

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO. 52 OF 2016 (RMJ)

**IN THE MATTER OF THE COMPANIES LAW (2016 REVISION)
AND IN THE MATTER OF CHINA BRANDING GROUP LIMITED (IN OFFICIAL LIQUIDATION)**

In Chambers, 5th October 2017

Appearances:

Mr Jeremy Walton and Ms Victoria King of Appleby for Mr Tony Bobulinski (the Appellant/Applicant)

Mr Matthew Goucke and Mr Peter Kendall of Walkers for the Joint Official Liquidators of China Branding Group Limited (In Official Liquidation) (the Respondent)

Before: The Hon. Mr. Justice Robin McMillan

Heard: 5th, October 2017

Draft Judgment

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Judgment Delivered: 1 Dec 2017

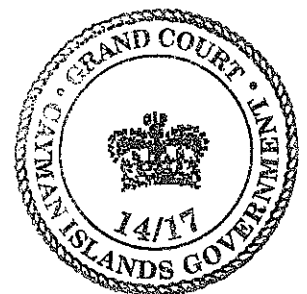
HEADNOTE

Part III of Companies Winding Up Rules 2008 - Absence of provision for cross-examination or discovery on appeal - Exercise of inherent jurisdiction of Court to address and correct a lacuna.

RULING

The Appellant/Applicant's Summons Application in material part states as follows:

"



1. *That the Joint Liquidators of China Branding Group Limited (In Official Liquidation) (Company) do provide:*
 - a. *details, along with supporting documentation, of what Adam Roseman describes at paragraph 7 of his Third Affirmation, affirmed on 8 September 2017 in these proceedings, as "considerable creditor pressure which threatened [the Company's] ability to continue to trade";*
 - b. *any minutes or record(s) of the Company's board meeting held in March 2016 at which the Appellant was in attendance and during which Robert Roche discussed the Company entering into liquidation;*
 - c. *copies of all communications between Adam Roseman and any other parties relating to the Appellant's entitlement under his loan and, in particular, in relation to the 2.5x return on his loan and the effect of the maturity date in his Note and Pledge Agreement (as defined in the First Affidavit of the Appellant sworn on 4 August 2017);*
 - d. *information about the assets (both tangible and intangible) held by the Company and their locations, and about the proceeds of the sale of the Company, relevant to the issue of the security of the Appellant under the Pledge Agreement;*
 - e. *copies of the communications between the Joint Official Liquidators, Douglas Oscrow, Tim Gong, Jacob Fisch, Adam Roseman, Robert Roche, Shing Tao and the Company's board members during the month of April 2016 and during July through to September 2016; and*
 - f. *records of any and all communication between Shing Tao, Douglas Oscrow and any of the other individuals mentioned in paragraph 1(e) above regarding Remark Media, Inc.'s last-minute waiver of the requirement of the Appellant's signature to the relevant contractual documents for the sale of the Company.*

2. *That the following individuals do attend for cross-examination on their affidavits (or in the case of Mr Jeffrey Valle and Mr Mark Dosker, their memoranda on matters of California law) at the hearing of the Appellant's Summons dated 5 July 2017, falling which their evidence be disregarded:*
 - a. *The Appellant*
 - b. *Mr Adam Roseman*
 - c. *Mr Hugh Dickson*
 - d. *Mr Jeffrey Valle*
 - e. *Mr Mark Dosker ."*



2. Regarding a proof of debt appeal, this application arises in the context of Part III of the Companies Winding Up Rules 2008 and the absence therein of express provision for either cross- examination or discovery on appeal.

3. Having considered this matter, I am of the view that it comes down at this stage to one narrow point of law and, in determining that point of law, I have taken into account not only the Court of Appeal case to which we have been referred (*HSH Cayman Limited I GP Ltd. v ABN AMRO Bank NV* [2010 (1) CILR 114]) but also the case in which the learned Chief Justice indicated how, other than in substantive matters, the Court may use its inherent jurisdiction to fill what would otherwise be a lacuna (*In the Matter of Saad Investments Company Limited* [2010 (2) CILR 422]). Considering the nature of the matter under consideration and the fact that cross-examination may well be appropriate in many instances, the Court is of the view that, in this instance, it would be appropriate to allow cross-examination as requested in paragraph 2 of the Summons dated 28 September (Summons).

4. I say that both as a matter of jurisdiction, because I see nothing at variance with or that contradicts the scheme laid down by making this order, and as a matter of discretion in the circumstances of what appears to be a complex and difficult matter where the Court considers that it would be assisted by having an opportunity to see these witnesses cross-examined and, indeed with the particular issue of expert witness evidence firmly in mind, to test and see tested their propositions of law (that is in respect of Mr Valle and Mr Dosker). Therefore, given that this is an unusual matter and that expert evidence is to be adduced, it is very important that the Court has the tools available to make an informed and considered decision after those experts have been, as appropriate, duly tested. In that respect I grant the Summons Application.



5. I do not grant it in the other respects, because I do not consider that the procedural scheme which we have been examining allows at large for the kind of comprehensive discovery which has been sought. As I explained earlier in this hearing, there is a fundamental difference between a matter and an action. A matter has perhaps a more summary character to it, but it certainly does not, in the general course of things, provide for extensive pleadings and then for comprehensive discovery in relation to material which is relevant to those pleadings. I consider (as Mr Goucke has indicated) that it would be contrary to the scheme of CWR Order 16 to go down that route in a comprehensive way as I have been invited to do. Therefore I dismiss those other aspects of the Summons.

Dated this 5th day of October 2017

Robin McMillan

The Hon. Justice Robin McMillan
JUDGE OF THE GRAND COURT

