IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD No: 19 of 2021 (NSJ)

IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)

AND IN THE MATTER OF GBC OIL COMPANY LTD.

JUDGMENT ON WINDING UP PETITION

Headnote

Creditor's winding up petition on the ground that the Company is unable to pay its debts – petitioning creditor is a secured creditor taking steps to enforce security in Canada – Company not appearing but a director sent an email to the Court seeking an adjournment of the hearing of the petition pending the outcome of the Ontario proceedings and because of the impact of COVID 19 illness and restrictions

Appearances:	Shaun Tracey of Campbells for the Petitioner
	The Company was not represented
Hearing:	25 February 2021
Further evidence:	4 March 2021
Draft judgment circulated:	4 March 2021
Judgment delivered:	5 March 2021

Introduction

1. This judgment sets out my decision on the winding up petition dated 22 January 2021 (the ***Petition***) presented by Omni Bridgeway Limited (***OBL***) to wind up GBC Oil Company Ltd. (the ***Company***). The Petition was supported by affidavit evidence from, *inter alia*, Ms Loewith, the Director of Strategic Partnerships (Canada), Investment Manager and Legal Counsel of OBL and Mr Jeffrey Levine, a lawyer and partner of McMillan LLP in Toronto, who addressed the relevant law of Ontario.

2. OBL seeks the winding up of the Company on the grounds that it is a creditor of the Company and has standing to present the Petition under section 94(b) of the Companies Act (2021 Revision) (the ***Act***); the Company is unable to pay its debts, within the meaning of section 92(d) of the Act and that in the circumstances the Company should be wound up pursuant to Part V of the Act. OBL seeks the appointment of Christopher Kennedy and Barry Lynch of Alvarez & Marsal as joint official liquidators and the standard consequential orders, including an order that its costs of and occasioned by the Petition be paid out of the Company's assets on the indemnity basis.

3. The Petition was heard on 25 February 2021. OBL was represented by Mr. Shaun Tracey of Campbells. The Company did not appear although a director of the Company (Mr Grezda) had prior to the hearing of the Petition made representations to the Court via two emails, including a request for an adjournment. At the conclusion of the hearing, I indicated that I considered that OBL had established that the grounds for making a winding up order had been made out and that, subject to one matter on which further evidence was needed, it was appropriate for a winding up order to be made. I also indicated that, having taken into account of the matters raised in Mr Grezda's emails, I did not consider that an adjournment was necessary or justified.

4. The issue on which I required further evidence to be filed related to the effect of the relief that OBL was seeking in proceedings against the Company in Ontario, Canada. That further evidence, in the form of the Second Affidavit of Mr Levine, was filed on 4 March 2021. This evidence reveals that, in light of the issue I had raised, OBL has decided to withdraw, and withdrawn, the Ontario proceedings. As a result, the issue and concern I had has disappeared. I am now satisfied that the winding up order should be made. This judgment summarises briefly the reasons for my decision, including my decision not to grant the Company's request for an adjournment.

The background and recent history

5. The Company is an exempted limited company incorporated under the laws of the Cayman Islands with its registered office at Genesis Trust & Corporate Services Ltd., PO Box 448, Elgin Avenue, George Town, Cayman Islands. The Company held licenses to operate oil fields in Albania. Under the contractual arrangements between the Company and the Ministry of Infrastructure and Energy of Albania, the National Agency of Natural Resources of Albania and Albania's state-owned oil and gas corporation, Albpetrol Sh.A (together, ***Albania***), disputes were to be referred to the International Court of Arbitration of the International Commerce (the ***ICC***).

6. OBL is a company incorporated in Australia and has been listed on the Australian Securities Exchange since 2001. OBL is a global funder of litigation and arbitration. Omni Bridgeway Capital (Canada) Limited (formerly known as Bentham IMF Capital Limited) (***Omni Bridgeway Canada***) is a company incorporated in Canada and is a subsidiary of OBL.

7. In February 2017, the Company requested funding from Omni Bridgeway Canada for a claim that it was advancing against Albania at the ICC (the ***Arbitration Claim***). On 12 September 2017, Omni Bridgeway Canada and the Company entered into a security agreement (the ***2017 Security Agreement***) and on 8 November 2017, Omni Bridgeway Canada, the Company and the Company's lawyers in the Arbitration Claim entered into a litigation funding agreement (the ***Original LFA***). It was a term of the Original LFA that Omni Bridgeway Canada would be reimbursed for its investment and receive a return from the proceeds of the Arbitration Claim, if such claim was successful. The 2017 Security Agreement provided Omni Bridgeway Canada with a first-ranking security interest in, among other things, any judgment or award made by the ICC in favour of the Company in the Arbitration Claim (the ***Collateral***).

