

COURTS OFFICE LIBRARY

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION



9-9-10

CAUSE NO. FSD 0188/2010-ASCJ

IN THE MATTER OF THE COMPANIES LAW (2010 REVISION) (AS
AMENDED)

AND

IN THE MATTER OF STRAUMUR-BURDARAS INVESTMENT BANK HF

IN CHAMBERS
BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE
THE 8TH DAY OF SEPTEMBER 2010

APPEARANCES: Mr. Barnaby Gowrie of Walkers for the applicant

RULING

1. This is an application by Mr. Hörður Felix Hardarson in his capacity as the court-appointed Moratorium Assistant in bankruptcy proceedings instituted in Iceland in relation to the affairs of Straumur Bank. In those proceedings a moratorium on the grant of any judgments against Straumar Bank has been imposed (“the moratorium”). Mr. Hardarson’s appointment by the Icelandic Court was recognised by order of this Court on 29th June 2009 as a foreign representative, thereby authorizing him to act in this jurisdiction on behalf of Straumur Bank. That Order was made pursuant to section 241 (1)(a) of the Companies Law (2009 Revision) (“the Law”) and the Foreign Bankruptcy Proceedings (International Cooperation) Rules 2008 (“the Rules”).

2. Mr. Hardarson now applies for an order pursuant to section 241 (1)(b) of the Law enjoining the commencement of legal proceedings against Straumur Bank in this jurisdiction without the prior leave of this Court.
3. The following background is taken from Mr. Hardarson's and Mr. Eyvindur Gunnarsson's affidavits (the latter being a Professor of Icelandic Law of the University of Iceland) filed in support of this application and as summarised by Mr. Gowrie in his written submission.

Background to Straumur's insolvency proceedings

4. Straumur was incorporated in Iceland and has its headquarters in Reykjavik. It is a commercial bank which principally provided investment and merchant banking and securities and asset management services to a broad range of corporate and individual investor clients. Straumur's Registered Office is located at Borgartun 25-IS-105, Reykjavik, Iceland.
5. In August 2007, Straumur was granted an Icelandic commercial banking licence. By the end of 2007, Straumur had grown to become Iceland's largest investment bank, with operations in ten Northern and Central European countries, including ownership of United Kingdom-based stockbroker Teathers and Finnish eQ Bank, and was the sixth-largest company on the OMX Nordic Exchange in Iceland.
6. In late September 2008, as a result of a number of difficulties including problems in refinancing short-term debt and a run on bank deposits, the Icelandic Government took emergency measures to nationalise each of Iceland's three major commercial banks, Glitnir, Kaupthing and Landsbanki; in an attempt to stabilise the national economy. Despite these emergency actions, the financial

crisis had serious consequences for the Icelandic economy and a severe economic recession set in.

7. Due to the global and Icelandic economic crises, serious pressure was placed on Straumur. Banking deposit outflows increased significantly. Lender margin calls increased. Straumur's standby financing diminished due to credit downgrades, and other banks and trading counterparties began to apply increased pressure. In the end, despite strenuous efforts, Straumur succumbed to Iceland's economic crisis and on March 9, 2009, following extensive discussions with the Icelandic Central Bank, the Icelandic Ministry of Finance and the Financial Supervisory Authority of Iceland (the "FME"), Straumur closed for business.

Restructuring efforts

8. Since March 19, 2009, Straumur, with the assistance of the Winding-Up Board and the Resolution Committee, has downsized and streamlined its operations in order to reduce costs and limit liabilities. Steps taken include large staff reductions, branch closures, trade contract terminations and related position close-outs. Some assets have been sold and a formal review of remaining assets has been conducted.
9. The Winding-Up Board has presented a managed workout plan which will be described herein as "the Composition". It is intended that the Composition will, over the next three to five years, work to the benefit of Straumur's creditors and provide the best possible valuation for Straumur's assets as they mature.
10. Under Icelandic law, a composition is a legally binding agreement provided for in the Iceland Bankruptcy Act and Financial Undertakings Act between a company

and its unsecured creditors. A composition becomes legally binding and effective on a company and all of its unsecured, unsubordinated creditors and their successors and assigns, even if they did not vote or voted against it if:

- (a) at least 60% in number and value of composition creditors vote in favour either in person or by way of postal vote;
- (b) the composition is confirmed by order of the District Court of Reykjavik; and
- (c) the order confirming the composition is not appealed within one calendar week or any such appeals are decided in favour of the composition.

