



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

Submitted Date:18/01/2021 11:54

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BETWEEN

101 INVESTMENTS LIMITED

Claimant

And

(1) ELEUTHERA GROUP PTY LTD

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

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

Defendants

FIRST AFFIDAVIT OF JAMES MAWHINNEY

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

1. I am the ultimate beneficial owner of the Claimant ("101") in these proceedings and am duly authorised to depose to this Affidavit on behalf of 101.
2. I make this Affidavit in support of 101's claim for declaratory relief as set out in the Fixed Date Claim Form ("Claim").
3. Save as otherwise stated, the facts and matters deposed to in this Affidavit are derived from my personal knowledge and from my perusal of relevant documentation. Where facts and matters are not within my own knowledge, they are true to the best of my information and belief.

4. In this Affidavit, I refer to certain documents, true copies of which are contained in the paginated exhibit marked "**JM-1**". Page numbers appearing in brackets in this Affidavit refer to page numbers of Exhibit JM-1.

A. THE PARTIES

5. The Claimant and the Applicant in the Service Application, 101, is a BVI company incorporated on 30 January 2019 with its registered office at Trinity Chambers, PO Box 4301, Road Town, Tortola, BVI.
6. The 1st Defendant, Eleuthera, is an Australian company incorporated on 5 March 2014 with its registered office at Level 27, 35 Collins Street, Melbourne, Victoria, 3000, Australia.
7. The 2nd Defendant, IPO, is an Australian company incorporated on 18 April 2017 with its registered office also at Level 27, 35 Collins Street, Melbourne, Victoria, 3000, Australia.
8. The 3rd Defendant, IPO No. 3, is an Australian company incorporated on 26 July 2017 with its registered office also at Level 27, 35 Collins Street, Melbourne, Victoria, 3000, Australia. IPO No. 3 is one of 16 special purpose vehicles ("**SPVs**") wholly-owned by IPO (IPO and the 16 SPVs are collectively referred to as the "**IPO Wealth Holdings Group**").

[See Company Extracts of the Defendants from the Australian Securities & Investments Commission at pages 1-14 of JM-1]

9. On 22 May 2020, Mr Hamish Mackinnon and Mr Nicholas Giasoumi of Dye & Co were appointed as receivers and managers of the IPO Wealth Holdings Group. On 2 July 2020, the Supreme Court of Victoria placed the IPO Wealth Holdings Group into provisional liquidation. Mr Hamish Mackinnon and Mr Nicholas Giasoumi of Dye & Co were appointed as the provisional liquidators of, amongst others, IPO and IPO No. 3.
10. On 17 September 2020, the Supreme Court of Victoria ordered that the IPO Wealth Holdings Group be wound up. Mr Hamish Mackinnon and Mr Nicholas Giasoumi of Dye & Co were appointed as liquidators.
11. References in this Affidavit to "**Provisional Liquidators**" and "**Liquidators**" refer to Mr Hamish Mackinnon and Mr Nicholas Giasoumi in their capacity as the provisional

liquidators between 2 July 2020 to 16 September 2020 and as the liquidators from 17 September 2020.

12. The Notices of Winding-Up Order and appointment as Provisional Liquidators/ Liquidators for the IPO Wealth Holdings Group were published by the Australian Securities and Investment Commission on 3 July 2020 and 18 September 2020 respectively.

[See Orders for Appointment of Receivers & Managers, Provisional Liquidators, and Liquidators as well as the Notices of Liquidation at pages 15-40 of JM-1]

B. RELEVANT BACKGROUND

13. I now set out what I believe to be the relevant background for purposes of this Claim. Should any of the Defendants raise new points, I seek this Honourable Court's leave to respond to the same and to supplement this background.
14. The "Mayfair 101" group is an international investment and corporate advisory group ("**Mayfair Group**"). I am the Group's Managing Director and the director of Eleuthera, IPO and IPO No. 3 (although the IPO Wealth Holdings Group has since been placed into liquidation). The key divisions (in no particular order) include:
 - a. Investment Holdings in growth companies, which includes but is not limited to investments held by 101 and the IPO Wealth Holdings Group;
 - b. Real estate; and
 - c. Fundraising, which includes but is not limited to the IPO Wealth Fund (the "**Fund**").
15. To-date, the Mayfair Group has made investments in 10 countries including United Kingdom, India, Hong Kong, Singapore, Italy, Sri Lanka, Malaysia and Australia.
16. Eleuthera, which was incorporated on 5 March 2014, has functioned as the Mayfair Group's 'treasury' since mid-2019. Eleuthera's primary function is to make payments on behalf of other Group entities including investments and supplier payments. Most Group entities are investment holding companies with minimal transaction volume and no bank accounts.
17. The treasury role has also been undertaken by Online Investments Pty Ltd ("**Online Investments**") as trustee for the Sunseeker Trust ("**Sunseeker**") as this entity holds operational bank account(s).

