In The Supreme Court of Bermuda

CIVIL JURISDICTION

2010: 42

(Commercial)

Between:

(1) TENSOR ENDOWMENT LIMITED

(2) UBS FUND SERVICES (CAYMAN) LTD.

Plaintiffs

-v-

NEW STREAM CAPITAL FUND LIMITED

Defendant

REASONS

(In Chambers)

Date of Hearing: August 2, 2010
Date of Ruling: September 23, 2010

Ms. Kiernan Bell, Appleby,
for the Class K the Interim Joint Receivers of Classes B, E, F, H, K, L, N and O ("the NSSC Classes")[1]

Mr. Andrew Martin, Mello Jones & Martin,
for the Plaintiffs

[1] Mr. Delroy Duncan and Ms. Nicole Tovey of Trott & Duncan appeared on behalf of Mr. John McKenna, the Class F Receiver, in support of the stay of execution application.

Introductory

1. On June 17, 2010, the Plaintiffs were granted summary judgment against the Defendant, a segregated accounts company ("the Company"), in their capacity as Class K shareholders in the amount of US$8,820,838.03. That same day the Plaintiffs issued a Writ of Fieri Facias against the Company. The following day on June 18, 2010, Michael Morrison and Charles Thresh of KPMG Advisory Ltd. were appointed by this Court as Interim Joint Receivers of the NSSC Classes, of which Class K forms a part.

2. Neither the summary judgment order nor the Writ of Fieri Facias made any explicit reference to Class K. However, it is implicit in the summary judgment ruling ([2010] SC (Bda) 31 (17 June 2010)-("Tensor II")) and the earlier judgment in the Plaintiffs receivership application ([2009] SC (Bda) 69 Civ (18 December 2009)-("Tensor I")) that the Plaintiffs' judgment is only enforceable against assets linked to their own share class.

3. On July 8, 2010 the Plaintiffs' attorneys served the Receivers with a copy of the Writ advising that the Deputy Provost Marshall was due to execute it before 4.00pm on July 12, 2010 against a Loan Note in favour of Class K shareholders. The following day, on the Receivers ex parte application on notice, I granted an interim stay of execution. After evidence was filed in support of the stay application and in opposition thereto, the inter partes hearing of the Receivers' stay application took place on August 2, 2010 when I continued the stay and reserved the issue of costs.

4. These are the reasons for that decision.

The relevant provisions of the Segregated Accounts Companies Act 2000 ("the Act")

5. The crucial provisions of the Act are those under which the Receivers were appointed as these explain the adversarial interaction between the Plaintiffs' individual judgment enforcement rights and the collective rights of the share class from which the judgment debt itself ultimately derives. Section 19 provides as follows:

> "**Receivership orders**
> *19 (1) Subject to the provisions of this section, if, in relation to a segregated accounts company, the court is satisfied that—*
>
> *(a) a particular segregated account is not solvent, the general account is not solvent, a liquidation has been commenced in relation to the company, or for other reasons it appears to the court just and equitable that a receiver should be appointed;*
>
> *(b) the making of a receivership order under this section would achieve the purposes set out in subsection (3),*
>
> *the court may make a receivership order in respect of that segregated account.*

(2) A receivership order may be made in respect of one or more segregated accounts.

(3) A receivership order shall direct that the business and assets linked to a segregated account shall be managed by a receiver specified in the order for the purposes of—

(a) the orderly management, sale, rehabilitation, run-off or termination of the business of, or attributable to, the segregated account; or

(b) the distribution of the assets linked to the segregated account to those entitled thereto.

(4) No resolution for the winding up of a segregated accounts company of which any segregated account is subject to a receivership order shall be effective without leave of the court."

6. A segregated account is in many respects a company within a company and when insolvency occurs, the assets of an account must be administered in the interests of the creditors of the account as a whole. The term insolvency is used in this context to connote a situation where the account is unable to meet its liabilities to either third-party-creditors or account owners as they fall due. Absent insolvency, if an application is made to appoint a receiver on the just and equitable ground, the Court will have regard to the interests and/or views of the majority of shareholders of the relevant share class. For this reason, the Plaintiffs' application in *Tensor I* to appoint a receiver was refused in the face of opposition from the majority of Class K shareholders who were also owed redemption monies. In *Tensor I*, this Court observed as follows:

"*40….In fact the powers and duties of a receiver appointed in respect of a segregated account under the Act suggest that while the office has features of an equitable receiver and a liquidator, the office on balance more closely resembles a liquidator than an 'ordinary' receiver. Section 21 provides as follows (emphasis added):*

'21 (1) The receiver of a segregated account—

(a) may do all such things as may be necessary for the purposes set out in section 19(3); and

(b) shall have all the functions and powers of the directors and managers of the segregated accounts company in respect of the business and assets linked to the segregated account.

