IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 22 OF 2024 (IKJ)

IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2021 REVISION)

AND IN THE MATTER OF ONE THOUSAND & ONE VOICES AFRICA FUND I, L.P. (IN VOLUNTARY LIQUIDATION)

BETWEEN:

AFRICA INVESTMENTS, LLC

Petitioner

-and-

ONE THOUSAND & ONE VOICES AFRICA FUND I INVESTORS, LTD., AS GENERAL PARTNER FOR AND ON BEHALF OF ONE THOUSAND & ONE VOICES AFRICA FUND I INVESTORS, L.P., AS GENERAL PARTNER FOR AND ON BEHALF OF ONE THOUSAND & ONE VOICES AFRICA FUND I, L.P. (IN VOLUNTARY LIQUIDATION)

Respondent

IN COURT

Before: The Hon. Justice Kawaley

Appearances:

Mr David Allison KC of Counsel with Mr Rupert Bell, Ms Siobhan Sheridan and Mr Sam Hall of Walkers (Cayman) LLP, for the Petitioner

Mr Phillip Marshall KC of Counsel with Mr Ben Hobden and Ms Rhiannon Zanetic of Harneys (Cayman) LLP, for the Respondent

Heard: 11 April 2024 and on the papers

Date of decision: 2 May 2024

Draft Reasons circulated: 7 May 2024

Reasons delivered: 9 May 2024

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Final order appointing voluntary liquidators summarily-abuse of process by respondent between initial inter partes hearing of petition and adjourned hearing-requirements of substantive justice justifying summary determination of part-heard petition-Exempted Limited Partnership Act (2021 Revision), section 36 (13)-Grand Court Rules (2023 Revision), Preamble, paragraphs 1, 4

REASONS FOR DECISION

Introductory

1. Under the terms of the Limited Partnership Agreement relating to One Thousand and One Voices Africa Fund I, L.P. (the "LPA"), the Respondent as General Partner (the "GP") became the Liquidating Agent when the Limited Partnership (the "LP") entered into voluntary liquidation on 27 November 2023. The overwhelming majority of the limited partners requested the GP to appoint independent voluntary liquidators. It declined. Accordingly, the Petition herein dated 25 January 2024 was presented supported by an aggregate of 97% of the economic stakeholders in the LP.

2. It is or ought to be trite law that the GP's role as manager of the LP is broadly analogous to that of the managing shareholder in an investment fund constituted as a limited company. Once a voluntary liquidation commences on a solvent basis, the liquidation process must be conducted having regard to the interests of the limited partners as economic stakeholders. Their reasonable wishes ought ordinarily to be accommodated.

3. It was easy to understand the GP wishing to avoid the Court replacing the GP with independent voluntary liquidators based on positive findings of misconduct on its part. It was impossible to understand why the GP could legitimately insist on remaining in office over the wishes of 97% of

the stakeholders. Had seriously arguable grounds for opposing the Petition on its merits existed, the GP would surely not have occupied the hearing initially designated for the Petition itself with an intellectually teasing, but ultimately meritless, jurisdictional challenge.

4. Be that as it may, perhaps anticipating that the Court might well be inclined to summarily reject the jurisdictional challenge and the merits of the GP's grounds of opposition, at the end of the 11 April 2024 hearing, the GP's Leading Counsel skilfully interwove elements of his client's merits arguments, into his oral jurisdictional submissions. This *hors d'oeuvre* did little to whet my appetite for the main course of the merits submissions. However, I reserved judgment to consider the more intricate jurisdictional question and heard limited argument on the Petitioner's oral application for interim injunctive relief, since it had hoped that a final order would have been made at the end of that hearing. I declined to grant such interim relief at that stage.

