SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

OASIS INVESTMENTS II MASTER FUND LTD., Plaintiff, v. **VINCENT TIANQUAN MO** et al, Defendants.	Index No.: **652607/2023** **Hon. Andrew Borrok, J.S.C.**

AFFIRMATION OF FELICITY TOUBE KC AND DR. RIZ MOKAL ON BEHALF OF THE PLAINTIFF

We, **FELICITY TOUBE KC** and **DR. RIZ MOKAL**, both of South Square, 3-4 South Square, Gray's Inn, London, England, affirm as follows:

1 We submit this Affirmation on behalf of Plaintiff in the above-captioned matter to address certain points of the law of the Cayman Islands raised in the Memorandum of Law in Opposition to Plaintiff's Motion to Approve Settlement ('**Opposition**') filed by 507 Summit LLC ('**507**') and Koa Capital LP ('**Koa**'). Neither of us has any past or present relationships with any of the parties to this matter.

2 The cases and materials referred to in this document are attached as **Exhibit 1**.

I. BIOGRAPHIES

A. FELICITY TOUBE KC

3 Felicity Toube KC is a barrister practicing at the Bar of England and Wales from Chambers known as South Square, which is located at 3-4 South Square, Gray's Inn, London WC1R 5HP, England, UK. She holds an Upper Second Class Honours Bachelors Degree in Law and a First Class Honours Masters Degree in Law from Oxford University (BCL) (both from Magdalen College, Oxford). She is a visiting professor of practice at Oxford University, teaching courses in Cross Border Insolvency and Commercial Mediation on the BCL. She also leads sessions on cross-border insolvency law at Columbia Law School (together with Judge Martin Glenn) and the London School of Economics (together with Professor Sarah Patterson). She is also undertaking a part-time DPhil at Oxford University in cross-border insolvency law. She was called to the Bar in 1995.

4 She was appointed as Queen's Counsel in 2011 (now known as King's Counsel, after the accession of King Charles III), as a Mediator by ADR in 2014, and as a Panel Mediator by INSOL International College of Mediation in 2015. She is a Board Member of the International Insolvency Institute ('**III**'), Co-Chair of the INSOL ADR Colloquium, and is regularly asked to speak at, and Chair, conferences in the UK and internationally (including by INSOL, III, and GRR).

5 Ms Toube KC's CV is attached as **Exhibit 2**. As that CV shows, she is a specialist in corporate and individual insolvency law (and in particular cross-border insolvency) and her practice at the Bar encompasses a wide range of business law. She has appeared in numerous reported cases involving insolvency and commercial law, including acting for the liquidators and office-holders of numerous banks and financial institutions, including BCCI, Lehman Brothers, MF Global, and the Icelandic Banks. She has authored or co-authored a large number of publications relating to insolvency and commercial law, including as editor of *International Asset Tracing in Insolvency* (with a second edition published by the Oxford University Press in 2025), *Lightman & Moss* on Administrators and Receivers, *Moss, Fletcher and Isaacs on the EC Regulation*, *Halsbury's Laws*, and was for many years Chair of *Insolvency Intelligence*.

6 As King's Counsel she is generally recognised on a case by case basis (as a result of her expertise as a barrister) to appear in Courts throughout the United Kingdom and the Commonwealth. In 2012, she was called to represent clients in two different cases in the Grand Court in the Cayman Islands. Since that time, she has continued to act in the Grand Court in relation to a number of cases that are proceeding to litigation in that jurisdiction (including in the Eastern Caribbean Court of Appeal). She also appears in the Courts of the British Virgin Islands, the Turks and Caicos, and Bermuda.

7 As we set out further below, the laws of the Eastern Caribbean are to a great extent based upon English common law and statute, and Ms Toube KC frequently advises on issues relating to the laws of various countries in the Eastern Caribbean, including the Cayman Islands and has acted as an expert on the law of the Cayman Islands in numerous proceedings in the United States.

8 By reason of her background and experience, Ms Toube KC believes that she is competent to provide an expert opinion on Cayman Islands law as it relates to the questions she has been asked to consider.

