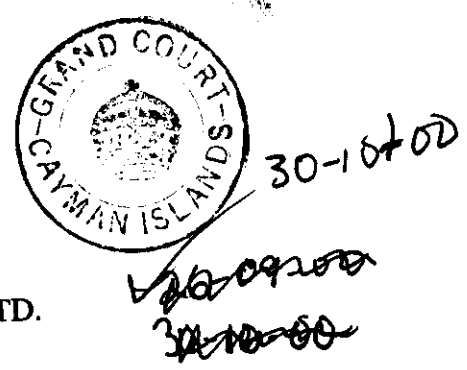


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

IN CHAMBERS  
IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CAUSE 823 OF 1999



IN THE MATTER OF FRUIT OF THE LOOM LTD.  
(in provisional liquidation)

Before Hon. Chief Justice Anthony Smellie

**Appearances:**  
Mr. Guy Locke of Walkers for the Joint Provisional Liquidators.  
Mr. Stewart Diamond of Truman Bodden & Co. for Fruit of the Loom Ltd.

REASONS

Fruit of the Loom Ltd ("the Company") is a Cayman Islands company which is the ultimate holding company for all companies within the Fruit of the Loom Group. On 30 December 1999 the Company was placed into provisional liquidation by order of this Court. Two partners of the well-known accounting firm of KPMG Peat Marwick were appointed Joint Provisional Liquidators ("the JPLs"). The order appointing the JPLs was made in advance of the hearing of the winding up petition filed by the Company itself against the background of the following circumstances. The Company was incorporated in the Cayman Islands on 23 January 1999 as part of the restructuring of the Fruit of the Loom Group ("The FTL Group"). The FTL Group comprises over 70 companies in the United States, Europe, the Caribbean and Central America. The assets of the Company comprise 100% of the share capital of the entities

1 within the FTL Group including FTL Delaware and FTL Caribe Ltd, the latter being  
2 another Cayman Islands company.

3 The Company has pledged all the shares of its wholly owned subsidiaries as collateral  
4 security for approximately USD 1.2 billion of secured debt.

5 The Company is now listed and traded on the New York Stock Exchange where its  
6 trading has been suspended because of Chapter 11 bankruptcy proceedings which the  
7 Company itself has instituted. This will be described below.

8 The FTL Group products are well known throughout the United States and in other  
9 countries. The Company itself is described as a vertically integrated international basic  
10 apparel company, emphasising branded apparel products for consumers of all age groups.

11 The subsidiary FTL Delaware is one of the world's largest producers of underwear,  
12 active-wear for the designer market and causal and jeans-wear. It sells products under  
13 several recognisable brand names.

14 On 29 December 1999, the Company and FTL Delaware filed for protection under  
15 Chapter 11 of Title 11 of the United States Bankruptcy Code. That filing was made  
16 following a decision by the Company that it required the protection of Chapter 11  
17 proceedings to allow it to obtain USD 625 million new "Debtor in Possession Financing"  
18 ("DIP Financing") to enable the Company to continue its business. This followed a  
19 decision by the Board of FTL Delaware that it in turn needed to seek protection under  
20 Chapter 11 to obtain DIP Financing. I am advised that the concept of "debtor in  
21 possession" implies the debtor company being allowed to remain in possession of its  
22 assets pending the Chapter 11 proceedings.

1 The Company through its Board of Directors, has obtained advice that in order to assist  
2 the refinancing process, it would be in the Company's best interests to file a petition for  
3 winding up in the Cayman Islands (its place of incorporation) and to seek the  
4 appointment of provisional liquidators and an injunction restraining any and all  
5 proceedings against the Company pursuant to Section 99 of the Cayman Islands  
6 Companies Law, (1998 Revision).

7 The parallel objectives of the petition here with those of the Chapter 11 proceedings are  
8 readily apparent. I am advised that upon a Chapter 11 filing, section 362 of the United  
9 States Bankruptcy Code imposes an automatic stay upon creditors with the result that no  
10 action can be commenced or continued against the Company or its assets. This stay  
11 provides a period during which the Company, FTL Delaware and the FTL Group can  
12 refinance while protecting their ongoing business.

13 Upon the completion of the Chapter 11 Proceedings, the objective is that the FTL Group  
14 can emerge with a "fresh start" and continue to operate as going concerns.

15 Thus, the petition here is intended to have the effect of protecting the Company's estate  
16 by allowing the Company the benefit of a stay on proceedings against it and assist in  
17 achieving the purposes underlying the Chapter 11 proceedings.

18 On 30 December 1999, this Court (per Graham J.) made the orders invited by the  
19 Company's petition appointing the JPLs and vesting them with the following powers  
20 among others:

21 (a) to oversee the continuation of the business of the Company under the  
22 control of the Company's Board of Directors, and under the supervision of  
23 this Court and the United States Bankruptcy Court.

1 (b) To oversee and otherwise liaise with the Company's Board of Directors in  
2 effecting a refinancing of the Company under the supervision of the United  
3 States Court and this Court in connection with the proceedings that have  
4 been commenced by the Company for that purpose under Chapter 11 of  
5 Title 11 of the Bankruptcy Code.

