

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

3 **FSD Number 88 of 2012(PCJ)**

4
5 **The Honourable Mr. Justice Peter Cresswell**
6 **In Open Court, 16th to 18th and 21st to 25th January 2013**

7
8
9 **IN THE MATTER OF SECTION 94 OF THE COMPANIES LAW (2011 REVISION)**

10
11 **AND IN THE MATTER OF FORTUNE NEST CORPORATION**

12
13
14 **Appearances:** Mr. Peter McMaster QC and Ms Katie Pearson of Appleby for the Petitioner

15
16 Mr. Stephen Moverley Smith QC instructed by Harneys and with Mr. James
17 Noble and Mr. Sebastian Said of Harneys for the Respondent

18
19
20 **JUDGMENT**

21 **Index**

22
23 Introduction
24 Chronology
25 Dramatis Personae
26 The Petitioner's Case
27 The Respondent's Case
28 The relevant legal principles
29 An analysis of the documents
30 The witnesses
31 Dr. Mohammad's credibility as a witness
32 The three documents where authenticity is disputed
33 Analysis and Conclusions



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35
36 The Introduction, Background and Chronology (paragraphs 1 to 19) and Annex 1 to 3 are taken
37 from the agreed Case Memorandum. The cooperation between the two legal teams in preparing
38 the Case Memorandum in accordance with the FSD Guide has served to narrow the issues and
39 save court time.

40
41 **Introduction**

42
43 1. The Re-Amended Petition seeks the winding-up of Fortune Nest Corporation (the
44 "Company" or "FNC" or "FNC Cayman") on the just and equitable ground. Fortune

1 Nest Limited (“FNL”), the majority shareholder in the Company, is the Respondent to
2 the Re-Amended Petition.

3 2. The following bases for winding up are pleaded in the Re-Amended Petition:

4 2.1. The Petitioner, Mr Lee, has lost confidence in the management of the Company
5 due to a lack of probity on their part;

6 2.2. Mr Lee, as a minority shareholder, has suffered oppression by the majority
7 shareholder, FNL, acting through its controlling mind, Dr Mohammad Abdel-Haq
8 (“Dr Mohammad”);

9 2.3. There is a need for investigation of the Company’s affairs;

10 2.4. As a result of the relationship between Mr Lee and Dr Mohammad, the Company
11 is by nature a quasi-partnership, and the relationship between Mr Lee and Dr
12 Mohammad has broken down.

13
14 3. The Respondent denies that the Petitioner is a current shareholder of the Company.
15 Alternatively, the Respondent denies the various bases pleaded by the Petitioner in
16 support of the winding up petition.

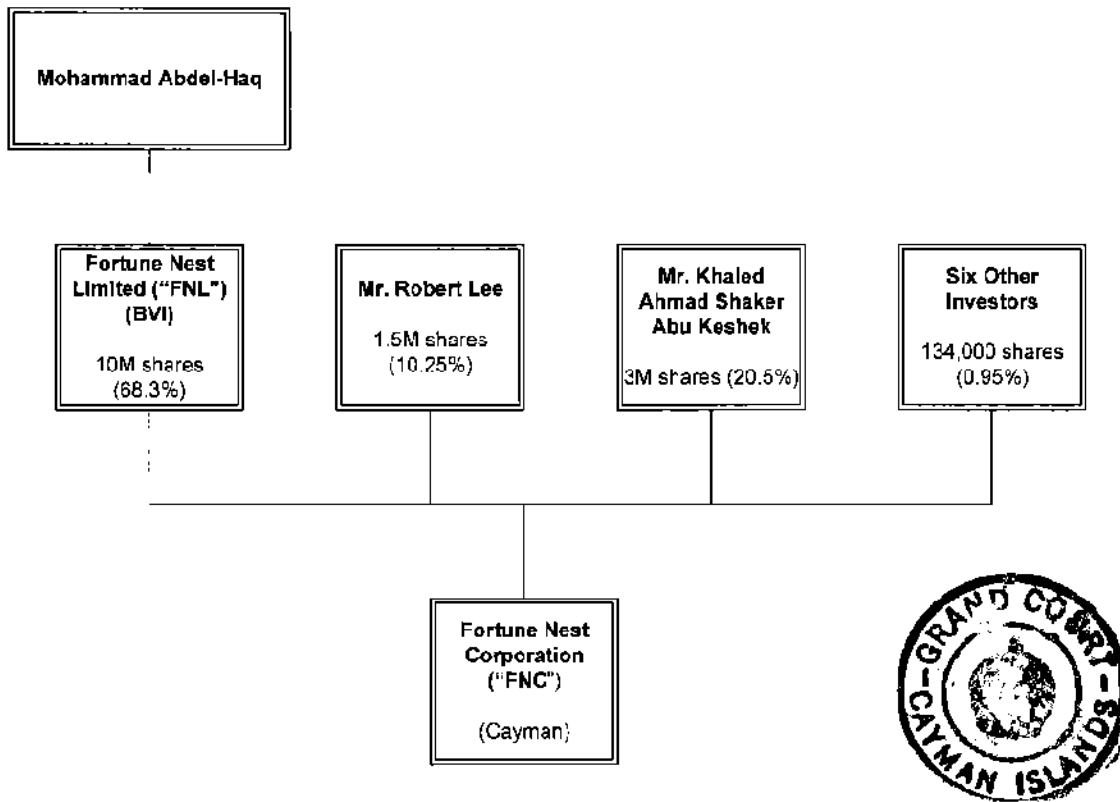
17 **Background**

18
19 4. Mr Lee is a businessman based in Seattle, Washington, United States and is (or, on the
20 Respondent’s case, was, a shareholder in the Company). The shareholdings in the
21 Company as at December 2009 are set out below¹.



¹ In his closing speech Counsel for the Respondent said that (contrary to what had been agreed) the chart was not accurate in relation to Mr Lee’s shareholding as at December 2009.

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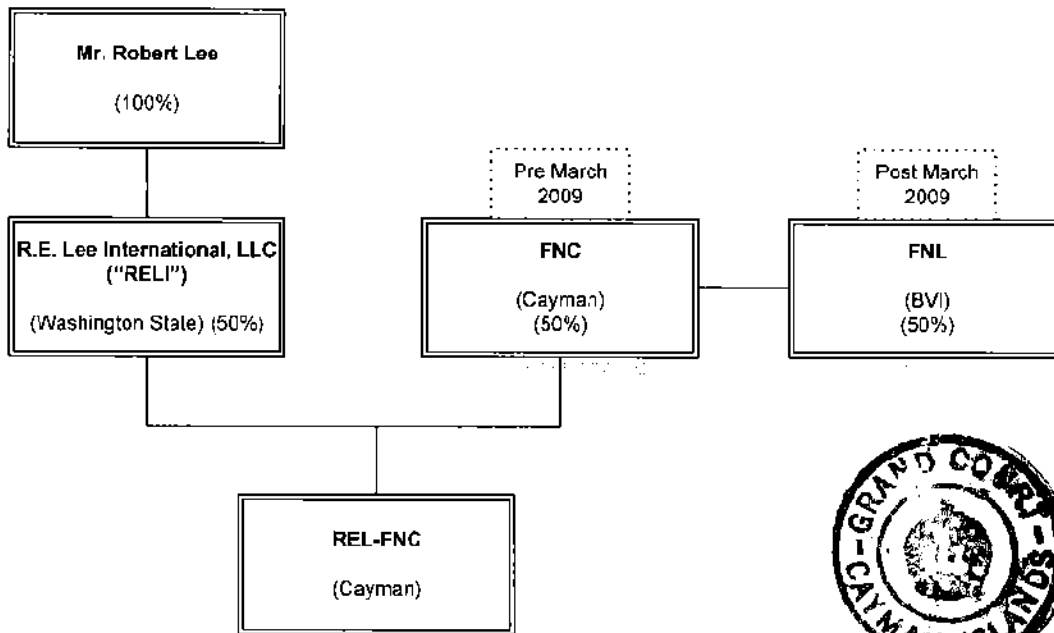
5 5. Dr Mohammad is Chairman, CEO and sole director of the Company. He is also sole
6 shareholder and director of FNL (its majority shareholder).

7 6. FNL alleges that the shareholdings of Mr Lee and Mr Abu-Keshek (or "Khaled") have
8 been forfeited.

9 **Chronology**

10 7. Mr Lee was introduced to Dr Mohammad by Mr Abu-Keshek in 2008, following which
11 they decided to form a joint venture facilitating the issue of life insurance to high net-
12 worth clients in the Middle East (the "Joint Venture"). Mr Lee was to provide sales and
13 underwriting expertise (as his background is in life insurance) and Dr Mohammad was to
14 provide prospective clients and also to obtain the relevant licences.

15 8. A Cayman company, REL-FNC (Cayman) Limited was incorporated on 8 August 2008
16 as the vehicle for the Joint Venture. Its shareholding was as follows:

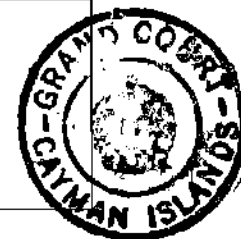


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9. Mr Lee and his company, RE Lee International, LLC (“RE Lee” or “RELI” or “REL”) have made the following transfers to the Company, FNI, and Dr Mohammad.

	Date	Amount (US\$)	From	To	Account	Purpose
1.	24 June 2008	\$1m	RE Lee	FNC Nevada	Bank of America, California	Per Petitioner, fund Joint Venture; per Respondent, to Mr Abu-Keshek pursuant to separate agreement
2.	22 September 2008	\$2.5m	RE Lee	FNC Nevada	Bank of America, California	Per Petitioner, fund Joint Venture; per Respondent, to Mr Abu-Keshek pursuant to separate agreement
3.	22 September 2009	\$1m	RE Lee	FNL	Standard Chartered Bank, Bahrain	Fund Joint Venture (agreed)
4.	7 December 2009	\$10m	Mr Lee	FNC	Standard Chartered Bank, Bahrain	Purchase shares in the Company (agreed)

5.	8 December 2010	\$154,695	RE Lee	FNC	Standard Chartered Bank, Bahrain	Fund Joint Venture (agreed)
6.	26 January 2011	\$154,695	RE Lee	FNC	Standard Chartered Bank, Bahrain	Fund Joint Venture (agreed)
7.	7 March 2011 to 9 May 2011	Per Petitioner \$150,000; Per Respondent \$50,000.	Mr Lee	Dr Mohammad	Bank of America, Beverley Hills, California	Per Petitioner, personal loan; per Respondent, repay expenses incurred in relation to Joint Venture
8.	7 June 2011	Per Petitioner \$200,000; Per Respondent \$150,000.	Mr Lee	Dr Mohammad	Bank of America, Beverley Hills, California	Per Petitioner, personal loan; per Respondent, repay expenses incurred in relation to Joint Venture
9.	9 November 2011	\$200,000	Mr Lee	Dr Mohammad	Bank of America, Beverley Hills, California	Per Petitioner, personal loan; per Respondent, repay expenses incurred in relation to Joint Venture
	Total	Per Petitioner \$15,359,390 Per Respondent \$15,209,390				



I will refer to the 9 payments as Payment 1, Payment 2, Payment 3, Payment 4, Payment 5, Payment 6, Payment 7, Payment 8 and Payment 9 respectively.

10. It is the Petitioner's case that at the time of making Payment 1, Mr Lee and his employees were only aware of one company with the name Fortune Nest Corporation, which is the Company. At the time of making Payment 2 RE Lee was aware that there was also a Nevada corporation with the same name, of which Dr Mohammad was the sole director (the "Nevada Corporation"). It is also the Petitioner's case that as the two entities were under the common control of Dr Mohammad, it was not considered

1 important at the time whether Payment 2 was being made to the Company or the Nevada
2 Corporation. It is common ground that the bank account to which Payments 1 and 2
3 above (totalling \$3.5 million) were made was held by the Nevada Corporation.

4 11. Dr Mohammad alleges that although he was the sole director of the Nevada Corporation,
5 he had no involvement in its running. He denies that the requests for these funds, which
6 were made by Mr Abu-Keshek, were made on his or the Company's behalf but alleges
7 that they were requested by Mr Abu-Keshek on his own behalf and pursuant to a separate
8 agreement. The Respondent's case is that Dr Mohammad is unaware of the precise terms
9 of that agreement but that Mr Lee agreed to pay Mr Khaled a "commission" in return for
10 introducing Mr Lee to Dr Mohammad. However, the bank statements for the account
11 show that the majority of the funds transferred into the account (\$2,383,600), were
12 transferred to the Company, Dr Mohammad or other members of the Abdel-Haq family.
13 A spreadsheet showing the payments which were made into and out of this account is at
14 Annex 1.

15 12. The parties agree that the Payment 3 (in the sum of \$1 million) was made for the purpose
16 of funding the Joint Venture. A spreadsheet showing the payments which were made
17 into and out of the account held by FNL at Standard Chartered Bank, Bahrain, to which
18 this payment was made, is as Annex 2.

19 13. The parties also agree that Payment 4 was for the purpose of purchasing shares in the
20 Company. FNL alleges that, after making that payment, Mr Lee agreed orally to invest a
21 further \$5 million in the Company, with payment to be made at a later date, and that the
22 Company had the right to forfeit Mr Lee's shares for non payment of the further \$5
23 million. FNL alleges that Mr Lee's shares have been validly forfeited. Mr Lee denies
24 that he ever agreed to invest a further \$5 million in the Company, and denies that the
25 purported forfeiture of his shares was valid. The circumstances surrounding the
26 purported forfeiture of Mr Lee's shares are described below.

27 14. The parties agree that the Payments 5 and 6 were for the purpose of funding the Joint
28 Venture.



- 1 15. Payments 4, 5 and 6 were all made to an account in the name of the Company at
2 Standard Chartered Bank, Bahrain. A spreadsheet showing the payments which were
3 made into and out of that account is at Annex 3. It can be seen from Annex 3 that, of the
4 \$10 million provided by Mr Lee on 7 December 2009, \$9,274,980 was transferred to Dr
5 Mohammad on 12 January 2010.
- 6 16. Mr Lee alleges Payments 7 to 9 (totalling \$550,000 on the Petitioner's case or \$400,000
7 on the Respondent's case) were personal loans made by Mr Lee to Dr Mohammad. FNL
8 says these payments were made to reimburse Dr Mohammad for expenses which he had
9 incurred in relation to the Joint Venture.
- 10 17. One of the key issues on the Petition is whether the funds provided by Mr Lee and RELI
11 have been properly accounted for. Mr Lee's case is that Dr Mohammad has repeatedly
12 promised to provide Mr Lee with financial statements relating to the Company and an
13 accounting of the funds which Mr Lee has transferred to the Company, but the
14 information provided to date has been incomplete and insufficient to allay Mr Lee's
15 concerns. FNL alleges in its Defence that the funds have been properly accounted for.
16 The Respondent's case is also that Dr Mohammad was subsequently informed by FNC's
17 lawyers that FNC was under no obligation to provide Mr Lee with a copy of the accounts
18 requested. In light of that advice, on the Respondent's case, Dr Mohammad elected not to
19 provide the accounts to Mr Lee.
- 20 18. On 7 May 2012, the Company issued a notice purporting to call up unpaid capital on Mr
21 Lee's shares and demanding a further payment of \$5 million. When Mr Lee disputed the
22 call notice, a purported notice of forfeiture was sent to him on 29 May 2012. Mr Lee's
23 position is that the purported forfeiture was invalid.
- 24 19. FNL alleges that, after he provided the initial US\$10 million in December 2009, Mr Lee
25 agreed to increase his investment by providing a further \$5 million. Mr Lee denies that
26 he ever agreed to invest a further \$5 million.



1 **Dramatis Personae**

2

3 The following Dramatis Personae is agreed. I use abbreviations for certain individuals for
4 convenience, without any disrespect to those concerned.

5

6 **Individuals**

Name	Description
Abdel-Haq, Bana ("Bana")	Daughter of Mohammad Abdel-Haq, secretary of Fortune Nest Corporation (Nevada).
Abdel-Haq, Dina	Daughter of Mohammad Abdel-Haq.
Abdel-Haq, Nadine	Daughter of Mohammad Abdel-Haq.
Abdel-Haq, Mohammad ("MAH")	Sole director of FNC and of Fortune Nest Limited ("FNL"), which is the majority shareholder of FNC.
Abdel-Haq, Tala	Daughter of Mohammad Abdel-Haq.
Abu-Keshek, Khaled ("Khaled")	Petitioner says holder, Respondent says former holder of 3,000,000 shares in FNC.
Abukeshek, Salwa Nawak Shaker	Minority Shareholder in FNC. Has sworn affidavit confirming opposition to Petition.
Abu-Kishk, Shaker Nawwaf ("Shaker")	Minority Shareholder in FNC. Has sworn affidavit confirming opposition to Petition.
Al-Khatib, Wael ("Wally")	Introduced to Mr Lee in December 2008. The Petitioner says that Mr Al-Khatib was introduced as an associate of Dr Mohammad. The Respondent disputes this. The Petitioner says that Mr Al-Khatib made a proposal to provide additional collateral for purposes of Joint Venture and procured fraudulent charges on Mr Lee's credit card in February 2009. The Respondent disputes this.
Al Zireeni Hajeer, Enas J	Minority Shareholder in FNC. Has sworn affidavit confirming opposition to Petition.