B. DR. RIZ MOKAL

9 Riz Mokal holds a BSc in Mathematics, Statistics, and Economics from Government College, the University of the Punjab (1993), an LLB Hons from University College

London (1996), a BCL Hons from the University of Oxford (1998), and a PhD in corporate insolvency law from University College London (2002). He is a barrister practising at the Bar of England and Wales from South Square in London, with a practice covering all aspects of domestic English and cross-border insolvency, restructuring, bank resolution, company, commercial, and trust law.

10 Dr. Mokal's CV is attached as **Exhibit 3**. As that CV shows, Dr. Mokal was called to the Bar at Gray's Inn in 1997, became an academic member of South Square in 2005, and took up full-time practice in 2016. Since then, he has been instructed in relation to some of the most significant insolvency and restructuring proceedings in England and abroad, including those of *Bell Group* (Curaçao), *British Steel* (England), *Greensill Capital* (England), *gategroup* (England), *Hanjin* (South Korea), *ipagoo* (England), *Lehman Brothers* (England, New York), *NMC Healthcare* (Abu Dhabi), *Ocean Rig* (Cayman Islands), *OW Bunker* (Denmark), *Primeo* (Cayman Islands), *Seadrill* (Texas), *Sova* (England), *Unister* (Germany), *Yukos* (Switzerland), and *The Z Trusts* (Jersey). He is also frequently instructed as an expert witness on English and Commonwealth (including Cayman Islands) law.

11 Dr Mokal is the author or co-author of four books and a contributor to seven others, and the author or co-author of over 30 scholarly articles in leading law journals on commercial law, financial sector regulation, insolvency and restructuring law, property and trusts, and legal theory. His scholarship has influenced legislation in several jurisdictions and has been cited with approval by courts around the world, including the House of Lords (*Spectrum*, 2005); the Australian High Court (*Ansett*, 2008); the Courts of Appeal of England and Wales (*Sonatacus*, 2007), New Zealand (*Strategic Finance*, 2013), Ontario (*Nortel*, 2015), and Victoria (*Ansett*, 2006); and the High Court of England and Wales (*Virgin Active*, 2021; *Houst*, 2022; *Great Annual Savings Company*, 2023); see also the judgment of the Grand Court of the Cayman Islands in *Adenium Energy Capital* (2022).

12 From 2009 to 2013, Dr Mokal served as Senior Counsel to the World Bank and Head of the Bank's Global Initiative on Insolvency and Creditor/Debtor Regimes. This entailed working with the governments of some 20 World Bank member states to undertake policy analyses of existing laws and practices, develop new legislation, and train judges, lawyers, insolvency practitioners, central bankers, and other stakeholders. Dr Mokal also held the

Chair of Law and Legal Theory at University College London until 2016 and, upon resigning the Chair to take up practice, was appointed an Honorary Professor. He was a Visiting Professor in Law at the University of Florence from 2015 to 2018 and a Research Associate at Cambridge University's Centre for Business Research from 2003 to 2007. He is currently an Honorary Research Fellow of the University of Aberdeen School of Law in Scotland.

13 He is one of six UK-based Fellows of the American College of Bankruptcy, and an invited member of each of the International Insolvency Institute (on whose board of directors he sits), the World Bank's Task Force on Insolvency, the Bowen Island Group, the International Exchange of Experience on Insolvency Law, and several expert groups on aspects of insolvency law convened by the Secretariat of the United Nations Commission on International Trade Law. In 2020, he was named amongst the 500 leading global restructuring and insolvency lawyers by the US legal guide Lawdragon.

14 By reason of his background and experience, Dr. Mokal believes that he is competent to provide an expert opinion on Cayman Islands law as it relates to the questions he has been asked to consider.

II. BASIS AND STRUCTURE OF AFFIRMATION

15 We have reviewed the following documents in preparing this Affirmation:

15.1 the Shareholder Derivative Complaint dated 29 May 2023 filed by Oasis Investments II Master Fund Ltd and Lorelei NCC Inc;

15.2 a Petition dated 16 January 2024 ('**Koa-507 Petition**') to wind up Fang Holdings Limited ('**Fang**') filed at the Grand Court of the Cayman Islands ('**Cayman Court**') on behalf of Koa and 507;

15.3 a Stipulation of Settlement dated 25 October 2025 ('**Proposed Settlement**');

15.4 a Directions Order in relation to the Koa-507 Petition made by Mr Justice Doyle of the Cayman Court on 25 November 2025;

15.5 a Summons in relation to the Koa-507 Petition issued on behalf of Koa and 507 on 31 December 2025;

15.6 a '**Consent Order**' dated 19 January 2026 agreed between the parties to the Koa-507 Petition; and,

15.7 the Opposition.

