



IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS
COMMERCIAL DIVISION
CLAIM NO.: BVIHC (COM) 4 OF 2021

Submitted Date:19/03/2021 10:12

Filed Date:19/03/2021 10:12

Fees Paid:139.79

BETWEEN

101 INVESTMENTS LIMITED

Claimant

And

(1) ELEUTHERA GROUP PTY LTD

(2) IPO WEALTH HOLDINGS PTY LTD (IN LIQUIDATION)

(3) IPO WEALTH HOLDINGS NO 3 PTY LTD (IN LIQUIDATION)

Defendants

AMENDED FIXED DATE CLAIM FORM

[AMENDED PURSUANT TO CPR 20.1]

The Claimant, 101 Investments Limited, whose address for service is care of its legal practitioners, Carey Olsen, Rodus Building, PO Box 3093 Road Town, Tortola VG 1110, British Virgin Islands, claims the relief set out below:

1. A declaration that the amount of AUD 19,460,672.96, which was paid by and on behalf of Eleuthera Group Pty Ltd ("**Eleuthera**") to IPO Wealth Holdings Pty Ltd (In Liquidation) ("**IPO**") for the shares in Accloud PLC sold by IPO Wealth Holdings No 3 Pty Ltd (In Liquidation) to 101 Investments Limited ("**101**") pursuant to a Share Sale Agreement executed on 4 October 2019,

is owing by 101 to Eleuthera pursuant to the Facility Agreement executed on 15 July 2020 ("**Facility Agreement**") at pages 94-103 of Exhibit JM-1, subject to further interest which continues to accrue as set out in the Facility Agreement;

2. A declaration that the amount of AUD 2,962,313.68, which 101 drew down under the Facility Agreement for its Paymate Investment pursuant to Investment Cum Shareholders Agreements dated 25 March 2019 and 18 July 2019, is owing by 101 to Eleuthera, subject to further interest which continues to accrue as set out in the same;
3. A declaration that the amount of AUD 9,341,698.07, which 101 drew down under the Facility Agreement for its Accloud Revenue Share Investment pursuant to a Revenue Share Agreement dated 26 March 2019, is owing by 101 to Eleuthera, subject to further interest which continues to accrue as set out in the same;
4. ~~2.~~ Costs of this Claim be paid to the Claimant; and
5. ~~3.~~ Such further and/or other relief as the Court thinks fit.

The grounds for the relief sought are set out in further detail in the 1st and 3rd Affidavit of James Mawhinney filed in support hereof. In summary, these are:

6. ~~4.~~ The "Mayfair 101" group, an international investment and corporate advisory group, had the following key divisions:-
 - a. Investment Holdings, which includes but is not limited to the Claimant ("**101**"), 2nd Defendant ("**IPO**"), and 3rd Defendant ("**IPO No. 3**");
 - b. Real estate; and
 - c. Fund-raising, which includes but is not limited to the IPO Wealth Fund (the "**Fund**").
7. ~~5.~~ The Investment Holdings division primarily focused on pre-IPO technology companies in emerging markets and real estate. Specifically:-

- a. 101 was established to hold the Group's international interests in pre-IPO technology investments; and
 - b. The IPO Wealth Holdings Group was established with IPO as the parent company of 16 wholly-owned special purpose vehicles ("**SPVs**"), including IPO No. 3.
8. ~~6.~~ Between 101, IPO and IPO No 3 and the various entities in the IPO Wealth Holdings Group, only IPO held a bank account(s).
9. ~~7.~~ The IPO Wealth Holdings Group was placed into receivership on 22 May 2020, into provisional liquidation on 2 July 2020 and into liquidation on 17 September 2020.
10. ~~8.~~ The 1st Defendant ("**Eleuthera**") has functioned as the Mayfair Group's 'treasury' since mid-2019. Its primary function is to make payments on behalf of other Group entities including investment and supplier payments. Most Group entities are investment holding companies with minimal transaction volume and no bank accounts. The treasury role has also been undertaken by Online Investments Pty Ltd ("**Online Investments**") as trustee for the Sunseeker Trust ("**Sunseeker**") as this entity holds operational bank account(s).
11. ~~9.~~ The Fund's sole investment was a secured loan to IPO (the parent company of the IPO Wealth Holdings Group). The IPO Wealth Holdings Group made various investments using loan drawdown proceeds from the Fund in accordance with the Fund's Information Memorandum. Vasco Trustees Limited ("**Vasco**") was the Fund's trustee and was responsible for its key functions.