5. Having reserved judgment to consider the jurisdiction question, the Petitioner renewed its application for a freezing injunction over the LP's assets on the papers. Despite the GP's protestations that no risk of dissipation existed, I considered that the balance of convenience lay clearly in favour of granting the injunctive relief sought, effectively on an *ex parte* basis, with liberty to the GP to apply to vary or set aside the 15 April 2024 Order (the "Freezing Order"). It was discomfiting that the GP seemed more determined to deploy a litigation strategy, which put off the 'evil day' when the Court would decide the Petition on its merits, than it was to seek to allay the concerns of the economic stakeholders. Moreover, I had recently been given cause to regret declining to grant urgent ex parte relief in reliance upon a respondent's assurances that there was no justifiable risk of dissipation: *Fortunate Drift Limited -v-Canterbury Securities, Ltd.*, FSD 227/2018 (IKJ), Judgment dated 14 September 2023 (unreported).

6. I delivered my jurisdictional ruling on 24 April 2024 (the "Jurisdictional Ruling"). I set out (at paragraphs 29-34) my strong provisional views that, without resolving the allegations of misconduct against the GP, the case for appointing independent voluntary liquidators seemed compelling due to a demonstrable loss of confidence in the GP on the part of 97% of the relevant stakeholders. I suggested a possible compromise (at paragraph 33), but ultimately granted leave to the GP to apply to seek to persuade the Court (either on the papers or orally) that arguable grounds for opposing the Petition still existed.

7. Needless to say that Jurisdictional Ruling was not an invitation to the GP to, in effect, manufacture entirely new grounds for opposing the Petition. Nonetheless, I received the following communication from the GP's attorneys on 1 May 2024 (while I was overseas on annual leave):

> "*We write further to His Lordship's judgment of 24 April and in particular paragraph 36 of the same. We had previously indicated that we believed that our client would seek an oral hearing to demonstrate that the substantive order sought by the Petitioner should not be granted. We hereby confirm that the General Partner does indeed request that such an oral hearing take place and we will liaise with Walkers and the Court as to its listing.*
>
> *Separately, we note that the General Partner has taken steps pursuant to the LPA to remove the Petitioner and issued proceedings in New York seeking declarative relief on a number of issues. This raises the issue of the standing of the Petitioner which will need to be addressed at the substantive oral hearing.*"

8. I did not initially properly consider the implications of this communication and invited counsel to submit dates to avoid for a hearing. The following day, the Petitioner's counsel forwarded a copy of a complaint filed by the GP against the Petitioner in the United States District Court for the Southern District of New York (the "Complaint") and invited the Court to summarily grant the primary relief it sought on the Petition. It was readily apparent that the GP's abuse of the opportunity afforded to it to advance an improbable opposition to the relief sought by the Petitioner had created irrefutable grounds for summarily granting that relief.

9. Accordingly, on 2 May 2024 I made the following summary ruling:

> "***SUMMARY RULING***
>
> *1. In this case, the Petitioner supported by the overwhelming majority of economic stakeholders in an exempted limited partnership in voluntary liquidation, seeks to replace the GP as the Liquidating Agent. The GP, seemingly unable to face the commercial reality of the ordinary legal consequences which flow from the loss of confidence which has obviously occurred, raised a technical jurisdictional challenge to the Petition.*
>
> *2. In rejecting this challenge in a Ruling dated 24 April 2024, I observed:*
>
> *'34. In summary, at this juncture, the likelihood that this Court can find a rational basis for declining to grant the relief sought by the Petitioner seems quite fanciful in all the circumstances of the present case.'*

3. The Petitioner, which had hoped to obtain a final order on the first return date of the Petition, sought interim injunctive relief pending the hearing of the Petition on the merits. On 15 April 2024 I granted that relief on a de facto ex parte basis because, in an unrelated matter, I had recently wrongly assumed that a party contesting an injunction application would not undermine the efficacy of any order that might not be granted. On balance, I was not prepared to give the GP the benefit of the doubt, having regard to my provisional views of the merits of the Petition set out in the Ruling on Jurisdiction and my concerns that the very fact that the Petition was being opposed by the GP was indicative of a detachment from commercial and legal reality.