16 This Affirmation is structured as follows.

17 **Part III** provides an overview of the Cayman Islands legal system and explains the relationship between Cayman common law and the jurisprudence of the courts of England and Wales, including why English authorities are commonly treated as highly persuasive in Cayman insolvency matters.

18 **Part IV** addresses section 99 of the Cayman Companies Act. We explain its operative elements, and then apply them to the Proposed Settlement. In particular, we explain why section 99 has no effect in the absence of a winding-up order and set out our view that the Opposition's assumption that the Proposed Settlement involves a "*disposition*" for the purposes of the section is not straightforward.

19 **Part V** addresses the Cayman Court's discretionary power to validate transactions under section 99. We summarise the governing principles and rationale for validation as explained by the Cayman Court of Appeal, and explain why, if (contrary to our view) any aspect of the Proposed Settlement were to be treated as a disposition within section 99, the Cayman Court would in principle be likely to validate it.

20 **Part VI** addresses the Consent Order. We describe its nature and operative terms and explain why it does not, on its language, preclude this Court from approving the Proposed Settlement, unless it can be shown that Fang is itself required, after 19 January 2026, to take an affirmative act that results in a prohibited outcome within the Schedule of Undertakings to the Consent Order.

21 We are not asked to deal with every point made in the Opposition. Our silence on a point should not be regarded as suggesting that we agree with it.

22 Whether the facts alleged in the Opposition are proved to be correct is not a matter for us, but for the fact-finder in the litigation. We therefore do not address them further.

III. LEGAL SYSTEM OF THE CAYMAN ISLANDS AND RELATIONSHIP WITH ENGLISH COMMON LAW

23 The Cayman Islands is a self-governing Overseas Territory of the United Kingdom with the British monarch as the Head of State. It has a constitution ('**Constitution**') that is negotiated between the Governments of the Cayman Islands and the United Kingdom and formally made by the British monarch acting on the advice of the Privy Council. The current Constitution was promulgated by the Cayman Islands Constitution Order 2009, a UK statutory instrument, and was most recently amended in 2020. The Constitution provides for executive authority to be exercised by a Governor and a Cabinet,[1] for an independent legislature,[2] judiciary,[3] and a bill of rights.[4]

24 Insofar as relevant to the subject matter of our Affirmation, the judiciary consists of a Grand Court headed by the Chief Justice.[5] Appeal from the Grand Court's decisions lies to the Court of Appeal, which consists of a President and at least two Justices of Appeal.[6] In relation to a constitutional right, the Constitution provides for the right to appeal the final decision of the Court of Appeal to the Judicial Committee of the Privy Council ('**the Privy Council**').[7] There is also, subject to UK law, a broader right of appeal, by leave, to

[1] Parts II and III of the Constitution (The Cayman Islands Constitution Order 2009 (as amended)).

[2] Part IV of the Constitution.

[3] Part V of the Constitution.

[4] Part I of the Constitution.

[5] Articles 94-98 of the Constitution.

[6] Articles 99-103 of the Constitution.

[7] Article 26(3) of the Constitution.

the Privy Council.[8] Therefore, the Privy Council is the highest court of the Cayman Islands.

25 The Cayman Islands has a common law system, and the doctrine of judicial precedent applies. The Privy Council's judgments (formally characterised as advice to the monarch) in relation to Cayman Islands law matters are binding on all other Cayman Islands courts. When the Privy Council hears an appeal from a court which is not a Cayman Islands court, its decision is not binding on Cayman Islands courts but is treated by those courts as highly persuasive.

26 The common law of the Cayman Islands (as of other British Overseas Territories) is based on the common law of England and Wales,[9] and Cayman Islands courts generally refer to and follow the jurisprudence of the courts of England and Wales.[10] This tendency is reinforced by the fact that the Privy Council, which normally sits in London, usually consists (in whole or significant part) of judges of the English courts. Further, judges who have stepped down from the English bench as well as current English practitioners sit as judges on the Cayman courts. At present, five of the eight Cayman Islands Justices of Appeal, including the current President, have held judicial office in England, one of eight judges of the Grand Court is former English judge and three are distinguished English practitioners. Accordingly, decisions of the English courts are commonly treated by Cayman courts as highly persuasive.