Al Zireeni, Waddah	Minority Shareholder in FNC. Has sworn affidavit confirming opposition to Petition.
Arafeh, Khaled Suhil Hasan	Minority Shareholder in FNC. Has sworn affidavit confirming opposition to Petition.
Dysland, Nancy Lee	Executive Assistant to Robert E. Lee.
Hamdan Abdel-Haq, Khairieh Hassan	Wife of Mohammad Abdel-Haq.
Lee, Robert Earl	Founder, Chairman and Chief Executive Officer of R. E. Lee International LLC ("REL"). 1,500,000 shares in FNC were issued to him in April 2010; it is disputed whether those shares have been validly forfeited. Petitioner.
McComb, Mike Ritchey	Executive Vice President of REL.
Morrow, Donald Lee	Introduced to Mr Lee by Khaled in February 2009. The Petitioner says that Mr Morrow proposed a scheme to provide additional collateral for the purposes of the Joint Venture. The Respondent disputes this.
Pora, Betty	Vice President responsible for medical underwriting at REL.
Wotherspoon, Bruce	Chief Financial Officer of REL.



1 **Companies**

Name	Description
Fortune Nest Corporation (Cayman Islands) ("FNC" or the "Company" or "FNC Cayman")	The company subject to this winding up petition.
Fortune Nest Corporation (Nevada)	A company incorporated in the state of Nevada. MAH was President and sole director. Bana was Secretary. Khaled was Treasurer. Since struck off.
Fortune Nest Ltd. (BVI) ("FNL")	Majority shareholder of Fortune Nest Corporation. Respondent to the Petition. A company in which the sole shareholder and sole director is MAH.
G Six International Group WLL (Bahrain)	According to Grant Thornton report dated 4 August 2011, received payments from FNC in response to invoices rendered for work done on j.v. MAH is joint founder and 91% director.
REL-FNC (Cayman) Ltd. (Cayman)	Incorporated in the Cayman Islands on 5 August 2008 as vehicle for joint venture between REL/MAH. Dissolved on 8 February 2011.
R. E. Lee International LLC ("REL")	A Washington based limited liability company specialising in the sale and brokerage of jumbo life insurance policies to high net worth individuals.



1 **The Petitioner's Case**

2

3 Mr. McMaster QC's submissions on behalf of the Petitioner were as follows.

4

5 The Petitioner relies on (in order of significance):-

6

7 (1) Lack of probity;

8 (2) Oppression; and

9 (3) (Equal) Need for an investigation/lack of confidence.

10

11 Matters complained of

12

13 The Petitioner complains of the following matters:-

14

15 1. Forfeiture of shares. The sole director and majority shareholder purportedly resolved to
16 forfeit Mr Lee's shares in FNC when there was no basis for doing so.

17

18 2. The Director's diversion of \$9.27 million.

19

20 3. FNC was the original joint venture ("JV") partner. FNC was the JV partner when \$3.5
21 million was paid into the account of a company bearing its name, controlled by its
22 controlling mind Dr. Mohammad.

23

24 4. FNC was the JV partner over a period until March 2009 when well over a million dollars
25 was taken from the FNC Nevada account for non JV purposes. In this period \$600,000
26 went to Dr. Mohammad's wife alone. Dr. Mohammad has given evidence that all
27 payments to his family from this account were for their own personal account.

28

29 5. FNC received payments of expenses for the JV that were not properly accounted for (
30 Payments 5 and 6).

31

32 6. FNC received \$500,000 from the Nevada account.



1 7. FNC has produced false documents to explain the \$500,000 received from the Nevada
2 account.

3
4 8. The investment in FNC was for the purposes of the JV.

5
6 9. Mr Lee's investment in FNC was founded on a relationship of trust and confidence.
7 Disgraceful behaviour that undermines the relationship goes straight back to FNC.

8
9 Conflicts of evidence between Mr Lee and Dr. Mohammad.

10
11 Dr Mohammad was not a reliable witness of fact. He knowingly gave false evidence. He was an
12 unreliable witness on whose evidence no reliance can be place where it is not corroborated.

13
14 Mr Lee did not get the originals of certain documents he signed because they were not given or
15 sent to him.

16
17 The Partnership Agreement was signed in or about May 2008. Mr Lee was not supplied with a
18 signed copy until 4 years later. The minutes were signed in September 2009. Mr Lee did not
19 take a copy at the time and he was never sent a copy. The commitment in November 2009 was
20 not given to Mr. Lee in any form until 2012. The same applies to the share certificate in April
21 2010.

22
23 Issue and purported forfeiture of Mr Lee's shares



24
25 It is clear that on both cases when the \$10 m was paid in December 2009 it was paid to acquire
26 shares that were fully paid. Mr Lee's case is that he simply paid Dr Mohammed and trusted him
27 to issue an appropriate number of shares. The circumstances of the issue meant by 7 December
28 2009 Mr Lee had a vested right to \$10m worth of shares.

29
30 There is a conflict of fact as to an alleged further agreement on 22/23 December 2009 that Mr
31 Lee would invest an additional \$5m. Dr. Mohammad's evidence is that there was an agreement

1 for another half million shares at \$10 each, involving an additional investment of \$5 million, not
2 that this agreement made the shares already allotted other than fully paid.

3
4 In light of the oral testimony and undisputed documents it is clear that there was no further
5 agreement as alleged.

6
7 Dr. Mohammad supports his case by reference to 3 disputed documents (Letters of 27 October
8 2009, 6 April 2010 and 12 June 2011) which are not genuine.

9
10 As to the writing on the share certificate, the evidence shows clearly that the agreement was \$10
11 million for fully paid shares at that time. Mr Lee trusted Dr. Mohammad completely. Mr Lee
12 was not shown the resolution when he signed the share certificate. There is no evidence that he
13 was told that the resolution meant that he had to pay another \$5 million.

14
15 Dr. Mohammad produced false FNC documents (as to receipt of payments of \$250,000 and
16 \$250,000 from FNC Nevada, purportedly showing payments for Khaled's shares) to support his
17 testimony.

18
19 The purported forfeiture of shares for non payment of \$5 million is a clear case of want of
20 probity, of oppression and of betrayal of trust and confidence. A friend who has paid \$10 million
21 is stripped of everything on a sham pretext. Mr Lee gave Dr. Mohammad \$10 m, trusting him to
22 issue to him an appropriate number of shares.

23
24 Further evidence of lack of probity

25
26 \$9.27m received for Mr Lee's shares was transferred by FNC to its director. The money belongs
27 to FNC. Procuring its payment to himself is *prima facie* unlawful, involving a serious lack of
28 probity on the part of Dr. Mohammad. A director stands to his company as does a trustee to his
29 beneficiary. The director should not mix company funds with his own. That on its own, unless
30 there is good reason, entails a want of probity. It demands (a) an explanation showing good



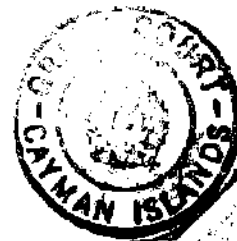
1 reasons for why it was done and (b) a full account of the money to be provided. There is no
2 proper explanation for why this money was diverted.

3
4 The first explanation that the money needed to be in a current account was untrue because the
5 account was a current account. The next explanation (to put the money beyond the scope of asset
6 freezing measures) reflects a dubious attitude to the conduct of business. The next explanation
7 (regulatory issues) was purportedly supported by press articles showing the attitude of the
8 Central Bank. The articles did not support what was said. None of the explanations as to why
9 the money was transferred to Dr. Mohammad's personal account are made out. Failure to
10 provide a proper explanation for the transfer of this money is itself lack of probity justifying a
11 winding up.

12
13 Even worse is the failure to provide a proper account of how the money was used. Dr.
14 Mohammad was aware of the need to explain what was done with this money when he prepared
15 his fourth affidavit. Had this money been used for Company purposes records would exist that
16 could be produced to establish that proposition. A man of probity would be able to provide an
17 adequate explanation of the use of this money. The failure to provide this account is a further
18 instance of serious lack of probity on the part of Dr. Mohammad in relation to the affairs of the
19 Company.

20
21 The court should infer that Dr. Mohammad took the money for himself. He admits the money
22 has gone from his bank account. The only evidence that money has been properly used is from
23 Dr. Mohammad. He said that it has been accounted for. He said it was used for investment in
24 Virtual Reality, but chose not to produce a single document in support of this. Dr. Mohammad
25 was consistently untruthful in his explanations as to money received. The court should not
26 accept his uncorroborated assurances that the money has been properly used and should instead
27 infer that he took it for his own use.

28
29 Failure to give proper explanation of what was done with money Dr. Mohammad accepts was
30 received for JV purposes



1 Dr. Mohammad failed to give a proper explanation as to what was done with money he accepts
2 was received for JV purposes.

3
4 **Forfeiture Factual**

5
6 No money was owed so there was no valid basis for a call. If, which is denied, money was owed
7 for further shares, there was no power to forfeit the shares already fully paid for (see Articles
8 14.2.)

9
10 **The Respondent's Case**

11
12 Mr Moverley Smith for the Respondent submitted as follows:-

13
14 **Witnesses**

15
16 Mr Lee was obviously labouring under severe difficulties. His evidence was truncated very
17 significantly by virtue of his health problems. His evidence was inherently unreliable, because of
18 his inability to remember that he had signed a number of key documents in the case and the fact
19 that he only accepted he had signed those documents after they had been analysed by a
20 handwriting expert and the signature confirmed. Those key documents were:

- 21
22 - the Partnership Agreement;
23 - the minutes of the September 2009 meeting;
24 - the share certificate; and
25 - the investment agreement.

26
27 Dr Mohammad was cross-examined for a very long time in contrast to Mr. Lee. He was confused
28 on some points, but he was essentially doing his best to assist the court.

29
30 The Threshold Question – Locus Standi



1 The starting point involves a question of fact. Did Mr. Lee subscribe for 1.5m shares at an issue
2 price of \$10? Mr. Lee said he was expecting US\$1m shares for his US\$10m: i.e. he was
3 expecting to pay \$10 per share. He obtained 1.5m shares – he was aware of this as he signed the
4 share certificate– so he must have been aware that either he had 500k shares too many, or he had
5 to pay a further \$5m.

6
7 The evidence from Mr Lee is unclear in other respects. He signed the investment agreement for
8 shares in FNC and FNL. There must have been a variation as he only got shares in one
9 company.

10
11 Dr Mohammad's explanation is that there was a meeting in Geneva in December 2009. There is
12 no explanation from Mr Lee as to how the variation occurred, after payment but before share
13 issue.

14
15 The Company books maintained by Maples & Calder record the shares as “fully paid”. However,
16 Maples & Calder are subsequently party to correspondence saying the shares are not fully paid.
17 They could only have done so if either they accepted that the shares were not in fact fully paid,
18 or they were a willing party to a fraudulent call – it is obviously not the latter.

19
20 Any alteration in relation to the rights of members after the commencement of the winding up is
21 void, only if a winding up order is made.

22
23 If the Respondent is successful in relation to forfeiture, the petition must be dismissed. If on the
24 other hand, Mr Lee's shares have not been forfeited, then it is accepted that he has locus as a
25 shareholder to apply for a winding up order on just and equitable grounds.

26
27 The grounds relied on for winding up



28
29 As to the alleged quasi partnership, the Company is not a quasi-partnership as Mr Lee was not
30 involved in the management of company – his shareholding was simply an investment. Mr Lee
31 sought information because of concerns relating to the IRS. Quasi partnerships are a particular

1 type of case where the legitimate expectations include the expectation that you will take part in
2 the management of the company.

3
4 As to the alleged lack of probity, the burden of proving a lack of probity is on the Petitioner.
5 Lack of probity is akin to an allegation of dishonesty. The specific allegations of lack of probity
6 in the case are allegations of dishonesty. These are serious allegations requiring a proper quality
7 and quantity of evidence.

8
9 On the facts of this case, the court should not look at matters outside the Company. The cases in
10 which behaviour in relation to other companies has been relied upon are quite different from the
11 present case:

12
13 (a) Unlike in *Freerider*, this case does not involve a group of companies carrying on a
14 "single business venture". Mr Lee was the sole director of the JV company. The JV
15 company was incorporated on Mr Lee's instructions and the JV company was struck off
16 on 30 June 2011 on Mr Lee's instructions. Dr Mohammad was not informed.

17
18 (b) Unlike in *Sound Advice* (where the court looked at matters outside the company because
19 (a) the other company was the parent and the parent controlled the subsidiary and (b) the
20 two companies were controlled by a common director) in the present case there is no
21 control of the JV company and FNC by a common director and the JV company is not the
22 parent, and therefore in control of, FNC.

23
24 Refusal to allow inspection of information is not lack of probity. There was no promise to
25 provide information about the Company.

26
27 As to the need for an investigation, this is not sufficient in itself to justify a winding up order.
28 No serious criminal or regulatory issues have been raised.



1 As to oppression, there is no evidence of any oppression by a majority shareholder. There is no
2 suggestion that the majority shareholder has done anything in relation to the Company. The only
3 thing in relation to the Company that has been identified is the failure to provide information.

4
5 Alternative Remedies

6
7 Winding up is the remedy of last resort

8
9 There are several alternative remedies available under s. 95:

10
11 (1) The court is able to appoint inspectors to inquire further into the company and report to the
12 court.

13
14 (2) The court is able to grant leave for the Petitioner to bring a derivative action if it is of the
15 view there is a prima facie case of a fraud on the minority – leading (if meritorious) to the
16 recovery of funds for the Company.

17
18 (3) Although not sought by either party, the court does have the power to order a buy-out,
19 whether by other shareholders or the Company.

20
21 (4) Finally, there are extant proceedings in the United States in which the Petitioner is seeking to
22 recover his investment in the Company. Those or similar proceedings in Cayman for the
23 recovery of the investment are an appropriate remedy which would give the Petitioner (if he
24 makes out a proper case) what he really wants, without winding up a substantial company
25 with good prospects.

26
27 Conduct

28
29 I have had regard to Mr Moverley Smith's further submissions on conduct in respect of the Joint
30 Venture and conduct in respect of the Company.



1 **The relevant legal principles**

2
3 The parties' legal teams have most helpfully provided a statement of legal principles showing (a)
4 agreed principles and (b) points of difference. I reproduce the statement below to the extent that
5 it is material having regard to my analysis, reasoning and conclusions. Points of difference are
6 shown in square brackets. Where necessary I set out my determination on points of difference.

7
8 **JUST AND EQUITABLE WINDING UP**

9
10 **The Legislation**

11
12 1. The Petitioner is seeking a winding-up order pursuant to s. 92(e) of the Companies Law
13 (2012 Revision):

14
15 *"92. A company may be wound up by the Court if -*

16 *...*

17 *(e) the Court is of opinion that it is just and equitable that the company should be wound*
18 *up."*

19
20 2. The court's powers on hearing a winding up petition are set out in s.95:

21
22 *"(1) Upon hearing the winding up petition the Court may-*

23
24 *(a) dismiss the petition;*

25 *(b) adjourn the hearing conditionally or unconditionally;*

26 *(c) make a provisional order; or*

27 *(d) any other order that it thinks fit.*

28
29 *but the Court shall not refuse to make a winding up order on the ground only that the*
30 *company's assets have been mortgaged or charged to an amount equal to or in excess of*
31 *those assets or that the company has no assets*



1 (2) *The Court shall dismiss a winding up petition or adjourn the hearing of a winding up*
2 *petition on the ground that the petitioner is contractually bound not to present a petition*
3 *against the company.*

4
5 (3) *If the petition is presented by members of the company as contributories on the*
6 *ground that it is just and equitable that the company should be wound up, the Court shall*
7 *have jurisdiction to make the following orders, as an alternative to a winding-up order,*
8 *namely-*

- 9
10 (a) *an order regulating the conduct of the company's affairs in the future;*
11 (b) *an order requiring the company to refrain from doing or continuing an act*
12 *complained of by the petitioner or to do an act which the petitioner has*
13 *complained it has omitted to do;*
14 (c) *an order authorising civil proceedings to be brought in the name and on*
15 *behalf of the company by the petitioner on such terms as the Court may direct; or*
16 (d) *an order providing for the purchase of the shares of any members of the*
17 *company by other members or by the company itself and, in the case of a*
18 *purchase by the company itself, a reduction of the company's capital accordingly.*

19
20 (4) *Where an alternative order under subsection (3) requires the company not to make*
21 *any, or any specified, alteration in the memorandum or articles of association, the*
22 *company does not have power, without the leave of the Court, to make any such*
23 *alteration in breach of that requirement.*

24
25 (5) *Any alteration in a company's memorandum or articles of association made by virtue*
26 *of an alternative order under subsection (3) is of the same effect as if duly made by*
27 *resolution of the company, and the provisions of this Law shall apply to the memorandum*
28 *or articles of association as so altered accordingly.*



1 (6) *A copy of an alternative order made under subsection (3) altering, or giving leave to*
2 *alter, a company's memorandum or articles of association shall be filed by the company*
3 *with the Registrar within fourteen days of the making of the order.*"

4
5
6 3. The power to grant an alternative remedy under section 95(3) only arises if the winding-up
7 petition is well founded – i.e. if (absent s. 95(3)) the court would otherwise have made a
8 winding-up order².