4. The 15 April 2024 Injunction Order was clearly designed to preserve the status quo pending the final hearing of the Petition. It explicitly mandated the preservation of assets; it implicitly mandated that no other steps be taken to prejudice the Limited Partners' interests pending the determination of the Petition on its merits. On 1 May 2024, the GP's attorneys requested a hearing of the Petition and indicated that the GP had recently:

(a) purportedly removed the Petitioner from the partnership;

(b) now wished to contest the Petitioner's standing on these grounds.

5. The GP has also filed a Complaint in the US District Court (SDNY) seeking to challenge the legality of the Petitioner's attempts in these proceedings to 'remove' the GP. These actions are a flagrant collateral attack on this Court's jurisdictional Ruling and contrary to spirit of the Injunction Order. As the Petitioner's counsel points out, it would alternatively have status as a creditor. In my judgment the GP's conduct provides irrefutable grounds for the Court preventing any further abuse of its processes and summarily granting the Order the Petitioner seeks as of today's date.

6. Fuller reasons can be provided in due course if required.

KAWALEY J, 2 May 2024." (the "Summary Ruling")

10. An Order was sealed later that day appointing Alexander Lawson and Christopher Kennedy of Alvarez & Marsal Cayman Islands Limited as the persons responsible for winding-up the affairs of the LP.

11. On 3 May 2024, the GP's attorneys indicated that they wished to seek leave to appeal and to apply for a stay pending appeal on an urgent basis. I accordingly decided that it was appropriate to give fuller reasons for my decision to make what was obviously a final Order, which could be appealed as of right, without waiting for counsel's request.

12. These are the fuller reasons for my Summary Ruling of 2 May 2024 to make a final Order on the Petitioner's application for the appointment of alternative independent voluntary liquidators in place of the GP, pursuant to section 36 (13) of the Exempted Limited Partnership Act (2021 Revision) (the "Act").

The jurisdictional requirements under section 36 (13) of the Act

13. Section 36 of the Act provides as follows:

> "*(13) Following the commencement of the winding up of an exempted limited partnership its affairs shall be wound up by the general partner or other person appointed pursuant to the partnership agreement unless the court otherwise orders on the application of any partner, creditor or liquidator of the exempted limited partnership pursuant to subsection (3)(g).*"

14. Section 36 (3) (g) provides:

> "*(g) on application by a partner, creditor or liquidator, the court may make orders and give directions for the winding up and dissolution of an exempted limited partnership as may be just and equitable.*"

15. In the Jurisdictional Ruling, I noted that:

> "*7. In Malaysia Capital Management Berhad-v-ECM Straits Fund I LP et al, FSD 230 of 2022 (RPJ), Judgment dated 20 December 2022 (unreported), Parker J granted the application of a limited partner to appoint liquidators in place of the general partner which had been struck-off the register and was unable to act. The application under section 36 (13) as read with section 36 (3) (g) was unopposed, but the Court clearly had the benefit of careful argument including reference to the general legislative purpose of section 36 based on extracts from Hansard. Justice Parker (at paragraph 36) accepted the following submission as to the legislative purpose of section 36 (13):*

> *'(a) there is a clear need for a mechanism for a voluntary liquidation to be brought under the supervision of the Court in cases where it is discovered that there is a need for independent, qualified Court-appointed liquidators to take control (such as in cases of insolvency, malfeasance, or where it is otherwise more effective or efficient);[…]*"

16. Parker J's cogent analysis obviously applies, beyond the narrow confines of applications to place a voluntary liquidation under this Court's supervision, to any applications arising out of circumstances where alternative liquidators need to be appointed. I rejected the GP's contention that section 36 (13) only applied to fill gaps in the contractually agreed liquidation mechanism.

