

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS

2 FINANCIAL SERVICES DIVISION

Cause No FSD 137, 138, 139, 140,

141,154,156,158,159,160,

161,162,163,164,165,166,167,168,

169,170,171 and 172 of 2014

(NRLC)

8 IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)

9 AND IN THE MATTER OF WEAVERING MACRO FIXED INCOME FUND LIMITED (IN

10 LIQUIDATION)

11 BETWEEN:

12 (1) IAN STOKOE

13 (2) DAVID WALKER

14 (3) HUGH DICKSON

15 (4) PAUL MCCANN

16 (AS JOINT OFFICIAL LIQUIDATORS OF WEAVERING MACRO FIXED INCOME FUND

17 LIMITED)

Plaintiffs

19 -and-

20 SOMERS DUBLIN LTD AND OTHERS

Defendants

23 **Appearances:** Mr Jan Golaszewski of Carey Olsen on behalf of the Plaintiffs

26 **Before:** The Hon. Justice Nigel R.L. Clifford QC

28 **Heard:** Tuesday, 2 June 2015

31 **RULING**

- 32
- 33 1. This is a series of *ex parte* applications by the Joint Official Liquidators of Weaving
- 34 Macro Fixed Income Fund (in Liquidation), which I shall refer to as the "Fund", to
- 35 serve the Writs of Summons ("**Writs**") out of the jurisdiction pursuant to Grand Court
- 36 Rules Order 11, rule 1 (1)(ff). These are Writs in which the Joint Official Liquidators,

1 acting in such capacity, are the Plaintiffs. I have read the Second Affidavit ("**Second**
2 **Affidavit**") of Ian Stokoe dated 28 May 2015.

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4 2. The actions are related in that the Defendants were all members of the Fund who
5 made redemption requests in December 2008. Payments were made to the
6 Defendants pursuant to these requests between 19th December 2008 and 2nd
7 January 2009. This was within, as it turned out, a period of six months immediately
8 preceding the commencement of the liquidation of the Fund when, it is alleged, it was
9 unable to pay its debts within the meaning of Section 93 of the Companies Law and
10 was, therefore, insolvent.

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12 3. The Joint Official Liquidators contend that, in the circumstances, the payments
13 constituted voidable preferences pursuant to the provisions of Section 145 of the
14 Companies Law and fall to be recovered.

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16 4. I have 22 Summonses before me. It is appropriate that all applications be heard
17 together. I am satisfied that each Defendant was a member of the Fund, being a
18 company incorporated and registered within the Cayman Islands and governed by its
19 laws. I am also satisfied that the subject matter of the claim in each case relates to
20 the rights of the member in relation to the company.

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22 5. GCR Order 11, Rule 4 sets out the requirements of what should be in the Second
23 Affidavit supporting the application for leave to serve out of the jurisdiction. I am
24 satisfied the requirements have been met.

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26 6. I accept that the ground for leave to serve out of the jurisdiction, pursuant to GCR
27 Order 11, rule 1 (1)(ff), is established in each case. Further I am satisfied that it is
28 appropriate, in each case, to exercise the discretion to grant leave to serve out of the
29 jurisdiction. This is because:

- 30 a. There exists a good arguable case and a serious issue to be tried; and
31 b. The claims are brought pursuant to a Cayman Islands Law, in relation to a
32 Cayman Islands Company which is being wound up subject to the
33 supervision of the Grand Court of the Cayman Islands.

- 1 7. Accordingly, it appears that this jurisdiction is the appropriate forum for the actions.
2
3 8. I will allow extra time for service of the Writs in the two causes FSD 160 of 2014 and
4 FSD 165 of 2014 because service is required in Switzerland pursuant to the Hague
5 Convention. The validity of those Writs shall be extended to 1 September 2015
6 pursuant to GCR Order 6, Rule 8 (2).
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8 9. The time to be fixed, in accordance with GCR Order 11, Rule 1(3), for the
9 Defendants to acknowledge service is 28 days, save actions FSD 159 of 2014, FSD
10 161 of 2014 and FSD 164 of 2014, in which the Defendants have already instructed
11 attorneys within this jurisdiction, where the time so fixed is 21 days.
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13 10. As submitted, I will order that costs be in the cause.
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16
17 Dated this 8th day of June 2015
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22 The Hon. Justice Nigel R.L. Clifford, QC
23 JUDGE OF THE GRAND COURT