27 The Cayman common law of insolvency is based on English common law, and as English courts develop that law, it is likely to be treated as highly relevant and persuasive by Cayman courts.

[8] Section 1 of the Judicial Committee Act 1844 read with the Cayman Islands (Appeals to Privy Council) Order 1984.

[9] English statutory law does not generally apply to the Cayman Islands, though Cayman statutes are often based on UK legislation.

[10] In the rest of this Affirmation, we will follow convention in referring to such courts as '**English courts**'.

28 Accordingly, and consistent with standard Cayman Islands legal practice, in this Affirmation, we cite the case law of English courts which Cayman courts themselves would cite and upon which they commonly rely.

IV. EFFECT OF SECTION 99 OF THE CAYMAN COMPANIES ACT

A. THE PROVISION

29 Section 99 of the CCA provides as follows:

> "*When a winding up order has been made, any disposition of the company's property and any transfer of shares or alteration in the status of the company's members made after the commencement of the winding up is, unless the Court otherwise orders, void.*"

30 The objective of this provision is to maintain the status quo, to protect the integrity of the winding-up process by ensuring that, during the period following presentation of a winding-up petition, the company's property and membership can be preserved pending the court's decision. If a winding-up order is ultimately made, the section operates retrospectively so that the liquidator may recover and unwind certain post-petition dealings and restore the company and its contributories to the position that existed at the time of the petition's presentation, unless the Cayman Court exercises its discretionary power under section 99 to validate the transaction.[11]

31 Leaving to the next section discussion of the Cayman Court's power to validate such a transaction, section 99 has the following elements insofar as potentially relevant to the facts of the present case.

32 First, as to the **trigger**: the section takes effect if, and only if, the Cayman court makes a winding-up order ("*When a winding up order has been made*").

33 Second as to the **look-back period**: If a winding-up order is made, the provision then applies to the period "*after the commencement of the winding up*". The statute deems the

[11] Tianrui (International) Holding Company Ltd v China Shanshui Cement Group Ltd 2020 (1) CILR 417 (CCA), [14]-[15] (Moses JA).

winding-up to have commenced "*at the time of the presentation of the petition for winding up*" (CCA section 100(2)). In short, the provision applies to the period starting with the presentation of the petition.

34 It is critical to understand the co-working of the trigger and the look-back period.

34.1 As explained by the English Court of Appeal (in the context of the materially similar provision that applies in personal insolvency in England),[12] provisions such as section 99 do not operate in real time to invalidate transactions as they occur. Rather, until the statutory trigger is engaged by the making of a winding-up order, it remains uncertain whether the provision will ever apply at all. In that interim period, the position of persons who take property under transactions within the look-back period is legally "*ambulatory*".

34.2 If no winding-up order is ultimately made, any title to the property received under the transaction is treated as having been indefeasible throughout.

34.3 If a winding-up order is made, any title to the property received under the transaction is treated as having been void from the outset to the extent provided by the statute.

34.4 The invalidating effect of section 99 therefore only crystallises, if at all, upon the making of the winding-up order, and then operates retrospectively by reference to the look-back period.

35 Third as to the **target**: The provision, if and once it applies, catches any "*disposition*" of the company's "*property*". Here:

35.1 As for "***disposition***", the most directly relevant authorities are from England, though they equally state Cayman law:

[12] Re Ahmed [2018] BPIR 535 (EWCA), [42]-[45] (Gloster LJ) .

35.1.1 According to the UK Supreme Court's analysis of the UK counterpart to section 99, the "*natural meaning*" of "*disposition*" in this context is "*a transfer by a disponor to a disponee of the relevant property*".[13]

35.1.2 English authority on the counterpart provision in natural person bankruptcy law also shows that such a transfer is a "*disposition*" even if it were undertaken under compulsion of a court order.[14]

35.1.3 Crucially, however, where the company's interest in property is not transferred from the company to another person but instead is extinguished or overridden by operation of law, that is not a "*disposition*". This proposition was established by the UK Supreme Court in relation to the extinguishment of an equitable interest under a trust when legal title to trust property is transferred to a bona fide purchaser for value without notice. Lord Mance explained as follows:[15]

> "*[The UK equivalent to section 99] addresses cases where assets legally owned by a company in winding up are disposed of. The section is necessary to enable the company to recover them, by treating the disposition as void. The court's power to validate the disposition is a necessary safety valve, to cater for situations in which validation would be appropriate, bearing in mind the position of creditors as well as that of the other party to the transaction. Any such disposition will involve issues which arise directly between the company (embracing in that concept its creditors in liquidation) whose property is disposed of and the other party to the transaction, although the section embraces situations where the company's property is held by, for example, a director or agent and is disposed of by him to a third party*".

