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IN THE GRAND COURT OF THE CAYMAN ISLANDS

FSD 16 OF 2009 ASCJ
(FORMERLY CAUSE NO. 258 OF 2006)



30-9-10

IN THE MATTER OF THE COMPANIES LAW (2007 REVISION)

AND IN THE MATTER OF THE SPHINX GROUP OF COMPANIES (IN OFFICIAL LIQUIDATION) AS CONSOLIDATED BY THE ORDER THIS COURT DATED 6TH JUNE 2007

IN CHAMBERS
BEFORE THE HON. CHIEF JUSTICE
Heard on the 30TH SEPTEMBER 2010

Appearances: Mr. Thomas Lowe QC instructed by Ms. Cherry Bridges of Ritch and Conolly for the Joint Official Liquidators of the SPHINX Group of Companies ("the JOLs")

Mr. Alan Turner instructed by Mr. Mark Goodman of Turner & Roulstone for the Liquidation Committee of the SPHINX Group of Companies ("the LC")

Mr. Graham Ritchie QC instructed by Mr. David Collier of Charles Adams Ritchie and Duckworth for the Deutsche Bank – member of the Liquidation Committee ("DB")

Ms. Sarah Dobbyn of Harneys for Contrarian/HFC Limited

Mr. Nigel Meeson QC of Conyers Dill & Pearman for Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft, an investor ("BAWAG")

Mr. Alistair Walters instructed by Mr. Guy Manning of Campbells for DPM Mellon, LLC and DP Mellon Ltd ("DPM")

RULING

The October Hearing

1. For the reasons explained and agreed by all the parties, I accept that the hearing set for 12th October 2010 should now be treated as set for the purpose of resolving only

such aspects of Issues 1 and 2 (as identified in the JOLs' Position Paper on Liquidation Issues as at 26 May 2010) as remain to be resolved; that is: only such unresolved questions as to whether the JOLs need to take further steps to seek to establish ownership of particular assets or to establish responsibility for particular liabilities, as between the various SPhinX companies.

2. It follows that a new date will have to be taken for the trial of issues 3 and 4 (as to whether or not there should be pooling of assets) which it had been hoped could also have been taken at the October hearing.
3. I also direct that at the October hearing, the opportunity be taken to review what are the outstanding directions which remain to be given by the Court arising from the Scheme Convening Hearing held earlier this year (7-12 April 2010) and for those purposes, that DPM be appointed to represent all the Indemnity Claimants at the October hearing.

DPM's standing in relation to the Liquidation Issues

4. The Court having already directed on 10th June 2010 that DPM be appointed as Representative Party for all Indemnity Claimants to argue only on Issues 4, 5 and 8, Mr. Walters for DPM now argues that DPM's appointment should be widened to include Issues 1, 2 and 3.
5. Between them, Mr. Turner (for the LC), the Meeson QC (for BAWAG), Mr. Ritchie QC (for DB) and Mrs. Dobbyn (for HFC) oppose the wider appointments of DPM.
6. Essentially, there are two reasons for their opposition. First, (per Mr. Turner) there is a concern that DPM who is a defendant in the New York Multi-District Litigation ("the NYMDL") would be seeking to argue on Issues 1, 2 and 3 primarily with an eye

to defending its own position against allegations made against it in the NYMDL. Those allegations would ascribe blame to DPM for the state of the co-mingling of assets which had given rise to the very Issues 1, 2 and 3 to be resolved by this Court. Thus, DPM would be purporting to argue in a representative capacity while under a serious conflict of interest which would prevent it from fulfilling the responsibilities of a representative in the objective manner that would be required.

7. Second, that DPM's interests as a creditor would be protected in any event because with HFC already appointed to argue one side of Issues 1, 2 and 3 and DB the other, the interests of all claimants in the question whether the JOLs have done enough work to allow for the determination whether assets should remain segregated or should be pooled; will be adequately addressed.
8. As those are indeed the questions taken up in Issues 1, 2 and 3; I find this latter point to be as compelling now as I had found it to be on the 10th June 2010 when I ordered the narrower remit for DPM. When the added weight of the potential conflicts of interest point is taken into account, I am satisfied that the Order made on the 10th June 2010 as to DPM's role should be reaffirmed.
9. I do, however, note Mr. Lowe QC's warning given this morning: which is that DPM could have an interest in determining how the JOLs should go about their work in relation to Issues 1, 2 and 3 as that could lead to the determination of whether the assets should remain segregated or pooled which, in turn, could affect DPM's (and other Indemnity Claimant's) rights to rank in the distribution of assets.
10. Nonetheless, I am satisfied that to the extent such matters could eventually arise as matters of special concern for DPM (or other Indemnity Claimants) – and not to be

addressed by the arguments to be presented by HFC or DB they can properly be addressed under Issues 4, 5 and 8 to which DPM is already appointed to act as Representative.

Trainee Solicitors

11. The question is whether I should, at the request of DB, expand the costs orders of the 10th June 2010 so as to allow for the costs of trainee solicitors who may be employed on behalf of DB (as representative party) in London to work on this matter.
12. Having heard all the arguments and while I see the practical merits of Mr. Ritchie's arguments in particular, I am not persuaded that I have the jurisdiction to expand the Order in that way; nor, if I do have the jurisdiction, that it would be prudent and proper to do so.
13. There is a clear and settled public policy implied not only in Order 62 of the Rules of Court, but also in the Legal Practitioners Law as taken with the Immigration Law and Regulations; that only attorneys-at-law who are admitted to practice in this jurisdiction shall be entitled to charge for their services in respect of litigation before our Courts.
14. The same policy must apply to ensure that only those para-legal or trainee lawyers as are licensed or permitted to work in this jurisdiction may charge and be protected by orders of this Court for their services related to such litigation.
15. Though, as Mr. Ritchie QC says, it may be of greater cost-benefit to the liquidation estate to allow DB to engage trainee solicitors in London and so to have them charge the estate for their services in relation to this litigation (about which I make no finding), I am not satisfied that I have the authority to so order. I therefore refuse to

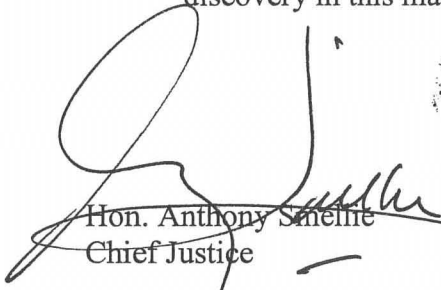
do so, being mindful also of the impact by way of precedent, that such an order would have upon the public policy which this Court must recognise and which is recognised above.

Mechanisms for payment of costs

16. I accept the draft form of order which has been agreed between the parties and presented today. It will be included in the formal order arising from today's hearing.

Confidentiality

17. I accept the proposed further preamble to be added to the Order of the 10th June 2010 for the preservation of the confidentiality of all material disclosed by way of discovery in this matter.


Hon. Anthony Smeeth
Chief Justice



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September 30, 2010