

IN THE GRAND COURT OF THE
CAYMAN ISLANDS

718
CAUSE NO. OF 2003

IN THE MATTER OF TRIBANK INTERNATIONAL (CAYMAN) LIMITED
AND IN THE MATTER THE COMPANIES LAW (2003 REVISION)

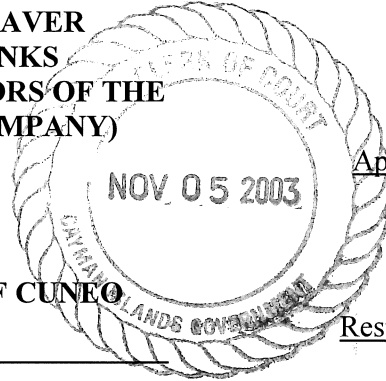
B E T W E E N :

(1) G. JAMES CLEAVER
(2) DON W. EBANKS
(OFFICIAL LIQUIDATORS OF THE
ABOVE-NAMED COMPANY)



-and-

SALVADOR MAJLUF CUNEO



Applicants

Respondent

ORIGINATING SUMMONS

LET THE RESPONDENT, Salvador Majluf Cuneo of Jr San Lorenzo 855, Surquillo, Lima 34, Peru, attend before the Judge in Chambers, at the Law Courts, George Town, Grand Cayman on the day of 20 at o'clock on the hearing of an application by the Applicants, G. James Cleaver and Don W. Ebanks of E&Y Restructuring Limited for the following relief:

- (1) A declaration that in causing or procuring each of the Payments set out in the Schedule, the Respondent acted in breach of his duties as a director of the Company and is liable to account to the Company for the amount of each of the Payments.
- (2) A declaration that each of the Payments set out in the Schedule constituted undue and fraudulent preferences, and that each of the Payments is accordingly invalid and void.

- (3) An order that the Respondent do pay to the Applicants as liquidators of Tribank International (Cayman) Limited the amount of each of the Payments set out in the Schedule.
- (4) Interest
- (5) Costs
- (6) Such further or other relief as the Court shall consider appropriate.

The grounds of the application are set out in the Particulars of Claim attached hereto.

AND LET THE DEFENDANT within [] days after service of this summons on him counting the day of service, return the accompanying Acknowledgement of Service to the Court's Office.

Dated this 5th day of November 2003.

Campbells.....
Campbells, Attorneys for the Applicants

NOTES:-

- (1) This Summons may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the above date unless renewed by order of the Court.
- (2) If a defendant does not attend personally or by his attorney at the time and place above-mentioned such order will be made as the Court may think just and expedient.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

This Originating Summons was issued by Campbells, Attorneys for the Applicant, whose address for service is PO Box 884GT, Grand Cayman, Cayman Islands

SCHEDULE

THE PAYMENTS

1. Payment 1: A payment of US\$600,000 made by the Company to the Respondent on or around 30 May 2002
2. Payment 2: A payment of US\$96,000 made by the Company to Sylvia Majluf on or around 30 May 2002.
3. Payment 3: A payment of US\$406,118.65 made by the Company to Alegria Majluf Abugosh on or around 30 May 2002.
4. Payment 4: A transfer of US\$412,814.43 made for the benefit of Casas & Cosas, on or around 31 May 2002.
5. Payment 5: A transfer of US\$657,818.47 made for the benefit of Tecnofil, on or around 31 May 2002.
6. Payments 6-10: Payments totalling US\$20,000 made by the Company for the benefit of Alegria Majluf Abugosh on or around 24 May 2002, 28 May 2002 and 31 May 2002.
7. Payment 11: A transfer of US\$245,000 made by the Company between 24 May 2002 and 3 June 2002.

**IN THE MATTER OF TRIBANK INTERNATIONAL (CAYMAN) LIMITED
AND IN THE MATTER THE COMPANIES LAW (2003 REVISION)**

B E T W E E N :

**(1) G. JAMES CLEAVER
(2) DON W. EBANKS
(OFFICIAL LIQUIDATORS OF
THE ABOVE-NAMED COMPANY)**

Applicants

-and-

SALVADOR MAJLUF CUNEO

Respondent

PARTICULARS OF CLAIM

1. Tribank International (Cayman) Limited ('the Company') is a company which was incorporated as an exempted company on 2 January 1992, and carried on business as a Class B bank licensed under the Banks & Trusts Companies Law.
2. Pursuant to a petition dated 31st May 2002, the Company was ordered to be wound up by the Grand Court on 12 July 2002, on which date G James Cleaver and H Jonathan Kahlberg were appointed Joint Official Liquidators of the Company. Mr Kahlberg has since been replaced by Don W Ebanks. The Applicants are hereafter referred to as 'the Liquidators'.
3. The Respondent was a director of the Company at all material times. As such, the Respondent owed (amongst others) the following duties to the Company:
 - (1) a duty to act bona fide in the best interests of the Company;
 - (2) a duty, if the Company were insolvent or on the verge of insolvency, to act in the best interests of the Company's creditors;