8. On 3 April 2018, the Original LFA was amended and restated (the ***Amended and Restated LFA***). In the Amended and Restated LFA (to which OBL was not a party) Omni Bridgeway Canada agreed to make a new loan to the Company in the sum of USD$600,000 (the ***Demand Loan***) for the purpose of extinguishing a debt owed by the Company to the Raiffeisen Bank Sh.A in the Republic of Albania. On the same date, pursuant to an assignment and assumption agreement (the ***Assignment and Assumption Agreement***), to which Omni Bridgeway Canada, OBL and the Company (amongst others) were parties, Omni Bridgeway Canada assigned to OBL all of its rights in the Original LFA, which was defined as being the Original LFA "*as may have been amended, restated, supplemented or otherwise modified from time to time*" (under the Assignment and Assumption Agreement OBL also agreed to assume all of Omni Bridgeway Canada's obligations under the Original LFA). The Original LFA is governed by the law of Ontario. OBL has stated

and I assume that the assignment is effective to assign Omni Bridgeway Canada's rights as creditor in respect of the Demand Loan. But also on 3 April 2018 the Company issued a promissory note (the ***Promissory Note***) in favour of OBL as lender (and not Omni Bridgeway Canada). A further security agreement was executed on 3 April 2018 (the ***2018 Security Agreement***, together with the 2017 Security Agreement, the ***Security Agreements***). OBL was a party to the 2018 Security Agreement.

9. Clause 2.2 of the Amended and Restated LFA provides that the Demand Loan shall be "*payable on demand*" and "*be documented and made pursuant to a Promissory Note and Security Agreement each dated as of the date hereof …. For the avoidance of doubt, the [Demand Loan] is separate and distinct from [the funding of the Arbitration Claim]and shall be required to be repaid by [the Company] regardless of recovery [in respect of the Arbitration Claim]*." The Promissory Note sates that it is issued "*pursuant and subject to the terms of the [Amended and Restated LFA*]."

10. On 6 July 2020 the ICC had issued its final award (the ***Final Award***) ordering Albania to pay the Company USD$12,577,852.10 as monetary damages, plus certain smaller sums and interest at the rate of 5% running from 6 July 2020 until full payment is made. Albania has not satisfied the Final Award. However, on 22 July 2020 the Final Award became subject to an order issued by the National Court of Private Bailiffs in Albania (the ***Bailiff's Order***). OBL regarded this as putting its security in jeopardy and as giving rise to defaults in respect of the litigation funding made pursuant to the Amended and Restated LFA. On 29 September 2020 Omni Bridgeway Canada wrote to the Company giving notice of the events of default and requiring the Company to cure the defaults within ten days (I assume that it was permissible for Omni Bridgeway Canada to give this notice despite and after the Assignment and Assumption Agreement assigning Omni Bridgeway Canada's rights to OBL, although the validity of the 29 September 2020 notice is not material on the Petition).

11. On 30 September 2020, OBL wrote to the Company demanding repayment of the Demand Loan within 10 days. No payment has been made.

12. Subsequently, in an undated letter referring to both the 29 September and 30 September letters, the Company's former attorneys, Strati & Partners, wrote to OBL and asserted that the allegations of defaults in the 29 September letter were baseless, that OBL was in breach of the Amended and Restated LFA, that the breach had caused material harm to the Company and that, despite the fact that the damages had yet to be quantified, they "*greatly exceeded any amounts referenced in [the] 30 September letter*." Strati & Partners went on to say that "*Upon the remedy of the material breaches arising from the actions of [OBL] on 24 September 2020, the actual amount of damages will be calculated, from which it may be agreed a netting of*

any amounts which may or may not be due by reference to [the] letter of 30 September 2020." The underlining is mine.

