



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

Submitted Date:18/01/2021 11:54

Filed Date:18/01/2021 11:54

Fees Paid:274.20

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

SECOND AFFIDAVIT OF JAMES MAWHINNEY

I, **James Mawhinney**, care of 101 Investments Limited, at Trinity Chambers, PO Box 4301, Road Town, Tortola, British Virgin Islands, do ~~MAKE OATH~~ / **AFFIRM AND SAY** as follows:-

1. I am the ultimate beneficial owner of the Claimant ("**101**") in these proceedings and am duly authorised to depose to this Affidavit on behalf of 101.
2. I make this Affidavit in support of 101's *ex parte* application to serve the Fixed Date Claim Form and my First Affidavit out of the British Virgin Islands ("**BVI**") jurisdiction on the 1st, 2nd, and 3rd Defendants ("**Eleuthera**", "**IPO**" and "**IPO No. 3**" respectively) ("**Service Application**").
3. Save as otherwise stated, the facts and matters deposed to in this Affidavit are derived from my personal knowledge and from my perusal of relevant documentation. Where facts and matters are not within my own knowledge, they are true to the best of my information and belief.

4. In this Affidavit, I refer to certain documents, true copies of which are contained in the paginated exhibit marked "**JM-2**".

A. SERVICE APPLICATION

5. I have seen a final draft of the Notice of Application setting out the grounds on which the Service Application is made, and agree with its contents and confirm the truth of any facts contained therein.
6. I also exhibit at JM-2 my 1st Affidavit filed in support of the Fixed Date Claim Form (and exhibits thereto) as it sets out the relevant factual background to the Claim. 101's legal counsel will refer to and draw the Court's attention to the relevant portions at the hearing of this Service Application.
7. I now address the specific grounds on which 101 seeks the Court's permission to serve the Fixed Date Claim Form and supporting affidavit out of jurisdiction on the Defendants.

Eleuthera

8. It is clear that there are between 101 and Eleuthera real issues which are reasonable for this Court to try concerning (a) the drawdown(s) on the Facility Agreement and (b) whether monies disbursed by and on behalf of Eleuthera to IPO are owing by 101 to Eleuthera pursuant to the Facility Agreement.
9. Clause 9.1 of the Facility Agreement between 101 and Eleuthera states that the Agreement "*is governed by the laws of the British Virgin Islands.*"
10. Clause 9.2 of the Facility Agreement further states that "*[t]he parties submit to the non-exclusive jurisdiction of the courts in the British Virgin Islands and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.*"
11. To this end, I am advised and do believe that Eleuthera has submitted to the jurisdiction of the BVI Courts. It has consented for issues in connection with the Facility Agreement, such as whether the sum of AUD\$ 19,460,672.96 was received by IPO as payment for the shares in Accloud PLC ("**Accloud Shares**") and whether the sum is owing by 101 to Eleuthera, to be governed by BVI law and to be subject to the BVI Court's jurisdiction. I am further advised and believe that this satisfies EC CPR 7.3(3)(b)(i) and (ii).
12. In addition, this Claim concerns the monies owed by 101 to Eleuthera pursuant to the Facility Agreement for the financing of the Accloud Shares. The subject-matter of this Claim therefore clearly falls within the "*constitution, administration, management or conduct of the affairs of a*

company incorporated within the jurisdiction" (i.e. 101) and satisfies EC CPR 7.3(7)(a) for purposes of service out of jurisdiction on Eleuthera.

IPO and IPO No. 3

13. The matters set out in this Affidavit and in my 1st Affidavit provide good grounds for my belief that the conditions in EC CPR 7.3(2)(a) are satisfied, namely:-
 - a. There are real issues between 101 and Eleuthera which is reasonable for the Court to try;
and
 - b. IPO and IPO No. 3 are necessary or proper parties to the Claim.
14. The relief being sought would necessarily require IPO and IPO No. 3 to be parties to these proceedings.
15. IPO was the recipient of the monies paid by and on behalf of Eleuthera and is the parent company of IPO No. 3, the counterparty to the Share Sale Agreement with 101. It is 101's position that the monies which it drew down from its Facility with Eleuthera were in full payment of the Accloud Shares which it purchased from IPO No. 3 under the Share Sale Agreement.
16. Further, as set out in Section G of my 1st Affidavit, IPO No. 3 alleges (amongst other things) that it never received payment for the Accloud Shares and IPO alleges (amongst other things) that it is owed \$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*".
17. IPO and IPO No. 3 would be affected by and have an interest in the outcome of the Claim and are thus "necessary or proper party(ies)" to the Claim.
18. I repeat paragraph 12 above. The monies owed by 101 to Eleuthera for the financing of the Accloud Shares (under the Share Sale Agreement with IPO No. 3) were paid to IPO. The subject-matter of this Claim therefore clearly falls within the "*constitution, administration, management or conduct of the affairs of a company incorporated within the jurisdiction*" (i.e. 101) and satisfies EC CPR 7.3(7)(a) for purposes of service out of jurisdiction on IPO and IPO No. 3.

Eleuthera, IPO and IPO No. 3

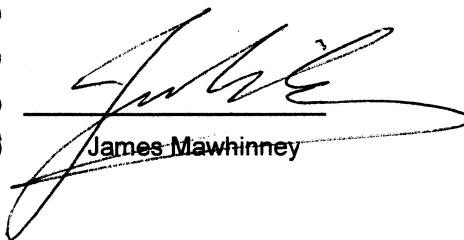
19. I further believe that 101's claim against the Defendants has a realistic prospect of success by reason of the matters asserted in this Affidavit and in my First Affidavit.
20. To the best of my knowledge and belief, I believe that:

- a. The 1st Defendant, Eleuthera, may be found at Level 27, 35 Collins Street, Melbourne, Victoria, 3000, Australia;
 - b. The 2nd Defendant, IPO, may be found at 165 Camberwell Road, Hawthorn East, VIC 3123, Australia; and
 - c. The 3rd Defendant, IPO No. 3, may be found at 165 Camberwell Road, Hawthorn East, VIC 3123, Australia.
21. The address stated for the 1st Defendant is its registered office and the address stated for the 2nd and 3rd Defendants is the office address of the appointed Liquidators.

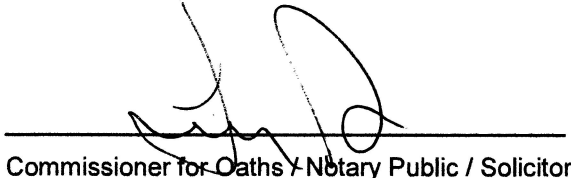
B. CONCLUSION

22. I will leave it to 101's legal counsel to make the necessary submissions before the Honourable Court.
23. In the circumstances, I respectfully ask the Honourable Court to grant 101 the orders sought in the Service Application.

SWORN / AFFIRMED by the abovenamed)
JAMES MAWHINNEY)
this 17th day of January 2021)
At MISSION BEACH QUEENSLAND)
AUSTRALIA)


James Mawhinney

Before me


Commissioner for Oaths / Notary Public / Solicitor

JACOB KING ROBERTSON
SOLICITOR

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PTY LTD (IN LIQUIDATION)

Defendants

SECOND AFFIDAVIT OF JAMES MAWHINNEY

CAREY OLSEN

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