- (3) a duty to act for the proper purposes of the Company in relation to its affairs.
4. Further, the Respondent, as a director of the Company was a trustee of its assets and/or owed the obligations of a trustee in respect of those assets.

December 2000: the intervention in NBK

5. In the period prior to December 2000, the Company entered into (amongst other agreements) a Credit Agreement ('the Credit Agreement') with NBK Bank ('NBK'), a bank incorporated in Peru, by which (inter alia), the Company loaned money to NBK ('the Loans').
6. In or around December 2000, NBK became insolvent. On 11 December 2000, the Peruvian Central Bank appointed an intervenor over NBK in order to take control of its affairs, following which NBK ceased to pay its creditors and was placed into liquidation.
7. As consequence of the intervention in NBK and its liquidation, the Company's ability to repay its depositors in full was in turn rendered doubtful:
 - (1) The Loans were significant assets held by the Company. If they were irrecoverable, then the Company would be insolvent on a balance sheet basis.
 - (2) Following the intervention, NBK did not repay the Loans. Further, while the Loans were said to be secured by customer deposits charged in the Company's favour by NBK and other assets, the validity of that security was open to dispute.

January 2001 to April 2002

8. The Company sought to repay its depositors in full, and cease trading as a bank, by the end of 2001. In the event, in the period up to April 2002:
 - (1) the Company failed to recover the Loans, or realise its alleged security, though

it did commence litigation seeking recovery in respect thereof;

- (2) the Company's depositors were not paid in full;
- (3) the Company failed to appoint an auditor to audit its accounts for the financial year ending on 31 December 2001, in breach of section 10 of the Banks & Trust Companies Law (2001 Revision, as it then was).
- (4) the Company failed to establish a physical presence in the Cayman Islands by 25 April 2002, in breach of section 6(6) of the Banks & Trust Companies Law (2001 Revision, as it then was).

May 2002: the intervention of CIMA

9. As a result of the matters pleaded above, the Cayman Islands Monetary Authority ('CIMA'), as regulator, became increasingly concerned about the Company's business.
10. On 16 May 2002, CIMA wrote to the Company indicating that, in view of the Company's inability to secure an auditing firm to conduct an audit for the year ended 31 December 2001 and the uncertainties surrounding its viability, CIMA intended to recommend to the Governor in Council the appointment of a Controller, pursuant to Section 14(1)(v) of the Banks & Trust Companies Law (2001 Revision, as it then was).
11. On 16 or 17 May 2002, the Company indicated to CIMA that it would place itself in voluntary liquidation. By a letter to the Company dated 17 May 2002, CIMA stated that, in light of that indication, it would refrain from recommending the appointment of a Controller.
12. By 22 May 2002, the Company had not entered voluntary liquidation. On 22 May 2002, CIMA formally requested the Governor in Council to appoint a Controller. This was communicated to the directors of Tribank by way of letter dated 23 May 2002.

13. On 30 May 2002, a meeting of the board of directors of the Company was convened at Avenue Central 643, Suite 102, San Isidro, Lima, Peru. The Respondent acted as Chairman. At that meeting:
- (1) Santiago Ulloa, who was the managing director of the Company based in the Cayman Islands, reported by telephone that (inter alia):
 - (a) the dispute with NBK had not been resolved, and that if those disputes were not resolved, then there might be uncertainty as to the solvency of the Company;
 - (b) CIMA had indicated that it was intending to recommend the appointment of a controller of the Company, if a liquidator were not appointed.
 - (2) It was resolved that the Company would apply for a compulsory winding up order, and for the immediate appointment of provisional liquidators.
14. On 31 May 2002, the Grand Court, following presentation of a winding up petition by the Company, appointed the Liquidators as provisional liquidators.
15. Shortly thereafter, it became clear to the provisional liquidators that the Company was insolvent, and on 12 June 2002, the Liquidators were so appointed.