17. Against that background, under the rubric of setting out my provisional views on how the relevant statutory jurisdiction should be exercised, I stated:

> "*31. Section 36(13) of the Act confers an unfettered discretion on the Court. There are no statutory conditions to satisfy as in the case of applications for a Supervision Order under section131 (b) of the Companies Act, as in Re Asia Private Credit Fund [2020 (1) CILR 134]. The need to evaluate whether the jurisdictional requirements for appointing Official Liquidators have been met do not arise in relation to an application to give effect to the majority stakeholders' wishes as to whom the voluntary liquidators of the ELP should be. The very fact that the GP does not apparently accept the fundamental principle that in a liquidation the wishes of the majority stakeholders prevail (assuming the opposition to the Petition is maintained) appears to demonstrate the need for a fresh appointment.*"

18. In the course of the hearing, Mr Allison KC submitted that the term "just and equitable" in section 36 (3) (g) of the Act connoted a broad and generous statutory discretion. I agreed. This Court's established practice is to follow its previous decisions unless they are shown to be wrong. The GP's Supplemental Skeleton Argument expressly dealt with the Petitioner's alternative case that if the pleaded misconduct was disputed, this Court could grant the relief sought on a wider basis. The main thrust of those submissions was the proposition that this Court did not have a general supervisory supervision over the LP, thus displacing the general company law principle that the economic stakeholders' wishes as to who should liquidate an investment vehicle are generally given considerable deference.

19. The GP's submissions, and Mr Marshall's admittedly only preliminary oral argument, failed to identify any seriously arguable basis on which the Court could properly prefer the wishes of 3% of the stakeholders, and the incumbent Liquidating Agent against whom unsubstantiated charges of misconduct had been levied, to the views of the 97%. Demonstrating that the Court was not compelled to give effect to the wishes of the majority was not the same as identifying an arguable basis for the Court declining to do so.

20. Accordingly, I was satisfied when I made the Summary Ruling that this Court enjoyed a broad supervisory jurisdiction over the LP after its voluntary liquidation commenced, which could properly be exercised having regard for the best interests of the majority of the limited partners, being the relevant economic stakeholders. Absent countervailing legal policy considerations, the starting assumption in most commercial legal contexts is that it is for the stakeholders, not the Court, to determine where their best commercial interests lie.

21. The winding-up of investment funds constituted by limited companies provides a useful contextual analogy, the force of which Mr Marshall KC vainly sought to minimise at the initial hearing of the Petition. The typical fund company consists of one or more management shareholders and one or more participating shareholders who have no right to participate in the management of the fund company. That longstanding Caymanian corporate approach may well have inspired the substantially similar exempted limited partnership structure whereby limited partners invest and have no power to manage whilst general partners manage. The management shareholder is usually given the right to place the fund into a solvent voluntary liquidation, but it is well recognised that once the normal business of the fund is at an end, the management shareholder's managerial function fades away and the wishes of the real economic stakeholders ordinarily hold sway.

22. In *Re Asia Private Credit Fund* [2020 (1) CILR 134] Field JA held (at paragraph 99):

> "*…the relationship between those holding the management shares in a fund and those holding the participating shares radically changes when the fund is contemplating the cessation of business and a voluntary winding up. The exclusive power conferred on the manager to resolve to wind up the company is conferred not for their benefit but for the benefit of the participating shareholders who, under the articles, have the predominant financial interest in the proposed winding up. Accordingly, the starting assumption should be that where the majority of the participating shareholders nominates a suitable voluntary liquidator, their wishes should be acceded to by the holder of the management or founder shares…*"

23. This principle is not a narrow company law principle but is simply one expression of the wider principle of commercial law, that those who have invested their property in a venture should ordinarily be free to determine where their best interests lie. It will generally apply with equal force in the field of exempted limited partnerships as it does in the company law field. It might well be possible for this general principle to be displaced by express provisions in a limited partnership agreement conferring on the general partner absolute power in the voluntary liquidation phase, but such an improbable commercial bargain was not struck in the LPA in the present case.