35.1.4 And Lord Neuberger stated:[16]

[13] Akers v Samba Financial Group [2017] AC 424 (UKSC), [55] (Lord Mance), [65] (Lord Neuberger).

[14] In Re Flint [1993] Ch 319, 326 G-H (Nicholas Stewart QC).

[15] Akers v Samba Financial Group [2017] AC 424 (UKSC), [53] (Lord Mance).

[16] Akers v Samba Financial Group [2017] AC 424 (UKSC), [72], [74] (Lord Neuberger).

> "*there is no 'disposition' of an equitable interest within [the UK counterpart to section 99] when there is a transfer by the legal owner of the legal estate, which is subject to that equitable interest, to a bona fide purchaser for value without notice of that equitable interest.*
> *…the surrender of a lease or the giving up of contractual rights by a company would be a 'disposition' within [the UK counterpart to section 99] as would a surrender of a life interest…However, there are differences between a surrender (whether of a lease, contractual rights, or a life interest) and the loss of a beneficial interest on a transfer of the legal estate to a bona fide purchaser for value without notice of that interest. In the former case, the person who is the disponor is the same as the person who loses the property; whereas in the latter case the disponor is, ex hypothesi, not the person who loses the property. And, in the former case the disponee is well aware of the property which is ceasing to exist: as far as he is concerned, its extinction is the purpose of the transaction; in the latter case, the disponee is, by definition, unaware of the property which is being disposed of.*"

35.1.5 As these passages show, a "*disposition*" for the purposes of section 99 (and its UK counterpart) requires acts of transfer or surrender by the holder of the relevant interest. In other words, for there to be a "*disposition*", there must be dealings by which the company's property is conveyed, given up, or otherwise passed to another person. The concept does not extend to cases where the company's interest is extinguished or overridden by operation of law as a consequence of a third party's act. In such circumstances, the company has not disposed of its property to anyone; the loss of the interest occurs as a matter of law rather than by any act of disposition by the company.

35.1.6 Further and as Lord Mance's dictum above shows, the avoidance mechanism in section 99 proceeds on the basis that a disposition can be treated as void in order that the property disposed of may be recovered for the company's estate. That logic has no application where an interest is not transferred to another person but is instead extinguished or overridden by operation of law. In such a case there

is no disponee from whom the interest can be recovered, and no transaction capable of being "voided" so as to cause the interest to re-vest.

35.2 As for "***property***", it is "*not a term of ancient art*".[17]

35.2.1 In the House of Lords in Nokes v Doncaster Amalgamated Collieries Ltd, having noted that the term does not have a technical meaning, Lord Porter stated that the term therefore "*takes its meaning from its context and from its collocation in the…Act…in which it is found and from the mischief with which that Act…is intended to deal*".[18] In the same case, Lord Atkin said that "*the word 'property' standing by itself…would be taken by any lawyer to include property, rights and powers of any description*".[19]

35.2.2 The Cayman Companies Act does not provide a general definition of the term "*property*" though, in two provisions addressing the reconstruction and amalgamation of companies, it incorporates the Nokes definition, including the circularity therein in referring to "*property*" in the definition of the term "*property*". In those two provisions, "*property"* is defined as *"[including] property, rights and powers of every description*".[20]

35.2.3 Despite the lack of any general definition of "*property*" in the Cayman Companies Act or any specific definition in section 99, in our view the term "*property*" has this same meaning under section 99.

[17] In re Earnshaw-Wall [1894] 3 Ch 156 (ChD), 157.

[18] Nokes v Doncaster Amalgamated Collieries Ltd [1940] AC 1014 (HL), 1051-2 (Lord Porter).

[19] Nokes v Doncaster Amalgamated Collieries Ltd [1940] AC 1014 (HL), 1033 (Lord Atkin).

[20] Companies Act, sections 87(4) and 91J(4).