6 (c) To assist and consult with the Company as a debtor in possession in the  
7 Chapter 11 Proceedings regarding the Chapter 11 refinancing.

8 (d) To provide written reports to the Court from time to time and as this Court  
9 otherwise requires on the process of the Chapter 11 refinancing.

10 (e) To retain the services of attorneys and other professional advisers as  
11 required in Cayman and elsewhere for the purpose of advising and assisting  
12 in the execution of the JPLs' powers.

13 (f) If appropriate, to prepare and present to the Court for its approval a draft  
14 scheme of arrangement between the Company and its creditors consistent  
15 with any plan approved by the United States Court for implementation in  
16 the Cayman Islands that gives effect to and/or facilitates a refinancing and  
17 to seek appropriate directions from this Court or the United States Court for  
18 the approval and implementation of such a scheme.

19 For these and other authorised purposes, the JPLs shall have such access to so much of  
20 the Company's information as they may require.

21 Of particular note as a part of the Order of 30 December 1999, the JPLs' express consent  
22 was directed for the Company's execution, delivery and performance of the Post-Petition  
23 Loan and Security Agreement dated 29 December 1999 between the Company and

1 certain of its subsidiaries on the one hand and certain financial institutions which are its  
2 principal creditors, on the other.

3 Against that background injunctive provisions were also made in the Order pursuant to  
4 section 99 of the Companies Law, that all suits or proceedings against the Company are  
5 restrained until further order of this Court.

6 Also of importance for present purposes, the Order provided that subject to the various  
7 powers given to the JPLs, the Company's Board of Directors shall continue to manage  
8 the Company's affairs in all respects. This is provided always that if the JPLs in their sole  
9 discretion consider at any time that the Company's Board of Directors is not acting in the  
10 best interests of the Company and its creditors, the JPLs shall notify the Company's  
11 Board of Directors in writing requiring them to cease or desist from such action. If the  
12 Board fails, refuses or neglects to comply within 7 days, the JPLs may report to this  
13 Court and seek directions appropriate to the circumstances then prevailing.

14 As to the status of the Company's petition itself, the effect of the Order of the 30  
15 December 1999 is that its final hearing has been adjourned pending the operation of the  
16 Order, with liberty to restore.

17 Thus, a machinery has been put in place to allow the Company and its subsidiaries to  
18 obtain financing as debtor in possession of its assets; to continue to operate as going  
19 concerns and to continue to achieve these objectives with the interests of creditors  
20 properly protected and under the joint supervision of the United States Court in the  
21 context of the Chapter 11 proceedings and of this Court in these proceedings.

22 In the event these objectives fail, the petition may be restored for hearing and the  
23 Company may be wound up by further order of this Court and under its supervision. The

1 JPLs would be under an obligation to report an eventuality of failure to the Court but that  
2 eventuality is what everyone is working to avoid.

3 A petition for its winding up by the Court is allowed to be presented by a company itself  
4 under section 96 of the Companies Law. Grounds for the petition may include a  
5 company's inability to pay its debts: Section 94.

6 Upon the presentation of such a petition, the jurisdiction of the Court to make the  
7 foregoing types of Orders is clear enough from the provisions of the Companies Law.  
8 Section 99 provides:

9 "The Court may, at any time after the presentation of a petition for winding up a  
10 Company under this law, and before making an order for winding up the  
11 Company, upon the application of the Company, or of any creditor or contributor  
12 of the Company, restrain further proceedings in any action, suit or proceeding  
13 against the Company upon such terms as the Court thinks fit; and the court may  
14 also, at any time after the presentation of such petition and before the first  
15 appointment of liquidators appoint provisionally an official liquidator of the estate  
16 and effects of the company."

17  
18 Since the making of the Order on the 30 December 1999, the Company's adjourned  
19 petition has been back before this Court for its consideration and supervision of the status  
20 of the provisional liquidation on a number of occasions.

21 On each of these occasions, this Court has had before it confidential reports prepared by  
22 the JPLs for the Court's consideration. Filed with the Court also have been copies of  
23 reports prepared for the creditors of the Company by the JPLs dated 2 June 2000 and 21

1 September 2000. Further orders have been made for the continuation of the Order of 30  
2 December 1999 on the basis of the information contained in all those reports.

3 I now have before me an ex parte summons on behalf of the JPLs seeking directions that  
4 they may continue to administer the provisional liquidation of the Company substantially  
5 in accordance with proposals set out in the Fourth Confidential Report of the JPL's to the  
6 Court (dated 25 August 2000) until further order.

7 Mr. Locke appears for the JPLs for the purposes of the ex parte application. Separately,  
8 Mr. Diamond appeared before me today in open court upon an application by the  
9 Company for the further adjournment of the petition. This application is intended also to  
10 allow the provisional liquidation to continue.

11 In order to allow the continuation of the administration of the provisional liquidation in  
12 tandem with the Chapter 11 proceedings, I am in effect to be exercising anew the powers  
13 first exercised by the Court under Section 99 of the Companies Law when the Order of  
14 30 December 1999 was made.