18. The Investment Holdings division of the Mayfair Group is primarily focused on pre-IPO technology companies in emerging markets and real estate. 101, which is part of this division, was established to hold the Group's international interests in pre-IPO technology investments. 101 has never held a bank account.
19. The Fund was established in March 2017 and offered term-based investment options with targeted returns to qualified investors. Vasco Trustees Limited ("**Vasco**") was the trustee of the Fund and was responsible for key functions associated with running the Fund via their related party administration and licensing companies. IPO Wealth Pty Ltd, another Mayfair Group member entity, was contracted as the investment manager of the Fund.
20. The Fund had one investment only, that being a secured loan to IPO, the parent company of the IPO Wealth Holdings Group. The IPO Wealth Holdings Group made various investments using loan drawdown proceeds from the Fund in accordance with the Fund's Information Memorandum.
21. As at 1 January 2019, the Mayfair Group had ownership of 21,250,000 fully paid ordinary shares in Accloud PLC ("**Accloud**"), a London-based technology company incorporated on 29 October 2015. These shares were held across five Group member entities (see paragraph 49 below).
22. In early 2019, the Mayfair Group's former accountants, Pinnacle Advisory Group ("**Pinnacle**"), advised on the consolidation of the Mayfair Group's Accloud shareholdings into IPO No. 3 and sale to 101 by way of a Share Sale Agreement (see Section E below).
23. 101 and IPO No. 3 entered into a Share Sale Agreement wherein the agreed sale price was EUR 12,156,310.61 (the equivalent of AUD \$19,460,672.96) or €0.57 per share, which was reflective of the market price at the time (the "**Accloud Transaction**"). This was executed on 4 October 2019 and made effective on 30 January 2019.
24. On 23 July 2019, Pinnacle provided a draft Share Sale Agreement, Share Transfer Forms, a Loan Facility Agreement between IPO and 101 (the "**IPO Facility**") and an IPO Facility Drawdown Notice ("**Drawdown Notice**"). The proposed IPO Facility provided for a vendor finance arrangement to settle the purchase of the Accloud shares.

25. The draft IPO Facility and Drawdown Notice were not executed by 101. 101's (now former) sole director, Mr Graham Cook, was unaware of the IPO Facility until 14 July 2020, the date I brought it to his attention. Mr Cook wrote to me on 15 July 2020 stating:-

"I do not believe we have seen a Facility Agreement with IPO Wealth,"

[See Email from Graham Cook at page 41 of JM-1]

26. In this regard, although the draft IPO Facility was unexecuted and 101's director was unaware of the same, Pinnacle made manual and inaccurate accounting entries to the draft accounts of 101, IPO and IPO No. 3 to suggest that the draft IPO Facility was on foot (the "**Entries**"). The Entries did not accurately reflect the basis of the transaction for the following reasons:-

- a. Bank account statements confirmed that IPO received AUD\$19,510,000 between 28 June 2019 and 20 November 2019 from Eleuthera and Sunseeker which settled the Accloud Transaction in full;
- b. The draft IPO Facility was not executed by 101's director;
- c. The draft Drawdown Facility needed to settle the transaction using the proposed IPO Facility was not executed by 101's director;
- d. 101's director was not aware of the proposed IPO Facility at the material time; and
- e. The Entries, which were relied on by the Liquidators in obtaining the winding-up orders for the IPO Wealth Holdings Group, were entered without the knowledge or consent of the directors of IPO, IPO No. 3 and 101.

27. Pinnacle eventually resigned without notice as the Mayfair Group's accountants on 6 June 2020, two weeks after receivers & managers were appointed to the IPO Wealth Holdings Group.

28. In addition, when the Liquidators were first appointed as Receivers & Managers of the IPO Wealth Holdings Group on 22 May 2020, I instructed my staff to fully cooperate and provide them with access to the books & records of the IPO Wealth Holdings Group despite the short notice. However, the financial accounts of the IPO Wealth Holdings Group at the time were not fully reconciled and were unaudited. Formal statutory accounts had not been finalised or lodged for the years ended 30 June 2019 and 30 June 2020.