B. APPLICATION

36 We note that the Opposition appears to elide the act of the presentation of a winding-up petition with the pursuit of corporate causes of action. This is not correct. We therefore address this point first:

36.1 Under Cayman law, the presentation of a winding-up petition under section 92(e) does not constitute the bringing or prosecution of the company's causes of action, whether derivatively or otherwise.

36.2 The presentation of a winding-up petition seeks the making of a winding-up order, which is a collective, statutory remedy directed to the status and management of the company.

36.3 Corporate claims remain vested in the company unless and until a winding-up order is made and an official liquidator is appointed. At that point, and from that point in time only, it is for the liquidator, and not the petitioners, to decide whether, and on what basis, any such claims should be pursued.

36.4 The mere pendency of a winding-up petition therefore does not mean that the petitioner has "live" derivative claims, nor that such claims are before the Cayman court for adjudication. They are not.

37 As to section 99 itself, first, as we have set out above, the section has no operative effect unless and until a winding-up order is made:

37.1 While the Koa-507 Petition to wind up Fang is pending, no winding-up order has been made. It therefore remains uncertain whether the statutory trigger will ever be engaged.

37.2 In those circumstances, even if the Proposed Settlement were (contrary to what follows) to involve a disposition within the look-back period, section 99 would not presently render such disposition void.

37.3 The statutory scheme operates conditionally and retrospectively: it is only if a winding-up order is ultimately made that section 99 determines, with retrospective effect, the consequences of acts falling within the look-back period.

37.4 If no winding-up order is made, section 99 never operates and no question of invalidity arises.

37.5 As a matter of Cayman law, section 99 therefore presents no legal impediment to, or requirement for restraint upon, this Court's approval of the Proposed Settlement.

38 Second, the Opposition proceeds on the further assumption that the releases and waivers contemplated by the Proposed Settlement necessarily engage section 99 as "*dispositions*" of Fang's property. We do not agree that these releases and waivers are necessarily dispositions of Fang's property:

38.1 As explained above, the concept of "*disposition*" in section 99 is concerned with acts of transfer or surrender by which a company's property is conveyed to another person. Where, instead of being transferred to another, property is extinguished by operation of law pursuant to the judgment of a court of competent jurisdiction, the analysis is more nuanced. There is a real question whether such consequences involve a "*disposition*" by the company at all.

38.2 However, even assuming that the releases and waivers effected by the Proposed Settlement could constitute "*dispositions*" within the meaning of section 99, as we have already stated the provision has no effect unless and until a winding up order is made. Section 99 does not operate prospectively or pre-emptively, and does not render transactions void merely because a winding-up petition is pending. Accordingly, the assertion in the Opposition that the Proposed Settlement's releases "would be void" under section 99 is incorrect as a matter of Cayman law.

V. VALIDATION BY THE CAYMAN COURT

A. THE LEGAL PRINCIPLES

39 The leading Cayman law authority on validation pursuant to section 99 is the Cayman Court of Appeal's judgment in Tianrui.[21] The Court identified the following principles which apply when the Cayman Court considers whether to exercise its discretion to make a validation order:

39.1 First as to rationale, the Cayman Court's power to make a validation order exists to mitigate the potentially paralysing effect of a pending petition. Such an order allows companies, particularly trading companies, to continue operating in the ordinary course with commercial certainty—what the UK Supreme Court referred to as the "*safety valve*"[22]—provided this does not prejudice those interested in the value of the company's assets or undermine the court's control if a winding-up order is later made.[23]

39.2 Second, the validation power is available in every compulsory winding up regardless of the company's solvency, the nature of its business, or whether the petition is brought on insolvency or just and equitable grounds.[24]

39.3 Third, the court must in every case be satisfied that the making of a validation order will not undermine, frustrate, or preclude the maintenance of the status quo pending determination of the petition, and that it is instead consistent with, and in furtherance of, that objective. While the application of this principle will necessarily vary with the facts, the principle itself is constant and applies in all

[21] Tianrui (International) Holding Company Ltd v China Shanshui Cement Group Ltd 2020 (1) CILR 417.

[22] Akers v Samba Financial Group [2017] AC 424 (UKSC), [53] (Lord Mance).

[23] Tianrui (International) Holding Company Ltd v China Shanshui Cement Group Ltd 2020 (1) CILR 417, [15]-[16], [19]-[20] (Moses JA).

