pearson of FFP is one of the Joint Receivers appointed over the Shares in PIF, Long View and GFIF. He has over 20 years' experience in the financial services sector as a Chartered Accountant (England and Wales) and a licensed insolvency practitioner (Cayman Islands). In the latter capacity he is well known to me and the other Judges of this Court's Financial Services Division.

31. His involvement with Mr Wang flowed from an initial introduction to a law firm by Thomas Lowe KC which resulted in FFP being appointed to the Board of the trustee of discretionary trusts of which Mr Wang was a beneficiary in April 2018. He first met Mr Wang at Floreat's offices in June

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2018. FFP's role expanded as the trusts were restructured, with FFP becoming the director of various new entities in 2019. From January 2020, FFP commenced providing advisory services to Mr Wang, including family office management services and bringing his financial records up to date. By August 2020, there were concerns about the lack of transparency in relation to Mr Wang's investment in the Floreat Funds. He deposed:

> "*On 28 August 2020, I was privy to a telephone call between Mr Hussam Otaibi and Mr Wang in which the unravelling of the relationship was acutely obvious. This is vivid in my memory due to the shockingly abusive, threatening and offensive behaviour of Mr Otaibi towards Mr Wang during this call. Other than this call, I have never heard Mr Otaibi speak like this and I have no doubt that he would not have revealed himself in this way if he had known that Mr Lowe QC and I were listening…*"

32. He avers that this incident occurred when he and Mr Lowe KC happened to be in a meeting with Mr Wang at Mr Wang's apartment and Mr Wang placed the call from Mr Otaibi onto speaker. From August 2020, FFP focussed on helping Mr Wang to understand the arrangements Floreat had put in place. In the course of that process Mr Pearson:

(a) understood that Mr Wang had had difficulty in getting investor statements, and when he was given access to audited financial statements noted that these suggested Mr Wang might be the sole or majority investor in the Floreat Funds;

(b) observed that Mr Wang "*appeared genuinely shocked to learn that Springs Farm was an asset of RAGOF*";

(c) felt, when he learned that Floreat's response to Mr Wang's decision to transfer the administration of his UK staff to another family office service provider was to accuse him of breaching the non-solicitation clauses in the SOSA, that this "*suggested to me that Floreat would go to extreme lengths to intimidate Mr Wang*";

(d) conducted the "FFP Review", which was largely completed in 2020 but which was formally communicated to Mr Wang in a 5 March 2021 letter ("FFP Letter"). The FFP letter noted that FFP had identified "*significant and unusual related party transactions…which…require further investigation*". Also, "*Mr Wang was shocked to learn that he was the only substantial investor in the Floreat Funds*";

(e) issued the "Further FFP Letter" dated 12 July 2021 based on information Mr Wang obtained through a Norwich Pharmacal Order obtained from this Court against the Cayman Funds' administrator; and

(f) conducted a review of Mr Wang's art investments, promoted by Floreat seeking to remove art from his home which culminated in the 12 July 2021 "Shanti Letter".

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33. FFP were appointed as Joint Receivers by Mr Wang to present the present Petitions and to bring similar proceedings in the BVI in respect of RAGOF. As regards the 2nd Respondents' collateral purpose defence, Mr Pearson deposes as follows:

> "*50. I understand that Floreat have alleged that Mr Wang has brought these proceedings for improper collateral purposes, including: to gather documents to support personal claims; to avoid the payment of fees alleged to be due to Floreat entities; and to avoid Mr Wang's companies having to making immediate repayments of allegedly overdue loans. I make clear that in all of my discussions with Mr Wang in relation to these proceedings, both before and after they were commenced, I have never understood Mr Wang to be motivated by anything other than a genuine desire to protect his investments in the Funds given the serious issues uncovered in relation to the conduct of Floreat in relation to his investments. Further, as confirmed in my previous affidavits, the Receivers satisfied themselves prior to the commencing of the winding up proceedings and filing the applications for the appointment of provisional liquidators that these were appropriate and necessary steps to take and that there were good grounds for taking such action. Whilst I accept that the Receivers have been appointed on Mr Wang's application for the specific purposes set out at paragraph 3 of the Receivership Order (being to bring the winding up proceedings and make any ancillary applications we deem appropriate, including for the appointment of provisional liquidators), the Receivers were expressly given the power by paragraph 4 of the Receivership Order to seek the comfort of the prior sanction of the Court if we considered that this was appropriate. Given the good objective grounds for the bringing of the winding up proceedings and the application for the appointment of provisional liquidators, the Receivers did not consider that such prior comfort was necessary. As an experienced office holder, if I had any concerns in relation to the grounds for bringing these proceedings or apprehensions in relation to Mr Wang's motivations, then I would have sought the sanction of the Court prior to taking any action.*
>
> *51. Equally, if at any time during the course of these proceedings the Receivers came to the view that it was no longer proper to maintain them, then we would have applied to the Court to air those concerns and seek sanction. Whilst the Receivers were appointed on Mr Wang's application, I made clear in Pearson 1 at paragraph 17 that if a conflict between the Receivers position and that of Mr Wang arose, then the Receivers would seek independent legal advice. At no time during these proceedings have any such concerns or any such conflicts arisen.*"