29. The Entries mentioned at paragraph 26(e) above have since been rectified with the assistance of KPMG Melbourne who were engaged on 8 July 2020 to manage the reconciliation of the Mayfair Group's accounts after the Receivers & Managers were appointed.
30. However, neither I nor KPMG have been able to finalise the reconciliation of the accounts of the IPO Wealth Holdings Group as the Receivers & Managers terminated access to the accounting files immediately after they were granted the same.
31. At the same time, the Liquidators have failed to confirm closing and opening balances between the IPO Wealth Holdings Group and related party entities since their initial appointment as Receivers or Managers or since KPMG Melbourne undertook their reconciliation of the Mayfair Group accounts, including those of 101 and Eleuthera.

C. THE FINANCING OF THE ACLOUD TRANSACTION

32. The decision to settle the Transaction with cash (rather than on the vendor finance terms under the draft IPO Facility) was due to the significant increase in investor redemptions from the Fund that had occurred in the second half of 2019. This made it necessary for IPO Wealth Holdings Group to sell a portion of its assets in exchange for cash consideration to meet its liquidity requirements, rather than divest an asset for zero upfront cash consideration on vendor finance terms which was what the draft IPO Facility proposed.
33. Vasco was informed of our intention to create liquidity in the IPO Wealth Holdings Group by selling assets to related parties to satisfy liquidity requirements. Notice was provided in a number of instances, for example:

- a. On 30 August 2019, Vasco was provided with the Mayfair Group's 2019 Annual Operational Review (the "**Operations Manual**"), which specified as follows at Page 18:

"it is our intention to use monies raised via IPO Wealth more readily as a means of financing the purchase of more assets, with the view to transition these assets elsewhere in the group as they mature in exchange for liquidity. The strategy will provide the following benefits to the Fund's unit holders and Trustee:

- *regular controlled liquidity events without the need to rely on buoyant and or receptive capital markets;*
- *underlying asset liquidity events allows the borrower to replenish or turnover credit (shorter duration) further enhancing the credit strength of the Borrower;*

- *enables certain Non-Current Assets to be re-classified as Current Assets when they become the subject of a Share Purchase Agreement or Call Option Agreement, better aligning the borrower's balance sheet with the tenure of the Loan drawdowns; and*
- *provides the Borrower with an additional source of funding which is managed by a related-party, enabling liquidity to be created as and when is needed to maintain the integrity of the Loan."*

(emphasis added)

[See Operations Manual at pages 48-71 of JM-1]

- b. On 11 September 2019, a meeting was convened with Vasco to discuss, *inter alia*, the operations of the Mayfair Group set out in the Operations Manual. In particular, the strategy of selling assets from the IPO Wealth Holdings Group to other Group entities in exchange for cash to create liquidity was discussed in significant detail; and
- c. Following the discussion on 11 September 2019, on 30 September 2019, Vasco was furnished with proposed revisions to the Fund's Information Memorandum for their consideration. The revised Memorandum included the following statement in the "Investment Strategy" section:–

"The Borrower may seek to sell these assets to third parties or related parties of the Borrower from time to time to create liquidity at the Borrower's discretion"

(emphasis added)

[See Meeting Agenda and revised Memorandum at pages 72-83 of JM-1]

34. There was no pushback from Vasco whatsoever at that time. They were well-informed of the strategy to acquire assets from the IPO Wealth Holdings Group to related entities to create liquidity.

[See email from Vasco and revised Memorandum where they accepted/ had no comments on the statement at paragraph 33(c) above at pages 84-93 of JM-1]

35. IPO's assets at that time were unlisted and illiquid in nature. Accordingly, to facilitate the redemptions by Fund investors and provide liquidity for interest payments and further investments, Eleuthera provided AUD\$19,510,000.00 to IPO between June and November 2019 to settle the Accloud Transaction.
36. These funds did not come from the IPO Wealth Fund but were raised externally from investors in other financial products offered by the Mayfair Group and were applied for investment purposes (i.e. funding the Accloud Transaction).

37. In simple terms, 101 acquired the Accloud shares in exchange for valuable consideration which was financed by Eleuthera. These funds helped to meet the liquidity requirements of the IPO Wealth Holdings Group and the Fund (including meeting its obligations to its investors),

D. DRAWDOWN ON THE FACILITY AGREEMENT TO FINANCE THE ACCLOUD TRANSACTION

38. The arrangement at Section C above i.e. that cash would be paid to IPO to settle the Accloud Transaction was reflected in a facility agreement between Eleuthera and 101. On or about 15 July 2020, 101 and Eleuthera executed a facility agreement wherein Eleuthera was the lender and 101 the borrower (the "**Facility Agreement**"). Essentially, Eleuthera agreed to lend 101 up to AUD \$100,000,000 from the effective commencement date of 30 January 2019 (the date of incorporation of 101) (the "Facility").