Summary of the Composition

11. The Composition provides for the first €8,000 of all unsecured claims (as defined in the Bankruptcy Act) against Straumur to be paid in full. The remainder of unsecured claims, being unsecured claims in excess of €8,000 (each, a “Composition Claim”), will be compromised and extinguished in exchange for the Bonds and Ordinary Shares, most of which will be issued in the form of Depositary Units to be issued by a Dutch-incorporated depository to be appointed by Straumur reformed as an ALMC (as defined below). The Depositary Units will not be admitted to trading on any securities exchange either in Iceland or elsewhere but will be admitted to and traded on both the Euroclear and Clearstream clearing platforms. Secured creditors of Straumur will be unaffected by the Composition to the extent they are secured.
12. Upon the Composition becoming effective, the existing share capital of Straumur will be cancelled, and Straumur will become known as the Asset Liability

Management Company (“ALMC”). ALMC will manage and administer Straumur’s assets, much of which is comprised of senior debt and equity investments, with a view to maximising the recoveries for Composition Creditors in the long term.

13. All of ALMC’s shares (collectively, the “Ordinary Shares”) will be issued to the benefit of holders of Composition Claims (each a “Composition Creditor”) in amounts equal to 1% of each Composition Claim.
14. Each Composition Creditor will also be entitled to bonds equivalent to the nominal value of each Composition Creditors' Composition Claim, less a proportionate share of the share capital of ALMC (that is, a face value of 99% of each Composition Claim) (the “Bonds”). The Bonds will be governed by a trust deed between ALMC and a trustee appointed to act on behalf of the bondholders.
15. Immediately following the Composition becoming effective, Composition Creditors will, through their holding of the Depositary Units, hold all of the shares in ALMC, and all of the Bonds.
16. Conditional upon the confirmation of the Composition by the Icelandic Court, the Resolution Committee has approved a demerger and simultaneous merger, which will take place immediately prior to the Composition becoming effective, that will vest certain assets of Straumur in its subsidiary, Straumur IB hf., an Icelandic incorporated investment bank.

Compliance with the Law and the Rules

17. Section 241 (1)(b) of the Law enables this Court, upon the application of a “foreign representative” to make orders in respect of a “foreign bankruptcy

proceeding” for the purpose of enjoining the commencement or staying the continuation of legal proceedings against a “debtor”. As yet no proceedings have been commenced against Straumur in this jurisdiction but Mr. Harðarson anticipates that they may be. Already proceedings have been taken in Canada and the United States where Straumur also has assets. Straumur is known to have assets by way of shares in various investment Funds in this jurisdiction valuing over \$27 million. For present purposes it is important to note that:

- (a) “debtor” means a foreign corporation or other foreign legal entity subject to a foreign bankruptcy proceeding in the country in which it is incorporated or established;
- (b) “foreign bankruptcy proceedings” includes proceedings for the purpose of reorganizing or rehabilitating an insolvent debtor; and
- (c) “foreign representative” means a trustee, liquidator or other official appointed in respect of a debtor for the purposes of a foreign bankruptcy proceeding.

18. It is thus immediately apparent when the circumstances of this case are considered in the context of the provisions of section 241 of the Law, that Straumur as a debtor, the subject of foreign bankruptcy proceedings in respect of which Mr. Harðarson as its court-appointed foreign representative, may apply to this Court to enjoin the commencement of proceedings against it.
19. The Rules must also be complied with and subject to certain qualifications explained below, I am satisfied that they have been.