34. Mr Pearson next sets out an overview of Mr Wang's financial position averring that he is comfortably able to meet all actual and potential liabilities, including those claimed in the LCIA Arbitration. He then describes the composition of the Floreat Group, which is managed by Hussam, who leads FMB, James, who leads FPL and Mr Mutaz Otaibi ("Mutaz"), the Group CEO (Hussam, James and Mutaz together the "Floreat Principals"). Floreat Holding was incorporated on 24 December 2013 and is owned by the two Otaibis (45% each) and Mr Wilcox (10%). The structure

of the Floreat Funds and Mr Wang's corporate entities are then described, with structure charts exhibited. The investments made in the Floreat Funds are then described:

(a) **PIF**: Mr Wang is the 100 % owner of the all participating shares purchased between September 2015 and August 2018;

(b) **Long View**: Mr Wang is the 100 % owner of the all participating shares purchased in July 2015 and July 2016;

(c) **GFIF**: Mr Wang purchased participating shares between August 2015 and November 2019 and as at year end 2021 owned a stake of 33.65% (although he owned as much as 95.05% in 2019);

(d) **RAGOF**: Mr Wang purchased participating shares between August 2015 and November 2019 and as at year end 2021 owned a stake of 97.17%.

35. Pearson 8 next addresses the grounds for winding-up. The approach, from the outset, is the balanced and objective approach one would expect from a licensed insolvency practitioner rather than from a partisan businessman whose personal economic interests are at stake:

> "*155. In paragraph 18 of Pearson 1, I confirmed that the Receivers sought in the name of the Petitioner orders for the Cayman Funds to be wound up on the just and equitable ground on the basis of the serious wrongdoing as set out in detail in Wang 1 and in the FFP Analysis. I confirmed that the Receivers verily believed that it was just and equitable for the Cayman Funds to be wound up as this is necessary to guarantee a fair and transparent realisation of the assets held by those funds and to prevent further wrongdoing. Since then, the pleadings have developed, with much of the wrongdoing being denied by the Second Respondents. I cannot give direct evidence in relation to the disputed wrongdoing and understand that, ultimately, the Court will likely determine to what extent the wrongdoing is established. Consequently, whilst I continue to believe it is just and equitable that the Cayman Funds be wound up, I recognise, that in relation to some of the allegations of wrongdoing, the picture may change following trial. In the evidence I give below, I have tried to address loss of trust and confidence in a way that recognises that the disputed facts have not yet been resolved.*
>
> *156. I confirm that the Petitioner will rely at trial on the previous affidavits that have been filed on its behalf throughout these proceedings, including those filed in support of the Petition and those filed in support of various interlocutory applications. This affidavit and the Petitioner's evidence for trial should therefore be read in conjunction with those earlier affidavits. The Petitioner will also rely on the concerning matters arising out of the evidenced filed on behalf of the Second Respondents. The matters set out in those affidavits contribute to the loss of trust and confidence.*
>
> *157. In paragraph 10 of Pearson 5, I noted that during the course of their work, the JPLs have produced and filed a number of reports, namely the JPL Reports, which contain*

> *further substantial prima facie evidence of wrongdoing. The areas of wrongdoing contained in the JPL Reports appear to be both significant and substantial. As such, they have led to a further loss of confidence by the Petitioner and Mr Wang in the management of the Cayman Funds.*
>
> *158. I am particularly concerned to note (as set out in the Sixth Report of the JPLs dated 4 November 2022 at paragraph 16) that the JPLs have seen fit to issue a protective claim form in the High Court of England and Wales (Commercial Court) in relation to the Floreat Funds' potential claims against the Floreat Parties and that that '…the JPLs consider that they are valuable claims with good prospects of success'.*
>
> *159. Below I set out certain factual matters raised in the JPL Reports, by reference to the wrongdoing alleged in the Petition. Each of the matters raised in the JPL Reports set out below, taken individually and cumulatively, have contributed to the Receivers' loss of trust and confidence in the management of the Cayman Funds.*"

