

Libary 14/9/06
28/9/06

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

3
4 CAUSE NOS. 238/06, 239/06, 240/06
5 241/06, 242/06, 243/06,
6 244/06 & 245/06
7

8 IN THE MATTER OF THE COMPANIES LAW (2004 REVISION)

9
10 AND IN THE MATTER OF UNIVEST MULTI-STRATEGY FUND LTD
11 (IN VOLUNTARY LIQUIDATION)

12 BETWEEN:

13 RSM RICHTER INC.



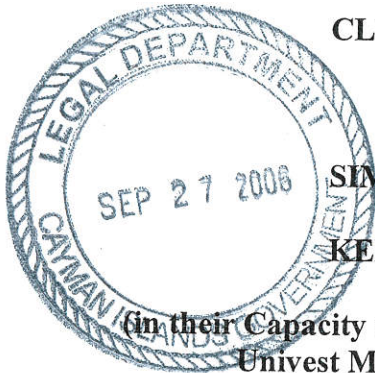
14
15 AND: RAYMOND MASSI

16
17 AND: CLIFFORD CULMER

Applicants

18
19 AND: SIMON WHICKER

20
21 AND: KEITH BLAKE



22
23 (In their Capacity as Joint Voluntary Liquidators of
24 Uninvest Market Neutral Fund Ltd.)
25 (In Voluntary Liquidation))

Respondents

26
27
28
29
30
31
32
33 **Appearances:** Mr. Kyle Broadhurst of Broadhurst Barristers for the Applicants
34 RMS Richter Inc., Raymond Massi and Clifford Culmer

35
36 Mr. Sam Dawson of Solomon Harris for the Joint Voluntary
37 Liquidators

38
39 Mr. Nick Robinson of Walkers for Uninvest Diversified Fund
40 (II) Ltd.

41
42
43 **Before:** Hon. Justice Henderson

44
45
46 **Heard:** September 13, 2006

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

JUDGEMENT

There are three applications before me: an application by RSM Richter Inc, Raymond Massi and Clifford Culmer for leave to amend the eight originating summonses filed by them in these causes; an application by the same parties for an extension of time to file further affidavit evidence; and an application by the Joint Voluntary Liquidators to strike out the originating summonses.

The Joint Voluntary Liquidators (“JVLs”), Simon Whicker and Keith Blake, are engaged in the liquidation of eight corporate entities to which I will refer collectively as the Debtor companies. Msrs. Massi and Culmer are Joint Official Liquidators of Olympus Uninvest Limited and of Mosaic Composite (US) Inc.; RSM Richter Inc is the receiver of several corporate entities; I shall refer collectively to these entities as the Creditor companies.

The Creditor companies have submitted a proof of claim to the JVLs in the Debtor companies’ liquidation. The proof of claim is in the most general of terms. It names each of the eight Debtor companies as “debtors” and it names each of the Creditor companies as “creditors”. It alleges that “the debtors (individually and/or collectively) were indebted to [the Creditor companies] in the aggregate sum of approximately \$100,000,000.00 Canadian Dollars (CDN \$100,000,000.00), subject to adjustment, amendment or partition between the [Creditor companies] (the “debt”).” The assertion that the debt is still due and owing is made “subject to further investigation, analysis and

1 review” and to the best of the current knowledge and belief of Mr. Massi. As to the
2 purpose of the debt, the claim says:

3 “the debt relates to and results from *inter alia*, investments
4 made by the [Creditor companies] and or redemption requests
5 made by and on behalf of such entities in respect of their
6 investments in the debtors and/or management and other fees
7 due by the debtors to the [Creditor companies] and/or transfers,
8 loans, advances, financial support, etc. made or granted to the
9 debtors by the [Creditor companies].”

10
11
12 No further particularization is given. There is no assertion of particular debts owing by
13 specific debtors to specific creditors.
14

15 The claim was rejected. The originating summonses ask for orders setting aside the
16 rejection; in effect, this is an appeal from the decision of the JVLs.

17
18 The Grand Court Rules provide that “all proceedings concerning or arising out of the
19 liquidation of any company shall, so far as practicable, be made in accordance with the
20 Insolvency Rules 1986 (SI 1986/1925), insofar as such rules are not inconsistent with the
21 law or such other rules as may be applied to the proceeding in question”: GCR Order
22 102 rule 17.

23
24 The Insolvency Rules 1986 specify certain matters which must be stated in a creditor’s
25 proof of debt (see Insolvency Rules 1986, section 4.75). The rules contemplate clearly
26 that a claim will be made by a specific, named corporate entity against the assets of a
27 particular named entity; a “rolled up” claim is too general to permit the appropriate level
28 of scrutiny by the liquidators. The creditor’s proof of debt must specify the total amount
29 of the individual claim, whether or not the amount includes outstanding uncapitalized

1 interest, particulars of how and when the debt was incurred, particulars of any securities
2 held, and certain other matters. The rules contemplate that documents which substantiate
3 the existence of the debt will be identified in the proof of debt. These rules represent the
4 established practice in the Cayman Islands, whether or not the liquidation is carried out
5 under court supervision.

6

7 The proof of debt submitted by the Creditor companies falls so short of this standard that
8 no further comment is necessary. Given its form, the JVLs had no option but to reject it.

9

10 I therefore conclude that the appeal against the rejection of the claim is entirely without
11 merit and will necessarily fail. In light of that finding, I order that each of the originating
12 summonses is struck out on the ground that they disclose no reasonable cause of action.

13 The application for an extension of time to file further evidence is dismissed.

14

15 I accept the contention of the JVLs that no prejudice has been occasioned to the Creditor
16 companies by this result. At present, those companies have little or no evidence in their
17 possession to support the existence of a debt or debts. However, they have obtained an
18 order of this court on August 24, 2006 requiring the JVLs to make disclosure of any
19 documents supporting the existence of such debts and permitting the examination of both
20 JVLs under oath. If and when the Creditor companies come into possession of
21 documentary evidence supporting the existence of a debt or debts, they will be able to file
22 fresh proofs of debt in the proper form.

23

1 Since August 24, the JVLs have taken no steps to review the order of this court, which
2 was granted *ex parte* pursuant to letters of request from the Superior Court of Justice of
3 Ontario. The JVLs have also taken no steps to apply to this court for an order under
4 section four of the *Confidential Relationships (Preservation) Law* for directions as to the
5 manner of giving evidence and the production and inspection of documents. The order of
6 August 24, 2006 required this to be done within seven days.

7

8 During oral argument, I endeavoured to make a directions order intended to expedite
9 disclosure by the JVLs in a timely manner. The JVLs took objection to my jurisdiction to
10 do so. I therefore refrain from making an order for directions, but wish to add the
11 following. The JVLs, Mssrs. Whicker and Blake, have received appointments from this
12 court as provisional and official liquidators in other cases. As officers of this court, they
13 have a special obligation to ensure that orders of the court are complied with in a timely
14 manner. I must express some disappointment that they have not done so with respect to
15 the order of August 24th, and some further disappointment with their reluctance to accept
16 an order for directions even though, technically, the proceeding in which the August 24th
17 order was obtained is not before me.

18

19 Dated this 14th day of September, 2006

20

21

Henderson, J.

22

23

Henderson, J.

24

Judge of the Grand Court