(2) The receiver may at any time apply to the court for—

(a) directions as to the extent or exercise of any function or power; or

(b) the receivership order to be discharged or varied.

(3) In exercising his functions or powers the receiver is deemed to act as the agent of the segregated accounts company in respect of the segregated account, and does not incur personal liability except to the extent that his conduct amounts to misfeasance.

(4) Any person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within his powers.

(5) During the period of operation of a receivership order the functions and powers of the directors and managers and any liquidator of the segregated accounts company cease in respect of the business and assets linked to the segregated account in respect of which the order was made.

(6) At any time after the appointment of a receiver in respect of a segregated account, the company or any account owner or creditor of that account may, where an action or proceeding against the company in respect of that account is pending, apply to the court for a stay of those proceedings, and, on such an application being made, the court may stay the proceedings accordingly on such terms as it thinks fit."

41. Not only may the receiver seek directions from the Court as to the exercise of his powers, he displaces both the directors and any liquidator of the company as regards management of the assets in the relevant segregated account. The Court is also empowered, on the application of the company (presumably acting by the receiver), an account owner or creditor to stay any proceedings against the company in respect of the account which has been placed in receivership. The significant consequences flowing from the appointment of a receiver no doubt explains why the requirements which an applicant must meet under section 19 appear to be more onerous than would apply on an application to appoint a receiver under the Supreme Court Act or a liquidator under the Companies Act. After all, the segregated account structure is clearly defined to create more business-friendly and nimble structure for account owners than they would have if they became shareholders in an ordinary company. This added commercial freedom and flexibility is subject to the usual legal protections being preserved for creditors, who may seek to appoint a receiver on grounds of insolvency on terms analogous to an application to appoint a liquidator in respect of an ordinary company. Yet even this right is diluted to the extent that a counterparty, just like an account owner, must still prove that a receivership would likely

achieve the specified statutory goals under subsection (3) of section 19…"

7. So the present application by the Receivers for a stay of the execution of the Plaintiffs' judgment was made under section 21(6) of the Act. And while in *Tensor I* the majority of Class K opposed the appointment of a receiver, they now support the appointment of the Joint Receivers. The Receivers take the view that the Plaintiffs should not be able to decide how the account's sole asset should be liquidated. To the extent that I considered that the Receivers ought to be viewed as notionally (if not actually) representing the majority of Class K redemption creditors, I regarded this as essentially a reprise of the *Tensor I* position: the interests of the majority of Class K shareholders/redemption creditors ought to prevail.

8. The legal validity of this position can only be assessed by reference to the applicable statutory rules for the distribution of the assets of a segregated account. Section 17(7) is the most important provision which is set out in full in a subsequent part of the present Judgment.

9. The Plaintiffs' counsel submitted that under the statutory scheme summarised above, no statutory trust was created with respect to the assets of a segregated account as in the company insolvency context. Accordingly, the wishes of other account holders were irrelevant to any consideration of whether or not the Plaintiffs should be permitted to enforce their judgment. In addition, Mr. Martin submitted that only the company was empowered to apply for a stay under section 21(6), not the Receivers.

Factual findings

10. The relevant facts were not seriously in dispute. The principal asset of Class K segregated account is a Loan Note issued to NSSC which is secured by NSSC assets under arrangements creating overlapping security interests with (a) the Company's other NSSC share classes, and (b) Cayman and US Feeder Fund investors in NSSC. Because of the way the investment business was carried out in practice, these commercial interests may also overlap (in practical if not in strictly legal terms) with those of NSI investors including the Company's NSI investor share classes.