36. As regards the balanced approach by Mr Pearson to his evidence, there is an interesting (if somewhat fine) distinction between certain pleas I encouraged the Petitioner to abandon early in the trial, for case management reasons, and the way the issue is addressed in Pearson 8. The Re-Amended Petitions when the trial opened averred (paragraph 10 (b), later deleted by way of re-re-amendment) that the Funds were '*formed with the principal purpose of enabling the Floreat Management…and the Floreat Principals…to wrongly obtain access to Mr Wang's assets and then to charge fees and otherwise exploit those assets as their own*'. Without straying into the realms of inference bordering on speculation as to underlying motives (as paragraph 10 (b) seemed to me to do), Mr Pearson averred as follows, focussing solely on how the Funds were managed:

> "*160. I am also concerned that the Cayman Funds were never primarily or appropriately used as investment vehicles for Mr Wang, but were used as vehicles for extracting fees from Mr Wang. In particular:*
>
> *(a) According to the Offering Memorandum, PIF was meant to make private equity (or quasi equity) investments and the Floreat Principals were to subscribe for up to 25% of the shares in the Fund. In fact, the JPL's work indicates that only a small part of the Fund's assets (about 4%) were invested in arms-length private equity investments. The rest was used to fund (1) to fund Mahi Lending Services Limited; and (2) Shanti. It appears from the JPL Report dated 13 December 2021 (and in particular the PIF section, paragraphs 98 and 99) that (1) Mahi Lending Services loaned money only to Blue Water (which is owned by Mr Wang), GFIF and RAGOF, with Floreat entities earning transaction fees on each loan and also on Shanti's transactions. Quite apart from the question of whether these transaction fees were payable (which I address below), the entire structure (i.e. funnelling money to Mr Wang, the other Floreat Funds and Shanti through PIF, rather than by direct investment) appears to be designed to maximise the placement, management and transaction fees that could be charged by Floreat entities. Mr Wang was also unable to redeem shares without the consent of the directors.*

(b) Long View invested in tradable listed securities. I am aware of no reason why those could not be held directly by the nominees through a securities account. The use of PIF substantially increased costs for Mr Wang (and resulted in Floreat Group entities charging substantial fees) for no discernible benefit. Furthermore, I understand that it is common ground on the pleadings that the Articles and Offering Document were effective to restrict Mr Wang's right of redemption. I cannot see how this is appropriate for a fund that invests in securities that can be liquidated at any time.

(c) According to the Offering Memorandum, the investment objective for GFIF was to construct a diversified portfolio, but it appears from the JPL Report dated 13 December, GFIF paragraph 22 that, apart from related party loans to Plumstead (which I understand to be owned by Mr Wang), RAGOF and FIML, the vast majority of GFIF was invested in aviation-related instruments such as the Aviation Notes. My concern about funds being funnelled through GFIF to Mr Wang and RAGOF is the same as the concern I have expressed above: it only serves to increase fees. As to the Aviation Notes, I can see no benefit in Mr Wang investing in these through GFIF and understand that he also invested directly. As with the interposition of Long View (above), the interposition of GFIF into the structure increased costs for Mr Wang (and fees for Floreat entities) for no discernible benefit. And Mr Wang was not able to voluntarily redeem his shares."

37. Mr Pearson then supports various specific allegations of mismanagement by primarily saying that if the supporting factual findings in the JPLs' Reports are accepted by the Court, and he sees no reason to question their accuracy, these matters would constitute justifiable grounds for the Petitioner having lost confidence in the Funds' management. The complaints are set out under the following headings:

(a) wrongly charged and inappropriate fees (Third JPL Report paragraphs 11-14 and Annexures A-D, Fourth JPL Report paragraphs 7.2 and 14-15);

(b) misuse and misappropriation of art owned by PIF by the Floreat Principals (Second JPL PIF Report, paragraphs 40-42);

(c) the Modern Forms Transaction (JPLs' Second Report, Addendum);

(d) overvaluation of Shanti's portfolio (Third JPL Report, paragraph 34, Fourth JPL Report, paragraph 34);

(e) overvaluing PIF's investments in technology companies (Third JPL Report, paragraph 34);

(f) causing PIF to pay fees that were not due (Second JPL PIF Report);

(g) causing PIF to fail to disclose fees paid to Floreat entities (Third JPL Report, paragraph 34);

(h) dishonestly attempting to secure a transfer of shares to the IM for no consideration (JPL Report dated 13 December 2021, paragraphs 70-73, JPL Report dated 4 November 2022 ("Sixth JPL Report"), paragraph 6.3);