9
10 4. A provision in identical terms to s. 92(c) has formed part of English company law since
11 1848.³ Lord Wilberforce explained its significance, in his well known speech in *Ebrahimi*
12 *v. Westbourne Galleries*:⁴

13
14 *"The words are a recognition of the fact that a limited company is more than a mere*
15 *legal entity, with a personality in law of its own: that there is room in company law for*
16 *recognition of the fact that behind it, or amongst it, there are individuals, with rights,*
17 *expectations and obligations inter se which are not necessarily submerged in the*
18 *company structure. That structure is defined by the Companies Act and by the articles of*
19 *association by which shareholders agree to be bound. In most companies and in most*
20 *contexts, this definition is sufficient and exhaustive, equally so whether the company is*
21 *large or small. The 'just and equitable' provision does not, as the respondents suggest,*
22 *entitle one party to disregard the obligation he assumes by entering a company, nor the*
23 *court to dispense him from it. It does, as equity always does, enable the court to subject*
24 *the exercise of legal rights to equitable considerations; considerations, that is, of a*
25 *personal character arising between one individual and another, which may make it*
26 *unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.*

27 *It would be impossible, and wholly undesirable, to define the circumstances in which*
28 *these considerations may arise. Certainly the fact that a company is a small one, or a*

² See the judgment of the Court of Appeal in *Re Camulos Partners Offshore Limited* [2010(1)] CILR 303, at §35-38 per Sir John Chadwick P.

³ See *Re CVC/Opportunity Equity Partners Limited* [2002] CILR 77, at §13 per Lord Millett in the Privy Council.

⁴ *Ebrahimi v Westbourne Galleries Limited* [1973] AC 360, at 379B-D.

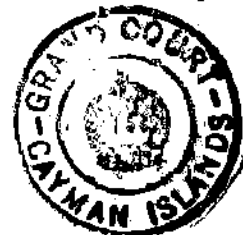


1 *private company, is not enough. There are very many of these where the association is a*
2 *purely commercial one, of which it can safely be said that the basis of association is*
3 *adequately and exhaustively laid down in the articles. The superimposition of equitable*
4 *considerations requires something more, which typically may include one, or probably*
5 *more, of the following elements: (i) an association formed or continued on the basis of a*
6 *personal relationship, involving mutual confidence—this element will often be found*
7 *where a pre-existing partnership has been converted into a limited company; (ii) an*
8 *agreement, or understanding, that all, or some (for there may be 'sleeping' members), of*
9 *the shareholders shall participate in the conduct of the business; (iii) restriction upon the*
10 *transfer of the members' interest in the company—so that if confidence is lost, or one*
11 *member is removed from management, he cannot take out his stake and go elsewhere.*

12
13 *It is these, and analogous, factors which may bring into play the just and equitable*
14 *clause, and they do so directly, through the force of the words themselves. To refer, as so*
15 *many of the cases do, to 'quasi-partnerships' or 'in substance partnerships' may be*
16 *convenient but may also be confusing. It may be convenient because it is the law of*
17 *partnership which has developed the conceptions of probity, good faith and mutual*
18 *confidence, and the remedies where these are absent, which become relevant once such*
19 *factors as I have mentioned are found to exist: the words 'just and equitable' sum these*
20 *up in the law of partnership itself, and in many, but not necessarily all, cases there has*
21 *been a pre-existing partnership the obligations of which it is reasonable to suppose*
22 *continue to underlie the new company structure. But the expressions may be confusing if*
23 *they obscure, or deny, the fact that the parties (possibly former partners) are now co-*
24 *members in a company, who have accepted, in law, new obligations. A company,*
25 *however small, however domestic, is a company not a partnership or even a quasi-*
26 *partnership and it is through the just and equitable clause that obligations, common to*
27 *partnership relations, may come in."*

28

29 5. The case law has established certain categories of cases in which it has been held to be just
30 and equitable for a company to be wound up. Such categorization was deprecated by Lord



1 Wilberforce in *Ebrahimi v. Westbourne Galleries*, where, having reviewed the cases, he
2 said:⁵

3
4 *“There are two other restrictive interpretations which I mention to reject First, there*
5 *has been a tendency to create categories or headings under which cases must be brought*
6 *if the clause is to apply. This is wrong. Illustrations may be used but general words*
7 *should remain general and not be reduced to the sum of particular instances. Secondly,*
8 *it has been suggested, and urged upon us, that (assuming the petitioner is a shareholder*
9 *and not a creditor) the words must be confined to such circumstances as affect him in his*
10 *capacity as shareholder. I see no warrant for this either. No doubt, in order to present a*
11 *petition, he must qualify as a shareholder, but I see no reason for preventing him from*
12 *relying upon any circumstances of justice or equity which affect him in his relations with*
13 *the company, or, in a case such as the present, with the other shareholders.”*

14
15 6. This does not of course mean that the court should reject the assistance provided by the
16 illustrations contained in the decided cases. Courts regularly refer to earlier cases for
17 illustration and this has created well recognised lines of cases.⁶ Certain of those lines are
18 considered below, namely:

- 19
20 (a) Loss of confidence in management caused by a lack of probity.
21 (b) Oppression.
22 (c) Quasi-partnership

23
24 7. One other head set out below is the need for an investigation. [The Petitioner’s case is that
25 the need for an investigation is sufficient in the Cayman Islands to constitute a free standing
26 basis to wind the Company up on the just and equitable ground. The Respondent’s case is
27 that without more (e.g. serious allegations of wrongdoing being made outside the winding
28 up process) a need for investigation is not in itself a justification for a winding up.]

⁵ *Ib.d.*, at 374H-375B.

⁶ French; pg 601.



1 8. The question whether it is just and equitable to wind the Company up must be answered on
2 the facts which exist at the time of the hearing of the Petition, although the Petitioner is
3 confined to the heads of complaint set out in the Petition.⁷ The heads of complaint are set
4 out at paragraphs 10 to 13 of the Re-amended Winding-up Petition as follows:

5
6 *“10. The winding-up of the Company is sought on the basis that Mr Lee has lost*
7 *confidence in the management of the Company due to a lack of probity on their part.*

8
9 *11. Alternatively Mr Lee, as a minority shareholder, has suffered oppression by the*
10 *majority shareholder, FNL acting through its controlling mind Dr Mohammed. Details*
11 *of such oppression are provided below.*

12
13 *12. Alternatively, there is a need for investigation of the Company's affairs.*

14
15 *13. Alternatively, as a result of the relationship between Mr Lee and Dr Mohammed,*
16 *the Company is by nature a quasi-partnership. The relationship between Dr Mohammed*
17 *and Mr Lee has broken down, and accordingly it is just and equitable that the Company*
18 *should be wound up.”*

19
20 Paragraph 53 of the Re-amended Winding-up Petition states as follows:

21
22 *“53. By reason of the aforesaid:*

23
24 *53.1 Dr Mohammed and/or FNI, have acted with a lack of probity in repeatedly*
25 *requesting funds from Mr Lee (including for the avoidance of doubt the sums of \$3.5*
26 *million referred to at paragraphs 21 and 24 above, \$1 million referred to at paragraph*
27 *26 above, \$10 million referred to at paragraphs 27 to 29C above and \$309,390 referred*
28 *to at paragraphs 30 to 31 above), which funds have not been used for the purposes for*
29 *which they were provided but have instead been paid to members of Dr Mohammed's*
30 *family and for other unauthorised purposes*

⁷ *Re Fildes Bros Ltd* [1970] 1 All ER 923 at 927d-f.



1 53.2. *Dr Mohammed and/or FNL have acted with a lack of probity in seeking to forfeit*
2 *Mr Lee's and Mr Khaled's shares, in circumstances where Dr Mohammed represented to*
3 *Mr Lee that those shares were issued fully paid.*

4
5 53.3. *In light of the above, Mr Lee has justifiably and irreversibly lost trust and*
6 *confidence in Dr Mohammed and the financial strength of the Company.*

7
8 53.4. *Dr Mohammed and/or FNL have persistently disregarded the interests of Mr Lee*
9 *as a minority shareholder in the Company and have acted in a manner which is*
10 *oppressive to Mr Lee.*

11
12 53.5. *There is a need for investigation of the Company's affairs and in particular the*
13 *use made by the Company of the funds advanced by Mr Lee."*

14
15 9. [The Respondent highlights that the basis of the petition is:

- 16
17 (1) Lack of probity
18 (2) Oppression
19 (3) Need for an investigation
20 (4) Quasi Partnership.

21
22 The Respondent says that, despite ample opportunity to do so, the Petitioner does not plead any
23 case of legitimate expectations, beyond the pleading of quasi partnership. The Petitioner
24 maintains that the distinction between legitimate expectations and quasi partnership implied in
25 the previous sentence is not supported by the authorities. The Petitioner says that where there is a
26 legitimate expectation, this gives rise to a quasi partnership. The Petitioner's position is that
27 where the legal corporate and employment relationships do not tell the whole story, and behind
28 them there is a relationship of trust and confidence similar to that obtaining between partners
29 which makes it unjust and inequitable for the majority to insist on its legal rights, there is a quasi
30 partnership company.]



1 10. French ‘Applications to Wind up Companies’ Second Edition states at pg 596:

2
3 *“The principal factors affecting the court’s decision on a contributory’s petition under*
4 *the just and equitable clause include:*

5 *(a) The circumstances of the company as they affect the petitioner.*

6 *(b) The Petitioner’s interest in the company.*

7 *(c) The opposition of other members.*

8 *(d) The drastic character of the remedy.*

9 *(e) The availability of alternative remedies.*

10 *(f) The petitioner’s own responsibility for the company’s circumstances.”*
11

12 11. This is not an exhaustive list of the factors which may be relevant. This list should not be
13 read as curtailing the breadth of the jurisdiction as set out in Lord Wilberforce’s speech in
14 *Ebrahimi v Westbourne Galleries*, quoted above.

15
16 12. French states at pg 609 that:

17
18 *“The fact that a petitioner has taken the view that the company’s undertaking is a bad*
19 *speculation for which the petitioner wishes to salvage whatever is left of capital invested*
20 *in shares, or stop the company from calling for further contributions on partly paid*
21 *shares, does not in itself justify winding up.”*
22

23 13. This is no part of the case being advanced by the Petitioner.
24

25 **Loss of confidence in management due to a lack of probity on their part**

26
27 14. The court may wind a company up if the members have justifiably lost confidence in its
28 directors based on *“a lack of probity in the conduct of the company’s affairs”*. As stated by
29 Lord Shaw in *Loch v. John Blackwood Limited*:⁸

⁸ [1924] AC 783, at 788.



1 *"It is undoubtedly true that at the foundation of applications for winding up, on the "just*
2 *and equitable" rule, there must lie a justifiable lack of confidence in the conduct and*
3 *management of the company's affairs. But this lack of confidence must be grounded on*
4 *conduct of the directors, not in regard to their private life or affairs, but in regard to the*
5 *company's business. Furthermore, the lack of confidence must spring not from*
6 *dissatisfaction at being outvoted on the business affairs or on what is called the domestic*
7 *policy of the company. On the other hand, wherever the lack of confidence is rested on a*
8 *lack of probity in the conduct of the company's affairs, then the former is justified by the*
9 *latter, and it is under the statute just and equitable that he company be wound up."*

10
11 15. In order to justify the winding up of a company which is not a quasi partnership company,
12 lack of confidence in those in control of the company must be justified by their lack of
13 probity: *French*, pg 643.

14
15 16. The burden of proving a lack of probity is on the petitioner: *French*, pg 643.

16
17 17. [The Respondent's case is that an allegation of a lack of probity is sometimes coterminous,
18 and at other times analogous, to an allegation of dishonesty as it implies a lack of integrity,
19 rectitude and honesty in the conduct of the company's affairs: see the examples in footnote
20 637 at pg 642, *French* (the lack of probity cases there cited involved: (a) a controlling
21 director systematically stealing a vast amount of money and selling the principal revenue
22 earning assets to a new company owned by himself and his son; (ii) a company and its
23 directors having been fined for numerous tax offences; (iii) a director having lied about his
24 qualifications and having stolen the company's retail takings). The Respondent emphasises
25 that the Petitioner is expressly advancing, by way of their late re-amendment, a case that Dr
26 Mohammad misappropriated about US\$9.2m. The Petitioner's case is that there is no
27 requirement that there be a finding of dishonesty in order for lack of probity to be found,
28 because the requirement to behave with probity goes beyond a requirement not to be
29 dishonest. The standard of probity to be expected may depend on the relationship between
30 the parties at the time the association was entered into.]



1 In my opinion in order to justify the winding up of a company which is not a quasi-partnership
2 company, lack of confidence in those in control of the company must be objectively justified by
3 their lack of probity (see French at page 643). I emphasize the use of the word probity which
4 provides the touchstone.

5
6 18. On standard principles of the law of evidence, the more serious the allegations of lack of
7 probity are, the more convincing the evidence has to be before the court will make such a
8 finding: *Re H and R* [1996] AC 563 (HL) and *Hornal v Neuberger Products Limited* [1957]
9 1 QB 247 (CA).

10
11 19. In *In the Matter of Freerider Limited; Heinen v Le Comte*,⁹ which was an application to
12 wind up a Cayman company which was part of a multinational group of companies
13 structured to carry out a single business venture, Foster J held that in considering whether to
14 wind up the Cayman company he should look at the whole commercial context of the
15 situation, and that a finding of mismanagement in relation to another group company was
16 undoubtedly relevant to considering whether there was justification for a loss of confidence
17 in management generally.¹⁰

18
19 [The Respondent says that the basis for that holding was that the group was “*established to*
20 *carry out a single business venture.*”¹¹ and that as the Joint Venture and FNC are patently
21 not a “*single business venture*” matters relating the Joint Venture are irrelevant to the
22 question of whether FNC should be wound up. The Petitioner says that the reasoning of
23 Foster J in *Freerider* should not be read so narrowly. Foster J held that he “*should look at*
24 *the realities and the whole circumstances and context*”.¹²]

25
26 Paragraph 67 of the judgment reads:

⁹ [2010(1)] CILR 486.

¹⁰ *Ibid.*, at §67

¹¹ *Ibid.*

¹² *Ibid.*



1 *"It was submitted on behalf of Mr. Le Comte that the finding by the Enterprise Chamber*
2 *of mismanagement by Mr. Le Comte is irrelevant because it related to EEU and not to*
3 *Freerider. However, I have already expressed the opinion that in considering whether it*
4 *is just and equitable to wind up Freerider I should look at the realities and the whole*
5 *circumstances and context. Both Freerider and EEU are plainly each parts of the group*
6 *structure established by Mr. Le Comte to carry out a single business venture. In my view,*
7 *the fact that Mr. Le Comte has been found by a court to have been guilty of*
8 *mismanagement of what is in fact probably the most important and significant company*
9 *within the group is undoubtedly relevant in the consideration of whether there is*
10 *justification for a loss of confidence in Mr. Le Comte's conduct generally, including his*
11 *management of Freerider. I see no reason not to accept and proceed upon the basis of*
12 *the report of Mr. van Hees and the consequent decision of the Enterprise Chamber."*
13

14 20. [The Petitioner's case is that the court in deciding whether to wind up FNC should consider
15 the Joint Venture. He says the Joint Venture is clearly a material part of the context – indeed
16 it is the context - for the Petitioner's investment in the Company. The Respondent says it
17 might be part of the context for the investment, but Freerider only supports taking into
18 account actions in relation to another company where it is part of a single business venture.]
19

20 21. Conduct in relation to other group companies was held to be relevant by the Ontario
21 Supreme Court in *Sound Advice Inc v 358074 Ontario Ltd*,¹³ where Hollingworth J held that:
22

23 *"It may well be that, as observed by the Motions Court Judge, the substance of the*
24 *appellant's claim relates to the conduct of the management of SAI and not Holdco and*
25 *that the matters of complaint took place long before the bankruptcy of SAI. I am of the*
26 *view, however, that the Court must look at the business realities of the situation. In*
27 *circumstances such as the instant case, where interlocking, closely-held corporations are*
28 *controlled by a common director, I am of opinion that the Court may look at the past and*
29 *present conduct of the common director in managing the affairs of both the holding*
30 *corporation and its subsidiaries to assess the propriety of that conduct."*

¹³ [1984] 5 OAC 288



1 22. [The Respondent's case is that matters relating to the Joint Venture are not relevant to the
2 completely separate business of FNC and the question whether it should be wound up. The
3 Petitioner accepts that the company in relation to which the relevant conduct had taken place
4 in the *Sound Advice* case was the parent of the company sought to be wound up, rather than
5 as in the case of REL-FNC (Cayman) Ltd (the Joint Venture company) a former subsidiary,
6 but submits that this distinction is irrelevant. The Petitioner notes that in *Freerider* the
7 company in relation to which the misconduct had occurred was an indirect subsidiary of the
8 company which was the subject of the petition.¹⁴ The Respondent says that in that case the
9 only basis for holding that activities in other companies were relevant was that the
10 companies were part of a structure set up to pursue a "single business venture."]