11. The First Morrison Affidavit sworn in support of the stay application deposed as follows:

> "*9. I respectfully submit that in light of the Receivership Order, the Writ issued by Mello Jones & Martin for the Plaintiffs in the Tensor action should be stayed. The Plaintiffs in the Tensor action are not the only account owners with redemption claims in Class K, and having completed my initial investigations, it is clear it would be damaging to the NSSC Class as a whole and Class K in particular, if the Deputy Provost Marshall were to attempt to take any steps to try and seize and sell the loan note or any other assets linked*

to Class K. In light of the terms of the loan notes linked to the NSSC Classes and the collateral arrangements linked to all the NSSC Classes I am advised that it is unlikely as a practical or legal matter that it could be done in any event. What is certain is that such action would cause confusion and uncertainty and adversely affect the orderly management and winding up of the affairs of the NSSC Classes and Class K in particular."

12. This evidence was challenged as insubstantial and lacking in particulars, by way of argument. Jeremy Garrood's First Affidavit sworn on July 26, 2010 merely explained that execution was believed to be "*the only mechanism by which they* [his clients] *have any prospect of successfully making any significant recovery*" (paragraph 5). It also confirmed that the only asset sought to be attached and sold was the "*Note dated 1st May 2009*" (paragraph 6). In Michael Morrison's August 2, 2010 Affidavit, he explains that the stay is sought because, *inter alia*, the sale of the Class K Note: (a) would undermine the Receivers' attempts to negotiate an alternative restructuring, (b) would be inconsistent with the statutory scheme, and (c) "*favours one unsecured creditor when there are other competing claimants to a limited fund"* (paragraph 6).

13. I found that the Plaintiffs were seeking in good faith to exercise what they believed to be their legal rights as judgment creditors of the Company in respect of Class K account. I also accepted the Receivers' evidence that permitting one unsecured creditor to enforce its claim unilaterally would undermine the Receivers' attempts to negotiate a global solution for all of Class K and the wider NSSC class of investors as a whole. It seemed self-evident to me, in light of the various matters of record concerning the way in which the various competing commercial interests are intertwined, that the proposed execution would most likely be difficult at best and prejudicial to other Class K redemption creditors at worst. Bearing in mind the high level of uncertainty that exists as to the value of the collateral which secures the NSSC Notes, it is easy to anticipate a fire-sale which would yield enough to meet the Plaintiffs' claim (assuming they have priority) but would little to be shared amongst the remaining claimants of the same share class.

14. Further, and more pivotally, it seemed obvious that the factual matrix in which the stay application was being made was analogous to a corporate insolvency situation giving rise to clear objections in principle to one unsecured creditor being paid in priority to others, absent the establishment of special priority rights.

15. Finally, although it was a matter of record that the Writ was issued the day before the receivership commenced, there was no evidence adduced by the Plaintiffs that the Writ was in the possession of the Deputy Provost Marshall General before the Receivership Order was made. It was also seemingly accepted that the Deputy Provost Marshall had yet to obtain possession of the Note when the Receivership Order was made.

Findings: principles applicable to applications for a stay of proceedings against the Company under section 21(6) of the Segregated Accounts Company Act 2000

Standing to make stay application

16. Mr. Martin submitted that the Company alone had standing to apply for a stay under section 21(6) and not the Receivers. Ms. Bell countered that the Receivers are empowered to act on behalf of the Company under section 21(1) (b) and section 21(3).

17. Although the wording of section 21(6), on a purely superficial reading, might be said to be less than crystal clear, in my judgment the suggestion that the Receivers cannot themselves seek a stay had to be decisively rejected. Section 21(6) provides as follows:

> "*(6) At any time after the appointment of a receiver in respect of a segregated account, the company or any account owner or creditor of that account may, where an action or proceeding against the company in respect of that account is pending, apply to the court for a stay of those proceedings, and, on such an application being made, the court may stay the proceedings accordingly on such terms as it thinks fit."*

18. The primary statutory purpose of section 21 is to set out the powers liquidators have after their appointment (sections 19 and 20 dealing with the appointment process, and section 22 dealing with the discharge and variation of receivership orders). It would be curious for section 21 to be construed as positively excluding the power of receivers appointed in respect of a segregated account to apply to stay proceedings pending "*against the company in respect of that account*", while explicitly empowering the company itself (presumably acting by its directors) and creditors and account owners to seek such relief. This reading ignores the point, advanced by Ms. Bell, that once a receiver is appointed, he displaces the directors (save as regards other segregated accounts or the general account) and is the agent primarily competent to act on behalf of the company in respect of the relevant account:

> "*(1) The receiver of a segregated account—*
>
> *(a) may do all such things as may be necessary for the purposes set out in section 19(3); and*
>
> *(b) shall have all the functions and powers of the directors and managers of the segregated accounts company in respect of the business and assets linked to the segregated account.*"