(i) wrongdoing/mismanagement in GFIF (Sixth JPL Report, paragraphs 38-39, 42-50, 52-70, Fifth JPL Report, paragraph 21);

(j) misappropriation of Reading FC loan termination fee (findings in *Floreat Investment Management Limited-v- Benjamin Churchill & Ors* [2022] EWHC 357, at paragraphs 128, 342, 382, 451);

(k) causing Long View to pay fees that were not due (Third JPL Report, paragraph 34, Fifth JPL Report, paragraph 21);

(l) Springs Farm acquisition, Deed of Indemnity and occupation/use by Floreat Principals; and

(m) RAGOF management fee variation, redemptions and oral loan documentation after the fact.

38. In Mr Pearson's Ninth Affidavit dated 31 January 2023 ("Pearson 9"), he replies to Hussam 3 and makes some minor corrections to his own last two Affidavits.

<u>Impressions of Witness' oral testimony</u>

39. Mr Pearson is well known to the Court as an official liquidator (and in one instance estate administrator) who I have appointed and supervised over the last approximately 5 years. So far as I recall, I have only met him on one social occasion in April 2021[3]. Mr Pearson gave his oral evidence in a generally straightforward non-partisan manner. He was understandably somewhat defensive when questioned about what he aptly characterised as "banter" in WhatsApp communications with Provisional Liquidator Mr Cosimo Borrelli in September 2021. He was clearly keen to defend the professionalism of Mr Borrelli. However, he was quite firm and straightforward in denying any contact took place with Mr Borrelli prior to 2021. Although he questioned the veracity of the records of all the allegedly overheard conversations, he was appropriately more tentative about disputing conversations he was said to have participated in during the period when he was admittedly in contact with Mr Borrelli in connection with these

[3] That was a dinner hosted by RISA during the Court's Distinguished Lecture Series when Lady Mary Arden and Lord Jonathan Mance were the guests of honour.

proceedings. At the end of his cross-examination, the following exchange took place between Mr Bloch KC and Mr Pearson[4]:

> "*Q. Now, I put it to you in this way, Mr Pearson: if insofar as you claim that your recollection is inconsistent with that of Mr* [X] *and Mr* [Y], *they are right and your evidence as to your recollection is wrong. Do you have any comment on that?*
>
> *A. I think there's perhaps two parts to answering this which I'll divide into the Wang notes and what's called the Borrelli notes. The Wang notes are obviously at a much earlier point in time, I think a year before the appointment of PLs. I mean, there simply wasn't any engagement by anybody of Mr Borrelli at that time. There's simply none. There is none and there is no evidence because it didn't happen. In relation to the Borelli notes, and I can't recall sitting here right now precisely what they said, but I don't think they would be an issue. It would be, you know, merely just a brief report.*"

40. At the end of his re-examination, the following related exchange took place between Mr Pearson and the Bench[5]:

> "*MR JUSTICE KAWALEY: Yes. Mr Pearson, just a couple of questions from me. First of all, on this question of the notes of the conversation said to have been overheard between Mr Borelli and yourself, do you accept that your recently disclosed communications with Mr Borelli both contain a reference to Hussam, I think, or Floreat being worried as to the purported record of the overheard telephone call. So I mean, my question is do you accept that there is a consistency in that respect between those two strands of evidence, the evidence given in writing so far about the overheard conversation and your own WhatsApp chats.*
> *A. Yes well I think the word 'worried' features in both. I 'm not surprised by that because it would have been a worrying time to be presented with JPLs on an ex parte basis and I presume at that point having read the petitions related to the appointment.*
>
> *MR JUSTICE KAWALEY: Yes. So to a certain extent I understood you to be, in effect, drawing a distinction in terms of how firmly you could say this was never said, a distinction between the September 2020 discussion said to have taken place between Mr Wang and yourself talking about Cosimo and you seem to be quite adamant that could not have happened.*
>
> *A. Yes.*"

41. I found Mr Pearson to be an entirely credible witness who appeared despite his understandable loyalty to his client's cause to be attempting to give accurate evidence to the Court.

[4] Transcript Day 12, page 47 line 20 to page 48 line 11.
[5] Transcript Day 12, page 66 line 15 to page 67 line 14.

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<u>Michael Roger Priaulx</u>

42. Mr Priaulx's Amended First Affidavit is dated 10 January 2023. He qualified as a solicitor with Linklaters in 1998 in London and later worked in the Cayman Islands with Walkers. He is currently the CEO of Genesis Trust & Corporate Services Ltd ("Genesis Trust"). His capacity relevant to the present Petitions is his directorship of PIF, GFIF and Shanti. He discloses that he has been released from any claims in exchange for giving his evidence.