11
12 The present case does not involve "parts of [a] group structure established... to carry out a single
13 business venture" or "interlocking closely-held corporations... controlled by a common director".
14 The focus in the present case must be on whether a lack of probity in the conduct of FNC's
15 affairs is made out. As will be seen below, in my opinion issues and matters relating to the Joint
16 Venture are relevant to my assessment of Dr. Mohammad's credibility as a witness.

17
18 23. Loss of confidence on grounds of lack of probity is separate and distinct from the well-
19 known type of case that is called for convenience a quasi partnership.¹⁵

20
21 24. French states as pg 647:

22
23 *"Refusal to allow the petitioner to inspect accounting records which the petitioner does*
24 *not have a right to inspect cannot be a ground for complaint."*

25
26 25. [The Petitioner says that this does not apply where (a) the company in question is a quasi
27 partnership or (b) where there have been promises to provide information which have been



¹⁴ [2010(1)] CILR 486 at §10

¹⁵ *Ibid.*, at §16; see also *Re Wondoflex Textiles Pty Ltd* [1951] VLR 458 at p465 and *Re National Drive-in Theatres* [1954] 2 DLR 55 at p64.

1 broken. The Respondent accepts proposition (a) but disputes proposition (b) which it says is
2 not supported by any authority.]

3
4 In my opinion what matters in the present case is the state of the evidence after discovery. The
5 court is entitled to take into account the absence of material documents that have not been (but
6 should have been) disclosed.

7
8 **Oppressive conduct**



9
10 26. French states at pg 647:

11
12 *"In Great Britain, the Companies Act 1948, s 210 (repealed), provided that if a member*
13 *of a company could prove that its affairs of the company were being conducted in a*
14 *manner oppressive to some part of the members, and the court found that the oppression*
15 *justified the making of a winding-up order, then the court could instead make other*
16 *orders (the most useful of which was an order that the other shareholders buy out the*
17 *petitioner)."*

18
19 27. Under Cayman law, oppression is one of the grounds on which it may be just and equitable
20 that a company be wound up, but it is not a precondition where there are other grounds for
21 an order.

22
23 28. At least, oppression must include either a lack of probity or fair dealing. As Lord Keith held
24 in *Elder v Elder & Watson*:¹⁶

25
26 *"It is not lack of confidence between shareholders per se that brings section 210 into*
27 *play, but lack of confidence springing from oppression of a minority by a majority in the*
28 *management of the company's affairs, and oppression involves, I think, at least an*

¹⁶ 1952 SC 49; approved in *Scottish Co-operative Wholesale Society Ltd v Meyer* [1959] AC 325 at 363-4; see also *In re Jermyn Street Turkish Baths Limited* [1971] 1 WLR 1042.

1 *element of lack of probity or fair dealing to a member in the matter of his proprietary*
2 *rights as a shareholder”.*

3
4 29. Buckley LJ in *Jermyn Street Turkish Baths Limited*¹⁷ provided a more comprehensive
5 definition of oppression as a whole:

6
7 *“Oppression occurs when shareholders, having a dominant power in a company, either*
8 *(1) exercise that power to procure that something is done or not done in the conduct of*
9 *the company’s affairs or (2) procure by an express or implicit threat of an exercise of*
10 *that power that something is not done in the conduct of the company’s affairs; and when*
11 *such conduct is unfair or, to use the expression adopted by Viscount Simonds in*
12 *Scottish*
13 *Co-operative Wholesale Society v Meyer [1959] AC 324 “burdensome, harsh and*
14 *wrongful” to the other members of the company or some of them and lacks that degree of*
15 *probity that they are entitled to expect in the conduct of the company’s*
16 *affairs. . .Oppression must, we think, import that the oppressed are being constrained to*
17 *submit to something which is unfair to them as the result of some overbearing act or*
18 *attitude on the part of the oppressor.”*

19 **Need for an investigation of the company’s affairs**

20
21 30. Henderson J held in *In the Matter of Paradigm Holdings Limited*¹⁸:

22
23 *“These are matters which require a full investigation. That is one of the traditional*
24 *reasons for making a winding-up order under the just and equitable ground: see*
25 *Palmer’s Company Law, 22nd ed, para.81-08, at 887 (1976); and Re Peruvian Amazon*
26 *Co. Ltd.)”*

27
28 31. Smellie CJ held in *In the Matter of GFN Corporation Limited*¹⁹:

¹⁷ Ibid, n. 17.

¹⁸ [2004-5] CILR 542 at §35.

¹⁹ [2009] CILR 135 at §37.



1 *“In the wider context of the allegations in this petition, the authorities have also clearly*
2 *established that the court has jurisdiction, in the exercise of its statutory discretion (given*
3 *here by ss. 94 and 100 of the Companies Law), to wind up a company on the basis that an*
4 *investigation into its affairs is necessary and justified.”*

5
6 32. Jones J held in *In the Matter of ICP Strategic Credit Income Fund*²⁰:

7
8 *“The need for an investigation into the affairs of a company can constitute a freestanding*
9 *basis for making a winding up order on the just and equitable ground. I accept the*
10 *proposition that the mere fact that the SEC has seen fit to commence proceedings*
11 *alleging fraud against the Offshore Fund’s Investment Manager demonstrates that the*
12 *affairs of all the ICP Funds do need to be investigated. In the circumstances of this case,*
13 *I also accept that the need for such an investigation is a sufficient justification for making*
14 *a winding up order.”*

15
16 33. [In light of these authorities, the Petitioner submits that the need for an investigation of the
17 Company’s affairs has been held in the Cayman Islands to constitute a free standing basis to
18 wind up a company on the just and equitable ground. The Respondent says that *Paradigm,*
19 *GFN* and *ICP* all involved a company rendered insolvent due to fraud or serious
20 wrongdoing, and where such allegations had been made outside of the winding up process.
21 The Respondent’s position is that the court would be taking a novel step in ordering a
22 winding up on the ground of a need for an investigation in circumstances where serious
23 factors, external to the winding up process, are not present. The Petitioner’s case is that it
24 does not emerge from any of the judgments cited above that such factors are necessary in
25 order for it to be just and equitable to wind up a company on the basis that an investigation
26 is necessary, and that it is wrong to seek to trammel the court’s jurisdiction in this manner.]

27
28 It is unnecessary to address these competing submissions because in this case I consider that
29 there is no need to go beyond consideration of loss of confidence caused by a lack of probity and
30 oppression.

²⁰ Unreported judgment of Jones J dated 10 August 2010 at §8.



1 **Quasi partnership**

2
3 34. One of the most familiar circumstances in which the ‘just and equitable’ ground is invoked
4 is in relation to the break-down of the underlying relationship of mutual trust and confidence
5 in a ‘quasi-partnership’ company.²¹

6
7 *CVC v Opportunity Equity Partners*

8
9 35. The quasi partnership concept was summarised by the Privy Council in CVC:²²

10
11 *“Companies where parties possess rights, expectations and obligations which are not*
12 *submerged in the company structure are commonly described as ‘quasi-partnership*
13 *companies’. Their essential feature is that the legal, corporate and employment*
14 *relationships do not tell the whole story, and that behind them there is a relationship of*
15 *trust and confidence similar to that obtaining between partners, which makes it unjust or*
16 *inequitable for the majority to insist on its strict legal rights. The typical characteristics*
17 *of such a company are that there should be (i) a business association formed or*
18 *continued on the basis of a personal relationship of mutual trust and confidence; (ii) an*
19 *understanding or agreement that all or some of the shareholders should participate in the*
20 *management of the business; and (iii) restrictions on the transfer of shares so that a*
21 *member cannot realize his stake if he is excluded from the business. These elements are*
22 *typical, but the list is not exhaustive.”*

23
24 It is not necessary to set out or consider the conflicting submissions of the parties under this head
25 in view of my analysis of the case set out below.

²¹ Lord Wilberforce in *Ebrahimi v. Westbourne Galleries* deprecated the use of the expression ‘quasi-partnership’ because “it may obscure or deny the fact that the parties (possibly former partners) are now co-members in a company, who have accepted, in law, new obligations. A company, however small, however domestic, is a company not a partnership, or even a quasi partnership and it is through the just and equitable clause that obligations, common to partnership relations, may come in.”

²² Re *CVC/Opportunity Equity Partners Ltd* above, at §36.



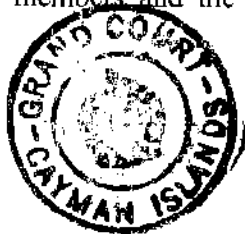
1 **ALLOTMENT OF SHARES AND THEIR FORFEITURE**

2
3 36. Cayman law, like English law, preserves a distinction between allotment and registration of
4 shares. Shares are allotted when there is an enforceable contract for their issue. At that
5 stage the purchaser has a right to enforce the contract and be registered as shareholder. Once
6 the purchaser is entitled to be registered as shareholder he has, on ordinary principles
7 acquired an accrued right to the shares. (Per the Respondent, *prima facie*) title is conferred
8 by registration.²³

9
10 37. On standard principles of the law of contract, it is possible for a subsequent contract to
11 supersede an earlier contract and for the allotment to occur pursuant to the subsequent or
12 varied, rather than the earlier, agreement.²⁴

13
14 38. Under Section 43 of the Companies Law, a share certificate is admissible in evidence as
15 proof of the title of that member to the shares in question.

16
17 39. By virtue of section 48 of the Companies Law, the Register of Members is "*prima facie*
18 *evidence of any matters by [the Companies Law] directed or authorised to be inserted*
19 *therein*" (including the names and addresses of members and the shares held by each
20 member: see s40(1)).



21
22 **Right to forfeit shares**

23
24 40. There is no inherent power to forfeit shares; this power exists only if it is contained in the
25 Company's Articles of Association.²⁵ Where the Articles do contain such a power, it is to be
26 treated as *strictissimi juris*, like a power of forfeiture in respect of an estate, and the forms to

²³ See Lord Templeman in *National Westminster Bank plc v IRC* [1995] 1 AC 119 at 126E-F.
²⁴ Chitty, para 22-025: Rescission by Agreement: "*Where a contract is executory on both sides, that is to say where neither party has performed the whole of its obligations under it, it may be rescinded by mutual agreement, express or implied.*"
²⁵ *Clarke v Hart* (1858) HLC 633.

1 be observed in declaring the forfeiture must be strictly followed.²⁶ As stated by James LJ in
2 *Johnson v Lyttle's Iron Agency*²⁷.

3
4 *"It was the established rule of the Court of Chancery and the Courts of Common Law*
5 *that no forfeiture of property could be made unless every condition precedent had been*
6 *strictly and literally complied with. A very little inaccuracy is as fatal as the greatest."*
7

8 41. [The Respondent agrees that the forfeiture procedure must be strictly followed but its case is
9 that it is clear that directors can resolve informally where there is unanimous agreement:
10 *Hunter v. Senate Support Services Limited* [2005] 1 BCLC 175 at paragraph 103. The
11 Respondent's says that where (as here) there is a sole director who has considered the issue
12 and forms the final view that there should be forfeiture without a formal meeting and
13 resolution, that will suffice for a binding resolution and the forfeiture cannot be impugned
14 for lack of formality. The Petitioner relies on the following quotation from Palmer's
15 Company Law, at 6.223:

16
17 *"Forfeiture is treated very strictly by the courts. The procedure laid down in the articles*
18 *must be followed exactly. A slight irregularity will be enough to make the forfeiture invalid.*
19 *Thus, e.g., where the wrong date is put on the forfeiture notice the forfeiture may be invalid.*
20 *There can of course be no forfeiture if the call has been wrongly made."*
21

22 The Petitioner also relies on the decision of Lightman J in *Nepune (Vehicle Washing*
23 *Equipment) Ltd v Fitzgerald* [1996] Ch 274.]
24

25 42. The power to forfeit is a fiduciary power and as such must be exercised in accordance with
26 the directors' fiduciary duties. It must also be exercised reasonably, and a failure to consider
27 other courses of action open to the directors renders the forfeiture voidable by any affected
28 shareholder.²⁸

²⁶ Ibid, at p633 and p664.

²⁷ (1877) 5 Ch D 687.

²⁸ Palmer's Company Law, 6.220 *Hunter v Senate Support Services Ltd* [2005] 1 BCLC 175



1 43. In this case, the right to issue calls on, and forfeit, shares is contained at Articles 13 and 14
2 of the Company's Articles of Association.

3
4 Article 13.1 provides that:

5
6 *"Subject to the terms of the allotment the Directors may from time to time make calls*
7 *upon the Members in respect of any monies unpaid on their Shares (whether in respect of*
8 *par value or premium), and each Member shall (subject to receiving at least fourteen*
9 *days notice specifying the time or times of payment) pay to the Company at the time or*
10 *times so specified the amount called on the Shares. A call may be revoked or postponed*
11 *as the Directors may determine. A call may be required to be paid by instalments. A*
12 *person upon whom a call is made shall remain liable for calls made upon him*
13 *notwithstanding the subsequent transfer of the Shares in respect of which the call was*
14 *made."*

15
16 Articles 14.1 provides that:

17
18 *"If a call remains unpaid after it has become due and payable the Directors may give to*
19 *the person from whom it is due not less than fourteen clear days notice requiring*
20 *payment of the amount unpaid together with any interest, which may have accrued. The*
21 *notice shall specify where payment is to be made and shall state that if the notice is not*
22 *complied with the Shares in respect of which the call was made will be liable to be*
23 *forfeited."*

24
25 Article 14.2 provides that:

26
27 *"If the notice is not complied with any Share in respect of which it was given may, before*
28 *the payment required by the notice has been made, be forfeited by a resolution of the*
29 *Directors. Such forfeiture shall include all Dividends or other monies declared payable*
30 *in respect of the forfeited Share and not paid before the forfeiture."*





1 **An analysis of the documents**

2
3 In view of the numerous factual issues it is necessary to pay careful regard to the contemporary
4 documents.

5
6 On 8 April 2008 Mr Wotherspoon of RELI wrote to Khaled on the subject of a Dubai Broker
7 License.

8
9 "Mr. Lee asked that I summarize for you the key issues associated with R.E. Lee International's
10 ability to obtain a broker license in the DIFC..."

11
12 A Partnership Agreement bearing the date 20 May 2008 (but not necessarily signed on that date)
13 was signed by Mr Lee on behalf of RELI and Dr. Mohammad on behalf of FNC in the following
14 terms:

15
16 "This Partnership Agreement (this "Agreement") is entered into as of Tuesday, May 20, 2008
17 between R.E. LEE INTERNATIONAL (CAYMAN) LTD ("PARTY A") and FORTUNE NEST
18 CORPORATION, ("FNC") ("PARTY B")

19 **Preamble**

20
21 "PARTY A" and its affiliates are life insurance brokers arranging for the provision of life
22 insurance policies to clients of "PARTY A's" referral sources. "PARTY A" and its affiliates
23 have developed certain financial and estate planning ideas, strategies and services (collectively,
24 the "Programs") including services relative to the procurement, ownership and financing of life
25 insurance policies (collectively, the "Products").

26
27 "PARTY B" is an international financial and investment company providing comprehensive
28 range of international financial and investment services including master development of mega
29 projects, direct investment, private equity and structured finance, all in compliance with
30 international law, to a client base across the world. In addition, "PARTY B" has an extensive

1 and exclusive network of governments, semi governments, financial institutions, corporations,
2 and individuals.

3
4 Whereas the two Parties mentioned above agreed to enter into a Partnership in accordance to the
5 terms and conditions outlined in this agreement as follows:..

6
7 Article 2

8
9 Both parties have agreed to establish a company registered in the Cayman Islands under the
10 name of "REL-FNC LTD."