[See Facility Agreement at pages 94-103 of JM-1]

39. Under the definitions and interpretation section of the Facility Agreement, 'purpose' was defined as *"the making of investments by [101] with the consent of [Eleuthera] including investments in technology-related companies sourced by the Mayfair 101 Group of companies"*.

40. On the same day, a resolution was duly passed by 101 to, *inter alia*:-

- a. Appoint KMPG as the company's accountants;
- b. Declare that the proposed IPO Facility was invalid, null and void;
- c. Enter into the Facility Agreement with Eleuthera; and
- d. Make the necessary updates to the company's financial records.

[See Directors Resolution dated 15 July 2020 at pages 104 of JM-1]

41. Clause 2 of the Facility Agreement stated as follows:-

2.1 Facility Agreement

The Lender agrees, on the terms and subject to the conditions set out in this Agreement, that it has provided, and will provide, Advances to the Borrower by way of cash advances up to the Facility Limit for the Term.

2.2 Advances

(a) Subject to the prior and continuing satisfaction of the Borrower's obligations under this Agreement, the Lender shall, upon request by the Borrower, provide an Advance to the Borrower by way of cash advance on the Drawdown Date on the terms and subject to the conditions set out in this Agreement. Such a request may be made in any manner agreed upon by the parties.

(b) The Borrower may only request an Advance under clause 2.2 where the amount requested will not result in the sum of all Advances (less any repayments) exceeding the Facility Limit.

2.3 Expiry

This Agreement ends on the Expiry Date as defined in clause 1.1

[emphasis added]

42. Thus, under the Facility Agreement, 101 was entitled to request cash advances of any amount provided the sum total of unpaid advances did not exceed AUD \$100,000,000. The applicable interest rate (8% per annum) would accrue daily on the balance of the amount owing commencing from the drawdown date(s), and compound monthly commencing from the drawdown date(s).
43. Further, Clause 3 in respect of Repayment of the Facility stated as follows:

3.1 Repayment

(a) The Borrower must repay and finally discharge the Repayment Amount to the Lender by the expiry of the Term unless otherwise agreed in writing by the Lender and the Borrower.

(b) Notwithstanding the Term, the Lender agrees that the Borrower may repay the whole or any part of the Amount Owing including the Interest accrued then outstanding at any time and from time to time provided:

(i) the Borrower gives the Lender at least five (5) Business Days prior notice thereof in writing and specify in such notice:

(A) the date for the prepayment; and

(B) the amount to be prepaid.

(ii) any such prepayment must be in an amount that is not less than ten thousand Australian dollars (AUD 10,000).

3.2 Payments

- (a) *All payments by the Borrower to the Lender under this Agreement must be made in Australian dollars in freely and immediately available funds at such office or bank as may be notified to the Borrower from time to time by the Lender.*
- (b) *The parties acknowledge and agree that any payments made by the Borrower to the Lender pursuant to this Agreement will be applied firstly in payment of Interest and secondly in repayment of the Amount Owing outstanding at that time.*

- 44. The term of the Facility as defined in the Facility Agreement is fifteen (15) years from the relevant date(s) agreed between Eleuthera and IPO as the drawdown of advances.
- 45. The Facility Agreement further provided that this was subject to an expiry date of seventeen (17) years from the commencement date of 30 January 2019.

E. THE SHARE SALE AGREEMENT

- 46. As stated at paragraph 23 above, 101 entered into the Share Sale Agreement with IPO No. 3 to acquire 21,250,000 ordinary shares in Accloud (the "**Accloud Shares**") for EUR 12,156,310.61/ the equivalent of AUD \$19,460,672.96 at the time (defined in the Agreement as the "**Cash Component**"). This Agreement was executed on 4 October 2019 and made effective on 30 January 2019.

[See Share Sale Agreement at pages 105-116 of JM-1]

- 47. Clause 2 of the Share Sale Agreement stated as follows:

2 Agreement to sell and buy the Shares

2.1 Sale and purchase

The Vendor, on the terms and conditions of this agreement, sells the Shares, together with all benefits, rights and entitlements accrued or attaching, to the Purchaser free from any encumbrances security or third-party interests.

2.2 Title property and risk

The title to, property in and risk of the Shares:

- (a) *until Completion, remain solely with the Vendor; and*
- (b) *pass to the Purchaser on and from Completion.*

2.3 Consideration

In consideration for the Shares, the Purchaser has agreed to pay to the Vendor the Cash Component.