43. The deponent avers that in 2017 he was asked by Mr Lowe KC whether Genesis Trust would be interested in providing trustee services for Mr Wang. He met Hussam and James at Floreat's offices in September 2017, and in early 2018 he was asked whether he could assist with the provision of independent director services to some of Floreat's investment funds. He states:

(a) he was appointed as a director of PIF and GFIF on 18 April 2018. Trinda Blackmore and David Whitworth were already directors. He was "*given to understand that the funds were 'friends and family funds' and had operated as a collective investment vehicle in the past*";

(b) he raised concerns, having noticed the substantial art the fund had invested in that the PIF offering documents made no mention of such investments. Mark Banham and Mutaz responded that this was not an immediate concern as the only investors at that point were friends and family of the Otaibis;

(c) he now understands that Shanti acquired part of Hussam's Modern Forms collection in November 2019. He does not believe the PIF Board considered the transaction. Had he been aware that Hussam could profit from it, he would have addressed the resultant conflict issues; and

(d) he now understands that Mr Wang was the sole investor in PIF and Shanti. Had he known this, he would likely have approached their management in a different manner. As regards the PIF Redemption, his "*general view is that, where there is a sole beneficial owner, if that owners seeks redemption the board should be open to that irrespective of whether there are formal redemption rights*".

44. As regards the GFIF Aviation Notes, Mr Priaulx averred:

"*104. Beyond the disclosures of their directorships in FFISA which were given on occasion by Ms Blackmore and Mr Whitworth (but which do not appear to have been referred to in the 4 March Resolution which instead states that the directors confirm that they have no interest in the subject matter of the resolution), I do not believe that any disclosures were made of any conflicts of interest in respect of the acquisition of Aviation Notes between GFIF on the one hand and FFISA, Floreat and/or the Floreat Principals on the other in a potential default scenario or otherwise.*"

Impressions of Witness' oral testimony

45. Mr Priaulx gave his oral evidence in a straightforward manner and I found him to be an entirely credible witness. He explained that people looked to him for legal expertise when he served as an independent director. He agreed that it was "not uncommon" for directors of similar funds not to know who the beneficial owners were. He also agreed that the PIF and GFIF boards were both experienced ones and that he never saw anything untoward about any of the approved transactions at the time.

Ms Trinda Blackmore

46. Ms Blackmore's First Affidavit was dated 20 December 2022. She was a director of RAGOF, PIF, Long View and GFIF. In summary, her evidence included the following noteworthy averments:

(a) she was unaware of Hussam Otaibi's use of Springs Farm prior to 2021 when lease negotiations were started, and feels the Board should have been informed about this and a related Joint Venture Agreement;

(b) she was not aware of the wider implications of GFIF's acquisition of Aviation Notes in 2020 and now believes a different approach to valuation ought to have been taken;

(c) in connection with the RFC Loan Termination Fee, the GFIF Board was not given a material page of the Confidential Information Memorandum.

Impressions of Witness' oral testimony

47. Ms Blackmore was an entirely credible witness whose written evidence was not undermined in the course of her very brief cross-examination to any, or any material, extent.

2nd Respondents' Evidence

Mr Nick Hackworth

48. The First Affidavit of Nick Hackworth is dated 9 February 2023. He has studied at Central St Martins, the University of Oxford and the Courtauld Institute of Art. A former Contemporary Art Critic for the Evening Standard, in 2006 he established an art gallery, Paradise Row, which closed

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in 2014. Through their mutual interest in art, he became friends with Hussam in 2009 and the latter invested in Paradise Row in 2012. The deponent has been an art advisor to Shanti since October 2015 when Shanti was incorporated. He was also a "founding director" of the Modern Forms Collection funded and founded by Hussam which Mr Hackworth describes as follows:

> "*14…The Modern Forms Collection was and is dedicated to supporting outstanding contemporary art through a program of acquisitions and philanthropically supporting the art ecosystem through donations of art works to public art exhibitions and other forms of philanthropic collaboration with artists and art institutions…*"

49. Mr Hackworth explains the Shanti acquisition process, which was managed by Floreat Principal Investing Limited ("FPI"), PIF's investment advisor. He tendered advice on most acquisitions although informal advisors included Hussam Otaibi, Mr Wang (mainly in relation to Asian and Chinese art) and others. The investment strategy contemplated that "*PIF would engage in market interventions to increase the value of acquired artworks… the strategy was not to make quick sales, but to hold the majority of the artwork for some time, to enable it to increase in value.*" The deponent was responsible (with Mr Jeff Sinclair) for preparing pre-acquisition proposals ("PAPs"), which were typically drawn up after the event. He further avers with supporting elaboration that:

(a) the Modern Forms Transaction was indeed in Shanti's best interests; and

(b) the art portfolio was <u>not</u> overvalued.