24. This general principle may perhaps best be viewed as being derived from the notion of the sanctity of property rights. A similar principle is routinely articulated by courts in the context of approving solvent or insolvent schemes of arrangement. As long as the statutory requirements are met, with a majority in number representing three quarters in value of the relevant stakeholder class approving the proposed arrangement, this Court will follow the same approach taken by other common law courts. As Marcus Smith J put it in *Re Telford Homes Limited* [2019] EWHC 2944 (Ch) (at paragraph 4):

> "*Essentially, a scheme will be sanctioned where the provisions of the applicable statutory regime have been complied with….and the arrangement is such that an intelligent and honest person, a member of the class concerned, acting win respect of his or her interests, might reasonably approve. The court in such circumstances, will accord due respect to the commercial sense of those involved in the scheme and will not seek to second guess unduly the approach of such persons.*"

25. Where the overwhelming majority of the limited partners of an exempted limited partnership seek the appointment of a voluntary liquidator because they have lost confidence in the incumbent contractually agreed liquidator, this Court should likewise ordinarily give "*due respect to the commercial sense of those involved*".

26. Mr Marshall KC rightly argued that this could not properly be the invariable inflexible position. One obvious generic situation in which the views of the majority could properly be disregarded is if they are themselves the target of credible allegations of wrongdoing and are seeking to abuse their ownership powers to evade investigation. The Petitioner's Skeleton Argument provided

another helpful analogy in this regard from the company law sphere, *Fakhry v Pagden* [2021] BCC 46 (David Richards LJ, as he then was, at paragraphs 94-95).

The need for the Summary Ruling

27. In light of the governing legal principles summarised above, the Court was entitled at the first return date of the Petition to be somewhat mystified as to why the GP felt it could possibly be properly open to the Court to refuse to appoint independent voluntary liquidators as requested by 97% of the relevant stakeholders. It was understandable that the GP should wish to oppose the Order sought being granted based on disputed allegations of wrongdoing, but the Petitioner readily accepted that it was willing to forego a time-consuming and expensive investigation. Apart from the improbable (and subsequently rejected) contention that the Court had no jurisdiction to replace the GP as Liquidating Agent under section 36 (13) of the Act as read with the LPA, no coherent principled case seemed to be advanced.

28. It was not disputed that there had been an unusually frequent changing of the auditor guard, although criticisms of the suitability of the incumbent firm were contested. However, the combination of allegations of financial mismanagement and auditors resigning was in my experience a familiar red flag. It was the sort of factor which, together with others, is frequently relied upon to justify appointing provisional liquidators in place of the impugned incumbent management. Nor was it disputed that the SEC was investigating; it was merely contended that no adverse findings had been recorded. This was a second, similar, red flag.

29. Another strand of the GP's defence was that its Mr Jordaan and the Petitioner's Mr Coors had fallen out for reasons unrelated to the complaints set out in the Petition. The GP asserted that Mr Coors was a very wealthy man and had effectively used his status to sway smaller investors into supporting his personal campaign against the GP. The striking feature of this line of this argument was that it tacitly admitted that there was a breakdown in trust and confidence between the key players. It seemed inherently improbable, in fact incredible, to imply that the true position was that there was no objectively valid basis for any concerns about the GP's fitness to manage the liquidation whatsoever. Indeed, it was easy to summarily conclude that the concerns about the recent turnover of auditors and the mere fact that the SEC had initiated an investigation in 2021, which had not very rapidly vindicated the GP, provided an objectively valid basis for concerns on the part of a non-partisan investor.

30. Moreover, the degree of loss of confidence which would justify giving deference to the wishes of the majority for independent professional voluntary liquidators was not as high as would be required to justify replacing independent professional incumbents. The GP was not an independent professional liquidator at all. It had been managing the LP and had now admittedly fallen out with one of the largest investors. The mere fact of this undisputed falling out provided compelling grounds for the relief the Petitioner sought. Even if Mr Coors had had a "hissy fit" over something inconsequential that Mr Jordaan had done and levied exaggerated complaints of misconduct against the GP's principal, it was reasonable for Mr Coors to harbour genuine doubts that the recipient of his ire could be trusted to fairly wind-up the LP's affairs.