Insolvency

16. By 20 May 2002, the Company was insolvent in that the value of its assets was less than the amount of its liabilities, taking into account its contingent and prospective liabilities. Alternatively, the Company was on the verge of insolvency.

The Payments

17. In the period between 20 May 2002 and the appointment of provisional liquidators on 31 May 2002, the Respondent caused or procured the Company to make the payments

to himself and to entities or individuals with whom he was associated (collectively 'the Payments') set out in the Schedule hereto.

Claims for breach of duty and preference

18. In causing or procuring the Company to make the Payments (and each of them), the Respondent acted in breach of the duties pleaded in paragraphs 3 and 4 above and/or the Payments were misapplications of the assets of the Company.

PARTICULARS

- (1) At the time of the Payments, the Respondent knew of the facts and matters pleaded in paragraphs 5-13 and 16 above, and in particular that:
- (a) the Company was insolvent or on the verge of insolvency so that depositors would not be (or were unlikely to be) paid in full;
 - (b) it was inevitable by the time of the Payments that the Company would imminently either enter liquidation or Controllers would be appointed and so that control of its affairs would pass from its directors (including the Respondent) to independent accountants.
- (2) The Payments were made for the personal benefit of the Respondent, his family, or companies in his ownership or control, rather than in the interests of the Company.
- (3) The Payments were intended by the Respondent to profit himself, his family or companies in his ownership or control.
- (4) Payments 1, 4, 5 and 11 were made with a view of giving the Respondent, as a creditor of the Company, a preference over the other creditors of the Company.
- (5) Payments 3 and 6-10 were made with a view of giving Alegria Majluf

Abugosh, as a creditor of the Company, a preference over the other creditors of the Company.

- (6) Payment 2 was made with a view of giving Sylvia Majluf, as a creditor of the Company, a preference over the other creditors of the Company.
19. By reason of the matters pleaded above, each of the Payments was invalid and void pursuant to section 168 of the Companies Law (2003 Revision).
20. In the premises, the Respondent is liable to account to the Company for the amount of each of the Payments. The Liquidators will seek the amount of the Payments, and each of them, by way of repayment, account or compensation pursuant to section 169 of the Companies Law (2003 Revision).
21. Further, the Company claims and is entitled to interest, whether or not compounded, on all sums found to be due to it at such rates as the Court thinks fit pursuant to the Court's equitable jurisdiction and/or section 34 of the Judicature Law.

AND the Applicants claim:

- (1) A declaration that in causing or procuring each of the Payments set out in the Schedule, the Respondent acted in breach of his duties as a director of the Company and is liable to account to the Company for the amount of each of the Payments.
- (2) A declaration that each of the Payments set out in the Schedule constituted undue and fraudulent preferences, and that each of the Payments is accordingly invalid and void.
- (3) An order that the Respondent do pay to the Applicants as liquidators of Tribank International (Cayman) Limited the amount of each of the Payments set out in the Schedule.
- (4) Interest

(5) Costs

(6) Such further or other relief as the Court shall consider appropriate.

Dated this 5th day of November 2003

The Claimant believes that the facts stated in these Particulars are true. We are duly authorised by the Claimant to sign this statement.

Signed*Campbells*.....

Campbells, Attorneys for the Applicants

SCHEDULE
THE PAYMENTS

1. Payment 1: The Respondent had an interest in account numbered 501346 held with the Company in the joint names of the Respondent, Salvador Majluf Cuneo and Miguel L. Majluf with a credit balance in excess of US\$600,000. On 22 May 2002, the Respondent instructed the Company to transfer US\$600,000 from account numbered 501346 to an account in the name of Salvador Majluf Cuneo. On or around 30 May 2002, the Company paid the sum of US\$600,000 standing to the credit of account numbered 501346 to an account held at Banco Santander Central Hispano International in the name of Salvador Majluf Cuneo.

2. Payment 2: Miguel L. Majluf, Martin Majluf and Patricia Majluf, members of the Respondent's family whose precise relationship to the Respondent is unknown, held account numbered 500686 in their joint names with the Company with a credit balance in excess of US\$96,000. By letter dated 22 May 2002, the Respondent instructed the Company to transfer US\$96,000 from account numbered 500686 to an account in the name of Sylvia Majluf Majluf. On or around 30 May 2002, the Company paid the sum of US\$96,000 standing to the credit of account numbered 500686 to an account held at Banco Santander Central Hispano International in the name of Sylvia Majluf Majluf.