<u>Impressions of Witness' oral testimony</u>

50. Nick Hackworth demonstrated a strong grasp of the art world which he inhabits. Despite his obvious partisanship and personal loyalty to Hussam, he attempted to give straightforward evidence to the Court. For instance, although he was initially reluctant to agree that he regarded Springs Farm to be Hussam's country home on the grounds that ultimate ownership of assets was generally not something he knew, when pressed he agreed that in a general sense he understood it to be Hussam's country home. When questioned about the fact that the PAPs were prepared after acquisitions and back-dated, he explained in a straightforward way that they "*were not tied to specific dates….but to the general time that those discussions happened*". He was less straightforward when asked about one purchase Shanti made from Hussam[6]:

> "*Q. I will rephrase it. I suggest to you that Shanti would not have bought this work at this price from the Vigo Gallery?*

[6] Transcript Day 12, 28 April 2023, page 111 line 7-20.

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A. I don't know what price they acquired that work for from the Vigo Gallery.
Q. I will rephrase it again. Based on your experience in June 2019 and 14 February 2020, when you had been rebuffed twice in relation to purchases of El Salahis, are you able to say whether or not Shanti would have purchased this El Salahi in December 2019 if the seller had been anyone other than Hussam?
A. No, I can't question because I wasn't making decisions so I don't know what the answer to that question is, no."

51. This art purchase at least appeared to contradict his earlier insistence that all purchases were made based on investment concerns alone and that Hussam and Mutaz never made such decisions. He vigorously denied purchasing art based on the personal tastes of Hussam and Mutaz, but was forced to admit that he had suggested that one piece of art would look good over Hussam's bed at Springs Farm. The fact that he held no formal corporate position within the Floreat Group lent credulity to the lack of knowledge about Mr Wang's status as a client which he professed. Mr Hackworth was a generally credible witness who made no attempt to conceal his sense of loyalty to the Otaibi brothers.

Mr Jeff Sinclair

52. The First Affidavit of Jeff Sinclair is dated 23rd November 2022. He is the Head and Managing Director of FPI. He holds a Mechanical Engineering Degree from Toronto University and an MBA from the Richard Ivey School of Business in Canada. He joined the company now known as FMB as a Senior Director in 2009. He describes his role in relation to art investments made by Shanti on behalf of PIF as follows:

> "*21.1 Together with Hussam and Mutaz as directors of FPI, considering investment advice and recommendations by Nick and other Shanti advisors to be passed on to FPIM and ultimately the boards of PIF and Shanti;*
>
> *21.2 Approving and preparing pre-acquisition proposals ("PAPs") in relation to Shanti's art acquisitions. I understand a full set of PAPs will be exhibited to Nick Hackworth's Affidavit; and*
>
> *21.3 Together with Nick and Hussam and Mutaz as directors of FPI, designing Shanti's art investment strategy.*"

Impressions of Witness' oral testimony

53. Mr Sinclair led FPI which was PIF's investment advisor and therefore operated at a fairly high operational level. Accordingly, what he seemingly did not know was somewhat surprising and what

he admitted to knowing often helped to add to the emerging picture of a business culture which lacked transparency and integrity. For instance:

(a) he said he understood PIF to have several investors rather than one;

(b) when asked whether it concerned him that an email which Hussam had sent him claiming to be a 20% owner of PIF was false, he replied: "*No. No, not at all*";

(c) his explanation for why the practice of loaning art which started in 2016 was only addressed in terms of a formal policy three years later ("*an oversight*") appeared to be an incomplete one;

(d) his suggestion that the \$6 million valuation of 19 pieces of art (acquired after \$6 million had previously been sourced from PIF) was the result of a credible valuation exercise was an entirely unconvincing one;

(e) he agreed that many art purchases from Modern Farms were made by Shanti and PIF without being put to the relevant Boards. He admitted that he saw a potential conflict and attempted to develop a policy to address it. He unconvincingly suggested that it was a mere "*oversight*" and a "*clerical error*" that a document disclosing the conflict was not forwarded to the PIF and Shanti Boards (on which independent directors sat); and

(f) he casually admitted asking Pearl Lam to sign an audit letter stating that art was stored where in fact it was not. His subsequent evidence that he did not appreciate at the time the falsity of the audit letter which he forwarded to KPMG beggared belief.