[24] Tianrui (International) Holding Company Ltd v China Shanshui Cement Group Ltd 2020 (1) CILR 417, [40] (Moses JA).

cases, whether or not the proposed transaction is said to fall within the ordinary course of business.[25]

39.4 Fourth, as a corollary, the fact that the company is solvent does not relieve the court of the need for careful scrutiny. The court must not assume that transactions proposed to take place during the pendency of a petition are proper, in the ordinary course of business, or in the company's best interests.[26]

39.5 Fifth, nor do the directors' views create any presumption in favour of validation; such views are relevant (especially where the proposal is said to be in the ordinary course) but not determinative, and the applicant must satisfy the court that validation is consistent with section 99's statutory purpose.[27]

B. APPLICATION

40 In the event that a winding-up order is made in relation to Fang at some point in the future, and assuming, contrary to our view, that anything in the Proposed Settlement (if approved) constitutes a "*disposition*" for the purposes of section 99, we consider that the Cayman court would be likely to validate such disposition.

41 The Proposed Settlement is governed by New York law. We do not express any view on its proper construction as a matter of New York law, nor do we opine on its operation or effect beyond what appears on its face. Our observations proceed on a prima facie reading of the Proposed Settlement for the limited purpose of assessing how the Cayman Court would be likely to approach the question of validation under section 99, if that question were ever to arise.

[25] Tianrui (International) Holding Company Ltd v China Shanshui Cement Group Ltd 2020 (1) CILR 417, [41]-[42] (Moses JA).

[26] Tianrui (International) Holding Company Ltd v China Shanshui Cement Group Ltd 2020 (1) CILR 417, [44] (Moses JA).

[27] Tianrui (International) Holding Company Ltd v China Shanshui Cement Group Ltd 2020 (1) CILR 417, [45] (Moses JA).

42 Applying the principles in Tianrui on that basis, the Proposed Settlement would not in our view undermine the maintenance of the status quo pending determination of the winding-up petition, but would instead advance the orderly resolution of disputes affecting Fang's assets and governance. It does not involve asset stripping, preferential dealing, or the dissipation of value designed to place property beyond the reach of a potential liquidator. Rather, it resolves contested claims through a court-supervised process and fixes the parties' positions transparently, thereby reducing uncertainty and preserving value.

43 From the Cayman Court's perspective, the Proposed Settlement would therefore in our view be regarded as consistent with the statutory purpose of section 99. It would not frustrate the avoidance function of the provision, because it does not impede the ability of a liquidator (if appointed) to identify, assess, and administer the Fang's assets as they stand following judicial approval. Nor would it prejudice those interested in the value of such assets: the Proposed Settlement substitutes defined outcomes for ongoing litigation risk, achieved under the supervision of a court which has jurisdiction to determine that issue.

44 Accordingly, even if section 99 were engaged, the Proposed Settlement would fall within the category of transactions that the Cayman Court is likely to validate in principle: transactions entered into in good faith, in a manner that is transparent and judicially supervised, and in circumstances that promote certainty and the preservation of value pending resolution of the winding-up proceedings. From that perspective, there is no Cayman law reason for this Court to withhold approval of the Proposed Settlement now, nor to require the prior obtaining of a Cayman validation order.

VI. EFFECT OF THE CONSENT ORDER

45 The Consent Order dated 19 January 2026 is an order of the Grand Court of the Cayman Islands, Financial Services Division, made in Cause No. FSD 13 of 2024 (DDJ) in the matter of Fang Holdings Limited under the Companies Act (2025 Revision). It is expressly stated to be made "*by consent*", meaning it records and gives binding effect to undertakings voluntarily offered by Fang and accepted by the Petitioners and the Court, without any consideration or determination by the Cayman Court of the merits. The Petitioners are KOA Capital L.P. and 507 Summit LLC, and the Respondents are

Tianquan Mo and Fang Holdings Limited. The Order was made administratively, without an oral hearing, by Mr Justice Doyle. The Order adjourns the Summons on agreed terms.

46 The Schedule of Undertakings is key for present purposes. It provides as follows:

46.1 Unless and until Fang obtains a prospective validation order under section 99 of the Companies Act, Fang undertakes that it will not take any act which results in specified outcomes.