3. Payment 3: Alegria Majluf Abugosh, a member of the Respondent's family whose precise relationship to the Respondent is unknown, held account numbered 502237 in her sole name with the Company with a credit balance in excess of US\$406,093.65. On 23 May 2002, the Respondent instructed the Company to transfer US\$406,093.65 from account numbered 502237 to an account in the name of Alegria Majluf Abugosh. On or around 30 May 2002, the Company paid the sum of US\$406,093.65 standing to the credit of account numbered 502237 to an account held at Banco Santander Central Hispano International in the name of Alegria Majluf Abugosh.

4. Payment 4: Casas & Cosas (“C&C”), a company owned and/or controlled by the Respondent, held a loan account numbered 506287 with the Company, by which C&C owed the Company a sum of of US\$410,533.69. The Respondent had an interest in account numbered 500058 held with the Company in the joint names of the Respondent, Salvador Majluf Cuneo and Miguel A. Majluf. By letter dated 30 May 2002, the Respondent instructed the Company to cancel the outstanding loan to Casas & Cosas in respect of account numbered 007283 from the proceeds in the Respondent’s account. On 31 May 2002, the Company transferred a sum of US\$412,814.43 standing to the credit of account numbered 500058 to account numbered 506287 in the name of C&C. These funds were then utilised by C&C to pay bank charges totalling US\$2,280.74 and to the balance of US\$410,533.69 to discharge the loan owed by C&C to the Company.

5. Payment 5: Tecnofil S.A. (“Tecnofil”), a company owned and/or controlled by the Respondent, held loan account numbered 500066 with the Company, by which it owed the Company a sum of US\$654,306.62. The Respondent had an interest in account numbered 500058 held with the Company in the joint names of the Respondent, Salvador Majluf Cuneo and Miguel A. Majluf. On 30 May 2002, the Respondent instructed the Company to cancel the outstanding loan to Tecnofil in respect of account numbered 500066 from funds held in the Respondent’s account. On 31 May 2002, the Company transferred a sum of US\$657,818.47, comprising transfers of US\$296,409.29, US\$304,175.95, US\$40,057.88 and US\$17,175.35, standing to the credit of account numbered 500058 to account numbered 500066 in the name of Tecnofil. These funds were then utilised by Tecnofil to pay bank charges totalling US\$3,515.65, to discharge the loan owed by Tecnofil to the Company, which at the time totalled US\$654,306.62 and the remaining balance of US\$17,057.81 was off-set against Tecnofil’s overdraft of US\$17,061.61 leaving an outstanding amount due from Tecnofil to the Company of US\$3.80.

6. Payments 6 to 10: Alegria Majluf Abugosh held account number 502237 with the Company. By letter dated 22 May 2002, the Respondent instructed the Company to pay a sum of US\$20,000 from account number 502237 to Alegria Majluf Abugosh. The Company fulfilled these instructions via five separate payments. The Company made two cash payments of US\$4,500 and US\$4,400 from account numbered 502237 on 24 May 2002. The Company then paid an additional sum of US\$1,100 from account numbered 502237 to an unknown account on 28 May 2002. Then, by letter dated 31 May 2002, the Respondent instructed the Company to issue two bank drafts (“Cheques de Gerencia”) of US\$5,000 each from account numbered 502237 made payable to Alegria Majluf Abugosh. A copy of both bank drafts dated 31 May 2002 is contained within the Company’s records and the copy bears the Respondent’s signature. These payments can be summarised as follows:

Date	US\$	Method
24 May 2002	4,500	Cash
24 May 2002	4,400	Cash
28 May 2002	1,100	Unknown
31 May 2002	5,000	Bank draft to Alegria Majluf Abugosh
31 May 2002	5,000	Bank draft to Alegria Majluf Abugosh
	—————	
	20,000	
	—————	

7. Payment 11: The Respondent had an interest in account numbered 500058 held with the Company in the joint names of the Respondent, Salvador Majluf Cuneo and Miguel A. Majluf. On 24 May 2002, the Company transferred US\$245,000 standing to the credit of account numbered 500058 to the Company’s account with Bear Stearns numbered 050-51456. Mr. Fernando

Gomez Sanchez, whose relationship to the Respondent is unknown, had an account with the Company held at Bear Stearns, numbered 050-51458, which was overdrawn by US\$240,009.86 as at 31 May 2002. On 3 June 2002, Bear Stearns transferred US\$245,000 from the Company's account numbered 050-51456 to Mr. Fernando Gomez Sanchez's account numbered 050-51458.