54. Mr Sinclair appeared to be testifying under the dark shadow of overpowering duties of loyalty which his senior managerial position required. His evidence, particularly controversial averments on matters central to the 2nd Respondents' defence, clearly had to be approached with great care.

<u>Mr David Whitworth</u>

55. Mr Whitworth's First Affidavit contains his main trial evidence. He qualified as a Chartered Accountant in London in 1982. Prior to his involvement with Floreat in 2013, he had served on

over 20 corporate boards. He has served on the following relevant boards in relation to the present proceedings:

(a) RAGOF (20 December 2013- 30 December 2021);

(b) FRAIM, Investment Manager of RAGOF (21 March 2014- 30 December 2021);

(c) PIF (13 July 2015-30 December 2021);

(d) GFIF (13 July 2015-30 December 2021);

(e) Shanti (14 October 2015 -18 September 2021); and

(f) LV2M, Investment Manager of Long View (9 October 2017-30 December 2021).

56. As regards PIF and Shanti, he averred that he disagreed that the Otaibis' involvement in certain art purchases was not disclosed to the independent board members of those companies. He disagrees with Mr Priaulx that his view of the appropriateness of the PIF Redemption would have changed had he known that Mr Wang was the beneficial owner of PIF. As regards GFIF, he avers that he would have not have approved the impugned transactions (the Reading FC termination fee and related transactions) if he was not satisfied of their propriety at the time. As regards RAGOF, he explains why he considered the purchase of Springs Farm was a good investment at the time. As regards all four Funds, he defends the appropriateness of the fee structures.

<u>Impressions of witness' oral testimony</u>

57. Under cross-examination, Mr Whitworth admitted that he had received one regulatory sanction in connection with unrelated directorships. He expressed surprise that adverse findings had been recorded in relation to Mutaz in connection with GFIF and the Reading FC Termination fee matter. When pressed on what the supporting contemporaneous documentation indicated as regards the conflict in relation to the Modern Forms purchase not being disclosed to the PIF and Shanti Boards, he somewhat reluctantly agreed that the disclosure he had thought occurred likely did not occur. He more readily admitted that both he and Mutaz had obvious conflicts in relation to the issuance of the Aviation Notes as directors of both counterparties. He agreed that he committed GFIF to lending $44 million to FAPL which GFIF did not at that point have. He was unable to explain why subsequent correspondence relating to sourcing funds to cover this loan was not shared with independent director Mr LeBeaux. He frankly admitted that his expectation was that Floreat would source the money needed from PIF and RAGOF and that an independent non-conflicted director

should have been involved in approving the transaction. Overall, I regarded Mr Whitworth as an entirely credible witness who did his best to give honest evidence to the Court.

Grounds for making the Winding-Up Orders

Overview

58. In his 29 September 2021 Judgment providing reasons for appointing the JPLs, Doyle J concluded as follows:

> "*32. I have carefully considered the Applicant's concerns and note the reference to:*
>
> *1) a justifiable loss of trust and confidence in the management of the Cayman Funds due to the lack of probity on the part of the management;*
>
> *2) oppression by those wielding the votes with respect to each of the Cayman Funds;*
>
> *3) the alleged fraud from the inception in respect of the Cayman Funds;*
>
> *4) an irretrievable breakdown in the underlying relationship of mutual trust and confidence; and*
>
> *5) a pressing need for an investigation into the affairs of each of the Cayman Funds.*
>
> *33. Concerns (1) and (5) in particular have persuaded me that there is a prima facie case.*" [Emphasis added]

59. Against this background, it is difficult to see how I could have declined to grant the Orders sought once it became apparent that the Petitions were no longer being opposed. Departing from a brother Judge's decision in this very case in September 2021 based on far less material than was before me on 12 May 2023 would require a remarkable self-combustion of the Petitioner's case. On the contrary, the Petitioner's case at trial was based in large part on the more cogent conclusions reached by the JPLs based on preliminary investigations and presented in various reports which Mr Pearson (himself an insolvency practitioner) asserted supported a justifiable loss of confidence in the Funds' management and/or demonstrated the need for further investigations through an official liquidation. The Petitioner's witnesses provided oral evidence and did not wither under cross-examination. Significant corroboration for the Petitioner's case was obtained through careful cross-examination of the 2nd Respondents' witnesses.

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60. A *prima facie* case for winding-up in 2021 had become an almost compelling case for winding-up in 2023.

