IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 551 AND OF 2007
CAUSE NO. 552 OF 2007

IN THE MATTER OF THE COMPANIES LAW (2007 REVISION)

AND IN THE MATTER OF BEAR STEARNS HIGH GRADE STRUCTURED CREDIT STRATEGIES (OVERSEAS) LTD. (IN VOLUNTARY LIQUIDATION)

IN CHAMBERS
BEFORE THE HON. ANTHONY SMELLIE, C.J.
THE 13th MARCH 2008

APPEARANCES: Mr. Jeremy Walton and Mr. Jonathan Tarboton of Appleby for the applicants

Mr. Mark Goodman of Turner and Roulstone for BSAM

Mr. Steven Barrie of Nelson & Co. for Walkers SPV (with Ms. Nancy Lamb of Walkers Global Holdings)

Mr. Geoff Varga in person (of Kenetic, the replacement liquidators)

RULING

1. The first question is whether in the formal order recording my decision in these proceedings (and in respect of which oral judgment and reasons were given on 22nd February 2008), I should record that the first three heads of the relief sought by the applicants have been dismissed.

I am firmly of the view that it should not be so recorded. No such determination was made. Instead I expressly declined to arrive at a conclusion on the factual issues which would have been necessary for determination one way or the other on those three heads of relief.

While the evidence revealed and as I found that there was "clandestine and suspicious behaviour" on the part of BSAM, Walkers Fund Services and the lawyers advising them, I declined to express a final conclusion as to whether they had acted in bad faith and for an improper purpose without providing them with a further opportunity to explain their conduct, particularly as the evidence about that conduct emerged to a large extent for the first time during the cross-examination in these proceedings. While had it been necessary to provide the relief which the applicants deserved, I would have been prepared to pronounce a conclusion in that regard but strictly only on the balance of probabilities; for the reasons I explained, that was not the case.

The result was that I took and expressed no decision in respect of those first three aspects of the application which depended on a finding of bad faith. It is only correct therefore, that the formal order should simply state as proposed in the preamble to the draft presented this afternoon, that "no order" is made in respect of them.

This means that if it becomes necessary for the issues raised to be canvassed again, those issues will not be barred or estopped and all concerned will have an unrestricted opportunity to propose or oppose them.

2. As to costs, the conclusion is more straightforward.

If the costs must follow the event (as I remain persuaded they should, despite the argument to the contrary based on the ***Parmalat*** case), that event is clearly the applicants' successful application for the removal and replacement of KPMG as the liquidators.

As matters transpired, the only party who actively opposed that outcome was BSAM. It did so in an entirely partisan and self-interested manner, in no sense limited, in my view, "in the manner of a party interested in the liquidation acting in a reasonable way seeking to make its views known" and "for the sake of the better management of the liquidation as a whole" – the tests, as I read it, as laid down in ***Parmalat*** by Henderson J.

In light of my findings that KPMG would have been unacceptably conflicted because of their appointment also as liquidators of the Master Fund (to the creditors of which they would thus owe duties which would conflict with those they would owe to these investors in the Feeder Funds) it follows that BSAM's opposition to KPMG's removal was unreasonable. BSAM must accept the consequences of its unsuccessful opposition to their removal.

The order as to costs stands, even if it could properly be revisited by me now. A question of jurisdiction was raised by Mr. Walton on behalf of the applicants on the basis that I am already *functus officio* in that regard. It is not a question to which I see the need to give an answer.

Hon. Anthony Smellie
Chief Justice

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