

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO 512 OF 2007



BETWEEN: (1) BNY AIS NOMINEES LIMITED

(2) GVA MARKET NEUTRAL  
MASTER LIMITED

PLAINTIFFS

AND: CPIM STRUCTURED CREDIT  
FUND 1000 INC

DEFENDANT

IN CHAMBERS  
BEFORE THE HON. CHIEF JUSTICE  
THE 13<sup>TH</sup> AND 16<sup>TH</sup> MARCH 2009

Appearance: Mr. Jeremy Walton with Mr. Chris Easdon of Appleby for the  
Plaintiffs

Mr. Francis Tregear QC instructed by Ms. Lindsay Luttermann of  
Walkers for the Defendant

### RULING

1. I am asked by the plaintiffs to order a stay of these proceedings until after the determination of a proposed appeal to the Privy Council in another set of proceedings entitled *In the Matter of Strategic Turnaround Master Partnership Limited* ("STMP").
2. In those proceedings the Court of Appeal has, in its decision – that to be further appealed to the Privy Council – sought to clarify the process by which investors in the STMP might redeem their investments. While that process does of course

depend upon the particular provisions of the constitutional documents of the STMP, it is said that the Court of Appeal's decision, and therefore the decision of the Privy Council to follow, will be far reaching and of general applicability to the Fund Industry as a whole.


3. It is apparent in this case already that the Court of Appeal's decision can have that effect as the Defence is to be extensively amended so as to place primary reliance upon the meaning and effect of that decision; insofar as it might be relevant to the present Fund dispute where the issue is whether the Fund has the right, as it has purported to do, to impose a retroactive gate upon the redemption of the plaintiffs' investments.
4. The similar but not identical question in STMP was whether the Fund had the right to suspend the payment of redemption proceeds even after the event of a valid request for redemption of the investment having been made and acceded to by the STMP management.
5. It seems that the common effect which the Court of Appeal's decision will carry to STMP as to the present and, I am told, to many other Funds; will be as to its decision that redemption is a process that is not concluded unless and until the proceeds are actually paid and the name of the investor expunged from the register of shareholders. Thus, any decision to place a gate upon redemptions (as in this case) or to suspend redemption or payment of redemption proceeds (as in STMP itself); taken before the completion of that process would stand to prevent the investor from completing the process.

6. The decision at which I have arrived is that whatever view the plaintiff or others in the industry may take now of the Court of Appeal's decision, it does represent the law in this jurisdiction on the subject which it decides. Arguments now as to its heterodoxy or being contrary to industry practice and norms as a basis for anticipating leave to appeal or even a different outcome before the Privy Council cannot be persuasive.
7. A judge must apply the law as it stands: *Wilson v Dagnall [1972] 1QB 509 at 519*. This principle will apply to the judge who will try this case.
8. The trial date is set for 31<sup>st</sup> March 2009, preparations are far advanced and the defendant is entitled to have its case tried, based on the present state of the law on the subject.
9. Nor am I satisfied, viewed purely as a matter of good case management, that the imposition of a stay would be the right thing to do.
10. If leave to appeal to the Privy Council is granted – itself a matter of speculation at this stage – the outcome before the Privy Council could carry various consequences.
11. If the Court of Appeal is upheld, the stay would have resulted only in wasted leave and costs.
12. If the Privy Council overturns the Court of Appeal, it can do so on more than one basis, not all of which would go directly to the question of the right of redemption which is in common as between this case and the STMP case.
13. In that event also, the stay would have resulted only in wasted time and costs.

14. Even in the event the Privy Council were to overturn the Court of Appeal in respect of the common issue, it appears there would still be room for a different argument as to the meaning of the constitutional documentation of the Fund being distinguishable from that in the STMP case. For instance, one distinction already identified is as between the articles in STMP not giving the STMP Fund an express power to suspend the payment of redemption proceeds whereas the articles in this Fund do contain such an express power. So even in the event the Court of Appeal were overruled, there could be an outcome before the Privy Council which would not necessarily be effectively dispositive of the issues before this Court in this case and thus a further basis on which the stay could result only in wasted time and costs.
15. On the other hand, if the outcome in the Privy Council proves to be contrary to the present state of the law as declared by the Court of Appeal and so proves to be effectively dispositive of the issues between the parties in this case, the plaintiff, the party who would benefit from that outcome; could immediately appeal against any contrary decision to be taken in the meantime at the trial of this matter. In that event, the Court of Appeal would be obliged to apply the law as declared by the Privy Council.
16. As a matter of good case management, this last scenario is the one to which I am attracted: it offers a far more finite, predictable and cost effective outcome than any of the others.
17. And so, while I doubtless have the jurisdiction and discretion to stay these proceedings pending the proposed appeal to the Privy Council in the STMP proceedings (see, for example *Glaxo*

Group Ltd. v Europharm of Worthing Ltd. [2003] EWHC 1037) in this case and in its present circumstances, it would not be prudent to do so.

18. The application for the stay (or for the adjournment) of the proceedings is refused.



Hon. Anthony Smellie  
Chief Justice



Dated the 16<sup>th</sup> March, 2009