PIF

61. There was clear evidence that the art investments were on at least one occasion (the Modern Forms transaction) managed without any proper attempt to mitigate the effects of blindingly obvious conflicts of interest. There was also clear evidence of a senior manager making false representations to PIF's auditors in connection with the location of art. There were strong reasons for suspecting that on a systemic basis PIF's art investments were used in part for the personal benefit of senior Floreat employees and that unmitigated conflicts of interest were rife. The JPLs' Reports, combined with the evidence of Mr Pearson, also support the view that grounds for a justifiable loss of confidence in the management exist. It was further appropriate to view the evidence directly linked to PIF in the wider context of how the other Funds were managed. The cumulative weight of these concerns, which the 2nd Respondents ultimately did not have the temerity to permit the Court to examine more fully in the present proceedings, made it manifestly appropriate for PIF to be wound-up to enable its affairs to be fully investigated.

62. No need to analyse the loss of confidence ground on its merits properly arose because of my initial assumption that the investigation ground was easier to make out. However, since a justifiable loss of confidence may in legal terms potentially be based on well-founded suspicions of misconduct, it is far from obvious that the analysis of that ground would be much different.

Long View

63. The JPLs' Reports combined with the evidence of Mr Pearson also support the view that grounds for a justifiable loss of confidence in the management exist. It was further appropriate to view the evidence directly linked to Long View in the wider context of how the other Funds were managed. The cumulative weight of these concerns, which the 2nd Respondents ultimately did not have the temerity to permit the Court to examine more fully in the present proceedings, made it manifestly appropriate for Long View to be wound-up to enable its affairs to be fully investigated. No need to analyse the loss of confidence ground on its merits therefore arose.

GFIF

64. There was clear evidence that in at least one significant instance, the issuance of Aviation Notes with the same directors acting on the issuing and investing side, blindingly obvious conflicts of

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interest were not addressed. There are strong reasons to suspect that independent directors were deliberately deprived of access to information which would have enabled the conflicts to be addressed. As in the case of PIF and Long View, Mr Pearson's evidence and the JPLs' Reports also support the view that grounds for a justifiable loss of confidence in the management exist. It was further appropriate to view the evidence directly linked to GFIF in the wider context of how the other Funds were managed. As regards the Reading FC termination fee issue, reliance was placed on judicial observations in the English proceedings about Mutaz's honesty. In *Floreat Investment Management Limited-v- Churchill & Another* [2023] EWCA Civ 440, the judgment in favour of GFIF's Investment Manager was set aside on appeal. Males LJ concluded with the following observations:

> "*90. Standing back from the detail, it seems to me that this is the just result. If the Defendants did act dishonestly, it is difficult to avoid the conclusion that Mr Mutaz Otaibi was equally dishonest. After all, he was a director of the Fund itself, closely involved in every aspect of this contractual structure, and was found by the judge to have given his informed consent to the diversion of the termination fee. But the Fund has never made any claim against him, and he was put forward in this action as an honest witness who was deceived by the Defendants' false representations, a claim which the judge rejected. In effect, Mr Mutaz Otaibi's company brings this action to undo the agreement to split the termination fee 50/50 which he himself made with the Defendants. In those circumstances an outcome in which the entirety of the termination fee ends up in the hands of his company, FIML, is to say the least somewhat counter-intuitive.*"

65. The cumulative weight of these concerns, which again the 2nd Respondents ultimately did not have the temerity to permit the Court to examine more fully in the present proceedings, made it manifestly appropriate for PIF to be wound-up to enable its affairs to be fully investigated. No need to analyse the loss of confidence ground on its merits arose, albeit that any such analysis might yield a similar result.

<u>RAGOF</u>

66. There was clear evidence that Springs Farm was for some years used for private purposes without Mr Wang knowing it was a RAGOF property. In opening submissions, Mr Rubin KC referred the Court to 12 December 2015 emails in which Hussam wrote to Mr Wang: "…*What a pleasure to host you today… at my favourite country retreat*". To which Mr Wang replied: "*Thank you so much*

for your warm hospitality. It was a magical day in your country retreat…" Mr Pearson testified that Mr Wang seemed "*genuinely surprised*" to learn that his Fund owned the property.

67. This lent further force to the case for winding-up the three Cayman Funds as it further sharpened the general picture of mismanagement portrayed by the evidence directly concerning those Funds.

Conclusion

68. For these reasons on 12 May 2023, I granted Winding-Up Orders in respect of PIF and Long View and found that GFIF was also liable to be wound-up, subject to the Court considering any opposition by the Series 7 Investors given that they were not represented at the hearing on 12 May 2023.

THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT

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