2-2-12

IN THE GRAND COURT OF THE CAYMAN ISLANDS

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

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 2ND FEBRUARY 2012

Appearances:

Mr. Richard Snowden QC, Ms. Ceri Byrant and 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") (with them the JOLs, Ms. Margot MacInnis, Mr. John Skelton and Mr. George Weru)

Mr. Mark Phillips QC instructed by Mr. Mark Goodman and Ms. Andrew Dunsby of Turner & Roulstone for the Liquidation Committee of the SPhinX Group of Companies ("the LC")

Miss Felicity Toube QC (by videolink from London at the Offices of Linklaters) instructed by Mr. Graham Ritchie QC and Mr. David Collier of Charles Adams Ritchie and Duckworth for Deutsche Bank – member of the Liquidation Committee ("DB")

Ms. Sarah Dobbyn (by video link from London) and Mr. Anthony Akiwumi of Stuarts for Contrarian/hfc Limited

Mr. Marc Kish of Maples and Calder for the Refco Offshore Managed Futures Fund Ltd. and Refco Public Commodity Pool LP

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

Mr. John Harris and Ms. Alexia Adda of Higgs & Johnson for PWC Cayman

Mr. Roger Nelson of Nelson & Co. for the PWC LLP

Mr. Hector Robinson of Mourant for Mr. Robert Aaron

Mr. Andrew Bolton of Appleby for Messrs. Brian Owens and Mark Kavanagh)

RULING

1. This is the resumed hearing of the petition for sanction of a scheme of arrangement following on the meetings of scheme investors which were convened by direction of the Court.

2. The only two meetings which failed to pass a resolution approving the Scheme were Class 1 – the S-Share Claimants in SPhinX Limited and in Class 10 – the Post-June 14 June 2006 Redemption Claimants in SPhinX Strategy. Both of these meetings were passed by the requisite majority in number under section 86 of the Companies Law but not by the required 75% in value of investors' claims.

3. In summary then, of the 11 inter-dependent SPhinX Company Schemes, 9 Scheme Companies approved the Scheme and two Scheme Companies did not.

4. The questions presented now are whether I am obliged to dismiss the petition not being able to sanction he Scheme for want of two of the requisite majorities or whether I may adjourn the petition in the expectation that those majorities in Class 1 and Class 10 will be obtained.

5. While having full regard to the JOLs' report of the meetings, I am not yet fully persuaded that there is a reasonable prospect of the Scheme achieving all the majorities required for its sanction by the Court within a time that I could now specify. I am, however, satisfied that there is a prospect of the Blocking Investor in Class 10 changing its vote to vote in favour of the Scheme if provided with certain further information.

6. In its letter to the JOLs, that Blocking Investor has suggested that it would require two months for the reconsideration of its position.

7. I am therefore able today to identify that period of two months as the window of opportunity for the Scheme to gain all the necessary approvals, at least in principle, to be confirmed at voting at any further meetings that I may direct.

8. As to the necessary majorities in Class I – the only other class that failed to attain the necessary majorities – I am told that that was the result of an administrative error which will be readily corrected and that the necessary majorities in that Class will certainly be attained.

9. The Practice Directions on Schemes of Arrangements and Compromise under section 86 of the Companies Law (No. 2 of 2010) may be regarded as giving rise to a question of jurisdiction where they provide in paragraph 2.3 as follows:

> *"Within seven days after the Court meeting(s) has or have been held, the applicant must file an affidavit sworn by the chairman of the meetings verifying that notice was duly sent in accordance with the order for directions; that the meeting(s) was or were duly held; and giving particulars of the result. In the event that the scheme was not approved the applicant will also formally ask for the petition to be dismissed. In the event that the scheme was approved, the substantive hearing of the petition will take place on the pre-determined date. In most cases, it should be unnecessary to file any further evidence." (Emphasis added)*

10. The words in emphasis notwithstanding, I am satisfied that I have jurisdiction to adjourn the petition rather than – as the Practice Directions would suggest – dismiss it because the required majorities had not been completely achieved at the Court directed meetings already convened.

11. In light of the overwhelming support of the Scheme amongst investors, I accept that it would be premature to dismiss the Scheme petition at this hearing when there still remains some reasonable prospect of the Scheme achieving the requisite sanction by the Court.

12. I am also satisfied – as there will be no prejudice caused and as such large majorities in all but two classes have already been achieved; and further, as a great deal of time and expense have gone into promoting the Scheme to date – that the adjournment of the petition for the period of two months proposed would be appropriate in all the circumstances to allow for the consideration of whether further meetings in Class 1 and Class 10 should be convened.

13. This adjournment will however be conditional upon the JOLs (and through them the Court) being forthwith provided with full disclosure of the discussions which have taken place between the Blocking Investor in Class 10, DB and hfc. This will allow the JOLs to decide, in turn, what further information, if any, it would be appropriate for them to provide to the Blocking Investor and also to decide what, if any, further information should be provided to the other members of the Class or indeed, to the other investors as a whole.

14. After that process is completed, the JOLs would be expected to seek the directions of the Court as to what, if any, further meetings of Class I, Class 10 or other Classes

should be reconvened depending of course, on the outcome of the negotiations involving DB, hfc and the Blocking Investor in Class 10. I note my acceptance, however, that the reconvening of a meeting in Class 1 in order to redress the situation caused by the administrative error already mentioned, is not a matter that would make any material difference to the way in which the investors in the other classes voted and ought not to be regarded as a "new circumstance" such that all class meetings should be reconvened [see ***Cadbury Schweppes plc v Somji [2001] 1 WLR 615***].

15. It is with all the foregoing in mind that I will now direct that the Petition be adjourned to a fixture to be made for after two months from today.

16. In giving these directions, I wish to make it clear that the Court does not proceed on the basis that the information already provided to investors in the Explanatory Memoranda (whether "Open" or "Confidential") was in any way inadequate.

17. The JOLs are also to be at liberty to procure such expert advice as they deem appropriate relating to "the Beus Gilbert claim" and to provide information about that claim to the investors.

18. They are also to be at liberty, depending on the view they take on advice of the effect the Beus Gilbert claim could have upon the assets available for meeting the Indemnity Reserve, to provide information about the Beus Gilbert claim to the Indemnity Claimants. I consider that it would be inappropriate at this stage to elaborate any further upon the nature of the Beus Gilbert claim or its potential impact upon the SPhinX estate.

19. The Indemnity Claimants will be at liberty to apply to the Court for directions as to how they might respond to the information provided in relation to the Beus Gilbert claim.

Hon. Anthony Smellie
Chief Justice

February 2 2012