IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 311 OF 2007

18/12/2007

BETWEEN:

PHOENIX MERIDIAN EQUITY LIMITED

Plaintiff

AND: (1) LYXOR ASSET MANAGEMENT S.A., A WHOLLY OWNED SUBSIDIARY OF SOCIETE GENERALE [A company incorporated under the laws of France]

(2) SCOTIABANK & TRUST (CAYMAN) LIMITED [A company incorporated under the laws of the Cayman Islands]

Defendants

Appearances: Mr. Roger Ellis Q.C. instructed by Mr.William Helfrecht of Bodden & Bodden both for the Applicant/Plaintiff
Mr. Christopher Style Q.C. instructed by Mr. Colin McKie and Mr. Barnaby Stueck of Maples and Calder both for the Respondent/First Defendant
Ms. Laura Hatfield of Solomon Harris for the Second Defendant

Before: Hon. Justice Henderson

Heard: December 17 & 18, 2007

RULING

The plaintiff, Phoenix Meridian Equity Limited ("Phoenix") seeks on this summary judgment application certain declarations relating to its investment of approximately US $553 million in two Cayman unit trusts - Patriot I Protected Fund and Patriot Focus Protected Fund ("the protected funds"). The entirety of this investment was reinvested in two leveraged funds which invested the leveraged amounts in two master funds. The lock-in period has now expired and Phoenix wishes to redeem the entirety of its units in the protected funds.

The NAVs of those protected funds are said by the respondents to be, very approximately, US $100 million less than the NAVs of the leveraged funds. Phoenix disagrees and advances its own analysis which suggests that the two sets of NAVs should be identical at redemption. The requested declarations are intended to confirm the validity of Phoenix's position.

Lying at the heart of this dispute is a debate about the components of two swap transactions between the protected funds and Société Générale ("SG"), the parent of the first defendant. The two fund-specific memoranda give to SG, as a part of the swaps, "the right to borrow units [of the leveraged funds] for hedging purposes." The respondent says this right to borrow has been given to SG until the maturity date in 2015. Because of the prospective early redemption, SG will have lost several years of use of this right. The value of that loss must be paid by Phoenix as the price of an early redemption and that value contributes the bulk of the $100 million figure.

Phoenix says that the value of the right to borrow for the purpose of an early redemption is essentially nothing. Relying on certain provisions of the Confirmation of Stock Lending

Agreements, it says that SG is now prohibited from borrowing any further. Central to Phoenix's argument is its reliance on section 2 of the Confirmations, which reads:

> "Specific provisions - Modifications of the Quantity of Securities.
>
> Each Party is entitled at any time to request the modification of the Quantity of Securities or the termination of part or all of the Loan by notification sent to the other Party. In particular, LAM [the first defendant] will request a modification of the Quantity of Securities in the event of a decrease or increase in the outstanding number of units of the Fund. Such change in the Quantity of Securities shall be made in the same proportion as the change in the outstanding number of units of the Fund."

Phoenix says it will, upon early redemption, request a modification in the Quantity of Securities to zero because that is the number of units which will remain in the funds. This state of affairs will necessarily prevent SG from making any further use of the right to borrow after the early redemption date. It follows that the right, upon early redemption, has no value at all.

The first defendant replies that this reading of the contractual documents makes a nonsense of the swap transactions. It is wholly contrary to practice in the industry. The contractual provisions relied upon must be construed according to the law of France. I have no sworn evidence before me from any qualified expert in that field.

Applying, for present purposes, the law of the Cayman Islands to the task of construction, I am satisfied that the meaning of the contractual provisions is unclear. This is not a case where the court will simply construe the provisions according to the plain and natural meaning of the words used because it cannot. Extrinsic evidence will be admissible to assist in the construction of these provisions and will be necessary. In particular, each of the parties can and should adduce evidence

of industry practices, i.e., the custom of the trade. I anticipate that the expert evidence on this subject will be controversial and so cross-examination of the experts will be required.

For these brief reasons, I find that the issues are not suitable for resolution on a summary judgment application. The application is dismissed.

Lyxor has asked for its costs of this application to be assessed on the indemnity basis, on the ground that the application was doomed to failure and brought unreasonably. I accept that, in appropriate circumstances, indemnity costs can be awarded against an unsuccessful applicant for summary judgment on the ground that the application should never have been brought. This is not one of those cases. I award to Lyxor its costs on the standard basis, to be taxed if not agreed.

Dated this 18th day of December, 2007

Henderson, J.

Henderson, J.
Judge of the Grand Court