Shares in Accloud PLC ("**Accloud**")

12. ~~40.~~ As at 1 January 2019, the Mayfair Group had accumulated 21,250,000 fully paid ordinary shares in Accloud ~~PLC ("**Accloud**")~~, a London-based technology company. These shares were held across 5 member entities of the Mayfair Group – IPO Capital Pty Ltd, Online Investments, IPO, IPO No. 3 and IPO Wealth Holdings No. 6 Pty Ltd ("**IPO No. 6**").

13. 44. In early 2019, the Mayfair Group's former accountants ("**Pinnacle**") advised on the consolidation of the Mayfair Group's Accloud shareholdings into IPO No. 3 and sale to 101. Documentation for (i) the consolidation of the Group's Accloud shareholdings into IPO No. 3; (ii) the novation of rights from IPO No. 3 to 101; and (iii) the sale of 21,250,000 ordinary shares in Accloud from IPO No. 3 to 101 ("**Accloud Shares**") by way of a Share Sale Agreement ("**Accloud Transaction**") was executed by the relevant parties.

Accloud Revenue Share and Paymate Agreements (the "Accloud Revenue Share Investment" and "Paymate Investment")

14. 101 also directly held investments in (1) a Revenue Share Agreement with Accloud and Accloud Mauritius Limited ("**Accloud Mauritius**") and (2) Paymate India Private Limited ("**Paymate**") since the inception of the investments.

15. On or about 26 March 2019, 101 entered into a Revenue Share Agreement with Accloud Mauritius Limited ("**Accloud Mauritius**") and Accloud PLC. In brief, in consideration for paying a participation fee, 101 would be entitled to receive a share of the revenue of Accloud Mauritius and of other entities wholly or partially owned by Accloud PLC directly or indirectly.

16. On or about 25 March 2019, 101 entered into an Investment Cum Shareholders' Agreement with, amongst others, Paymate. In brief, under this agreement, 101 agreed to subscribe to first tranche series D preference shares of Paymate at an aggregate consideration of USD 700,000.

17. Subsequently, on or about 18 July 2019, 101 entered into a further agreement with, amongst others, Paymate. Under this agreement, 101 agreed to invest an additional USD 1,300,000 in second tranche series D preference shares of Paymate.

The Accloud Transaction, the Accloud Revenue Share Investment and the Paymate Investment was were financed by way of a Facility between 101 and Eleuthera

18. ~~12. The 3 Transactions/ Investments named above were The Aecloud Transaction was~~ financed by way of a facility between 101 and Eleuthera (the "Facility"). The decision to settle the Accloud Transaction with cash was due to the significant increase in investor redemptions from the Fund that had occurred in the second half of 2019.
19. ~~13. IPO's assets at that time were unlisted and illiquid in nature. Thus, to facilitate the redemptions by Fund investors and provide liquidity for interest payments and further investments, Eleuthera provided AUD 19,510,000 to IPO between June and November 2019, of which the sum of AUD 19,460,672.95 was for payment for the Accloud Shares. These funds were raised externally from investors in other financial products offered by the Mayfair Group.~~
20. ~~The following payments were made to IPO's bank account(s) as IPO No 3 did not have a bank account:~~
- a. ~~AUD 5,580,672.96 was transferred directly from Eleuthera to IPO between June and September 2019; and~~
 - b. ~~AUD 13,880,000 was transferred from Sunseeker to IPO on behalf of Eleuthera between September and November 2019.~~
21. ~~14. In simple terms, 101 acquired the Accloud Shares in exchange for valuable consideration provided by Eleuthera on its behalf. These funds helped to meet the liquidity requirements of the IPO Wealth Holdings Group and that of the Fund.~~
22. ~~In respect of the Accloud Revenue Share and Paymate Investments, IPO transferred AUD 8,541,698.07 to Accloud Ltd (an entity related to Accloud and Accloud Mauritius) and AUD 2,962,313.68 to Paymate between November 2019 and March 2020 to settle's 101's obligations under the Accloud Revenue Share Investment and Paymate Investment respectively. One of the strategies to create liquidity was to divest IPO's entitlement to repayment from 101 in exchange for cash from Eleuthera.~~