11
12 Article 3

13
14 The ownership of "REL-FNC LTD.," will be owned equally between both Parties A & B.

15
16 Article 4

17
18 It is agreed upon that the responsibilities of "PARTY A and its affiliates" are as follows:

- 19
20 1.) "PARTY A" is responsible for arranging the provision of life insurance policies to
21 clients of "REL-FNC LTD.," referral sources. ...
22 3.) "PARTY A" is responsible for opening a main office in the Dubai Emirate, with
23 representative offices to be decided on at a later date. ...

24 It is agreed upon that the responsibilities of "PARTY B" are as follows:

- 25
26 1.) Obtaining all the necessary licenses needed in order for "REL-FNC LTD.," and any
27 necessary affiliate to operate in Dubai, Gulf Corporate Council; (GCC), Middle East,
28 and any other country pending further agreement.
29 2.) "PARTY B" will introduce to the "REL-FNC LTD.," and any other affiliated
30 company high net worth individuals meeting the criteria of the "Programs." (View
31 Appendix A). ...

1 6.) "PARTY B" will submit the expense details of the operation for "REL-FNC LTD.,"
2 (refer to Appendix B). ...

3 Article 9:

4
5 Good Faith: In the implementation of this Agreement, the parties undertake to observe the
6 utmost good faith and they warrant in their dealings with each other that they shall neither do
7 anything nor refrain from doing anything which might prejudice or detract from the rights, assets
8 or interests of the other of them. ..."

9
10 Appendix B listed 17 items of expenses totalling US\$2,970,000.

11
12 On 20 May 2008 Bana e-mailed Miss Matsumoto of RELI

13
14 "Attached you will find the partnership agreement and 2 appendixes, I look forward to working
15 with you and your team, like you, I also have a lot to learn and I love learning as well!"

16
17 The attached version included a second page of Appendix B as follows:-

18
19 "18. Revenues

20 19. (net profit)

21 20. We expect to insure the first year 200 people x 2,000,000=400,000,000

22 21. Ratio of expenses to profits:0.0075

23 22. This number represents a negligible expenses given the ratio of expenses to profits"

24
25 It is unclear whether or not this second page formed part of the signed Partnership Agreement.
26 This page (whether included or not) shows that FNC was expecting to introduce 200 high net
27 worth individuals in the first year. In the event there was not a single successful introduction.

28
29 On 17 June 2008 Mr Wotherspoon e-mailed Bana –

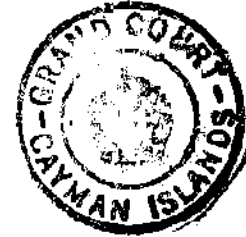


1 "Attached is a summary of key governance and operating terms associated with the formation of
2 REL-FNC, Ltd. Please review the attachment and confirm the provisions are consistent with
3 your understanding. I will develop the organizational documents on this basis.

4
5 Please note the need to identify the Directors and Officers of REL-FNC Ltd. I have assumed Mr.
6 Lee and Dr. Mohammad to be the Directors. Please let me know any individuals you believe
7 should fill the officer positions."

8
9 The attached document was headed "REL-FNC LTD. June 16, 2008 Joint Venture Formation
10 and Operation"

11
12 The document contained provisions as follows:



13
14 1. Formation of REL-FNC....

15
16 b. REL-FNC will be formed as a British Virgin Islands corporation....

17
18 2. Governance of REL-FNC.

19
20 a. REL and FNC will enter into shareholders agreement as necessary to effect their
21 agreement on operations, budgets (the "Budgets"), capital contributions, governance
22 issues, distributions of profits, dispute resolution, and exit mechanism. ...

23
24 3. Contributions of Capital to REL-FNC.

25
26 a. REL and FNC will each contribute 50% of the capital required for the formation of
27 REL-FNC and opening of main office in Dubai.

28
29 b. REL and FNC shall contribute equally any additional capital which they determine is
30 necessary.

1 c. REL will cause REL-FNC to establish bank account in BVI.

2
3 4. Contributions of Services to REL-FNC.

4
5 a. FNC will provide the following services:

- 6 i. Obtain the necessary insurance and business licenses in the UAE and
7 elsewhere in the Middle East;
- 8 ii. With REL, prepare the business plan;
- 9 iii. Make referrals of high net worth individuals for life insurance;
- 10 iv. With REL, design and implement the marketing strategy to potential
11 clients;
- 12 v. Headhunt local professionals to staff REL-FNC; and
- 13 vi. Provide political lobbying support.

14
15 b. REL will provide the following services:

- 16 i. Obtain the right to use the proprietary processes developed and owned by
17 the RELec International group for the procurement, ownership and
18 financing of life insurance policies by high net worth individuals.
- 19 ii. Provide training to local staff;
- 20 iii. Arrange for carrier contracts;
- 21 iv. Arrange for sale of policies;
- 22 v. Provide expertise in credit, legal, finance and policy analysis;
- 23 vi. Arrange procedures and facilities for medical exam and underwriting;
- 24 vii. With FNC, prepare the business plan; and
- 25 viii. With FNC, design and implement the marketing strategy to potential
26 clients.

27
28 5. Distribution of Profits....

29
30 6. Expenses



- 1 a. Joint venture expenses will include the following:
- 2 i. Compensation for local management, sales and other personnel;
- 3 ii. Accounting, legal and human resources for local office matters;
- 4 iii. Rent, insurance, telephone and similar expenses related to the maintenance
- 5 and operation of the local office;
- 6 iv. Local office furniture and equipment;
- 7 v. Meals, travel and entertainment expenses incurred by local staff for
- 8 business purposes in connection with the operations of REL-FNC;
- 9 vi. Expenses incurred in performing medical underwriting, including the cost
- 10 of the potential client's travel, meals and related expenses; and
- 11 vii. Miscellaneous items necessary to the operation of the local office.
- 12
- 13 b. Each party will bear their own expenses incurred in providing their respective
- 14 contribution of services listed above.

15

16 7. Shareholder Agreement between REL and FNC. ...”



17

18 A revised version of Appendix B to the Partnership Agreement was signed by Dr. Mohammad

19 and Mr Lee on 12 June 2008.

20

21 On 26 June 2008 Mr McComb sent to Bana, Khaled and Shaker his transcription of the minutes

22 of a meeting on 18 June attended by:- from FNC Dr. Mohammad, Khaled, Bana and Shaker and

23 from RELI Mr Lee, Mr. Wotherspoon, Miss Matsumoto, Miss Pora and Mr McComb.

24

25 The Summary of discussion points included the following:-

26

27 “1] Dr. Mohammed discussed the joint venture between FNC and REL. We must be the very

28 best in the Middle East, we have no interest in being number 2.

29

30 12] There will be several banks competing for this business. We will not make suggestions

31 to the bank as to what their collateral should be; that will be their own determination.

1 The banks will need to competitively bid for the business. Many of these clients will not
2 need to pledge additional collateral, as these clients are able to do banking business based
3 solely upon their signature. ...
4

5 15] REL's participation in the joint venture company should be via one of our primary
6 corporate entities, rather than a new shell company in Nevada. We discussed having R.E.
7 Lee International, LLC as the partner in the joint venture company. It is extremely
8 important that Bob Lee, and RE Lee International, LLC, with its existing business,
9 reputation, history, and market presence, be the partner presented in the Middle East.
10 FNC has no insurance background or history. FNC is relying upon REL and its
11 experience and expertise in structuring and underwriting Jumbo life insurance for these
12 Middle East clients. ..."
13

14 On 1 July Bana replied to Mr Wotherspoon:-
15

16 "Thank you for the transcript of our last meeting. Your minutes are comprehensive and indeed
17 cover all aspects of the business.
18

19 I will provide for you below the road map of our business relation, some pointes are a reiteration
20 of what was discussed in the meeting:
21

22 Road Map of our Business Relation."
23

24 On 5 August 2008 Mr Wotherspoon sent to Bana a revised organization chart.

25 On 18 August 2008 Bana emailed Mr McComb:-
26

27 "It was a pleasure to meet you again in San Francisco. I have been in Dubai for several days
28 now and I am pleased to inform you that cvcrything is progressing very well. My meetings with
29 the royal family gave me the opportunity to have even further insight on how to further tailor-
30 make this program for the entire GCC. The good news is: we will not have to reinstate in each



1 arab country once the setup is done here, because the program will be accessible to every GCC
2 member country and the power is behind us to see this business reach new heights.”

3 On 19 August 2008 Bana e-mailed a letter to Mr Lee:-

4
5 “Dear Mr. Lee,

6
7 It was a pleasure to speak with you on the phone. Receiving the insurance license under our new
8 company RELEE MIDEAST for the entire region, is truly exciting..”

9
10 On 22 August 2008 Mr McComb sent Bana “...the information you requested for our UAE
11 license...”

12
13 On 8 September 2008 Bana emailed Khaled:-

14
15 “RELEE Mideast license covers both UAE nationals as well as expats residing there. In
16 addition, the license will be applicable to all GCC countries. As I mentioned before, we can
17 offer any life policy offshore, and are not limited to locally issued insurance. We knew in
18 advance that this was the type of license we needed in order to have full flexibility and range...”

19
20 On 22 September 2008 Mr Wotherspoon e-mailed Khaled.

21
22 “As discussed, please find attached Promissory Notes to reflect the advances by RE Lee
23 International, LLC to Fortune Nest Corporation of \$1 million on June 24, 2008 and \$2.5 million
24 on September 23, 2008. As you know, these funds are for expenses incurred in the development
25 of the high net-worth insurance brokerage business based in Dubai to serve the Middle East. As
26 the development activities are for the benefit of REL-FNC (Cayman) Limited, the owner of the
27 business, once the business is operational and able to repay the notes, we agree that FNC will
28 assign its obligations under the notes to REL-FNC (Cayman) Limited. Depending on how
29 everyone ultimately decides to capitalize the company, RE Lee International expects that it may
30 likely be contributing such notes to the company as well.



1 I trust you find this consistent with your understanding. If you have any questions or concerns,
2 please let me know.”

3
4 On 18 December 2008 Mr McComb sent Bana his notes of a meeting on 16 December.

5
6 On 18 December 2008 Mr McComb emailed Bana:-

7
8 “I wanted to make certain that I answered Wael’s questions, as it was very hard to hear on the
9 phone...”

10
11 On 15 May 2009 Mr Wotherspoon sent Dr. Mohammed the following message:-

12
13 “Mr. Lee asked to me send you a note regarding the charges Wally originated and charged to his
14 American Express account.

15
16 Two separate charges were made:

- 17
18 1. Diplomat Hotel Bahrain - \$15,165.15
19 2. Lords Travel - \$71,526.50



20 As I believe you are aware, any charges to Mr Lee’s account were contingent upon Wally
21 arranging the wire transfer that was discussed in connection with the collateral financing
22 program. The transaction was not completed and Mr. Lee would like the charges reversed or the
23 funds returned. He would appreciate your assistance in the matter.

24
25 Please let me know if you require any additional information...”

26
27 Minutes of “Meeting of the visit of” Mr Lee to Bahrain from 8 September 2009 to [?] 9
28 September signed by Dr. Mohammad and Mr Lee include the following:-

- 29
30 1.) A company under the name R.E.LEE-FNC has been established in Cayman Islands between
31 R.E. Lee International, LLC and Fortune Nest Ltd, where the ownership of each party has

1 total equity of 50% of the company, will own the business and all the rights and the
2 intellectual property of R.E. LEE-FNC Bahrain.

3
4 2.) The two parties agreed to lease an office in the 5th or 6th floor in the Wind Tower, Manama,
5 and the second party is authorised to finalize the deal with the owner of the building and to
6 sign the lease agreement on behalf of R.E. LEE-FNC Bahrain.

7
8 4.) The first party [Mr Lee representing RELI] authorized the second party [Dr Mohammad
9 representing FNL] to structure the organization of the management team, of the R.E. LEE-
10 FNC Bahrain, immediately. And they have both agreed that the core of the staff of the
11 company will be Asian, preferable holding a US or Foreign Passport for more accessibility
12 and mobility in the Area.

13
14 5.) The second party will start inviting people to meet in Bahrain for the purpose of item
15 number 4, and will give a full report of the final choice of people, the number of staff
16 members, and the salaries to be approved by the first party.

17
18 6.) A comprehensive budget will be constructed for at least one year, and the funds must be
19 available in the account of the company. ...

20
21 10.) Both parties agreed that all expenses occurred from the second party including direct
22 expenses, legal expenses, and consultancy services have to be accountable for including the
23 payments made by the first party to Mr Khaled Abu-Kishek. The second party in his next
24 visit to the United States of America will obtain the audit account of these payments to be
25 accountable for.”

26
27 On 21 September 2009 Mr Wotherspoon sent the following message to Khaled (and copied the
28 message to Dr. Mohammad):-

29
30 [headed Fortune Nest Note]



1 "Please see my e-mails below. I have not had a reply and need to document our arrangement.
2 As you know, when the funds were originally advanced you indicated you would sign
3 promissory notes until other financial arrangements were finalized.

4
5 While we still need to finalize documentation, Mr. Lee would like an accounting of the funds
6 advanced to Fortune Nest Corporation to date."

7
8 Disputed Document A

9
10 The authenticity of what purports to be a letter (with enclosures) headed Fortune Nest from Dr.
11 Mohammad to Mr Lee on 27 October 2009 is disputed.

12
13 The letter reads:-

14
15 "It was great pleasure to me and to Fortune Nest Corporation team to see you among the
16 participants in our conferences in Bahrain which was a great honor to me and highly appreciated.
17 As per request, I am submitting to you my proposal to purchase Shares in our Company.

18
19 My proposal consist of the following

- 20
21 1. Articles of Association of the Company
22 2. Rules of Acceptance to Invest
23 3. Stock Purchase Offer



24
25 Kindly find the attached 1, 2, 3 documents.

26
27 If you choose to invest after you study this matter carefully by your next visit to Bahrain, you are
28 requested to deliver your Letter of Commitment..."

29
30 An Investment Agreement dated 19 November 2009 reads:-

1 “I, Mr. Robert E. Lee, am committed to invest into Fortune Nest Limited a British Virgin
2 Company and Fortune Nest Corporation a Cayman Island Company the amount of Ten Million
3 U.S. Dollars.

4
5 The investment in these companies will be the purchase of shares issued to my interest and
6 according to my instructions...”

7
8 Disputed Document B

9
10 The authenticity of what purports to be a letter headed Fortune Nest from Dr. Mohammad to Mr
11 Lee on 6 April 2010 is disputed.

12
13 The letter reads:-

14
15 “With reference to our discussions and negotiations in last few months, especially in the last few
16 days concerning your wish to purchase shares in FNC.

17
18 Please note the following



- 19
20 1. Your final decision to invest in FNC 15 Million USD leaving Fortune Nest Ltd out of your
21 interest.
22 2. Please be advised that I hereby as a Sole Director of FNC as agreed to sell 1.5 Million shares
23 of FNC to you and to pay the Company the aggregate purchase price of 15 Million USD at an
24 issue price of US\$10.00 per Share.
25 3. The issuing of these Shares to you as a purchaser and acceptance of FNC to this transaction is
26 according to the Company's Articles of Association and the Cayman Island Law and the
27 purchasing of these Shares are done privately outside of USA. So, this transaction is not
28 subject to any Laws or Regulations of Selling Shares, Securities in USA.
29 4. You have signed an Investment Agreement 19th Nov 2009 and on 27th Oct 2009 you have
30 received a complete package how to acquire these Shares of our Company.

1 5. On 7th Dec 2009, you have paid 10 Million USD as an advance Payment. This mean 5
2 Million USD are still pending for payment. This amount will be subject to calls according to
3 Articles of Association of the Company.

4 6. I hereby confirm to you today 6th April 2010 that the Written Resolution has been issued to
5 complete this transaction. I will inform immediately my lawyers of Maples & Calder in Hong
6 Kong to take action to complete this transaction and to be registered as a member of the
7 Shareholder of the Company (Please see the attached Written Resolution)

8 I will fly to Hong Kong on 14th April 2010 to handover you the Share Certificate of your
9 Participation in the company and I am open for dinner on 15th April or for a breakfast on next
10 day morning.”

11

12 A FNC Written Resolution of the sole director of FNC dated 6 April 2010 signed by Dr.
13 Mohammad read:-

14

15 “Allotment Shares

16

17 It is hereby resolved that the following shares... be allotted and issued as fully paid as follows, at
18 an issue price of US\$10.00 per Share:

19

20 Name	Number of Shares
21 Robert Earl Lee	1,500,000

22

23 It is further resolved that entries be made in the Register of Members and the Sole Director be
24 instructed to prepare and sign and seal on behalf of the Company share certificates as follows:

25

26 Name	Numbers of Shares	Certificate Number
27 Robert Earl Lee	1,500,000	010

28

29 The Register of Members of FNC dated 12 April 2010 included



1	"Name of	Date of entry	Cert. No issued	Shares Issues	Source	Amount Paid
2	Member	as Member			of Shares	Thereon
4	[Mr Lee]	8 Apr 2010	010	1,500,000	Original	In Full"
5					Issue	

7 On 16 April 2010 a FNC Share Certificate which read:-

9 "THIS IS TO CERTIFY THAT Robert Earl Lee is the registered holder of 1,500,000 Shares in
10 the above-named Company subject to the Memorandum and Articles of Association thereof.