31. Although the analogy between an employer and an employee is only relevant in a figurative sense, in my judgment Mr Coors (as the principal of one of the LP's largest investors) was at the winding-up stage entitled to effectively say to the GP, like the demanding 'boss' in '*The Apprentice*' television series: "*You're fired!*"

32. Another strand to Mr Jordaan's evidence in support of the GP's opposition to the Petition was the plausible notion that he had unique contacts with the underlying investment vehicles in various parts of Africa which were important to an effective liquidation process. This seemed inherently credible. In addition, it was impossible to avoid being impressed by the business concept which married wealth creation with social development in an admirable way. However, the appointment of independent liquidators did not mean that Mr Jordaan's continuing involvement in the liquidation process would necessarily be brought to a complete end. It is standard operating practice for professional liquidators to assess how best to extract and/or preserve value from a liquidation process and engagement with former managers frequently occurs. I sought to encourage consideration of such collaboration in the Jurisdictional Ruling (at paragraph 33).

33. The very fact that the GP wished to remain in office over the wishes of the overwhelming majority of the investors was a powerful indicator that he did not apprehend the fundamental characteristics and requirements of a liquidator's representative role. It thus seemed fanciful to anticipate that the Court could ultimately be persuaded to decline to appoint the professional liquidators that 97% of the investors sought to have appointed.

34. By the date of the Jurisdictional Ruling, the following factors strongly supported appointing independent voluntary liquidators:

(a) the Petitioner complained about the LP's financial management based in part on the fact that there had been five different auditors since 2019;

(b) the GP was said to be subject to an ongoing SEC investigation into allegedly fraudulent conduct;

(c) the Petitioner complained that an asset appeared to have been sold to a party connected to the GP between the date of the filing and the hearing of the Petition; and

(d) having rejected the GP's jurisdictional challenge, it was difficult to identify any arguable grounds for the Court to leave the GP in charge of the LP's voluntary liquidation over the objections of 97% of the relevant economic stakeholders who had on any view lost confidence in the incumbent Liquidating Agent.

35. The Freezing Order was designed most narrowly to preserve the LP's assets pending the final determination of the Petition. More broadly, realistically read in conjunction with my subsequent provisional conclusions on 24 April 2024 that the chances of the GP not being replaced seemed "*fanciful*", the Freezing Order was designed to preserve the status quo until the Petition was finally determined. Two reasonable responses were open to the GP following the delivery of the Jurisdictional Ruling:

(a) appealing the Jurisdictional Ruling and seeking a stay or adjournment of the Petition pending appeal; or

(b) accepting the Jurisdictional Ruling and submitting to the Court's jurisdiction on the merits of the Petition. This option necessarily required the GP to persuade the Court that the Petitioner's concerns about its alleged mismanagement were entirely baseless and it could properly be trusted to properly manage the liquidation process.

36. Bizarrely, the GP elected to submit to the jurisdiction of the Court but, rather than seeking to demonstrate its liquidation credentials, elected instead to demonstrate beyond sensible argument that it was manifestly unfit for such office. The GP achieved this surprising 'feat' by confirming to the Court on 1 May 2024 that by way of response to the Jurisdictional Ruling:

(a) it wished to contest the Petition on its merits;

(b) it had recently removed the Petitioner as a Limited Partner and proposed to challenge its standing to prosecute the Petition on these grounds; and

(c) it had also filed the Complaint in New York. Admittedly the Complaint was filed before the GP informed the Court it wished to contest the merits of the Petition.

37. The Petitioner's attorneys, on 1 May 2024, responded to the GP's attorneys' 1 May 2024 email with a robust criticism of these actions, which were characterised as "*outrageous*", and concluded as follows:

> "*In the circumstances, our client respectfully requests that His Lordship put an end to the General Partner's reckless behaviour immediately. We respectfully submit that the situation is urgent and the General Partner is now clearly out of control by taking steps in its own self-interest no matter what the damage to limited partners. We attach a draft Order that we would invite His Lordship to make 'on the papers' that would result in the immediate appointment of the nominated representatives of Alvarez & Marsal to the exclusion of the General Partner. We are available to attend at an urgent hearing if His Lordship is not minded to make the draft Order 'on the papers', or for us to be heard in respect of the terms of the draft Order.*" [Emphasis added]