19. The provisions of section 21(1)(b) are fortified by the following provisions of section 21:

> "*(3) In exercising his functions or powers the receiver is deemed to act as the agent of the segregated accounts company in respect of the segregated account, and does not incur personal liability except to the extent that his conduct amounts to misfeasance.*"

20. There is, however, a more fundamental reason as to why section 21(6) empowers the company and not the receiver to apply to stay "*an action or proceeding against the*

company", while section 21(2) empowers the receiver to apply for directions including the variation of the receivership order. This is because an application for directions by a receiver is authorised by the statute to be made in the name of the receiver on behalf of the receiver rather than in the name of the company. Liquidators appointed by the Court are empowered to both sue in the name of and on behalf of the company by section 175(1) and also to seek directions by section 176 (3) of the Companies Act on their own behalf[2]. Section 21(6) logically provides that the company itself is the proper party to seek a stay of proceedings against the company. This is consistent with the legal character of segregated accounts as the following provisions of the Act make plain:

> "*17 (1) Notwithstanding any other provision of this Act, the establishment of a segregated account does not create a legal person distinct from the segregated accounts company.*"

21. Section 21(6) of the Act, read in the context of the entire section and the Act as a whole, unambiguously provides that the Receivers may apply for a stay in the name of the Company of proceedings pending against the Company in respect of the property rights linked to the segregated accounts in respect of which they have been appointed. The Plaintiffs' action (Civil Jurisdiction 2010: 42) is a proceeding against the Company in respect the Class K segregated account in respect of which the Receivers have been appointed. For these reasons I rejected the Plaintiffs' challenge to their standing to seek a stay under section 21(6) of the Act.

Are the Receivers charged by the statutory scheme with managing the Class K assets for the benefit of past and present Class K shareholders on a pari passu basis by way of analogy with liquidators managing an insolvent estate?

22. Without resolving issues of priority, which by common accord did not require resolution in the context of the present application, it was readily apparent that Receivers upon appointment (a) became charged with managing the assets of the relevant account as a separate fund, and (b) were accordingly required to have regard to the interests of all persons interested in the relevant fund. It was equally clear that in the event of the fund being unable to meet all claims asserted against it in full, the Act mandates rules of distribution analogous to those which apply in the context of corporate insolvency.

23. For these reasons I rejected the submission that the interests of other Class K redemption creditors do not need to be taken into account. It is also irrelevant to a correct legal analysis that because illiquidity has afflicted all segregated accounts, and because of the way the Company structured its collateral arrangements in respect of the separate loan transactions, the Receivers have been appointed and are required to act on behalf of the NSSC classes as a whole. This is because, in general terms (and not ignoring the possibility that narrower conflict of interest difficulties may arise), the only obvious commercial and legal division exists between the NSI and NSSC "families" of segregated accounts. And this divide has been recognised through the appointment of Mr. McKenna

[2] The power to vest the assets of the company in the liquidator's name and for the liquidator to sue in his own name requires a special order which is rarely made: Companies Act 1981, section 174.

as Receiver of the NSI accounts and Messrs. Morrison and Thresh as Joint Receivers of the NSSC accounts.

24. The conclusion that the Receivers are indeed seized under the Act with the responsibility for managing the assets of, *inter alia*, Class K, in a manner akin to liquidators managing an insolvent estate was inevitable having regard to the following crucial statutory provisions. Section 19 of the Act, invoked by the Plaintiffs themselves in Tensor I, provides in material part as follows:

> "*(3) A receivership order shall direct that the business and assets linked to a segregated account shall be managed by a receiver specified in the order for the purposes of—*
>
> *(a) the orderly management, sale, rehabilitation, run-off or termination of the business of, or attributable to, the segregated account; or*
>
> *(b) the distribution of the assets linked to the segregated account to those entitled thereto.*"

25. In the event of a deficiency of assets in a segregated account, such as exists with respect to Class K, what distribution rules apply? Section 17 provides in salient part as follows:

> "*(7) In the event that a segregated account has insufficient assets to pay all of its obligations in full, the order and priority of the rights in relation to assets linked to a segregated account shall (without prejudice to the rights of any parties holding valid security interests against assets linked to that segregated account and any valid preferential claims in respect of that segregated account) be determined by the terms of the governing instrument and any contracts pertaining to that account, and any ambiguity in respect of the order and priority rights shall be resolved as follows:*
>
> *(a) the claims of creditors shall rank ahead of the claims of account owners;*
>
> *(b) the claims of creditors inter se shall rank pari passu; and*
>
> *(c) the claims of account owners inter se shall rank pari passu.*"

26. It is implicit rather than explicit in the well-worn winding-up regime applicable to companies under the Companies Act 1981 that the role of the liquidator is to wind-up the business of the company. The provisions which support the requisite inference are too numerous to mention. However, section 178, for example, provides as follows:

> "*178 (1) When the liquidator of a company which is being wound up by the Court has realized all the property of the company or as much thereof as can, in his opinion, be realized without needlessly protracting the liquidation and has distributed a final dividend, if any, to the creditors and has adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Court shall on his application and on his complying with all its*

requirements after hearing any objection that may be urged by any creditor, contributory or person interested against the release of the liquidator either release or withhold his release."

27. The distribution rules which apply in a winding-up have clearly been replicated by the section 17(7) regime. Section 225 of the Companies Act 1981 provides as follows:

> "**Distribution of property of company**
> *225 Subject to this Act as to preferential payment the property of a company shall, on its winding up, be applied in satisfaction of its liabilities pari passu, and, subject to such application, shall, unless the bye-laws otherwise provide, be distributed among the members according to their rights and interests in the company.*"

28. So the role of a receiver and the rules of distribution applicable to an insolvent segregated account are substantially similar to those which apply in the liquidation of an insolvent company. It follows that when considering an application to stay execution of a judgment against a company in respect of the assets of a segregated account in receivership, the approach which would be followed in a winding-up serves as a useful guide. It is true that, at first blush, there appears to be a somewhat different approach in the latter context; however, in my judgment the distinction is nit material in the present context where it is obvious that Class K and the various other accounts are commercially insolvent.

29. Under Part XIII of the 1981 Act, there is a mandatory stay of execution after the commencement of a winding-up: section 166(2). Proceedings are automatically stayed after a winding-up order has been made or a provisional liquidator has been appointed: section 167(4). Section 167(4) probably deals with the position most analogous to a receivership order under the Act, while section 166(2) may be said to deal explicitly with the issue of staying execution which is presently before this Court. However, the following provision in the Companies Act is in terms most similar to section 21(6) of the Segregated Accounts Companies Act:

> "**Powers to stay or restrain proceedings against a company**
> *165 (1) At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company or any creditor or contributory may, where an action or proceeding against the company is pending, apply to the Court for a stay of those proceedings.*
>
> *(2) On an application being made under subsection (1) the Court may stay the proceedings accordingly on such terms as it thinks fit.*"

30. This discretionary stay is only required, however in circumstances where the company's ordinary management is still in place. An automatic stay is triggered under section 167(4) when a provisional liquidator is appointed before a winding-up order is made or upon the making of a winding-up order when a provisional liquidator is inevitably appointed by the Court or by operation of law. What is made explicit in the Companies

Act regime is that the mere institution of compulsory winding-up proceedings prevents any execution which has not already been levied from being carried out:

> "**Avoidance of dispositions of property etc. after commencement of winding up**
> *166 (1)…*
>
> *(2) Where any company is being wound up by the Court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.*"

31. The practice under the United Kingdom equivalent of these rules in relation to writs of execution is explained in paragraph 47/1/12 of the 1999 White Book, which the Plaintiffs' counsel placed before the Court. From this commentary it appears that:

> "*A stay will, in ordinary circumstances be ordered although a winding up is not in immediate prospect, e.g. pending approval of a scheme of arrangement…The rule under which the Court gives effect to the rights of an execution creditor when the sheriff is in possession at the date of the commencement of the winding-up applies in favour of other execution creditors, who prior to such commencement, have lodged their writs with the sheriff in possession…*"

32. So, in the case of an insolvent company, proceedings against the company would ordinarily be stayed and execution would automatically be stayed except to the extent that the sheriff (in Bermuda the Deputy Provost Marshall General) is already in possession of the writ of execution and/or the property against which execution is to be levied. The Receivers' counsel referred the Court to *Re Buckingham International plc (in liq) (No 2)* [1998] 2 BCLC 369, a case which primarily dealt with the distinguishable but related arena of whether an execution creditor could be restrained from enforcing judgments against an insolvent company's assets abroad. I found the following passage in the judgment of Robert Walker LJ (as he then was) to be particularly helpful in explaining the general purport of the English equivalents of the Bermudian statutory insolvency provisions considered above:

> " *In his argument on this point Mr Moss submitted that it is not only s.183 of the Insolvency Act 1986 (replacing s.325(1) of the Companies Act 1948) that is relevant. There is a group of sections which together make up a coherent code for regulating the enforcement of claims (otherwise than through the winding up machinery) against a company which is about to be, or is in course of being, wound up. Such a code is necessary because the knowledge or suspicion that a company is in financial difficulties may lead judgment*

creditors to seek execution as a means of getting security, and other creditors to seek winding up in order to prevent any further reduction in the pool of assets available for those who remain unsecured. As Lord Brightman said in Roberts Petroleum Ltd v Bernard Kenny Ltd 1983 2 AC 192, 206,

> *'Neither step nor counterstep casts any discredit on those involved ...A person who has the misfortune to have given credit to a company which runs into financial difficulties has every right to seek to secure himself. And such company or its other creditors have every right to hasten liquidation in order to thwart such a purpose'.*

Mr Moss drew attention to ss 126, 128 and 130(2) of the Insolvency Act 1986, replacing ss. 226, 228 and 231 of the Companies Act 1948. Re Aro Co Ltd 1980 Ch 196 was concerned with s.231 in the specialised context of the arrest of a ship, and Roberts Petroleum Ltd was concerned with whether an intervening resolution to wind up was a "sufficient cause" for the court to decide to make absolute a charging order nisi made before the passing of the winding up resolution. There was no suggestion of sharp practice or other special circumstances in the case and it reached the House of Lords only because of the contrary decision of this court in Burston Finance Ltd v Godfrey 1976 1 WLR 719.

It is not necessary for us to refer to any more of the authorities cited by Mr Moss on this point. They are all in line with the general purpose of the legislation being (in Lord Brightman's words in Roberts Petroleum at p.209) to 'preclude inroads into the assets of a company once liquidation has

begun'; and Mr. Hollington readily accepted that he had to make out an exceptional case for discretion to be exercised in the appellants' favour."[3]

33. Section 21(6), admittedly, does not embody either the mandatory stay of proceedings or stay of execution (not already put in place) features of the company winding-up regime. In my judgment this is likely to be material only in cases, unlike the present, where a receiver has been appointed in circumstances where there is no suggestion that the liabilities of the relevant segregated account can be paid in full. In the present case where the segregated account which has been placed in receivership is plainly insolvent in a general sense[4], there can be no valid objection in principle to applying by analogy the corporate insolvency law practice to the Receivers' stay application.

Findings: reasons for continuing the stay

34. Applying the above principles to the present case, it was clear that Class K was an insolvent fund out of which the Plaintiffs were seeking to obtain payment through the judgment enforcement process. On this basis, absent any complicating factors, the Class K note as the account's sole or principal asset had to be viewed as an asset under the management and control of the Joint Receivers when they were appointed to be liquidated and distributed in such manner as they saw fit according to the statutory distribution scheme the application of which the Plaintiffs declined to recognise. The only proper exercise of the discretion to grant a stay under section 21(6) of the Act would be to continue the ex parte stay Order.

35. Having regard to the fact that the majority of the Class K stakeholders appeared to support the Joint Receivers' attempts to maximize the returns from the Note-through a negotiated solution of the wider commercial dispute-and the high level of complexity surrounding the legal and commercial status of the various segregated accounts as a whole, the case for continuing the stay was a compelling one.

Conclusion

36. For the above reasons, on August 2, 2010, I ordered that "*the execution of the Writ of Fieri Facias dated 4 June 2010 issued by Tensor Endowment Limited and UBS Fund Services (Cayman) Limited in proceedings in the supreme Court of Bermuda, Civil Jurisdiction, no 42 of 2010 be stayed pursuant to section 21(6) of the SAC Act and Order 47 Rule 1 of the Rules of the Supreme Court of Bermuda*".

Dated this 23 day of September, 2010

KAWALEY J

[3] [1998] EWCA Civ 247 at pages 13-15.

[4] Whatever view one may take of whether redemption claims ought or ought not to be taken into account for determining solvency for the purposes of section 19 (1) of the Act as read with section 2(2)(b).