11 EXECUTED on behalf of the said Company on the 16 day of April 2010"

13 was signed by Mr Lee under the following words in his handwriting:-

15 "Received Original Cert 16/4/10 which was according to Board Resolution 4/6/10."



17 On 2 November 2010 Dr. Mohammad sent a message to Mr Lee which included the following:-

19 "In addition, I am preparing the balance sheet for our expenses in the last two years, this will be
20 sent to you after it has been audited by Gran[t] Thornton in Bahrain. As I informed you on the
21 phone, the expenses of this mission in Bahrain over the last two years is exceeding three million
22 dollars. Out of this expense, one million dollars have been received from you last September.
23 At this point of time I am running on a negative budget and an urgent injection of one million
24 dollars is needed. It was agreed last year that you would send two million dollars for the
25 operation. I like to also make it clear to you that your expenses and our expenses has to be
26 complied together and to be deducted from the first insured person on our list."

28 On 30 November 2010 Dr. Mohammad wrote to Mr Lee enclosing "the proposed Service
29 Agreement to be signed between RE Lee and FNC." Appendix 'A' contained a List of
30 Operational Expenses for the Period October 1, 2010 up to December 31, 2010.

31 On 3 December 2010 Mr Wotherspoon sent the following message to Dr. Mohammad:-

1 "Mr. Lee provided me with a copy of the proposed services agreement. As I believe he
2 discussed with you, the budget and staffing plan require some revision as they are unnecessarily
3 high at this point in time.

4
5 He would like me to administer the finances and said that he agreed to share fifty percent of the
6 future operating expenses with you. He asked me to forward wire instructions (attached) for
7 your records. Once the budget is finalized I will issue a capital call. Mr. Lee will provide a
8 matching contribution when Fortune Nest's funds are received.

9
10 All invoices should be submitted to me for payment. I will set up a separate division to account
11 for the operations until a more formal structure is established and report to you monthly. I will
12 communicate more detailed monthly procedures once things get started."

13
14 On 9 December 2010 Mr Wotherspoon sent the following message to Dr, Mohammad:-

15
16 "At your request we wired US\$164,695 to Fortune Nest Corporation to fund Mr. Lee's share of
17 the October to December expenses.

18
19 We note that prior instructions directed funds be paid to Fortune Nest Ltd's account in Bahrain.
20 The current wire was directed to Fortune Nest Corporation's account which is the company Mr.
21 Lee made his personal investment in.

22
23 The inconsistency is creating accounting problems. We would appreciate clarification as these
24 funds are to be used for the insurance program."

25
26 E-mails were exchanged between Dr. Mohammad and Mr Wotherspoon on 8 and 20 January
27 2011 on the subject of the operational expenses covering the period 1 January 2011 – 30 March
28 2011 and procedures for Operating Expenses.

29
30 On 23 February 2011 Miss Pora sent Dr. Mohammad an e-mail stating:-



1 “... due to recent political instability in the Middle East, our carriers are re-elevating their
2 capacity for the Middle Eastern market. They are looking at placing temporary restrictions on
3 certain countries which may include Bahrain. At this point we can still submit cases on Bahrain
4 residents, however, depending on the longevity of the uprising, insurance capacity and price may
5 be effected.”

6
7 On 9 June 2011 Miss Dysland sent a message to Dr. Mohammad:-

8
9 “Please see the attached demand notes payable to Mr. Robert E. Lee.

10
11 Would you be so kind as to print two copies, sign one set and give to Mr. Lee?”

12
13 Disputed Document C

14
15 The authenticity of what purports to be a letter headed Fortune Nest from Dr. Mohammad to Mr
16 Lee dated 12 June 2011 is disputed.

17
18 The letter reads:-

19
20 “During our last meeting at Island Hotel in Fashion Island, you proposed me to sign a Tolling
21 Agreement in related to your Investment in FNC where I promised you to check this matter with
22 my lawyers and come to you.

23
24 As a result of my discussions with my lawyers, please understand the following

- 25
26 1. This Tolling Agreement will not be signed and recognized by me because this will create a
27 conflict between the Company and other shareholders and it is also conflicting with the
28 bylaws of the Company.
29 2. Through our discussions in Bahrain 19th Nov 2009, you insist that your investment in FNC
30 must be kept Confidential and Private. Although you informed you Chief Financial Officer



1 Mr. Bruce about this transaction. I assure you that I will keep my commitment of
2 Confidentiality in order.

3 3. As you know, they are 5 Million USD still need to paid to complete the aggregate purchase
4 price of 15 million USD for your 1.5 Million Shares at an issue price of US\$10.00 per share.”

5 On 18 June 2011 Mr Lee sent the following message to Dr. Mohammad:-

6

7 “I have not heard from you since last Friday 6/10/11 when I advanced an additional personal
8 loan to you and have not received any of the information you promised regarding the Middle
9 East, Fortune Nest, Money, and Khaled.

10

11 I met with my attorney yesterday and was strongly advised to start action to recover advanced
12 loans, funds etc...

13

14 Starting next week while I am in Hong Kong and Singapore the legal process will commence
15 along with additional requirements with the IRS.”

16

17 A Confidential: FNC Valuation by Mr Lightman to Dr Mohammad was dated 26 July 2011. It
18 concluded:-

19

20 “...Conclusion:

21

22 Our preliminary projections indicate that FNC can generate gross profits of \$2 billion by 2015
23 and \$10.5 billion by 2021 just on Bahrain Silicon Valley.

24

25 Bahrain Silicon Valley is expected to generate just 15% of the value creation as a whole for
26 FNC. If this is the case, then FNC would be worth (dividing the gross profit by 0.15)

27

28 2015 \$13 billion

29 2012 \$70 billion...”

30

31 On 28 July 2011 Mr Lee’s personal attorney, Mr Steers of Stoel Rives wrote to Dr Mohammad:-



1 “...I am aware that Mr Lee has been requesting, for some time now, certain documents relating to
2 Fortune Nest Corporation in his capacity as a shareholder. I am now reiterating those requests
3 with urgency. Could you please have the following documents delivered to me immediately...”
4

5 On 3 August 2011 Maples and Calder, Hong Kong as Counsel to FNC replied:-
6

7 “...Under Cayman Islands law, your client is entitled to receive copies of the Memorandum and
8 Articles of Association of the Company (including any amendments), and copies of any special
9 resolutions which are currently in force and which are annexed to or embodied in the Articles of
10 Association. Copies of these documents are enclosed herewith. Kindly note that these
11 documents are confidential and may not be disclosed by your client to any other person.
12

13 In addition, our client can confirm that Dr Mohammed Abdel-Haq is the sole director of the
14 Company.
15

16 In relation to the other documents which you have requested, under Cayman Islands law your
17 client as a shareholder of the Company is not entitled to inspect or receive copies of such
18 documents. In addition, item (5) of your list refers to filings made with the Registrar of matters
19 including calls made, received and unpaid, shares forfeited and details of former shareholders.
20 No such filings are required to be made with the Registrar under Cayman Islands law. Similarly,
21 your request at item (7) of your list refers to annual reports filed with the Registrar – again, there
22 is no requirement for annual reports to be filed with the Registrar under Cayman Islands law. ...”
23

24 [It is common ground that Maples and Calder correctly set out the limit of the information to
25 which a shareholder is entitled under Cayman Islands law in respect of a Cayman Islands
26 exempted limited company.]
27

28 On 4 August 2011 Grant Thornton provided a Review (not an audit) headed:-
29

30 “Fortune Nest Corporation



1 Review of expenses incurred in relation with REL-FNC, Cayman For the period from 20 May
2 2008 to 30 June 2011.”

3
4 On 11 August 2011 Miss Dysland wrote to Dr. Mohammad:-

5
6 “It has been over 60 days with no repayment on the two demand notes for personal loans given
7 to you in Orange County, California.

8
9 Now asking for both notes \$150,000 and \$200,000 to be repaid immediately ...”

10
11 On 7 May 2012 Dr. Mohammad on behalf of FNC sent Call Notices to Mr Lee and Khaled
12 calling for payment of US\$5 million and \$30 million respectively.

13
14 Some uncertainty surrounds the “Unanimous Written Resolutions of the Sole Director” of FNC
15 (Dr. Mohammad) dated 7 May 2012. Annex 1 and Annex 2 thereto were not produced.

16
17 On 6 June 2012 Maples on behalf of FNC wrote to Appleby (acting for Mr Lee):-

18
19 “You have requested our client to provide an explanation as to why the Company considers that
20 the sum of US\$5 million is due and payable in respect of your client’s 1,500,000 shares in the
21 Company (the “Shares”),...

22
23 Our client informs us that the terms of your client’s investment in the Company, including
24 specifically the price of the Shares, were discussed and negotiated in considerable detail in
25 numerous face-to-face meetings and telephone discussions between Dr. Mohammad and Mr Lee,
26 over several months from December 2009 up to the date of issue of the Shares in April 2010.
27 After such negotiations, the price of US\$10.00 per Share was agreed between Dr. Mohammad on
28 behalf of the Company and Mr Lee, and this was confirmed by Dr. Mohammad to Mr Lee both
29 at the time the Shares were issued and in subsequent correspondence.



1 Specifically, Dr. Mohammad met with Mr. Lee on 16 April 2010 in Hong Kong in order to hand
2 to Mr Lee the certificate for his Shares, and at that time Mr Lee countersigned the share
3 certificate with the following words, which were written by Mr Lee in his own handwriting:

4
5 “Received Original Cert – 16/4/10 which was according to board resolution 4/6/10
6 Robert....””

7
8 **The Witnesses**

9
10 The following witnesses gave evidence orally:-

11
12 Called by the Petitioner:-

13
14 Mr McComb

15 Miss Pora

16 Mr. Wotherspoon

17 Mr Lee (by video link)

18 Miss Dysland (by video link)

19
20 Called by the Respondent:-

21 Mr Lightman

22 Dr Mohammad

23 Bana

24 In addition affidavit evidence was admitted:-

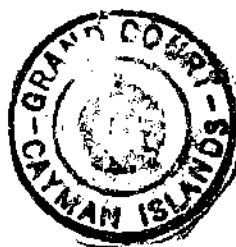
25
26 On behalf of the Petitioner:-

27 Khaled (27 December 2012 only).

28
29 On behalf of the Respondent:-

30 Shaker Nawwaf Abu-Kishk

31 Nasser Nawwaf Abu-Kishk





1 Waddah Al-Zireeni
2 Enas J Al Zireeni Hajeer
3 Khaled Suhil Hasan Arafeh
4 Salwa Nawak Shaker Abukeshek.

5
6 I was impressed by the evidence of Mr McComb, Miss Pora, Mr Wotherspoon and Miss
7 Dysland. Their evidence was generally consistent with the contemporary documents. They
8 struck me as a highly professional team who provided careful support to Mr. Lee. I accept the
9 evidence they gave.

10
11 Most regrettably Mr Lee has been seriously ill. He has undergone major surgery five times in
12 the past nine months and there have been complications slowing his recovery, including chronic
13 infection requiring frequent admissions to hospital.

14
15 Mr Lee gave evidence by video link, but this was only possible for about 20 minutes before a
16 break was necessary. It was not easy for Counsel for the Respondent to cross-examine him in
17 these circumstances. I make appropriate allowance for and take into account the difficulties that
18 Mr. Moverley Smith faced in testing Mr. Lee's evidence. It was not possible to cross-examine in
19 the manner and to the extent that would have been possible with a witness who was fit and well.
20 Mr Moverley Smith criticised Mr Lee for at one stage questioning the authenticity of certain
21 documents (not on his files) which he subsequently accepted he had signed. But given the
22 absence of other documents from his files and my findings as to the 3 disputed documents set out
23 below, I do not consider that this criticism carries the weight ascribed to it.

24
25 In my view Mr Lee was doing his best to assist the court despite his illness. His evidence was
26 generally consistent with and supported by the contemporary documents.

27
28 In particular (but without limitation) I accept Mr Lee's evidence in the following central
29 respects.

30
31 Firstly in his second affidavit he said:-

1 "It was during this November [2009] trip that Mohammad changed tack. Prior to this trip he had
2 been telling me that he wanted me to invest in [FNC] because he wanted me to be his partner in
3 all of his ventures; at some point during or after the luncheon meeting I attended in Abu Dhabi
4 he told me that he needed me to make an investment in the Company because it would not only
5 cement our relationship but it would show the Bahraini Royal family that I had faith in
6 Mohammad, his company and the region and that it would help in obtaining the licence which
7 the Joint Venture needed. So for me the nature of the opportunity to invest in the Company
8 changed from an opportunity to become Mohammad's business partner in a wider range of
9 businesses to an integral part of the plan to get the licence for the Joint Venture and to get the
10 insurance business started in the Middle East."

11
12 Secondly, again in his affidavit evidence Mr. Lee said in relation to the share certificate he
13 received on 16 April 2010:-

14
15 "While I now accept that I must have signed the stock certificate and that the phrase is in my
16 handwriting, I never received a copy of that receipt. It was not suggested to me at any time prior
17 to 2012 that I had agreed to invest \$15m rather than \$10m in the Company. That would have
18 been a shocking piece of information. I would have questioned and then disputed the suggestion
19 as I did in 2012. This would have produced documents and events that would have left a clear
20 recollection in my mind. It was not suggested to me that by signing the certificate I was agreeing
21 to provide a further \$5 million, still less that if I did not provide a further \$5 million then the
22 shares that I had acquired for \$10 million would be forfeited."

23
24 I regret to say that Dr. Mohammad was a most unsatisfactory witness in numerous respects. On
25 several occasions his oral evidence was inconsistent with (a) the evidence he had given on
26 affidavit; (b) what had been said in letters written by the Respondent's attorneys; (c) the
27 contemporary documents; and (d) the agreed Case Memorandum. There are numerous examples
28 where, had he disputed what was written by or on behalf of Mr Lee or RELI, one would have
29 expected him to say so, by letter or e-mail. I find on the balance of probabilities that 3 separate
30 documents which he said he signed were not authentic (see below). I set out below my reasons



1 for finding that Dr. Mohammad lacked credibility as a witness and my findings as to the 3
2 disputed documents.

3
4 Mr. Lightman's informal valuation of FNC in July 2011 was not in my opinion based on
5 commercial reality, in the absence of evidence that FNC had the contractual rights etc necessary
6 to make the vast sums he referred to.

7
8 Bana's involvement in the relevant events was limited. But the part she played as her father's
9 highly intelligent and loyal daughter in my view went beyond the very limited role she described
10 when giving evidence. The best example of her true role was her participation in the meeting
11 with Vinson and Elkins on 25 August 2008 (see their letter of 27 August 2008)

12
13 **Dr. Mohammad's credibility as a witness**

14
15 In my opinion Dr. Mohammad lacked credibility as a witness for (among others) the following
16 reasons.

17
18 Payment 4 - Mr Lee's payment of \$10 million to FNC in respect of the purchase of shares.

19
20 1. On 8 December 2009 Mr Lee paid \$10 million to FNC in respect of purchase of shares in the
21 Company (Payment 4). On 12 January 2010 \$9.27 million was withdrawn from FNC's account
22 and transferred to Dr. Mohammad's personal account in Bahrain (see Annex 3). Despite the
23 third paragraph of the Respondent's attorneys' letter of 18 October 2012, the Petitioner did not
24 learn of the transfer until late December 2012 as a result of late discovery. Dr Mohammad's
25 fourth affidavit of 13 January 2013 said:-

26
27 "I understand from the Case Memorandum which has been filed in these proceedings that Mr
28 Lee is challenging the basis for the transfer of US\$9,274,980 from the account held by the
29 Company at Standard Chartered Bank in Bahrain, to my own personal account. Mr Lee seems to
30 be suggesting that those funds (as well as the balance of his investment in the Company) have
31 not been properly accounted for by the Company".



1 On 22 January 2013 FNC by Dr Mohammad was ordered to provide on 23 January 2013, an
2 affidavit stating whether any of the personal bank statements of Dr Mohammad for the account
3 into which \$9,274,980 was paid (only to the extent of showing the use to which the said amount
4 was put), are or have at any time been in its possession, custody or power, and if no longer in its
5 possession, custody or power when it parted with them and what has become of them.

6
7 In the event no such documents were disclosed. It must have been obvious to Dr. Mohammad
8 from at the latest 13 January (see paragraph 5 of his fourth affidavit) that such documents were
9 highly material. I make appropriate allowance for the difficulties of obtaining documents from
10 banks (and to a lesser extent auditors). But if proper records were kept by FNC and Dr.
11 Mohammad it should have been possible to disclose the material documents.

12
13 In his fourth affidavit Dr Mohammad sought to explain the reasons for transferring \$9.27m to his
14 personal account. He said:-

15
16 “First, the account held by the Company at Standard Chartered Bank is an offshore account. As
17 such, there are restrictions imposed in Bahrain on how that account can be used which preclude
18 it from being operated as a current account. For example, the Offshore Account does not have
19 many basic features that are needed for ordinary business practices such as the use of a cheque
20 book. Further, the account does not have an overdraft facility. These limitations would
21 unnecessarily inhibit that Company’s operations. My personal account is a current account. A
22 transfer to that account has enabled me to attend to the Company’s financial affairs with much
23 more ease and convenience.”

24
25 He also referred to a desire to protect the account from being frozen by third parties, onerous
26 regulatory requirements of Bahraini banks and the importance of preserving the assets of the
27 Company.

28
29 Dr Mohammad was cross-examined as to why the sum of \$9.27m was transferred to his personal
30 account. It was pointed out to him that the statement of FNC’s account from which the transfer
31 of \$9.27m was made, described the account as a “US Dollar Current Account”.



1 Dr Mohammad's oral evidence on this subject was inconsistent and unsatisfactory. At one point
2 in answer to the question:-

3
4 "I'm asking if you're saying this... company in fact operated its everyday banking through your
5 personal account?"

6
7 He said:-

8
9 "Well, for certain purposes, yes. ... Because it was necessary to do this."

10
11 A cash payment of \$10 million by FNL for shares in FNC?



12
13 2. Dr. Mohammad's answers to the question:-

14
15 "Was there or wasn't there a cash payment of \$10 million by FNL for shares in the Cayman
16 company?"

17
18 were in my opinion evasive (see the transcript for 18 January 2013 pages 239 to 246).

19
20 The call notice to Khaled.

21
22 3. On 7 May 2012 Dr Mohammad on behalf FNC sent a Call Notice to Khaled calling for
23 payment of \$30 million. The Call Notice read:-

24
25 "We hereby call upon you to pay to the Company the following amount which is unpaid on your
26 shares and which is now due and payable by you to the Company.

27
28 Number of ordinary shares held by you: 3,000,000
29 Amount now due and payable and subject to this call: 30,000,000
30 Due date: 24th May, 2012".

1 A Written Resolution dated 18 March 2008 resolved that 3 million shares in FNC (Cayman) be
2 allotted and issued to Khaled as fully paid at an issue price of US\$1.00 at par.

3
4 Dr. Mohammad was asked in cross-examination:-

5 “If the shares are issued at a dollar a share and that dollar isn’t paid, then the maximum call that
6 can made on those is a dollar a share?”

7
8 He answered

9
10 “I don’t know about this what you’re talking about.”

11
12 I refer to the full transcript of his cross-examination on this point. His answers were evasive and
13 wrong.

14
15 It was pointed out to Dr. Mohammad that there was no credit in the call for the US\$500,000
16 which he had said Khaled had paid for shares in January 2009. His answers were again most
17 unsatisfactory.

18
19
20 Khaled designated US representative?

21
22 4. A list of officers and directors of Fortune Nest Corporation Nevada for the filing period May
23 2008 to May 2009 showed Dr. Mohammad as President, Bana as Secretary and Khaled as
24 Treasurer.

25
26 When asked in cross-examination:-

27
28 “You designated Khaled the United States representative for Fortune Nest Corporation, didn’t
29 you?”

30
31 Dr Mohammad replied:-



1 "No".

2
3 This answer was inconsistent with an undated letter from Dr. Mohammad:-

4
5 "To: Khaled Abu-Kishek

6 Board of Director U.S. & Middle East Representative

7 Fortune Nest Corporation"



8
9 Dr. Mohammad said that he did not approve the letter in this format, but he had signed it. I find
10 that he did designate Khaled US Representative for FNC Nevada.

11
12 Payments 1 and 2

13
14 5. As to payment 1, at one point in his evidence Dr. Mohammed said that he knew about the
15 payment in 2009 when Mr Lee brought him a promissory note in Bahrain. Later he said that he
16 first learnt that \$1million had been paid by RE Lee into FNC Nevada's account in June or July
17 2008. Dr. Mohammad said:-

18
19 "I believe Khaled.... used the account of the company to receive that million dollars for his
20 commission. And I am happy for him."

21
22 When asked:-

23
24 "you knew as soon as the million dollars came into the account that it was there?" Dr.
25 Mohammad's answers were evasive.

26
27 Given the payments from FNC Nevada's account to Dr. Mohammad and members of his family
28 (see Annex 1) which started the very day Payment 1 was paid into the account, the
29 overwhelming probability is that Dr. Mohammad knew of Payment 1 as soon as it was made.

30 Dr. Mohammad's evidence that Payment 1 represented a commission payment to Khaled (and
31 that the payments from FNC Nevada's account to Dr. Mohammad and members of his family
32 were because Khaled owed millions of dollars to Dr. Mohammad), was in all the circumstances
33 contrary to the contemporary documents and the probabilities.

1 I do not accept his evidence in this respect.

2
3 I make similar findings in respect of Payment 2. In the case of Payment 2 the contemporary
4 documents are particularly telling. Payment 2 was made on 22 September 2008. On the very
5 same day Mr Wotherspoon sent the email to Khaled quoted above attaching Promissory Notes.
6 Further Mr Wotherspoon's message of 21 September 2009 to Khaled (with a copy to Dr.
7 Mohammad) quoted above, was not contradicted in any message by Khaled or Dr. Mohammad at
8 the time.

9
10 Payments 7, 8 and 9

11
12 6. The Petitioner's case in relation to Payments 7, 8 and 9 is supported by the markings of
13 "Loan" on the records kept by RELI and Miss Dysland's emails to Dr. Mohammad of 9 June
14 2011 (with 2 demand Notes attached). The Petitioner's figures for the first two personal Loans
15 (Payments 7 and 8, \$150,000 and \$200,000) were shown to be correct.

16
17 Dr. Mohammad's evidence on the subject of the loans was hopelessly inconsistent. When cross-
18 examined he said that the loans were not loans but payments of expenses by Mr Lee in respect of
19 a business Live Business Settlement, a business completely separate from the Joint Venture.

20
21 It was pointed out to Dr. Mohammad that his oral evidence in cross-examination was contrary to
22 (a) the pleaded case in paragraph 45(b) of the Defence to the Amended Petition ("These funds
23 were paid to meet expenses which had been incurred in furtherance of the Joint Venture. They
24 were paid into Dr. Mohammad's personal account to reimburse him for monies which he had
25 already expended in the Joint Venture, on behalf of RELI;" and (b) paragraphs 120 and 121 of
26 his second affidavit ("Mr Lee advanced me US\$50,000 which was paid to meet expenses that
27 had been incurred in furtherance of the Joint Venture. They were paid into my personal account
28 to reimburse me for monies that I had already expended in the Joint Venture, on behalf of
29 RELI." and "Mr Lee advanced me \$350,000 and these funds were paid to meet expenses that had
30 been incurred in furtherance of the Joint Venture").

31
32 Dr. Mohammad's evidence in response was as follows:-



1 "I agree with what I wrote. [in my second affidavit] I stick to what I wrote. ...

2

3 Q So if what you wrote is the truth, ... what you told His Lordship a moment ago is not true...?

4

5 A I did say to His Lordship [these were payments incurred in connection with a wholly separate
6 business venture] and I stick also to that. And that business was a completely different business,
7 and this affidavit said that, also I stick to it, so that's my problem.

8

9 Q I think there's a logical impossibility there. They can't both be true on the one hand, for the
10 joint venture and on the other hand for a wholly separate business. Can you explain what you
11 mean?

12

13 A Counsel, it's written what is written here. This is my affidavit, I stick to it, and I explain to
14 His Lordship about those loans for what and that is my position.

15

16 Q Well, I suggest to you the reason you've given two conflicting explanations is because you
17 are not telling His Lordship the truth about what those payments were for and you've become
18 confused.

19

20 A Continue"

21

22 The following day Dr. Mohammad said that the answers he gave to the effect that Payments 7, 8
23 and 9 were in relation to the Life Settlement Venture were wrong and that these payments related
24 to the Joint Venture.

25

26 Payments totalling \$500,000 from FNC Nevada to FNC (Cayman)

27

28 7. Annex 1 shows two payments from the account of FNC Nevada to FNC (Cayman) in January
29 2009 of \$250,000 each.

30

31 When cross-examined about these payments Dr. Mohammad said:-



1 “the two payments represented payment of half a million dollars by [Khaled] for the purchase
2 price of shares that were issued to him in FNC (Cayman).”

3
4 When asked:-

5
6 “If Cayman Fortune Nest had received a half million dollars from [Khaled] as payment for his
7 shares, the Cayman Fortune Nest would have documents that recorded that, wouldn't it?”

8 Dr. Mohammad replied:-

9
10 “Yes, we have recorded those documents. ... These documents are under the control of my
11 auditors.”

12
13 A Written Resolution of the Sole Director of FNC (Cayman) signed by Dr. Mohammad and
14 dated 18 March 2008 resolved that

15
16 “further shares be allotted and issued as fully paid and non assessable as follows, at an issue
17 price of US\$1.00 at par. ...

18
19

20
21 Khaled...



3,000,000

22
23 ... entries be made in the Register of Members and any Director be instructed to prepare and sign
24 and seal on behalf of the Company a share certificate as follows:

25
26

<u>Name</u>	<u>Number of Shares</u>	<u>Certificate Number</u>
Khaled	3,000,000	002

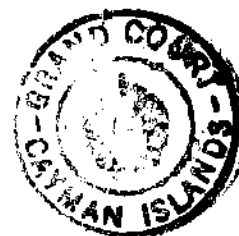
27
28
29 I find that in the light of all the evidence before the court (including without limitation the call
30 notice addressed to Khaled see above), Dr Mohammad's evidence in relation to the payment of
31 US\$500,000 in January 2009 from the account of FNC Nevada to FNC (Cayman) was contrary

1 to the probabilities. In the course of the trial (on 22 January) the Respondent produced two
2 pages which purported to be Company Records of FNC dated 8 and 13 January 2009 showing
3 receipt of the 2 payments of \$250,000 from Khaled as “installment payment[s]” for shares. I
4 find these records were probably not made on the dates they bear. They appear to be recently
5 produced documents.

6
7 Expenses

8
9 8. I do not accept Dr. Mohammad’s purported explanation of inconsistencies between (a) the
10 List of Operational Expenses 1 October 2010 to 31 December 2010 (Appendix A to Dr.
11 Mohammad’s letter to Mr Lee of 30 November 2010) and (b) Summary of Expenses incurred 20
12 May 2008 to 30 June 2011 (page 3 of the Grant Thornton Report).

13
14 **The Three Documents where authenticity is disputed**



15
16 The Petitioner challenges the authenticity of 3 documents:-

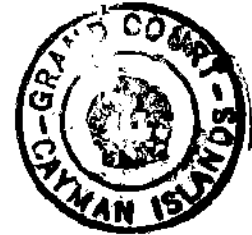
17
18 (A) What purports to be a letter with enclosures headed Fortune Nest from Dr. Mohammad to Mr
19 Lee on 27 October 2009 (C2 1162-1166).

20
21 (B) What purports to be a letter with enclosures headed Fortune Nest from Dr. Mohammad to Mr
22 Lee on 6 April 2010 (C2 1243)

23
24 (C) What purports to be a letter headed Fortune Nest from Dr. Mohammad to Mr Lee dated 12
25 June 2011 (C2 1349).

26
27 I refer to the quotations from these letters set out above. They are all highly material to the
28 Respondent’s case that Mr Lee agreed to pay, but failed to pay, a further \$5 million

29
30 “to complete the aggregate purchase price of 15 million USD for your 1.5 million Shares at an
31 issue price of US\$10.00 per share.”



1 (see the letter dated 12 June 2011).

2
3 The 3 disputed documents have not been found among Mr Lee's or RELI's records. I refer in
4 this connection to the evidence of Miss Dysland and the other witnesses called by the Petitioner
5 which I accept.

6
7 All 3 documents bear at the foot of the letters a 2 line address bar under a line across the page.
8 This address bar does not appear on any of the other correspondence prior to 7 May 2012 when a
9 call was made by FNC on Mr Lee to pay \$5 million.

10
11 On 20 November 2012 the Respondent's attorneys Harneys wrote to the Petitioner's attorneys,
12 stating that the three disputed documents:-

13
14 "were all created on a computer belonging to the Diplomat Radisson Blu Hotel in Bahrain."

15
16 This answer in practice precluded an order for examination of the relevant computer.

17
18 A. As to disputed document A, Dr. Mohammed said when giving evidence that it was typed by
19 his (male) secretary Basha on his computer (paid for by Dr. Mohammad) in the Wind Tower.
20 When shown Harneys' letter of 20 November 2012 Dr. Mohammad said that document A
21 was created at the Diplomat Radisson hotel by his daughter Tala, although FNC was
22 operating out of offices at the Wind Tower at the time.

23
24 Dr. Mohammad was asked to compare the disputed document A with the Investment Agreement
25 dated 19 November 2009:-

26
27 ("I, Mr Robert Lee, am committed to invest into Fortune Nest Limited a British Virgin Company
28 and Fortune Nest Corporation a Cayman Island Company the amount of Ten Million U.S.
29 Dollars. ...")

30
31 He agreed that it was not until after 19 November that the investment became focused on FNC.

1 B. As to disputed document B, Dr Mohammad said that this document was prepared by his
2 daughter at the Diplomat Radisson. When asked whether his daughter's computer or a
3 computer in the business centre was used he said:-

4
5 "the answer is that we use at that time the business centre computer."
6

7 When asked what happened to disputed document B after he signed it ?- Dr. Mohammad said he
8 gave it to the hotel to post. Dr. Mohammad added that he made a photocopy of the letter after he
9 signed it in the Diplomat Radisson.

10
11 Dr. Mohammad was then referred to Harneys' letter of 14 December 2012 which said:-

12
13 "Letters dated 6 April 2010 and 12 June 2011

14
15 After these were printed and signed, they were then scanned in colour. The colour printer on
16 which they were copied is in the offices of G6 International in Bahrain".

17
18 C As to disputed document C, Dr. Mohammad said that this letter was prepared at the Holiday
19 Inn Hotel, Fashion Island, California and typed by somebody in the business centre. He gave
20 it to someone in the hotel to post. A copy of the original was (he said) made in the hotel.

21
22 When asked to explain how it was Harneys had said on 20 November 2012 that disputed
23 document C was created on a computer belonging to the Diplomat Radisson in Bahrain? -Dr.
24 Mohammad said that the letter of 20 November was to this extent incorrect.

25
26 There are a number of respects in which the three disputed documents do not fit in with/sit side
27 by side with the undisputed contemporary documents or the manner in which undisputed
28 contemporary documents were prepared and sent.

29
30 Having carefully studied all the evidence, I find that the probabilities lead to the conclusion that
31 the three disputed documents are not authentic.



1 **Analysis and Conclusions**

2

3 I am of the opinion that it is just and equitable that FNC should be wound up for the following
4 reasons.

5

6 In considering whether or not to make a winding-up order, the court has regard to all the
7 circumstances of the case as established by the material before the court at the hearing. This will
8 involve the court considering primarily the conflicting interests and wishes of the opposing
9 parties to the petition, whether creditors or contributories or the company itself. The court will
10 consider those matters which constitute reasons why the company should be wound up
11 compulsorily, and those which constitute reasons why it should not be wound up. The court
12 carries out a balancing exercise, giving such weight to the various factors as is appropriate in the
13 particular case. (See Re Walter L Jacob and Co Ltd 1989 BCLC 345 Nicholls LJ at pp351-2).

14

15 **The circumstances of FNC as they affect the Petitioner.**

16

17 **The Petitioner's interest in the Company.**

18

19 I will consider the following:-

20

- 21 - Standing
- 22 - Loss of confidence in management due to a lack of probity on their part
- 23 - Oppression

24

25 **Standing**

26

27 Mr. Lee paid \$10m to purchase shares in FNC on 7 December 2009 (Payment 4). He should
28 have been issued with a share certificate in December 2009. It will be remembered that a FNC
29 Written Resolution of the sole director of FNC dated 6 April 2010 signed by Dr. Mohammad
30 read:-



1 "Allotment Shares

2
3 It is hereby resolved that the following shares... be allotted and issued as fully paid as follows, at
4 an issue price of US\$10.00 per Share:

5
6 "Name Number of Shares
7 Robert Earl Lee 1,500,000



8
9 It is further resolved that entries be made in the Register of Members and the Sole Director be
10 instructed to prepare and sign and seal on behalf of the Company share certificates as follows:

11
12 Name Numbers of Shares Certificate Number
13 Robert Earl Lee 1,500,000 010 "

14
15 [Emphasis Added]

16
17 I find that the Written Resolution of 6 April 2010 accurately recorded the position as at that date
18 and as at December 2009. 1.5 million shares in FNC were allotted and issued to Mr. Lee as
19 "fully paid". "Fully paid" meant that there was nothing further to pay on the shares. The
20 Written Resolution reflected the position in April 2010 and it did not change subsequently.