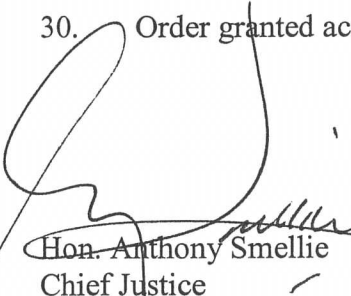
20. In particular, the originating summons required by Rule 3(1) must be supported by an affidavit verifying the matters set out in Rule 3(3) (as to the status and circumstances of the debtor including a description of the powers and duties of the foreign representative under the law of the place of appointment, as well as an explanation of the relevant foreign law that governs the appointment).
21. These are matters addressed by the Harðarson and Gunnarsson affidavits.
22. I am also persuaded that the requirement – in Rule 3(2) that the originating summons be served “on each respondent” – must be qualified in this case, to meet the circumstances. While potential claimants are legion, there are as yet no known respondents because no one claiming as creditor has as yet sought to institute proceedings against Straumur in this jurisdiction. The application for ancillary relief is thus anticipatory in nature but is nonetheless permitted by section 241(1) which speaks in anticipatory terms of “enjoining the commencement” as distinct from “staying the continuation” of proceedings against a debtor.
23. Instead of the process of originating summons envisaged by Rule 3(2), I am satisfied that the comprehensive notice of this application already given on Straumur’s website, by publication in the Icelandic Gazette (the usual place of notice of steps to be taken in a moratorium under the aegis of the Icelandic Court) and service by email to each Composition Creditor are, together, sufficient for present purposes. As there are as many as 117 Composition Creditors, I accept that formal service of the substantial documentation that grounds this application,

upon each, would be impractical. At all events, no creditor has responded to the notice on the website to date.

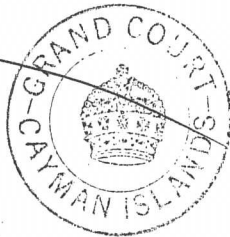
24. The further requirement in Rule 3(3)(e) that the supporting affidavits contain (among the other things set out in that sub-rule) “the facts and matters relied on in support of the allegation that the respondent is a “relevant person”” within the meaning of the Law, must also be qualified.
25. For reasons already explained, an anticipated respondent to this application would likely be a putative creditor seeking to bring proceedings against Straumur for recovery of a debt. (Here most likely for recovery of a deposit.)
26. Such a respondent would not, however, come within the meaning of “relevant person” as defined in section 103 of the Law. That expression is defined nowhere else in the Law. As defined in section 103, “relevant person” includes former professional service providers, advisors, directors, or officers and other persons who may have otherwise been involved in the management or affairs of the debtor company. The expression does not include former investors, shareholders or (as in the case of this banking company) depositors.
27. It follows that in this case I may not insist upon compliance with Rule 3(3)(e).
28. Indeed, as the typical respondent to an application to enjoin commencement or stay proceedings pursuant to section 241(1)(b) is more likely than not to be a putative creditor of a foreign company rather than a “relevant person” as defined; sub-rule 3(e) invites revision.
29. In conclusion, I am satisfied that the order enjoining commencement of proceedings should be granted. Notwithstanding that there are no proceedings in

respect of Straumur currently in the Cayman Islands and there are no known Cayman Islands creditors, the fact that there are significant Cayman assets may be sufficient to tempt a putative creditor of Straumur to commence proceedings here. Accordingly, in order to protect the global integrity of the Composition, it is of crucial importance that creditors of Straumur (wherever they may be located) should not be permitted while the moratorium is in place, to issue proceedings in the Cayman Islands against Straumur.

30. Order granted accordingly.


Hon. Anthony Smellie
Chief Justice

September 9 2010



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