[emphasis added]

48. 101's acquisition of the Accloud Shares for the Cash Component was for valuable consideration and the Shares were valued at fair market price (€0.57 per share as at 30 January 2019 as set out in Schedule 2 to the Share Sale Agreement).
49. For completeness, the Share Sale Agreement provided that IPO No. 3 was the beneficial owner of the Accloud Shares as a portion of the Shares was held in its name with the remainder being held in the names of 4 other Mayfair Group entities as bare trustees/ nominees. A summary of the entities holding the Accloud Shares sold to 101 under the Share Sale Agreement is set out below:-

Entity	Quantity of shares
IPO Capital Pty Ltd (" IPO Capital ") (as bare trustee/ nominee)	5,160,428
Online Investments (as bare trustee/ nominee)	3,243,827
IPO (as bare trustee/ nominee)	1,595,745
IPO No 3	5,250,000
IPO Wealth Holdings No 6 Pty Ltd (" IPO No. 6 ") (as bare trustee/ nominee)	6,000,000
Total	21,250,000

50. IPO Capital, Online Investments, IPO and IPO No. 6 will be referred to as the "**Nominee Parties**" in this context. Other relevant documentation executed in respect of the above and in respect of 101's acquisition of all the rights, title and interest in the Accloud Shares are as follows:-

- a. Share Sale Agreements under which IPO No. 3 agreed to purchase the Accloud shares held by the Nominee Parties;
- b. Nominee Shareholder Deeds under which the Nominee Parties agreed to hold the Accloud shares sold to IPO No. 3 as nominee shareholder for IPO No. 3; and
- c. A Deed of Novation between 101, IPO No. 3 and the Nominee Parties under which (i) IPO No. 3 agreed to novate its rights and obligations under the abovementioned Deeds to 101 and (ii) the Nominee Parties consented to the novation on the terms of the said Deeds.

[See copies of the Share Sale Agreements at pages 117-164 of JM-1]

[See copies of the Nominee Shareholder Deeds at pages 165-187 of JM-1]

[See a copy of the Deed of Novation at pages 188-194 of JM-1]

51. On or about 4 October 2019, I also executed 5 stock transfer forms for the share parcels detailed at paragraph 48 above ("**Forms**") in favour of 101. The Forms were posted to Accloud's registered office shortly thereafter for processing by its share registry.

[See Whatsapp message from Accloud's CEO, Mr Ross James, to me at page 690 of JM-1, confirming receipt of the Forms]

52. However, the Liquidators of the IPO Wealth Holdings Group have wrongfully refused to execute or follow-up on the documentation required to formalise the transfer of the Accloud Shares to 101. As at the date of this Affidavit, none of the Forms have been processed by Accloud's head office.

F. 101 MADE FULL PAYMENT FOR THE ACCLOUD SHARES BY DRAWING DOWN ON ITS FACILITY WITH ELEUTHERA

53. With the Facility Agreement in place, 101 drew down on its Facility with Eleuthera to fund its purchase of the Accloud Shares from IPO No. 3 thereby paying for the Shares in full in various tranches from June 2019 to November 2019.
54. As IPO No. 3 (a SPV) did not have a bank account, payment was made to IPO's bank account(s). A summary is set out below:-

Transactions	Date Range	# Payments	Total (AUD)
Transfers from Online Investments (which had been the trustee for Sunseeker) to IPO	28 June 2019 to 11 September 2019	36	13,880,000.00
Transfers from Eleuthera to IPO	6 September 2019 to 20 November 2019	7	5,580,672.96
	Total	43	<u>19,460,672.96</u>

55. In other words, the purchase of Shares by 101 from IPO No. 3 was funded by way of the following cash advances pursuant to the Facility Agreement:-

- a. AUD 5,580,672.96 was transferred directly from Eleuthera to IPO; and
- b. AUD 13,880,000 was transferred from Sunseeker to IPO on behalf of Eleuthera.

[See Eleuthera bank statements (redacted) at pages 196-410 of JM-1]

[See Online Investment Pty Ltd bank statements (redacted) at pages 411-434 of JM-1]

[See 'Loan Eleuthera Accloud Share Purchase Transactions' for Sunseeker and 'Asset Purchase Account Clearing Account Transactions' for Eleuthera at pages 436-439 of JM-1]

56. Notice of the drawdown pursuant to the Facility Agreement was given on 15 July 2020.

[See Notice of Drawdown dated 15 July 2020 at page 435 of JM-1]