38. Brief exchanges the next day did not materially change the overall picture. The following course of conduct amounted to an obvious and serious abuse of the process of the Court:

(a) the GP initially opposed the Petition on the grounds the Court had no jurisdiction to remove it from office, and alternatively sought to persuade the Court to give directions for a full contested hearing with oral evidence and cross-examination (Skeleton Argument dated 5 April 2024, 50 + pages);

(b) the GP next opposed the Petition, in response to the Petitioner's modified case, on the grounds that the Court had no jurisdiction to appoint alternative voluntary liquidators (Supplementary Skeleton Argument dated 10 April 2024, 17 pages);

(c) after the Court had resolved the jurisdiction issue against the GP and indicated that it was difficult to identify any meritorious grounds for refusing the relief sought by the Petition, the GP:

(1) purported to remove the Petitioner as a Limited Partner, and

(2) informed the Court that it proposed to contest the standing of the Petitioner to further prosecute the Petition.

39. Without further analysis, it was impossible to believe that a voluntary liquidator, which is the respondent to an application to replace it with independent liquidators because of concerns about the incumbent's probity, could validly deprive the petitioning limited partner of its status as such. More fundamentally, it is a misuse of the processes of the Court for a litigant to manipulate the legal and factual landscape to its advantage in the midst of pending proceedings. Discovering fresh evidence, which either previously existed or is based on the post-litigation conduct of one's opponent is not improper. Creating new grounds for opposing a pending proceeding by taking steps designed to deprive the claimant of standing will generally be an abuse of process.

40. The GP's purported deprivation of the Petitioner's standing to petition, after the Court had already recorded strong provisional views as to the substantive merits of the Petition and invited the GP to consider whether it wished to further oppose the Petition, was manifestly abusive. The proper advancement of the proceedings required the GP to either:

(a) challenge the Jurisdictional Ruling by way of appeal; or

(b) having decided to fully submit to this Court's jurisdiction, to either: (1) advance arguable grounds for opposing the Petition on its merits; or (2) contest the relief to be granted and/or not oppose the Petition any further.

41. The Petitioner's constitutional fair hearing rights guaranteed not only access to the Court, but a fair hearing in a reasonable time. The GP's own fair hearing rights cannot be exercised in a way which undermines a fair trial overall. Manufacturing a new standing ground sought to both deprive the Petitioner of access to this Court and, to the extent that the attempt to do so was bound to fail, would potentially delay the Petitioner's access to substantive justice in a reasonable time by delaying the final adjudication of the Petition. Moreover, these tactical stratagems were being deployed in circumstances where the Court had found a risk of dissipation of assets existed when making the Freezing Order. Had the GP been the respondent to a winding-up petition, the Court could simply

have appointed provisional liquidators in response to obvious concerns that the Freezing Order provided insufficient protection for the LP's assets.

42. The purported removal of the Petitioner as a limited partner was accompanied by the commencement of proceedings in New York, which were inconsistent with the GP's submission to the jurisdiction of this Court. It sought declarations that, *inter alia,* only the New York Court could validly appoint another liquidator. The Complaint, *inter alia*, alleged:

> "*…notwithstanding the parties' clear contractual agreement that any action or proceeding relating in any way to the LPA* ***shall*** *be brought and enforced in this Court or the courts of the State of New York, Defendant Africa Investments filed a petition in the Cayman Islands to surreptitiously circumvent the clear venue provision and, in doing so, strategically avoid the jurisdiction of the American judicial system that the parties agreed was the exclusive judicial forum. As a result of these actions, and other action to the detriment of the Fund, on April 30, 2024, Defendant Africa Investments was removed as a Limited Partner pursuant to the removal provisions of the LPA. Id. at § 11.2. Accordingly, Plaintiffs seek a declaratory judgment as to the rights and obligations of the parties under the LPA related to the dispute between the parties…*"