23. These amounts were fully settled by Eleuthera under the Facility. Eleuthera made various payments to IPO on behalf of 101 between November 2019 and March 2020, out of which AUD 11,504,011.75 was applied in settlement of monies owing by 101 to IPO for the Accloud Revenue Share and Paymate Investments. In addition, Eleuthera paid Accloud Ltd a sum of AUD 800,000 directly on 101's behalf for the Accloud Revenue Share Investment.

24. In summary, 101 drew down the sum of AUD 12,304,011.75 (AUD 8,541,698.07 + AUD 800,000 = AUD 9,341,698.07 plus AUD 2,962,313.68 for purposes of the Accloud Revenue Share Investment and Paymate Investment respectively). These sums are presently owing by 101 to Eleuthera only and not IPO.

25. ~~15.~~ The abovementioned arrangement/ Facility was reflected in a Facility Agreement between 101 and Eleuthera executed on or about 15 July 2020 ("**Facility Agreement**"). Its governing law and jurisdiction clauses provide for BVI law and the non-exclusive jurisdiction of the courts in the BVI.

26. ~~16.~~ Under the Facility Agreement, Eleuthera agreed to lend 101 up to AUD 100,000,000 from the effective commencement date of 30 January 2019, and 101 was entitled to request for cash advances of any amount provided the sum total of unpaid advances did not exceed AUD 100,000,000. The applicable interest rate (8% per annum) would accrue daily on the balance of the amount owing commencing from the drawdown date(s), and compound monthly commencing from the drawdown date(s). Eleuthera's funds were raised externally from investors in other products offered by the Mayfair Group.

27. ~~17.~~ The term of the Facility as defined in the Facility Agreement is fifteen (15) years from the relevant date(s) agreed between Eleuthera and 101 IPO as the drawdown of advances. The Facility Agreement further provided that this was subject to an expiry date of seventeen (17) years from the commencement date.

~~28.~~ ~~18.~~ A resolution was duly passed by 101 to, *inter alia*, (i) declare that a facility agreement between IPO and 101 previously proposed by Pinnacle was invalid, null and void and (ii) to enter into the Facility Agreement with Eleuthera.

~~19.~~ ~~101 drew down on its Facility with Eleuthera to fund the Accloud Transaction in cash. As IPO No. 3 (a SPV) did not have a bank account, payments were made to IPO's bank account(s) via 2 'channels':~~

~~e.~~ ~~AUD 5,580,672.96 was transferred directly from Eleuthera to IPO between June and September 2019; and~~

~~d.~~ ~~AUD 13,880,000 was transferred from Sunseeker to IPO on behalf of Eleuthera between September and November 2019.~~

~~29.~~ ~~20.~~ In the premises, the amounts of AUD 19,460,672.96 and AUD 12,304,011.75 are ~~is~~ owing by 101 to Eleuthera and subject to further interest which continues to accrue pursuant to the Facility Agreement.

Allegations/ Conduct of the Liquidators Necessitating this Claim

~~30.~~ ~~21.~~ As set out above, 101 made full payment for the Accloud Shares and full repayment of monies owing to IPO for the Accloud Revenue Share and Paymate Investments by drawing down on its Facility with Eleuthera. ~~Vasco, the trustee of the Fund, was fully aware of the decision to create liquidity in the IPO Wealth Holdings Group by selling assets to related parties to satisfy liquidity requirements.~~

~~31.~~ ~~22.~~ ~~However, on~~ On or about 24 July 2020, the (then provisional) Liquidators of the IPO Wealth Holdings Group (the "**Liquidators**") purported to terminate the Share Sale Agreement on behalf of IPO No. 3. In the alleged Notice of Termination, they claimed that 101 failed to pay the Cash Component for the Share Sale Agreement and had therefore breached an essential term of the same.

