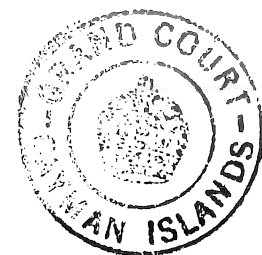


Smellie J.



18-04-94

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

Cause No: 22/94

BETWEEN:	AFRICA ENTERPRISES LTD. (In Voluntary Liquidation)	Applicant
AND :	THE REGISTRAR OF COMPANIES	Respondent

REASONS FOR ORDER

Mr. Graham Hampson for applicant.

Schofield J.

On the 22nd February 1994 I made orders that the voluntary winding up of Africa Enterprises Ltd. ("the Company") be stayed and that the Company be restored to the Register of Companies, on the usual terms. I now give my reasons for so doing.

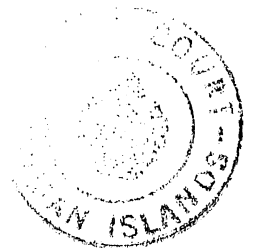
The Company was incorporated as an exempted Company under the provisions of the Companies Law (Revised). Its purpose was to hold an investment in a South African investment company and, indeed, shortly after incorporation the Company purchased one hundred per cent of the share capital of such investment Company. At the request of its beneficial owner, on 17th November, 1989, the Company resolved to be wound up voluntarily. A director of the Company, Richard E. Douglas, who makes this application on

its behalf was appointed Liquidator. The only assets of the Company are the shares it still holds in the South African investment company and a loan receivable from that company. The Company has no liabilities.

Repayment of the loan receivable was frozen as a consequence of the "South African Foreign Debt Standstill." This means that any foreign debt incurred prior to September 1985 is subject to a foreign debt moratorium and cannot be repaid unless specific approval is obtained from the Reserve Bank. The Liquidator has deposed that he understands such approval is seldom given. According to the Liquidator there are few options available for having the loan repaid, the only feasible one being to repay the loan through the medium of the Financial Rand which would result in a very large discount between the Financial Rand and the Commercial Rand. Consultations have taken place between the beneficial owner of the Company and the South African banking authorities and the beneficial owner has requested the Liquidator to make this application that the voluntary winding up be stayed with a view to increasing the chances of recovering the loan.

Mr. Hampson, acting for the applicant, has found no case in which the Grand Court has stayed a voluntary winding up. I therefore consider it right to set down my understanding of the basis for exercising this jurisdiction.

Section 140 of the Companies Law (Revised) reads:

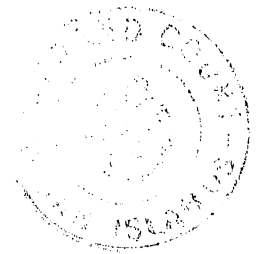


"140. Where a company is being wound up voluntarily the Liquidators or any contributory of the company may apply to the Court to determine any question arising in the matter of such winding up, or to exercise, in respect of the enforcing of calls or of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court; and the Court if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or may make such other decree on such application as the Court thinks just.

So the Grand Court may exercise, in the case of a voluntary winding up, the powers available to it on a compulsory winding up. One such power, contained in section 102 of the Companies Law (Revised) is to stay the winding up.

Section 102 reads:

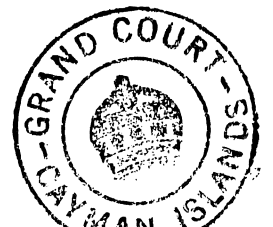
"102. The Court may at any time after an order has been made for winding up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding up ought to be stayed, make an order staying the same either altogether or for a limited time, on such terms and subject to such conditions as it thinks fit and any such order shall be published by Government Notice."



A stay of a voluntary winding up has been granted in England under similarly worded statutory provisions. In Re Calgary and

Edmonton Land Co. Ltd. [1975] 1 WLR 355 Megarry J. (as he then was) considered this jurisdiction under the English statutory equivalents of our sections 140 and 102 of the Companies Law (Revised) i.e. sections 307 and 256 (1) of the Companies Act 1948. He held that he had such power to stay a voluntary winding up. One difference between the two sets of legislative provisions merits attention, however. In our section 102 the power of the Court to stay a compulsory winding up may be exercised "upon the application by motion of any creditor or contributory of the Company." The Liquidator has no right to make such application. In the English Section 256 (1) "the Liquidator or the official receiver or any creditor or contributory" may make such application.

Be that as it may, in my judgment that the Liquidator has made this application for the stay of a voluntary winding up is no bar to its grant. Section 140 specifically gives this Court power to exercise the powers which it may exercise under section 102. The power given by section 140 may be exercised upon an application made by the Liquidator and I see no reason to limit the exercise of this jurisdiction simply because section 102 provides that an application for stay of a compulsory winding up may only be made by a creditor or contributory of the Company. The application is made under section 140 for the exercise of a power which the Court can exercise under section 102. It is section 140 which determines by whom the application may be made and not section 102.

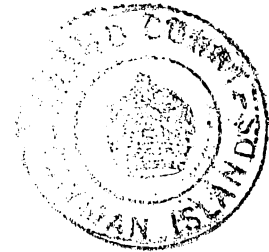


I determined that this Court has the power to grant the application before it. I then had to determine whether it was just and beneficial to exercise my discretion in the applicant's favour. The Liquidator has deposed that there are no creditors of the Company and that his position has been fully safeguarded. Each member of the Company has consented to the stay and there were no matters concerning the conduct of the Directors or promotion, formation or management of the Company which require further investigation.

There was no reason to refuse this application and I granted it.



Judge



Dated this 18th day of April, 1994