57. A detailed breakdown of the transfers is set out below:-

S/N	Date	Source / Destination	Amount (AUD)
<i>From Online Investments / Sunseeker to IPO's Bank Accounts ending with 4824 and 4816</i>			
1.	28 June 2019	Sunseeker to IPO	500,000
2.	1 July 2019	Sunseeker to IPO	800,000
3.	15 July 2019	Sunseeker to IPO	950,000
4.	18 July 2019	Sunseeker to IPO	400,000
5.	22 July 2019	Sunseeker to IPO	100,000
6.	23 July 2019	Sunseeker to IPO	200,000
7.	26 July 2019	Sunseeker to IPO	150,000
8.	30 July 2019	Sunseeker to IPO	800,000
9.	6 August 2019	Sunseeker to IPO	1,000,000
10.	8 August 2019	Sunseeker to IPO	280,000
11.	9 August 2019	Sunseeker to IPO	170,000
12.	9 August 2019	Sunseeker to IPO	780,000
13.	9 August 2019	Sunseeker to IPO	40,000

14.	12 August 2019	Sunseeker to IPO	30,000
15.	12 August 2019	Sunseeker to IPO	30,000
16.	15 August 2019	Sunseeker to IPO	150,000
17.	15 August 2019	Sunseeker to IPO	400,000
18.	19 August 2019	Sunseeker to IPO	40,000
19.	20 August 2019	Sunseeker to IPO	995,000
20.	21 August 2019	Sunseeker to IPO	1,000,000
21.	22 August 2019	Sunseeker to IPO	500,000
22.	22 August 2019	Sunseeker to IPO	60,000
23.	22 August 2019	Sunseeker to IPO	200,000
24.	28 August 2019	Sunseeker to IPO	150,000
25.	28 August 2019	Sunseeker to IPO	35,000
26.	29 August 2019	Sunseeker to IPO	200,000
27.	30 August 2019	Sunseeker to IPO	1,400,000
28.	30 August 2019	Sunseeker to IPO	300,000
29.	2 September 2019	Sunseeker to IPO	100,000
30.	2 September 2019	Sunseeker to IPO	250,000
31.	4 September 2019	Sunseeker to IPO	100,000
32.	5 September 2019	Sunseeker to IPO	500,000
33.	5 September 2019	Sunseeker to IPO	350,000
34.	6 September 2019	Sunseeker to IPO	270,000
35.	9 September 2019	Sunseeker to IPO	150,000
36.	11 September 2019	Sunseeker to IPO	500,000
		Sub-Total	<u>13,880,000</u>
S/N	Date	Source / Destination	Amount (AUD)
From Eleuthera to IPO's Bank Account Ending with 4824			
37.	6 September 2019	Eleuthera to IPO	80,000
38.	30 September 2019	Eleuthera to IPO	1,500,000

39.	3 October 2019	Eleuthera to IPO	2,200,000
40.	1 November 2019	Eleuthera to IPO	75,000
41.	13 November 2019	Eleuthera to IPO	75,000
42.	15 November 2019	Eleuthera to IPO	1,000,000
43.	20 November 2019	Eleuthera to IPO	700,000
		Sub-Total	5,630,000
		Sub-Total (Payments from Sunseeker to IPO plus payments from Eleuthera to IPO)	13,880,000 + 5,630,000 = 19,510,000
		Amount applied to Eleuthera loan balance	- 49,327.04
		Total	<u>19,460,672.96</u>

[See emails with ANZ confirming IPO's account details ending with 4824 and 4816 at pages 691-695 of JM-1]

58. To clarify, a total of AUD 19,510,000 was transferred to IPO between June and November 2019, of which the sum of AUD 19,460,672.96 was for payment for the Accloud Shares.
59. In the premises, the amount of AUD 19,460,672.96 is owing by 101 to Eleuthera, and subject to further interest which continues to accrue pursuant to the Facility Agreement.

G. ALLEGATIONS BY / CONDUCT OF THE LIQUIDATORS NECESSITATING THIS CLAIM

60. I now address certain events and correspondence exchanged which has necessitated this Claim.
61. On or about 24 July 2020, the Provisional Liquidators of IPO No. 3 purported to terminate the Share Sale Agreement. They alleged that 101 failed to pay the Cash

Component and accordingly had breached an essential term of the Share Sale Agreement. As explained in this Affidavit, this is incorrect.

[See Notice of Termination dated 24 July 2020 at page 440 of JM-1]

62. On 28 July 2020, 101 issued a reply via its solicitors AJ & Co Lawyers Pty Ltd ("**AJ & Co**") emphasising, *inter alia*, that valuable consideration has been paid for the Accloud Shares, that the termination notice was invalid, and that the Shares are the legal property of 101.

[See AJ & Co's letter dated 28 July 2020 at pages 441-442 of JM-1]

63. On 29 July 2020, Thomson Geer, acting on behalf of the Provisional Liquidators, issued a reply setting out, *inter alia*, its client's position that:-
- a. 101 failed to pay the Cash Component;
 - b. 101 did not acquire any interest in the Accloud Shares;
 - c. The Provisional Liquidators do not have any further obligations to 101 under the Share Sale Agreement;
 - d. It continues to rely on the Notice of Termination which was validly served and which had the immediate effect of terminating the Share Sale Agreement; and
 - e. The Shares were paid for from funds advanced to IPO out of the IPO Wealth Fund and there is an intention to deprive the investors in the Fund of the benefit of the Shares.
64. Thomson Geer also requested an undertaking from 101 and I to refrain from taking any steps to effect the transfer of the Shares into its name pending the resolution or determination of the dispute as to ownership of the Shares.

[See Thomson Geer's letter dated 29 July 2020 at pages 443-444 of JM-1]

65. On 31 July 2020, AJ & Co issued a reply stating, *inter alia*, that 101 undertook "*not to transfer or otherwise deal with the Shares until the notice of termination issue is resolved*". They further stated that I was not instructing them in relation to this matter and rejected the assertion that there was an intention to deprive the investors in the Fund of the benefit of the Shares. Rather, the cash consideration paid for the shares benefitted the Fund's investors as it enabled the Fund to meet its ongoing liquidity requirements including facilitating redemptions.

[See AJ & Co's letter dated 31 July 2020 at page 445 of JM-1]

66. On the same day (31 July 2020), Thomson Geer replied alleging, *inter alia*, that 101 forms part of the Mayfair 101 Group and that I control the affairs of 101. They requested that AJ & Co confirm if they are able to obtain instructions from me in respect of the undertaking sought.
[See Thomson Geer's letter dated 31 July 2020 at pages 446-447 of JM-1]
67. On 2 August 2020, AJ & Co reiterated that it did not act for me in relation to this matter.
[See AJ & Co's letter dated 2 August 2020 at pages 448-449 of JM-1]
68. On 3 August 2020, Thomson Geer issued a letter directly to me referring to the abovementioned correspondence and requested an undertaking from me not to transfer or otherwise deal with the Shares until its client's dispute with 101 regarding the Notice of Termination is resolved.
[See Thomson Geer's letter dated 3 August 2020 at pages 450-461 of JM-1]
69. On 6 August 2020, I voluntarily provided Thomson Geer with the requested undertaking.
[See my email dated 6 August 2020 at pages 462-463 of JM-1]
70. On 9 December 2020, the Liquidators issued a letter to 101:-
- a. Referring to its "*previous correspondence and in particular to [its] letter dated 3 August 2020*";
 - b. Informing 101 that the IPO had been placed into liquidation;
 - c. Alleging that 101 owes IPO \$12,628,310.25 which was purportedly advanced "*to finance 101 Investments Limited's investments in Paymate India Private Limited and a Revenue Share Agreement with Accloud Mauritius Limited and Accloud PLC*"; and
 - d. Demanding immediate payment of the \$12,628,310.25.
- [See Dye & Co's letter dated 9 December 2020 at page 464 of JM-1]
71. On 24 December 2020, 101's lawyers Carey Olsen issued a letter denying that it owes IPO the sum of AUD 12,628,310.25 or any sum at all. The letter also set out, *inter alia*, 101's position that the Accloud Transaction was largely funded by drawing down on its facility with Eleuthera and for valuable consideration. 101 further requested the Liquidators' confirmation that no debt is due or owing from it to IPO.

[See Carey Olsen's letter dated 24 December 2020 at pages 465-477 of JM-1]

72. On 31 December 2020, the Liquidators' lawyers, Thomson Geer, issued an "*interim*" response stating, *inter alia*, as follows:-

- a. That they maintain IPO's claim against 101 for AUD 12,628,310.25;
- b. That they maintain IPO No. 3's reliance on the Notice of Termination of the SSA;
and
- c. That "*both of [Eleuthera Group Pty Ltd and Sunseeker Holdings Pty Ltd] received more funds from IPO than they eventually repaid to it.*"

[See Thomson Geer's letter dated 31 December 2020 at pages 478-479 of JM-1]

73. Again, the Liquidators' allegations are unmeritorious. Funds that flowed from IPO to Eleuthera and other Mayfair Group entities were applied directly to investments held by the IPO Wealth Holdings Group, investment management and marketing expenses allocated to the SPVs in line with the Mayfair Group's internal policy.

74. I also reiterate that the payments made by Eleuthera on behalf of 101 to IPO for the Accloud Shares were made to settle the Accloud Transaction and for no other purpose.