43. In the Complaint, filed on 30 April 2024, just over a week after the Jurisdictional Ruling, the GP positively asserts that it has removed the Petitioner as a limited partner because it presented the Petition before this Court. It is impossible to see how it could be contended in good faith that the Petition was in breach of an exclusive jurisdiction clause in the LPA. That point did not form part of the GP's jurisdictional challenge before this Court; if it was articulated at all, the point was not pursued in oral argument. This was unsurprising because it flew in the face of the express terms of the Act. Further, this contention was entirely inconsistent with the Jurisdictional Ruling's findings that this Court had a general supervisory jurisdiction over voluntary liquidations of exempted limited partnerships under the Act.

44. The Complaint clearly launched a collateral attack on this Court's 15 April 2024 Order and the Jurisdictional Ruling as it sought to establish that the New York Court had sole jurisdiction to grant the relief this Court had already determined this Court had jurisdiction to grant. This Court's decision was reached following: (1) an *inter partes* hearing in which the GP participated and had not sought leave to appeal; and (2) a hearing in which the GP did not invite the Court to determine the exclusive jurisdiction clause point. This was a further abuse of process, seemingly designed to

provide another basis for postponing the final determination of the Petition, which the Court had already indicated it considered there appeared to be no valid defence to.

45. How did these developments impact on the need to evaluate whether the Court should proceed to list the Petition for further hearing or to summarily grant the primary relief the Petitioner sought? In short, they demonstrated that the GP had effectively abandoned any serious attempt to persuade the Court that the views of 97% of the LP's investors that the GP was unsuitable to continue as Liquidating Agent should be ignored. No reasonable voluntary liquidator, respectful of the commercial interests it was primarily required to uphold and of the rule of law, would behave in such an improper and unreasonable manner.

46. In explaining my provisional views as to why the wishes of the Petitioner and its supporters were likely to be acceded to, I noted:

> "*32. Unfortunately, the opposition to the present Petition has an all too familiar ring. The best way for a manager who has lost the confidence of the investors to demonstrate their probity is to step aside, demonstrating confidence that their impugned management of the fund will be vindicated by independent scrutiny. Instead, the importance of their continuing at the helm is apparently given priority over the wishes of the investors, and the recalcitrant manager claims to know better than the investors where their best commercial interests lie. Regrettably, whatever unique expertise the scorned manager truly possesses, the distinct impression is created that the determination to cling to office is motivated by self-interest at best or the desire to forestall independent investigation into suspect dealings at worst.*"

47. The GP's response to these provisional views was not to seek to contest the Petition on its merits by demonstrating that the Court's concerns were misplaced. Instead, it merely fortified the Court's existing concerns about its desperation to cling to power by any means, fair or foul, to a crescendo which called for decisive and summary judicial action. The Preamble to the Grand Court Rules (2023 Revision) confers a positive obligation on this Court to have regard to the overarching goals of ensuring the efficacy of the relevant substantive law and the normal advancement of proceedings in an economical, expeditious and proportionate manner having regard to the need to avoid wasting the Court's finite resources (paragraph 1). Supplementary case management powers include deciding what issues require full examination and which are appropriate for summary determination, together with taking the initiative to make orders of the Court's own motion (paragraph 4). This panoply of procedural powers were deployed in making the Summary Ruling.

48. In brief, the GP by its abuse of this Court's processes surrendered the right to any further opportunity to oppose the obviously meritorious Petition. Postponing the decision to grant the relief sought by the Petitioner would have undermined the substantive legal imperatives to safeguard the majority investors' investment, one of the main purposes of the statutory jurisdiction which I exercised, while causing unjustifiable delay and a wastage of costs.

Conclusion

49. For these reasons, on 2 May 2024 I granted an Order appointing Alexander Lawson and Christopher Kennedy of Alvarez & Marsal Cayman Islands Limited as the persons responsible for winding-up the affairs of the LP, under section 36 (13) of the Act.

THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT