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1 IN CHAMBERS
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS

3
4 CAUSE NO: 496 of 2002 2007



5
6 IN THE MATTER OF THE COMPANIES LAW (2001 SECOND
7 REVISION)

8
9 AND IN THE MATTER OF THE TRADE AND COMMERCE BANK

10
11 BEFORE: The Honourable Madam Justice Levers

12
13 APPEARANCES:

14 Mr. Simon Dickson of Quin & Hampson for the Third Official
15 Liquidator

16 Mr. Kyle Broadhurst of Broadhurst Barristers for the Creditors

17 Mr. Guy Manning of Campbells for the Joint Official Liquidators

18
19 HEARD: 8th May 2007

20

RULING

21

22 Levers, J.

23



24 The following applications are presently before the Court:

25 (1) An application by the Third Official Liquidator ("TOL") for the
26 approval of their fees and expenses;

27 (2) An application by the Joint Official Liquidators ("JOLs") for the
28 approved fees and expenses;

29 (3) An application by JOLs to approve of an arrangement;

30 (4) An application by JOLs for payment of approved fees and
31 expenses;

1 (5) An application by the Liquidation Committee for directions to
2 determine and/vary the order of priority of Broadhurst Barristers
3 fees.
4

5 At the commencement of the hearing, the parties requested the Court
6 to adjourn the application by the Liquidation Committee for directions
7 to determine Broadhurst Barristers fees because, by consent, it has
8 been agreed that Broadhurst Barristers fees will stand at the same
9 level of priority as the legal fees payable to the other parties.
10

11 That leaves me to deal with the other summonses. The Joint Official
12 Liquidators have taken out two summonses. They read as follows:

13 The First

14 Let all parties concerned attend before the Judge in Chambers at
15 the Law Courts, George Town, Grand Cayman on the 8th day of
16 May at 9:30AM on the hearing of an application by the Joint
17 Official Liquidators of the Company for the setting and approval of
18 their fees and expenses.
19

20 The Second

21 Let all parties concerned attend before the Judge in Chambers at
22 the Law Courts, George Town, Grand Cayman on the 8th May
23 2007 at 9:30AM on the hearing of applications by the Joint Official
24 Liquidators of the Company:

25 (1) to settle the terms of Madam Justice Levers' Order dated
26 26 September 2006; and

1 (2) for directions regarding the payment of the approved fees
2 and expenses of the Joint Official Liquidators, the
3 approved fees and expenses of the Third Official
4 Liquidator, and all other liquidation expenses.
5

6 It is my understanding that part of Summons No. 1 was to be
7 adjourned. No. 2 was to be adjourned until the Court settled the
8 issues raised in the summons for the approval of the fees and
9 expenses.
10

11 In this matter there is a Liquidation Committee. The Committee is
12 comprised of attorneys who represent several creditors and the JOLs
13 have submitted their invoices through the Committee. The
14 Committee having reviewed it, and represented by Mr. Broadhurst at
15 today's hearing, advised the Court that the JOLs fees have been
16 approved in principle, save and except, for the provisional liquidation
17 fees. Those are being reviewed. This is the reason that part of
18 Summons No.1 is being adjourned.
19

20 This is an insolvent company and fees have to be scrutinized
21 extremely carefully. I am aware of the present Practice Direction and
22 the limited responsibility the Court has, once there is a Liquidation

1 Committee formed. It is also of some concern that the Liquidators
2 have not endeavored to maintain the fee structure of a less than
3 market value, in view of the insolvency of this Company. However,
4 guided by the recent judgment of the Privy Council in these matters,
5 once the Creditors Committee has approved the fees, it is my view
6 that it is not for this Court to step in to the Liquidation Committee's
7 issues and act as a taxing master. In those circumstances, the fees
8 approved by the liquidation committee are approved by the Court. To
9 date that is some \$1,888,107.62 and expenses in the sum of
10 \$210,186.33. I adjourn the question of the provisional liquidation
11 fees and expenses and legal fees for the parties to attempt a
12 settlement.

13
14 There is another summons taken out by the JOLs for approval of an
15 asset recovery agreement between the Company and a law firm in
16 Argentine with the costs of the application be paid from the assets of
17 the Company. I foresee certain conflicts of interest in this matter.
18 The law firm involved with which this agreement is executed is a firm
19 that is on the Creditors Committee representing several creditors. In
20 review of this, the Court has ordered that this agreement be put to the

1 Liquidation Committee by Mr. Kyle Broadhurst, attorney acting as an
2 advisory to the Creditors and to advise the Court if a resolution in
3 writing is available from the Committee giving their approval of this
4 agreement. The Court also required an estimate of the JOLs fees for
5 this matter which should be capped, and on receipt of all that
6 information the Court should review the application. In the event that
7 this matter does come before the Court without agreement with the
8 Liquidation Committee, it must be borne in mind that the party to the
9 agreement who is on the Liquidation Committee should not vote in
10 any resolution to be passed.

11

12 That now leaves the question of the JOLs application for the payment
13 of approved fees and expenses. As the matter is complicated by the
14 fact of insolvency the parties wish to address me on that aspect and
15 for purposes of this Ruling no decision will be made on that aspect of
16 the application.

17

18 Before I go on to the Third Official Liquidator's application there is a
19 matter that should be dealt with. Mr. Kyle Broadhurst has received a
20 letter from Moyano Rodriguez & Associates; a firm that apparently

1 has some involvement with the Trade and Commerce matter. He has
2 written to Mr. Broadhurst and the allegations made therein are quite
3 serious. The Court is entitled to be apprised by all the objectors. In
4 making this decision I bear in mind that every individual creditor could
5 object and the matter could be prolonged eternally. However, the
6 Court has a discretion as to whether it should hear from a party. In
7 view of the contents of the letter I am of the opinion that the Court
8 should invite this attorney-at-law who represents interests in this
9 matter to make representations officially in writing to the Court or
10 instruct local attorneys to appear on his behalf or appear on his
11 behalf himself.

12

13 The Cayman law is that a liquidation involves the appointment of a
14 liquidator whose function it is to act as the agent of the company and
15 to realize the companies assets, to identify the companies creditors
16 and the amounts of their claim and to distribute the proceeds etc.

17 The duty of a liquidator is to maximize the realization of the
18 company's assets for the benefit of company's creditors. The
19 allegations made in this letter are that information was given as to
20 assets, which were ignored. The Court, in those circumstances,

1 cannot turn a blind eye to this letter. This is a substantial complaint
2 and the Court must give it some attention. The Clerk of the Court will
3 be so directed to write to the attorney in question.

4

5 I now turn to the question of the Third Liquidator's fees. There is
6 before me, presented by Mr. Broadhurst, a submission on behalf of
7 Liquidation Committee raising some concerns. They are as follows:

8

9 The value of the work completed

10

11

12 They seek the review of the fees incurred prior to August 2006 on the
13 basis that little was accomplished by the Third Official Liquidator in
14 this matter to justify the fees claimed. They apparently have
15 concerns, as a result of what they perceive to be lost opportunities to
16 advance claims and further concerns that the payment to the Third
17 Official Liquidator has brought in no value to the liquidation estate.

18

19 The use of and hourly rates for the support staff

20

21 Mr. Broadhurst submits that their concern is that the work was done
22 by a partner and a manager as opposed to support staff. The

1 concern also includes the significant administrative charges that are
2 being charged. They also object to the payment of fees for
3 applications to approve fees. The Committee also questions the
4 amount of money that has been sent in disagreements and disputes
5 between the Joint Official Liquidators and the Third Official Liquidator.
6 These are, of course, concerns that need to be expressed to the
7 Court and the Court must weigh it in the balance.

8
9 The position in this matter is that the Third Official Liquidator was
10 given a very restricted mandate to pursue a claim against a particular
11 party. The Third Official Liquidator and the Joint Official Liquidators
12 apparently from inception did not see eye to eye. The Court intends
13 to review each objection individually, but just as a general
14 background to this review, it must be remembered that it is not
15 always at the inception of a liquidation that the fruits of the labour can
16 be seen immediately. The Court must treat the Joint Official
17 Liquidators and the Third Official Liquidator equally. There should be
18 parity between the two. The Liquidation Committee and the attorneys
19 involved must see now that the costs of negotiating fees are
20 becoming uneconomic and especially as a matter of principle the fees

1 to be paid to all parties (that is the JOLs and the Third Official
2 Liquidator) must be at market value.

3

4 Mr. Simon Dickson on behalf of the Third Official Liquidator submits
5 that these objections have no proper intellectual basis. The
6 Committee's desire to investigate the fees is costing more money
7 than necessary, he submits and that the Committee has since
8 December of 2006 had time to review the files which have been
9 opened for inspection at all times to them and they have not done so.
10 He urges the Court to review these objections against that
11 background.

12

13 The value of the work completed is the first objection

14

15 Mr. Dickson responds that it cannot be quantified, in terms of the
16 value of the work done being assessed by the value of it to the estate.
17 This is an eight hundred and eighty two million dollar lawsuit against
18 Arthur Anderson. It is an extremely serious lawsuit against a
19 professional and that in those circumstances the negotiations, the
20 investigations, and the instructions could only be done or given by a

1 senior partner. Regrettably, it would appear that the Liquidation
2 Committee sat back and allowed these negotiations and work to be
3 undertaken whilst being invoiced. It would appear that it is now an
4 impossible task to quantify the value of the work done and the
5 necessity for the work done, when in fact a lawsuit has been
6 launched based on the work undertaken by the TOL. The statute of
7 limitation has been met (7 October 2006) in the face of a lot of
8 adversity from both the Joint Official Liquidators and the Liquidation
9 Committee. The Committee was formed in October 2004 and nothing
10 has been said about the value of the work invoiced till now.

11

12 The use of and the rates for the support staff

13

14 The above comments as to the difficulty of negotiations, the necessity
15 for instructions to be given by a partner and the requirement for a lot
16 of investigative work to be done is Mr. Dickson's response to the
17 hourly rate and the support staff. The administrative charges may
18 appear to be high and I agree with the objection on that basis but the
19 review of these charges now may well costs more than the amount
20 invoiced. This is bearing in mind that this is an insolvent estate. It

1 may be that those charges are negotiable between the parties. At
2 this stage I would not order a review but I would order a discussion
3 between the parties as to those charges of \$19,448.50.

4

5 The fees to be paid for these applications

6

7 The Privy Council's decisions as to liquidator's fees has made it quite
8 clear that these fees are to be paid and I have nothing further to add
9 to that. Their fees are approved.

10

11 The dispute between the JOLs and the Third Official Liquidator

12

13 This was a fact and I do not believe that one party alone is to blame.

14 The JOLs refused to give the \$75,000 that was required to
15 commence proceedings, the Liquidation Committee did not step in
16 and approve the fees or resolve the dispute. Should this lawsuit be
17 successful, the liquidation stands to gain substantial sums of money.

18 The JOLs have been paid for time spent so must the TOL. I rule,
19 therefore, that all the Third Official Liquidator's fees as set out in the
20 fifth affidavit of the TOL at CDJ5/2(3) and the sixth affidavit of the

1 TOL at CDJ6/3 are approved save and except for US\$19,448.50 for
2 the support staff which should be the subject of discussion with a
3 view to a reduction.

4

5 I also rule that the fees for Diamond McCarthy Taylor Finley Bryant &
6 Lee LLP and Quin & Hampson for the sums claimed in paragraph 8
7 of the affidavit is approved.

8

9 Finally, I would like to state that the Liquidators must be careful that
10 they do not involve the liquidation in any further legal expenses, by
11 negotiating with persons who might have a conflict of interest and
12 thereby invite lawsuits from creditors. It is clear that the gentleman
13 with whom an agreement has been signed could be said to have a
14 conflict of interest between his duty to his clients (the creditors) and
15 the estate in the event of a dispute. In those circumstances steps
16 should be taken extremely carefully to ensure that he does not vote
17 on resolutions in which he has an interest and that all the creditors
18 are informed of the problems that could arise.

19

20 Costs of all the applications to be paid out of the assets recovered.



1

2 Dated this 11th day of May 2007

3

A handwritten signature in black ink, consisting of a stylized, cursive letter 'A' followed by a long horizontal stroke that extends to the right.

4 Judge of the Grand Court