46.2 Those outcomes include: (a) any disposition of Fang's property in a transaction with or for the benefit of Mr Tianquan Mo or other defined Related Parties; (b) any disposition of Fang's property outside the ordinary course of business; (c) any distribution of Fang's assets to a Related Party; (d) any transfer of legal or beneficial interests in shares in Fang to or from a Related Party; (e) any alteration in the status of a member who is a Related Party; and, critically, (f) any settlement, compromise, release or waiver of claims which Fang has or may have against Related Parties, current or former directors, officers, agents or members, or any person in relation to claims involving transfers or dispositions of assets, transfers of shares, or alterations in member status.

46.3 The Schedule also defines "property" broadly to include money, goods, things in action (including claims), land, and all present or future interests arising out of or incidental to property, and requires that any application by Fang for a validation order be made on notice to the Petitioners.

47 We draw attention to three aspects of the Order.

48 First, the Consent Order was made on 19 January 2026 in the context of the Koa-507 Petition proceedings which had been issued (although not, it appears, progressed) on 16 January 2024:[28]

[28] We note that courts look unfavourably on proceedings that are issued but deliberately not progressed, which may be struck out on the basis that they are an abuse of process, as a result of such illegitimate "warehousing" Asturion v. Alibrahim [2020] EWCA Civ 32, [61].

48.1 Its operative language is expressly framed by reference to time, applying "*[u]ntil the determination of the Injunction Summons or such further order of the Court*".

48.2 As a matter of ordinary construction, the Order takes effect from the date it was made and governs Fang's conduct from that point forward. It does not purport to operate retroactively or to recharacterise, invalidate, or render unlawful or impermissible the prior execution of agreements or stipulations entered into before 19 January 2026. Its function is regulatory and forward-looking.

49 Second, the restraint imposed by the Consent Order is carefully and narrowly expressed:

49.1 It provides that "*the Company* [i.e. Fang] *shall not take any act which results in*" any of the specified outcomes.

49.2 The Order is therefore confined to positive acts taken by Fang. It does not refer to, and on its face does not extend to, omissions, failures to act, acquiescence, or the passive allowing of consequences to flow from prior acts. Absent language such as "by act or omission", "permit", "allow", or "procure", the Order is naturally read as deliberately confining the undertaking to affirmative conduct.

50 Third, against that background:

50.1 The correct analysis of the Consent Order as a matter of Cayman law is that the Consent Order is engaged only where, <u>after</u> 19 January 2026, Fang is required to take some affirmative step which results in a settlement, compromise, release or waiver of claims, or a disposition of property within the meaning of the Order.

50.2 If, as a matter of New York law and procedure, approval of the Proposed Settlement by the New York court operates as a juridical act of that court and does not require Fang, at or following the approval hearing, to take any positive act which itself results in such an outcome, then the court's approval of the Proposed Settlement would not, of itself, fall within the scope of the Consent Order.

51 In the light of the foregoing analysis and from a Cayman law perspective, the Objector's submission (at pp 8-9 of the Opposition) rests on a misreading of the Consent Order.

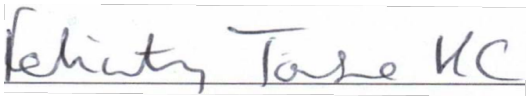
51.1 The Consent Order does not itself prohibit settlements, releases, or dispositions as such, nor does it restrain the acts of third parties or foreign courts. Rather, it narrowly restrains Fang from taking any act which results in specified outcomes, absent a prospective validation order.

51.2 Whether the Order is engaged therefore turns on a concrete question of mechanics: whether, under New York law and procedure, approval of the Proposed Settlement requires Fang, after 19 January 2026, to take any affirmative step which itself results in a settlement, compromise, release or disposition of property.

51.3 The Opposition does not address that question. It instead assumes that court approval alone constitutes a prohibited act by Fang. This assumption is not supported by the language of the Consent Order or by Cayman law.

51.4 Absent a showing that Fang must take such an affirmative act, approval of the Proposed Settlement by this Court would not contravene the Consent Order.

We affirm this twenty-eighth day of January, 2026, under the penalties of perjury under the laws of the United States and of New York, which may include a fine or imprisonment, that we are physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, that the forgoing is true, and we understand that this document may be filed in any action or proceeding in a court of law.



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28 January 2026