- ~~23.~~ 101 disputed the Liquidators' claim. Between 28 July 2020 and 2 August 2020, the solicitors for the (then provisional) Liquidators ("**Thomson Geer**") exchanged several rounds of correspondence with 101's previous solicitors ("**AJ & Co**") in respect of the Accloud Transaction.
- ~~24.~~ On 9 December 2020, the Liquidators issued a letter to 101 on behalf of IPO demanding that 101 repay IPO \$12,628,310.25 which was purportedly advanced "*to finance 101 Investments Limited's investments in Paymate India Private Limited and a Revenue Share Agreement with Accloud Mauritius Limited and Accloud PLC*".
- ~~25.~~ On 24 December 2020, 101's lawyers Carey Olsen issued a letter to the Liquidators denying that it owes IPO the sum of AUD 12,628,310.25 or any sum at all. The letter also set out, *inter alia*, 101's position that the Accloud Transaction was largely funded by drawing down on its facility with Eleuthera and for valuable consideration. 101 further requested the Liquidators' confirmation that no debt is due or owing from it to IPO ("**CO's 24 December Letter**").
- ~~26.~~ On 31 December 2020, Thomson Geer issued an "interim" response maintaining the Liquidators' position, [maintaining IPO's claim against 101 for AUD 12,628,310.25](#), and stating that they anticipated responding further during the week commencing 18 January 2021.
- ~~27.~~ However, on 7 January 2021, the Liquidators filed an originating process in the Supreme Court of Victoria on behalf of IPO No. 3 and in their personal capacities against 101, Accloud, and the Group Managing Director of the Mayfair Group (the "**Australian Proceeding**"). The core issue of the Australian Proceeding is the ownership of the Accloud Shares.
- ~~28.~~ By their conduct, the Liquidators are seeking to avoid providing an explanation of the matters set out in CO's 24 December Letter (in particular, the financing arrangement between 101 and Eleuthera wherein full payment for the Accloud Shares was made). The papers filed in the Australian Proceeding wrongfully circumvent the fundamental issue of the financing of the Accloud Transaction which falls under the Facility Agreement and is to be decided by the BVI Courts and in accordance with BVI law.

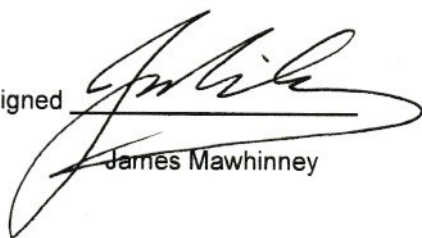
- ~~38. 29.~~ The financing of the Accloud Transaction, which falls under the Facility Agreement, is a necessary pre-determination to the issue of ownership of the Accloud Shares. The Liquidators omitted and/or failed to exhibit or apprise the Australian Court of material correspondence (including CO's 24 December Letter) in the Australian Proceeding. This must have been done intentionally so as to prevent a full and accurate position from being presented.
- ~~39. 30.~~ On 15 January 2021, Thomson Geer issued a letter to Carey Olsen on behalf of the Liquidators of IPO ~~wherein the Liquidators requested~~ requesting for a "*detailed explanation of the basis upon which [101] denies liability to [IPO]*". ~~They still failed to state the basis of 101's alleged liability. They have continued to make only bare allegations and 101 has instructed its lawyers to respond to this letter imminently.~~
- ~~40.~~ On 18 January 2021, 101 filed this Claim in respect of the financing of the Accloud Shares which it purchased from IPO No 3.
- ~~41.~~ On 19 January 2021, Carey Olsen responded to Thomson Geer's letter of 15 January stating, inter alia, that 101 did not owe the alleged sum of AUD 12,628,310.25 (or any sum at all) and that the onus is on the Liquidators to properly state the basis of their allegations.
- ~~42.~~ On 9 February 2021, Thomson Geer (on behalf of the Liquidators of IPO) set out the basis of IPO's purported claim against 101 for the first time and alleged, amongst others, that the debt owed by 101 was AUD 12,304,011.75. This was a different amount from what was claimed by them in their letter of 31 December 2020.
- ~~43.~~ On 16 February 2021, Carey Olsen responded to Thomson Geer's 9 February 2021 letter informing them that 101 would be amending this Claim to address IPO's allegation given that they had only now set out the basis of the claim and as it relates to the same Facility Agreement which is already before the BVI Courts.