75. Thomson Geer concluded their response by stating as follows, "*[w]e advise that we anticipate responding further to you during the week commencing 18 January 2021.*"

76. Despite 101's pre-action letter to Dye & Co and Thomson Geer's clear representation that they anticipated responding further in the week commencing 18 January 2021, the Liquidators proceeded to file an originating process in the Supreme Court of Victoria on 7 January 2021 on behalf of IPO No. 3 and in their personal capacities against 101, Accloud and myself personally (the "**Australian Proceeding**").

77. The core of the Australian Proceeding is the ownership of the Accloud Shares.

78. I am advised and believe that the Liquidators are wrong and acted in bad faith in commencing the Australian Proceeding.

79. The financing of the Accloud Transaction, which falls under the Facility Agreement, is a necessary pre-determination to the ownership of the Accloud Shares. This is supported by the very fact that the Liquidators' own alleged basis for terminating the Share Sale Agreement was that 101 "*failed to pay the Cash Component or any part thereof to the Vendor on the Completion Date or at any time thereafter and are therefore in breach of an essential term of the Agreement*".

80. Despite this, the Liquidators have wrongfully and mischievously attempted to circumvent this fundamental issue which, as set out in the Facility Agreement, is to be decided by the BVI Courts and in accordance with BVI law.
81. Further, the correspondence exchanged just days prior directly dealt with the issue of financing/ payment for the Accloud Shares and clearly stated 101's position that the said Shares were fully paid for. However, the Liquidators (through Thomson Geer) only exhibited the alleged Notice of Termination dated 24 July 2020 in the Australian Proceeding and omitted and/or failed to exhibit or apprise the Court of the other correspondence listed at paragraphs 60 to 72 above. I can only infer that this was done intentionally so as to prevent a full and accurate position being put before the Court, as otherwise it would have been apparent to the Australian Court that the issue that is the subject of this claim (and of which the Liquidators were by then well aware) would need to be determined first.

[See Originating Process and Form for Service Out dated 7 January 2021 at pages 480-495 of JM-1 and the Supporting Affidavit of Norman Fryde dated 7 January 2021 at pages 496-689 of JM-1]

82. Finally, on 15 January 2021, Thomson Geer issued a letter to Carey Olsen on behalf of the Liquidators of IPO requesting for "*a detailed explanation of the basis upon which [101] denies liability to [IPO]*". The Liquidators have made only bare allegations against 101 and it is incumbent upon them to show how or why IPO's books or records supposedly disclose a liability of AUD 12,628,310.25 on 101's part. In any event, 101 has instructed its lawyers to respond to this letter imminently.

[See Thomson Geer's 15 January 2021 letter at page 696 of JM-1]

H. CLAIMS AGAINST THE DEFENDANTS

83. In the premises, as against the Defendants, I am advised and believe that 101 is entitled to:
- a. A declaration that the amount of AUD \$19,460,672.96, which was paid by and on behalf of Eleuthera to IPO for the shares in Accloud sold by IPO No. 3 to 101 pursuant to a Share Sale Agreement executed on 4 October 2019, is owing by 101 to Eleuthera pursuant to the Facility Agreement executed on 15 July 2020 ("**Facility Agreement**") at pages 94-103 of Exhibit JM-1, subject to further interest which continues to accrue as set out in the Facility Agreement;
 - b. Costs of this Claim; and

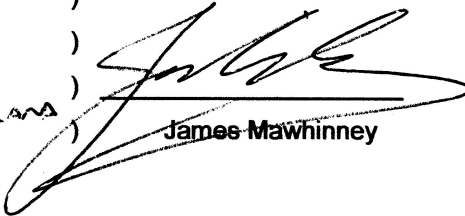
c. Such further and/or other relief as the Court thinks fit.

84. I will leave it to 101's legal counsel to make the necessary submissions before the Honourable Court.

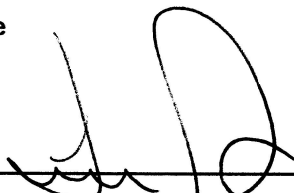
I. **CONCLUSION**

85. In the circumstances, I respectfully ask the Honourable Court to grant 101 the orders sought in the Fixed Date Claim Form.

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


James Mawhinney

Before me



Commissioner for Oaths / Notary Public / Solicitor

JACOB KING ROBERTSON
SOLICITOR

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

BETWEEN

101 INVESTMENTS LIMITED

Claimant

And

(1) ELEUTHERA GROUP PTY LTD

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

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

Defendants

FIRST AFFIDAVIT OF JAMES MAWHINNEY

CAREY OLSEN

Legal Practitioners for the Claimant
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