

Cayman Court will protect Cayman insolvency proceedings

UPDATE

Update prepared by Simon Dickson (Partner, Cayman Islands) and Zachary Hoskin (Senior Associate, Cayman Islands)

On 31 May 2016, the Grand Court (Court) granted an anti-suit injunction against International Tropical Timber Organisation (ITTO), upon an application made by the Joint Official Liquidators (JOLs) of the Ardent Harmony Fund (the Fund) Inc. ITTO is one of the Fund's largest creditors.

Background

The Fund's assets had been invested with Bruin Funding LLC (**Bruin**), a New York entity which acted as a factoring agent for the Fund. It was alleged that Bruin overstated the value of the loans it entered into on behalf of the Fund and that the value of the Fund's investments was almost entirely impaired. The JOLs were appointed (initially as voluntary liquidators) on 26 April 2016. The JOLs promptly issued proceedings in the US against Bruin and an associated entity RMP Capital Corp Inc.

Despite knowing of the appointment of the JOLs, ITTO commenced proceedings in Barbados on 13 May 2016, seeking a receivership order and the appointment of a trustee in bankruptcy over the Fund (the **Barbados Proceedings**). The purpose of the Barbados Proceedings was unclear. The JOLs had discovered no assets or debtors in Barbados other than the Fund's bank accounts which the JOLs had taken control of and transferred to the Cayman Islands.

Unsurprisingly, an anti-suit injunction was sought to restrain ITTO from continuing the Barbados Proceedings or commencing further proceedings elsewhere. The application was made *ex parte*.

The Decision

The Court was in no doubt that it had the power to restrain a creditor over whom it had personal jurisdiction from commencing or continuing proceedings in a foreign jurisdiction if those proceedings would 'subvert the universal collection process of the liquidation'.

The Court had to consider, whether it had jurisdiction over ITTO, a Japanese entity. The Court found it did have jurisdiction over ITTO. First, ITTO was a shareholder in the Fund. Accordingly, the Court had jurisdiction under Order 11, rule 1(1)(ff) of the Grand Court Rules on the basis that the application was brought 'against a person who is ... a member of a company registered within the jurisdiction ... and the subject matter of the claim relates in any way to such company'. Second, ITTO had submitted a proof of debt in the Cayman liquidation which constituted submission to the jurisdiction of the Cayman courts. An order for substituted service was made allowing service on ITTO's lawyers in Barbados to avoid the time consuming and costly exercise of effecting service in Japan.

Having established jurisdiction, the Court had no hesitation in granting the application, noting in particular, that the appointment of a trustee in bankruptcy over the Fund in Barbados would mean that conflicting bankruptcy regimes and orders would be in place in two different jurisdictions, which would directly interfere with the conduct of the Cayman Islands liquidation.

The Court then took the unusual step of awarding indemnity costs against ITTO in relation to both the injunction and the JOLs' costs of responding to the Barbados Proceedings. This was on the basis that ITTO's conduct was improper pursuant to GCR Order 62, rule 4(11) when it issued and then refused to withdraw the Barbados Proceedings. Further, in the absence of such an order the other creditors of the Fund would be forced to bear the costs of ITTO's unreasonable actions.

Comment

The judgment serves as a useful reminder of the Court's power and willingness to protect the sanctity of Cayman insolvency proceedings and its willingness to punish unreasonable and improper conduct. The decision also provides a helpful analysis of the law relating to the granting of anti-suit injunctions in the context of insolvency proceedings.

Contacts

Simon Dickson

Partner, Mourant Ozannes
Cayman Islands
+1 345 814 9110
simon.dickson@mourant.com

Zachary Hoskin

Senior Associate
Cayman Islands
+1 345 814 9179
zachary.hoskin@mourant.com

This update is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. © 2018 MOURANT OZANNES ALL RIGHTS RESERVED

[Document Reference]