44. ~~31.~~ In view of the above, 101 respectfully asks the Honourable Court to grant the relief set out at paragraphs 1 to ~~3~~ 5 of this Fixed Date Claim Form.

STATEMENT OF TRUTH

I, James Mawhinney, certify that the Claimant believes that the facts stated in this amended Fixed Date Claim Form are true and that this certificate is given on the Claimant's instructions.

Signed



James Mawhinney

We are acting for the Claimant; our address for service is Rodus Building, Road Reef Marina, PO Box 3093, Road Town, Tortola VG1110, British Virgin Islands, Legal Practitioners for the Claimant.



James Noble

Carey Olsen

Legal Practitioners for the Claimant

Date: 19 March 2021

Notice to the Defendant —

The first hearing of this claim will take place at _____ on _____ day the _____ day of 2021,
at am/p.m.

If you do not attend at that hearing, judgment may be entered against you in accordance with the claim.

If you do attend, the judge may —

- (a) deal with the claim, or
- (b) give directions for the preparation of the case for a further hearing.

An affidavit giving full details of the claimant's claim should be served on you with this claim form. If not and there is no order permitting the claimant not to serve the affidavit you should contact the court office immediately.

You should complete the form of acknowledgment of service served on you with this claim form and deliver or send it to the court office (address below) so that they receive it within 14 days of service of this claim form on you. The form of acknowledgment of service may be completed by you or a legal practitioner acting for you.

You should consider obtaining legal advice with regard to this claim. See the notes on the back of this form or on the next page.

This claim form has no validity if it is not served within 6 months of the date below unless it is accompanied by an order extending that time.

Dated:

The Court Office is at Sakal Building, Waterfront Drive PO Box 418 Road Town, Tortola, Virgin Islands, VG 1110 (Telephone number: +1 284 468 5001; Facsimile number: +1 284 468 4951). The Court Office is open between 8.30am and 4:30pm Monday to Friday except public holidays.

The Claimant's address for service is: Rodus Building, Road Reef Marina, PO Box 3093 Road Town, Tortola VG1110, British Virgin Islands

NOTES FOR DEFENDANT (FIXED DATE CLAIM)

The Claimant is seeking an order from the court as set out in the claim form on the basis of the facts or evidence set out in the Statement of Claim or Affidavit served with it. The Claimant will not be entitled to enter judgment against you without a hearing.

You may:

A. ADMIT THE CLAIM

If so, you should complete and return the Form of Acknowledgment of Service to the Court office within 14 days stating this. You may attend the first hearing if you wish to do so.

B. DISPUTE THE CLAIM

If so, you should complete and return the Form of Acknowledgment of Service as under A. You should also file at the Court office and serve on the Claimant's legal practitioner (or the Claimant if the Claimant has no legal practitioner):

- (a) a Defence if the Claim Form was accompanied by the Claimant's statement of claim, OR
- (b) an Affidavit in answer if the claim form is accompanied by an affidavit sworn by or on behalf of the Claimant

Within 28 days of the day on which the claim form was served on you. Your Defence or Affidavit must set out briefly ALL the facts on which you will rely to dispute the claim made against you.

You should also attend the first hearing. If you do not the judge may deal with the claim in your absence.

C. MAKE A CLAIM AGAINST THE CLAIMANT

If so, you should complete and return the Form of Acknowledgment of Service as under A. You must file a Statement of Claim (a Counterclaim) setting out full details of what you claim against the Claimant and the facts on which you will rely. This must be done within 28 days of the date on which the claim form was served on you. The Statement of Claim should set out ALL the facts on which you rely in disputing any part of the Claimant's claim against you.

You should also attend the first hearing. If you do not the judge may deal with the claim in your absence.

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS
COMMERCIAL DIVISION
CLAIM NO.: BVIHC (COM) OF 2020

BETWEEN

101 INVESTMENTS LIMITED

Claimant

And

(1) ELEUTHERA GROUP PTY LTD

(2) IPO WEALTH HOLDINGS PTY LTD
(IN LIQUIDATION)

(3) IPO WEALTH HOLDINGS NO. 3 PTY
LTD (IN LIQUIDATION)

Defendants

AMENDED FIXED DATE CLAIM FORM

[AMENDED PURSUANT TO CPR 20.1]

CAREY OLSEN

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