21
22 Although Mr Lee signed the share certificate on 16 April 2010 I find that he was not provided
23 with a copy of the document he signed. In April 2010 Mr Lee trusted Dr. Mohammad.

24
25 I accept Mr Lee's evidence:-

26
27 "It was not suggested to me at any time prior to 2012 that I had agreed to invest \$15m rather than
28 \$10m in the Company. That would have been a shocking piece of information. I would have
29 questioned and then disputed the suggestion as I did in 2012. This would have produced
30 documents and events that would have left a clear recollection in my mind. It was not suggested
31 to me that by signing the certificate I was agreeing to provide a further \$5 million, still less that if

1 I did not provide a further \$5 million then the shares that I had acquired for \$10 million would be
2 forfeited.”

3
4 It is highly significant that (apart from the disputed documents) there is no suggestion in any
5 written communication between Dr. Mohammad and Mr Lee between April 2010 and 2012 that
6 any sum was outstanding from Mr Lee in respect of shares in FNC.

7
8 I find that Mr Lee never agreed to pay any further sums in respect of the 1.5 million “fully paid”
9 shares.

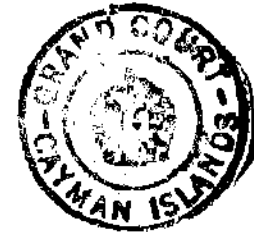
10
11 I repeat my findings under the heading – ‘The three documents where authenticity is disputed’.

12
13 The threat and purported attempt to forfeit Mr Lee’s shareholding in May 2012 was (as I find)
14 contrived by Dr. Mohammad relying on documents that were to his knowledge not authentic and
15 an alleged agreement (to invest a further \$5 million) which was, to his knowledge, never made.

16
17 In all the circumstances Mr Lee has the necessary standing to petition to wind up FNC.

18
19 **Just and Equitable**

20
21 I apply the legal principles set out above.



22
23 I remind myself that Lord Wilberforce said in Ebrahimi that the tendency to create categories or
24 headings under which cases must be brought (here under Section 92) is undesirable.

25
26 **Loss of confidence in management due to a lack of probity on their part**

27
28 The court may wind a company up if the members have justifiably lost confidence in its directors
29 based on a lack of probity in the conduct of the company’s affairs. This lack of confidence must
30 be grounded on conduct of the directors in regard to the company’s (i.e. FNC’s) business.

1 The burden of proving a lack of probity is on the Petitioner. In order to justify the winding up of
2 a company which is not a quasi-partnership company, lack of confidence in those in control of
3 the company must be objectively justified by their lack of probity.

4
5 In the present case the question under this heading is-

6
7 Has Mr Lee justifiably lost confidence in Dr. Mohammad (objectively justified) by Dr
8 Mohammad's lack of probity in the conduct of FNC's affairs/business?

9
10 I answer that question in the affirmative because of the following:-

11
12 (1) The threat and purported attempt to forfeit Mr Lee's shareholding in May 2012 was (as I
13 find) contrived by Dr. Mohammad, relying on documents that were to his knowledge not
14 authentic and an alleged agreement (to invest a further \$5 million) which was, to his
15 knowledge, never made.

16
17 (2) In December 2009 Mr Lee paid \$10m to FNC for the purchase of shares in FNC (Payment
18 4). The transfer by Dr. Mohammad in January 2010 of \$9.27m out of FNC's account to his
19 personal account was not in keeping with his duty as Director of FNC to keep FNC's assets
20 separate from his own assets. I do not accept the reasons he gave for the transfer to his
21 personal account. Dr. Mohammad has failed to disclose documents which would show what
22 the \$9.27 m was used for. I have to assess the credibility of Dr. Mohammad's evidence as to
23 what the \$9.27m was used for (in the absence of disclosure of relevant documents). I refer to
24 my reasons set out above (under the heading 'Dr. Mohammad's credibility as a witness') for
25 my finding that Dr. Mohammad lacked credibility as a witness. In the absence of documents
26 that show what the \$9.27m was used for, I find on the balance of probabilities that at least a
27 significant part of that sum was not used for the proper purposes of FNC.

28
29 If (1) or (2) above stood alone they would be sufficient to justify an affirmative answer to the
30 question set out above.



1 **Oppression**

2
3 The threat and purported attempt to forfeit Mr Lee's shareholding in May 2012 was (as I find)
4 contrived by Dr. Mohammad, relying on documents that were to his knowledge not authentic and
5 an alleged agreement (to invest a further \$5 million) which was, to his knowledge, never made.
6 This is a clear example of oppression.

7
8 Dr. Mohammad had a dominant power in FNC. The contrived threat and attempt to forfeit Mr
9 Lee's shareholding in May 2012 was unfair, burdensome, harsh and wrongful to Mr Lee and
10 lacked that degree of probity that Mr Lee was entitled to expect in the conduct of the Company's
11 affairs. Mr Lee was constrained to submit to or subject to something which was unfair to him as
12 a result of an overbearing act or attitude on the part of Dr. Mohammad.

13
14 In view of my findings set out above in relation to loss of confidence due to a lack of probity and
15 oppression, it is unnecessary to consider the competing submissions as to the need for an
16 investigation and quasi-partnership.

17
18 Although I have considered loss of confidence due to lack of probity and oppression separately, I
19 prefer to say that for the reasons set out under the two headings, it is just and equitable that the
20 Company should be wound up.

21
22
23 **The opposition of other members.**

24
25
26 The Petition is opposed by FNL, FNC, Dr. Mohammad, Mr Lightman and

27
28 Shaker Nawwaf Abu-Kishk

29 Nasser Nawwaf Abu-Kishk

30 Waddah Al-Zireeni

31 Enas J Al Zireeni Hajeer

32 Khaled Suhil Hasan Arafah and

33 Salwa Nawak Shaker Abukeshek.

34 Khaled supports the Petition.



1 (I refer to and repeat my findings in relation to the call notice to Khalid).

2
3 **The drastic character of the remedy.**

4
5 I remind myself and expressly take into account the drastic character of the remedy. In doing so
6 I have (without limitation) taken into account the following authorities

7
8 Lord Wilberforce said in *Cumberland Holdings Ltd v Washington H Soul Pattinson and Co Ltd*
9 (1977) 13 ALR 561 at pp 566-7 "...to wind up a successful and prosperous company and one
10 which is properly managed must clearly be an extreme step and must require a strong case to be
11 made".

12
13 In *Re Walter L Jacob and Co Ltd* supra Nicholls LJ agreed, at p 354:

14
15 "that to wind up an active company compulsorily is a serious step, and he who asserts that it is
16 just and equitable for the court to take that step must put forward and establish reasons which
17 have a weight justifying the court taking that step."

18
19 **The availability of alternative remedies.**

20
21 As to alternative remedies I do not consider that an alternative remedy under Section 95(3) is
22 appropriate in all the circumstances of the present case.

23
24 I am not of the opinion in all the circumstances of the present case that the Petitioner is acting
25 unreasonably in seeking a winding-up order, rather than pursuing one or more of the alternative
26 remedies proposed by Mr Moverley Smith on behalf of the Respondent.

27
28 **The Petitioner's own responsibility for the Company's circumstances.**

29
30 This consideration does not apply in the present case.



1 **Conclusion**

2
3 Having carried out the balancing exercise referred to by Nicholls LJ (as he then was) in Re
4 Walter L Jacob and Co Ltd it is my opinion that it is just and equitable that FNC should be
5 wound up for the reasons set out above and I so order. The balancing exercise in my judgment
6 comes down firmly in favour of the conclusion that FNC should be wound up in the
7 circumstances described above.

8
9 Dated this 5th day of February 2013

10
11 

12
13 _____
14 **The Hon. Mr. Justice Peter Cresswell**
15 **Judge of the Grand Court**



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Fortune Nest Corporation – FSD 88 of 2012
Annex 1 to Case Memorandum
Schedule of Transfers to/from account in the name of Fortune Nest Corporation at Bank of America, California

Date	Description	Payment Out	Payment In
25-Jun-08	RE Lee International		1,000,000
25-Jun-08	Mohammad F Abdel-Haq	50,000.00	
26-Jun-08	Mohammad Faeq Ahmad Abdel-	50,000.00	
28-Jun-08	Deposit to FNC from Account 26989-01762		120,000.00
30-Jun-08	Eana Abdel-Haq	10,000.00	
30-Jun-08	Khairieh Hassan Hamdan	25,000.00	
7-Jul-08	Khairieh Hamcan	30,000.00	
16-Jul-08	Nadine Abdel-Haq	2,000.00	
16-Jul-08	Eana Abdel-Haq	10,000.00	
21-Jul-08	Eana M Abdel-Haq	10,000.00	
28-Jul-08	Dina Abdul-Haq	6,000.00	
4-Aug-08	Eana M Abdel-Haq	10,000.00	
5-Aug-08	Khairieh Hamcan Ahrieel Haq	15,000.00	
14-Aug-08	Dina Abdul-Haq	13,000.00	
3-Sep-08	Eana M Abdul-Haq	5,000.00	
5-Sep-08	Kareem Arafeh		99,975.00
12-Sep-08	Eana M Abdel-Haq	10,000.00	
17-Sep-08	Eana M Abdel-Haq	25,000.00	
23-Sep-08	RE Lee International		2,500,000
24-Sep-08	Mohammad Faeq Ahmad Abdul	50,000.00	
29-Sep-08	Dina Abdel-Haq	8,000.00	
2-Oct-08	Nadine Abdel-Haq	11,000.00	
8-Oct-08	Khairieh Hamcan	100,000.00	
7-Oct-08	Tala Abdul-Haq	5,000.00	
9-Oct-08	Eana Mabel-Haq	15,000.00	
28-Oct-08	Nadine Abdel-Haq	5,000.00	
28-Oct-08	Dina Abdel-Haq	10,000.00	
30-Oct-08	Dina Abdel-Haq	5,000.00	
6-Nov-08	Eana M Abdel-Haq	10,000.00	
6-Nov-08	Mohammed F Abdel-Hac	15,000.00	
20-Nov-08	Eana Mabel-Haq	15,000.00	
26-Nov-08	Nadine Abdel-Haq	7,000.00	
26-Nov-08	Khairieh Hamcan	10,000.00	
26-Nov-08	Dina Abdel-Haq	10,000.00	
28-Nov-08	Tala Abdul-Haq	5,000.00	
20-Nov-08	Van der Hout Brigliano	5,000.00	
10-Dec-08	Tala Abdul-Haq	7,000.00	
15-Dec-08	Khairieh Hamcan	300,000.00	
22-Dec-08	Mapes & Calder	14,426.65	
22-Dec-08	Mohammad Faeq Ahmad Abdel-Haq	60,000.00	
26-Dec-08	Tala Abdul-Haq	4,000.00	
30-Dec-08	Nadine Abdel-Haq	5,000.00	
30-Dec-08	Dina Abdel-Haq	7,000.00	
2-Jan-09	Van der Hout Brigliano	5,000.00	
6-Jan-09	Fortune Nest Corporation	250,000.00	
12-Jan-09	Fortune Nest Corporation	250,000.00	
15-Jan-09	Van der Hout Brigliano	4,000.00	
23-Jan-09	Van der Hout Brigliano	4,000.00	
21-Jan-09	Nadine Abdel-Haq	6,000.00	
26-Jan-09	Guetero Abogadossi	9,353.36	
2-Feb-09	Van der Hout Brigliano	4,000.00	
5-Feb-09	Khairieh Hamdan Abdel-Haq	15,000.00	
24-Feb-09	Mohammad Faeq Ahmad Abdel-Haq	15,000.00	
24-Feb-09	Khairieh Hassan Hamdan	200,000.00	
27-Feb-09	Nadine Abdel-Haq	5,000.00	
27-Feb-09	Dina Abdul-Haq	7,000.00	
3-Mar-09	Beijing Xin Lian Xia Chuan	20,000.00	
10-Mar-09	Mapes & Calder	3,750.00	
25-Mar-09	Dina Abdul-Haq	7,000.00	
25-Mar-09	Nadine Abdel-Haq	10,000.00	
30-Mar-09	Khairieh Hassan Hamdan	150,000.00	
28-Apr-09	Nadine Abdel-Haq	5,000.00	
29-Apr-09	Dina Abdel-Haq	7,000.00	
12-May-09	Khairieh Hamdan Abdel-Haq	400,000.00	
15-May-09	Mohammad Faeq Ahmad Abdel-Haq	50,000.00	
26-May-09	Nadine Abdel-Haq	5,500.00	
26-May-09	Dina Abdul-Haq	7,000.00	
1-Jun-09	Mapes & Calder	1,500.00	
26-Jun-09	Dina Abdul-Haq	3,000.00	
1-Jul-09	Nadine Abdel-Haq	5,000.00	
27-Jul-09	Nadine Abdel-Haq	8,000.00	
31-Jul-09	Scott H Pope DCIS	1,022.00	
26-Aug-09	Nadine Abdel-Haq	5,000.00	
28-Aug-09	Dina Abdul-Haq	7,000.00	
4-Sep-09	Nadine Abdel-Haq	1,800.00	
10-Sep-09	Beijing Xin Lian Xia Chuan	20,000.00	
25-Sep-09	Nadine Abdel-Haq	5,300.00	
26-Sep-09	Dina Abdul-Haq	7,000.00	
		2,473,732	3,719,975



4

Note: excludes cheque withdrawals and withdrawals of less than \$2,000.00

PM

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Fortune Nest Corporation – FSD 88 of 2012
Annex 2 to Case Memorandum

Schedule of Transfers to/from account in the name of Fortune Nest Ltd at Standard Chartered Bank, Bahrain

Date	Description	Payment Out	Payment In	Notes
29-Jul-08	IT05090807280213		2,000.00	
23-Sep-09	IT05090909230110		999,950.00	From RE Lee
30-Sep-09	OT05090909300205	1,890.00		
30-Sep-09	OT05090909300149	35,000.00		
30-Sep-09	OT05090909300146	100,000.00		
22-Oct-09	TO 01676023601	500,000.00		
3-Nov-09	OT05090911030161	3,765.24		To Maples & Calder
24-Nov-09	OI05090911240213	100,000.00		
7-Jan-10	DEAL NO 1797314 V.110110	30,000.00		
7-Jan-10	DEAL NO 1797314 V.110110	50,000.00		
12-Jan-10	OT05091001120145 MAPLES AND CALDE	6,359.76		
23-Feb-10	OT05091002230058 MOHAMMAD FAEQ AH	50,000.00		
25-Feb-10	DEAL NO 1882048 V.010310	50,000.00		
14-Apr-10	OT05091004140102 MOHAMMAD FAEQ AH	30,000.00		
8-Jun-10	OT05091006080135 MOHAMMAD F A ABD	12,978.78		
15-Jun-10	OT05091006080135 RETURN A/C CLOSE		12,978.78	
22-Jul-10	5187190565901830	8,170.90		
8-Aug-10	Foregr Currency Cash Withdrawal	10,000.00		
13-Oct-10	DL NO. 2292379	5,000.00		
14-Oct-10	5187190527825910	3,000.00		
14-Oct-10	OT050910140100 GUERRERO ABOGADO	3,612.41		
27-Oct-10	OT05091010270228 CRYSTAL MEDIA	5,727.53		
31-Oct-10	OT05091010310233 NADIN ABDEL HAQ	989.75		
31-Oct-10	OT05091010310234 D NA ABDUL HAQ	3,000.00		
4-Jan-11	Cash Withdrawal	800.00		
4-Jan-11	Cash Withdrawal	1,500.00		
16-Nov-11	TRF FROM 0167602360'		2,000.00	
10-Apr-12	OT05091204100179 ALEX LIGHTMAN	1100.00		
	TOTAL	1012094.37	1 016,920.78	

5 Note: excludes payments in or out of less than \$500.



PK

13

Fortune Net Corporation - FSD 86 of 2012 Annex 3 to Case Memorandum

Schedule of Transfers to/from account in the name of Fortune Net Corporation (Standard Chartered Bank, Bahrain) Table with columns: Date, Party Name, Payment, Debit, Credit, Balance. Includes entries for various companies and individuals like 'Foreign Currency Transaction Cash Withdrawal', 'Foreign Currency Transaction Cash Withdrawal', etc.



4

Note: exclude payments in total of less than \$500