13. OBL and Omni Bridgeway Canada have taken steps in Canada to enforce the Security Agreements. Mr Levine in his First Affidavit dealt with the relevant history of the proceedings in and the law of Ontario. On 9 October 2020, OBL and Omni Bridgeway Canada issued a Notice of Acceptance of Collateral which set out the sums required to satisfy the Company's secured obligations (being CA$17,144,858.07 including the Demand Loan), referred in Schedule A to some of the Collateral including the Final Award (the ***Selected Collateral***) and gave notice on behalf of OBL and Omni Bridgeway Canada that they proposed "*to accept the [Selected] Collateral .... in satisfaction of the [secured obligations]*". On 22 October 2020 (the ***October Letter***) the Company objected to the proposal and on 13 November 2020 OBL and Omni Bridgeway Canada issued in the Ontario Superior Court of Justice a Notice of Application seeking relief with respect to the Selected Collateral (the ***Notice of Application***). The Notice of Application also referred to the Demand Loan and sought declarations that OBL has a valid security interest in the Selected Collateral, that there had been defaults under the Security Agreements and that following the issue by OBL and Omni Bridgeway Canada of the Notice of Acceptance of Collateral OBL was the owner of the Selected Collateral (the draft judgment attached to the Notice of Application included a declaration that OBL was "*entitled to the Selected Collateral and owns the Selected Collateral*"). In Mr Levine's First Affidavit, he stated that OBL and Omni Bridgeway Canada Omni Bridgeway Canada intended to "*demonstrate .... that the fair market value of the collateral consisting principally of the Company's rights in the [Final Award] is less than the total amount owing to [OBL] under the Amended and Restated LFA and expenses recoverable under clause 63(1)(a) of the Ontario Personal Property Security Act*." On 30 December 2020, the Company sent a "*Notice*" (the ***Company's Notice***) to Justice Cavanagh of the Ontario Superior Court in advance of a scheduling (effectively a case management) conference. The hearing of OBL's and Omni Bridgeway Canada's application was listed for 8 March.

14. In the October Letter the Company sought to reach "*an equitable and amicable solution to the current impasse*" but alleged that OBL's and Omni Bridgeway Canada's action had caused the Company's principals to suffer "*personal harm*" and that Omni Bridgeway Canada had "*operated in bad faith to frustrate the LFA*" and had breached the LFA. The Company maintained its "*denials of the baseless allegations of default*" and said that, as regards the Notice of Acceptance, "*in light of damages caused by [OBL and Omni Bridgeway Canada] which are expected to exceed amounts referenced in [the Notice of Acceptance], [the Company] objects to any seizure of collateral. Furthermore, [the Company] maintains that the amounts referenced in [the Notice of Acceptance] as claimed by [Omni Bridgeway Canada] are disputed*."

15. In the Company's Notice, the Company said that it was still in the process of communicating with "*potential Canadian counsel*" with a view to obtaining advice on the merits of the Company's application; that while the ICC arbitration had only resulted in a partially successful award, "*due to negligence on the part of [OBL and Omni Bridgeway Canada] the judgment did not reject nor award fifty per cent of the claim, which is pending further arbitration*"; that OBL and Omni Bridgeway Canada had on numerous occasions "*deliberately attempted to "strong-arm" the [Company] into an unequitable [sic] arrangement that violates the letter and spirit of the [Amended and Restated LFA]*"; OBL and Omni Bridgeway Canada had breached the Amended and Restated LFA (and provided particulars) and that it objected to "*any allegations of breach of any agreement with*" OBL and Omni Bridgeway Canada.

16. Following service of the Petition on 27 January 2021, the Company has not filed a notice of appearance or instructed attorneys to appear on its behalf in these proceedings. Likewise, no notice of appearance has been given by any creditor or shareholder in the Company despite the Petition having been advertised (within the prescribed period of time) in national newspapers in the Cayman Islands, Albania. However, on 18 February 2021, Mr Nik Grezda (apparently a director of the Company) emailed the Court as follows:

> *"Dear Judge Segal,*
>
> *In regard to the notice of hearing dated February 25, 2021, please note that the issue and amount referenced by Omni Bridgeway has been challenged by GBC Oil Company and the matter is currently being litigated in Canadian court, per the contractual agreement between the two parties. (Omni Bridgeway Capital (Canada) Ltd. et al. v. GBC Oil Company Ltd. - Court File No. CV-2000651273-00CL).*
>
> *Therefore, GBC Oil Company entirely objects to the winding up application, as initiated by Omni Bridgeway, and would ask the court for a stay until the Canadian litigation is complete.*
>
> *Moreover, principals of GBC Oil are presently under COVID-19 quarantine and undergoing medical treatment, therefore GBC cannot adequately prepare for a hearing on February 25, 2021.*
>
> *Thank you for your understanding,"*

17. In response to that email my Personal Assistant emailed Mr Grezda on the same day as follows:

> *"Thank you for your email dated 18 February.*
>
> *I have forwarded your email to Mr Shaun Tracey of Campbells, the attorneys acting for the petitioner (his email address is Shaun Tracey \| Campbells STracey@campbellslegal.com*
>
> ***Please address or at least copy all future correspondence to Campbells**. While it is a matter for you, I would point out that you may find it of considerable assistance to instruct Cayman attorneys to advise you on what steps to take in response to the petition and in relation to the forthcoming hearing. The Court is unable to advise or assist you."*

18. On 22 February, Mr Grezda sent a further email to my Personal Assistant:

> "*Thank you for the judge's response.*
>
> *Please inform the court that the company has not yet been able to retained [sic] local counsel.*
>
> *GBC principals are currently in quarantine, and under medical treatment for COVID.*
>
> *Therefore, additional time will be required in order to adequately consider local counsel to advise the company on this matter.*"

19. On the same day, my Personal Assistant responded as follows:

> *"Thank you for your email.*
>
> *The Judge has asked me to inform you that, while he sympathises with the position of those suffering from the COVID virus, the Company needs to instruct local counsel and unless local counsel can justify to the Court as to why doing so is not possible, also file evidence in support of any application for an adjournment. Mere emails are insufficient. There should be no reason why local counsel cannot be instructed by phone and email. If the Company fails to do so, it will be at risk of a winding up order being made against it at Thursday's hearing."*

20. No further communications were received prior to the hearing from the Company or anyone else purporting to represent the Company.

The further evidence

21. At the hearing, I noted that it appeared from the Notice of Acceptance of Collateral and the Notice of Application that OBL was seeking to appropriate the Selected Collateral (including the Final Award) towards the discharge of the sums owing by the Company including the Demand Loan. As I have noted above, the Notice of Application sought a declaration that OBL was "*entitled to the Selected Collateral and owns the Selected Collateral.*" I pointed out to Mr Tracey, the attorney for OBL, that this indicated to me that if and when the Ontario court granted the relief sought at least some of the Company's indebtedness including the Demand Loan would be discharged. There was however no discussion in Mr Levine's evidence of the effect of the relief and order which OBL sought from the Ontario court (the Demand Loan is governed by Ontario law) and in particular whether such an order would discharge all or part of the Demand Loan. I said that since the Petition was based on the Demand Loan being outstanding and on the Company's failure to repay it, I regarded it as relevant and material to know whether that debt was about to be discharged, perhaps within a few days pursuant to an order of the Ontario court (following the imminent hearing in Toronto). I explained that, in my view, this was relevant to the question of whether the Court should exercise its discretion to make a winding up order at this time.

22. As I have noted, Mr Levine has now filed a further affidavit. In his Second Affidavit he says that "*one consequence of the order sought .... by [OBL] in the Ontario proceedings would have been to discharge the Demand Loan*." Having realised that this would be the consequence of the Ontario court order, OBL had following the hearing therefore decided to withdraw the Notice of Application and terminate the Ontario proceedings. This was done because, as Mr Levine put it:

> *"This would have been the result although [OBL] would be receiving no cash payment from the Company in satisfaction of that loan, and in practice, the prospect of [OBL] making any cash recovery of the loan would be contingent upon its investing time and resources to enforce the underlying arbitral award. [OBL] considered this outcome to be commercially unpalatable since the Demand Loan was expressly made on terms whereby it would be repayable on demand."*

23. As a result of the withdrawal of the Ontario proceedings, there are now no pending proceedings in Ontario.

OBL's submissions

24. OBL submitted that (a) it was clearly a creditor in respect of, inter alia, the Demand Loan, which was a separate and distinct liability of the Company from the litigation funding advanced in relation to the Arbitration Claim, that demand for repayment had been made many months ago and no payment had been made and that (b) in these circumstances OBL had shown that the Company was unable to pay its debts. OBL further submitted that the correspondence from Mr Grezda, and indeed the documents filed in connection with the Ontario proceedings, did not show that there was *bona fide* dispute on substantial grounds as to the existence of or the failure to pay the Demand Loan. In these circumstances, the onus was on the Company to prove (on the balance of probabilities) that the Demand Loan was disputed on substantial grounds (citing *In re Tag Capital Ventures Ltd* [2012] EWHC 1171 Ch at [12] and [42] and French, *Applications to Wind Up Companies*, third edition, at [7.451]). The Company, to the extent that it could be taken to have made any submissions in opposition to the Petition, had failed to do so. An assertion of facts unsupported by evidence would not provide a substantial ground for dispute (citing French at [7.455] - "*the Court cannot prevent a petition proceeding simply because the company asserts that there is a dispute about the petition debt*" - and *Feldman v Nissim* [2010] EWHC 1353 Ch at [4], [66], [67] and [79]). OBL submitted that the Court would be wary of relying on unparticularised or unsubstantiated allegations (citing French at [7.458]). Neither the emails to the Court from Mr Grezda (to the extent that they could be relied on, as to which OBL reserved its rights) nor the Company's filings in the Ontario proceedings denied the existence of the Demand Loan or stated that the Demand Loan had been repaid (and in any event such statements would be factually wrong). OBL submitted that there was no justification for an adjournment of the hearing of the Petition. No proper defence or challenge to the Petition had even been outlined let alone established on evidence and OBL, and

any other creditors of the Company, had an interest in a winding up order being made and joint official liquidators being appointed without delay so that they could take action to preserve the Company's rights with respect to the Final Award. In the circumstances, the Court should immediately make a winding up order.

Discussion and decision

25. OBL is a secured creditor but it is well established that a secured creditor has standing to petition for the winding up of a company. A secured creditor does not have to elect between resting on its security and taking part in the winding up until after a winding up order has been made. Furthermore, it is clear that the non-payment of a single undisputed debt can be sufficient to satisfy the Court of a company's inability to pay its debts (see French, [7.278] – [7.281]). OBL was correct to argue that it was not sufficient for the Company merely to allege that the Demand Loan was disputed. Rather there must be a positive statement of the grounds of dispute with supporting relevant details to demonstrate that those grounds are substantial. The onus was on the Company to prove on the balance of probabilities that the Demand Loan was disputed on substantial grounds. When it is asserted that there is a dispute about the debt on which a petition is based the Court must decide whether the dispute is sufficiently substantial to justify the petition being dismissed or stayed.

26. Mr Grezda's emails appear to seek an adjournment for two reasons. First, because the Demand Loan on which the Petition is based is being "*challenged*" in the Ontario proceedings (and the Court is invited to stay the Petition "*until the Canadian litigation is complete*"). Secondly, because of the difficulties being faced by the Company caused by the COVID pandemic and illness, which had delayed its attempts to retain Cayman attorneys and its ability to prepare for the hearing and respond to the Petition. Even recognising that the Company can only participate in these proceedings if represented by counsel, and taking into account the Company's failure to take up my invitation to instruct Cayman attorneys, I consider that I should have regard to the matters raised and requests made in Mr Grezda's emails. I consider below how much weight is to be attributed to his comments and requests.

27. It seems to me that the passages I have quoted and underlined from the letter from Strati & Partners indicate that the Company asserts a cross-claim against OBL and Omni Bridgeway Canada by reason of an unliquidated damages claim for breach of the Amended and Restated LFA (OBL had assumed Omni Bridgeway Canada's obligations thereunder pursuant to the Assignment and Assumption Agreement). Furthermore, that letter and the October Letter indicate that the Company claims that its cross-claim exceeds the total amount owed by the Company including the Demand Loan. The reference in the letter from Strati & Partners to "*any amounts which may or may not be due by reference to [the] letter of 30 September 2020*"

indicates that the Company does not admit that all the amounts claimed, including for the Demand Loan, are owing and Mr Grezda's statement in his email to the Court dated 18 February that "*the issue and amount referenced by [OBL] has been challenged by GBC Oil Company and the matter is currently being litigated in Canadian court*" also indicates that the Company is challenging at least the quantum of its liability under the Demand Loan. In the Company's Notice, the Company identified three alleged breaches of the Amended and Restated LFA. However, in the absence of any further explanation and submissions from the Company as to the basis for these allegations it is not possible to assess the substance of the Company's claim and whether the allegations have any basis in fact or law.

28. The documents produced by the Company in the Ontario proceedings and the emails from Mr Grezda do not deny that the Company borrowed and is a debtor in respect of the Demand Loan or that the Demand Loan is now due and payable. Mr Levine's evidence was that the Company had, prior to the withdrawal of the Ontario proceedings, not retained counsel or to filed any formal submissions, nor had it "*at [any] time ... disputed the existence of the Demand Loan owing from the Company to [OBL].*" It does not appear that the Company is disputing its liability under the Demand Loan.

29. To the extent that the Company is relying on a cross-claim, it has the burden of proving that its cross-claim is larger than the admitted debt of the petitioner (or falls short of it by less than the statutory minimum for a petition claim) and that its cross-claim is either undisputed or is based on substantial grounds. It is unnecessary however to prove that the cross-claim must succeed (see French [7.623]). But, as French points out (at [7.629]), as is the case with a disputed debt petition, it is not sufficient merely to allege that there is a cross-claim. There must be a positive statement of the grounds for the cross-claim with supporting relevant details to demonstrate that those grounds are substantial. This requirement has not been satisfied in the present case. The Court does not have before it sufficient materials from which to reach such a conclusion. A stay or dismissal of the Petition would not be justified merely by reason of the Company's bald assertions of a cross-claim. As I have explained, it is not sufficient merely to allege that such a cross-claim exists.

30. In my view, even taking into account Mr Grezda's emails and the Company's position in the Ontario proceedings based on the documents I have seen (put in evidence by OBL), there is also no proper basis for adjourning the hearing of the Petition based on Mr Grezda's assertion that the Company's senior officers are indisposed because of COVID illness and restrictions:

(a). despite my invitation to do so, the Company has failed to appoint attorneys and appear at the hearing.

(b). nor has the Company filed *any* evidence to substantiate Mr Grezda's claims and explain the difficulties to which he alludes or the reason why at least basic instructions could not have been given to attorneys and limited evidence adduced.

(c). I have noted that Mr Grezda claimed that the "*principals of GBC Oil are presently under COVID-19 quarantine and undergoing medical treatment, therefore GBC cannot adequately prepare*" for the hearing (underlining added). But there is no explanation why someone at the Company could not have instructed attorneys (I note that the Company has previously used the excuse of being unable to find suitable counsel– see the second paragraph of the Company's Notice) or produced evidence of the nature and extent of the illness, incapacity and quarantine restrictions to which the Company's directors and officers are subject. There is no reason given as to why, let alone evidence to support a claim that, at least one officer of the Company could not find Cayman attorneys and give instructions by telephone. The hearing was conducted remotely and so someone from the Company could have participated remotely and updated their instructions during the hearing if necessary.

(d). unsubstantiated and unparticularised claims by email of incapacity to prepare for a hearing are an inadequate basis for an adjournment.

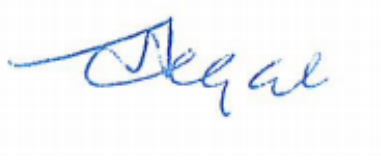
(e). Mr Tracey submitted, and I have no reason to doubt, that OBL would be prejudiced by an adjournment since it was important that liquidators be appointed without delay to ensure that the Company's challenge to the Bailiff's Order was progressed and that action was taken to protect the Company's assets and rights. It does appear that recovery under the Final Award (an important asset of the Company) is in immediate jeopardy (assuming that OBL's standing as a secured creditor is insufficient to enable it to take action to challenge the Bailiff's Order).

(f). the Company has therefore failed, as a threshold matter, to demonstrate that the difficulties identified by Mr Grezda are so serious and substantial that they have prevented it from putting forward a properly particularised explanation as to why it cannot defend the Petition at this stage and needed more time to prepare its defence. Furthermore, the balance of risk of prejudice appears to lie in OBL's favour.

(g). as was explained in the email from my Personal Assistant to Mr Grezda dated 22 February, I do sympathise with those suffering from the COVID virus and appreciate that real difficulties can be caused by COVID restrictions that would in appropriate circumstances justify an adjournment. However, the Court cannot grant an adjournment just because a party claims in a brief email to be

suffering from such difficulties, particularly where the other party has a genuine and substantial interest in obtaining the relief it seeks.

31. Of course, now that the Ontario proceedings have been withdrawn, there is no risk that the Demand Loan will be discharged in the next few days (it appears from Mr Levine's Second Affidavit that it would have been discharged in full). The concern I expressed at the hearing, that the Court would be reluctant to make a winding up order based on the non-payment of a debt that was imminently to be discharged, has therefore fallen away. I would point out that I would not expect OBL to issue new proceedings in Ontario to replicate the application it has just withdrawn, at least in the short term. It is likely that such proceedings will no longer be necessary as an action with respect to the Final Award can be taken by the official liquidators. Had the Ontario proceedings continued, the official liquidators would have needed to consider carefully their position in relation to the Company's opposition to and participation in such proceedings and might have needed to consider instructing independent and new Ontario counsel and the appointment of a conflict liquidator.



Mr Justice Segal,
Judge of the Grand Court, Cayman Islands
5 March, 2021