15 This is not the first case in which these powers have been invoked by this Court. Similar  
16 orders were made in The Matter of ICO Global Communications (Operations) Limited to  
17 allow that Cayman Islands company during provisional liquidation a moratorium on  
18 enforcement procedures to be able to refinance and restructure its financial affairs.

19 (See Cause 508 of 1999; Order made on the 27<sup>th</sup> August 1999).

20 The discretionary power vested in the Court by section 99 of the Companies Law is very  
21 wide. As the orders already made herein recognise, the power admits of a discretion  
22 which the Court will be prepared to use to appoint provisional liquidators as the basis for  
23 the rescue of a company. This is subject to the Court being satisfied that such

1 appointment would be for the benefit of those having the financial interests in the  
2 company to be rescued. This Court must be satisfied that the order would be for the  
3 general benefit of creditors and subject to creditor' prior interests, the benefit of  
4 shareholders.

5 In the absence in jurisdiction given by specific statutory powers in the Courts for the  
6 making of administration orders over the affairs of companies, it is apt that the flexible  
7 discretionary power given in Section 99 for the appointment of provisional liquidators be  
8 used to enable the rescue of a company where it is just to do so in the sense described  
9 above.

10 This is the approach taken by the English Courts in respect of Insurance companies in the  
11 absence of statutory provisions enabling administration orders over their affairs. (See  
12 section 8 (4)(a) of the Insolvency Act 1986).

13 In Re English and American Insurance Co. Ltd [1994] 1 BCLC 649 Harman J.  
14 contemplated a petition presented by the company itself for the appointment of  
15 provisional liquidators. He reflected upon the English practice in these terms (at p.650  
16 letter c):

17 "This is all part of the developing practice of the court of using a petition by the  
18 company for its own winding up as the basis for the appointment of provisional  
19 liquidators. That practice has been developed to mitigate the difficulties caused by  
20 the fact that administration procedures are not available in respect of insurance  
21 companies and is a practice which several of the Chancery judges have dealt with  
22 and approved of. It seems to me a useful practice and I do not wish in any way to  
23 cast any doubt or discredit upon it. It is a good system particularly in cases such

1 as this where there is a hope that in the future there will be a scheme of  
2 arrangement under Section 425 of the Companies Act 1985".

3 Section 99 of the local Companies law is in very general terms not confined to  
4 any category of cases.

5 As in the case of the broadly similar English provisions contained in Section 238 of the  
6 Companies Act 1948, section 99 confers on the Court a wide discretionary power "to be  
7 exercised in a proper judicial manner". See Re Highfield Commodities [1985] 1 WLR  
8 149 at 159 letters D-E per Megarry V.C.

9 It must be in the nature of the discretion to be exercised that the Court will be concerned  
10 to ensure that the protective orders are not abused by a company which is hopelessly  
11 insolvent to be allowed to continue to trade.

12 The effect of the fourth Confidential Report of the JPLs, has been to satisfy me that that  
13 is not the position of the Company and its subsidiaries here.

14 While the details of the Reports must for obvious reasons remain confidential, the  
15 conclusion to be drawn from them is that the financial position of the FTL Group appears  
16 to be improving. It is currently the JPLs' view that the creditors' position is being  
17 enhanced in the arrangements for refinancing now underway. Liquidation outright is not  
18 now indicated to be the advisable route.

19 I am assured as to the appropriate legal test being followed by the JPLs in their approach  
20 to the issues whether to advise the continuation of the provisional liquidation in aid of the  
21 refinancing and ongoing operation of the Company. It is a three stage test which reflects  
22 the principles I have discussed above and which was approved by this Court when the  
23 Order was first made on 30 December 1999:

1           "(i) that the JPLs should be satisfied that a refinancing and/or sale of the  
2           FTL Group Business as a going concern is likely to be more beneficial to  
3           the creditors than a liquidation realisation of the Group's assets;

4           (ii) that there is a real prospect of a refinancing and/or sale as a going  
5           concern being effected for the benefit of the general body of the creditors;

6           and

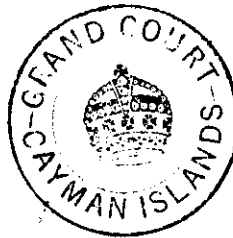
7           (iii) that in the circumstances it is in the best interest of the creditors to try  
8           to achieve such a refinancing and/or sale as a going concern."  
9

10       Being satisfied that the JPLs' advice and this ex parte application come to this Court with  
11       those principles firmly in mind, and having regard also to the ongoing supervision of the  
12       United States Bankruptcy Court in the context of the Chapter 11 proceedings there, I  
13       granted the orders sought for the continuation of the provisional liquidation substantially  
14       in accordance with the proposals set out in the Fourth Confidential Report; until further  
15       order.

16       For the same reasons, the petition was also adjourned with liberty to restore.

17  
18       

19       Anthony Smellie  
20       Chief Justice  
21



22       Decisions taken on 26<sup>th</sup> September 2000  
23       Reasons delivered on 30<sup>th</sup> October 2000.  
24  
25  
26