

SUPERIOR COURT

(Commercial chamber)

CANADA

PROVINCE OF QUÉBEC

DISTRICT OF MONTRÉAL

N°: 500-11-036045-090

DATE: September 11, 2009

THE HONOURABLE CLAUDE AUCLAIR, J.S.C., JUDGE PRESIDING

IN THE MATTER OF THE RECEIVERSHIP OF:

STANFORD INTERNATIONAL BANK LIMITED

and

STANFORD TRUST COMPANY LIMITED

Debtors

and

NIGEL JOHN HAMILTON-SMITH

and

PETER NICHOLAS WASTELL

Antiguan Liquidators

and

RALPH S. JANVEY

Applicant

and

STANFORD INTERNATIONAL BANK LIMITED

and

STANFORD INTERNATIONAL BANK, LTD.

and

STANFORD TRUST COMPANY LIMITED

and

STANFORD GROUP COMPANY

and

STANFORD CAPITAL MANAGEMENT, LLC

and

STANFORD FINANCIAL GROUP

and
STANFORD FINANCIAL GROUP BLDG, INC.
and
BANK OF ANTIGUA
and
ROBERT ALLEN STANFORD
and
JAMES M. DAVIS
and
LAURA PENDERGEST-HOLT
Respondents
and
L'AUTORITÉ DES MARCHÉS FINANCIERS
Intervener

REASONS AND DECISION DELIVERED ORALLY

[1] The Applicant Janvey, appointed as receiver by the United States District Court for [the] Northern District of Texas upon the request of the Securit[ies] & Exchange Commission ("SEC") on February 19, 2009, seeks that this Court:

- Quash the April 6, 2009 order of Registrar Flamand;
- Recognize Janvey as foreign representative of the proceedings instituted abroad pursuant to Sections 267 *BIA* and following.
- Give effect to the American court orders appointing Janvey as a receiver;
- Nominate Ernst & Young, a Canadian bankruptcy trustee, interim receiver of the Canadian assets of the debtors;
- Order that the interim receiver assist Janvey in his duties in Canada;
- Any additional remedies which are accessory to the foregoing relief.

The International Context

U.K. Proceedings

In the U.K., both the Receiver and the Antiguan Liquidators applied for recognition under the *Cross-Border Insolvency Regulations 2006*, inspired by the Model Law. Each of them alleged before the High Court of Justice that the

proceedings in which they have been respectively appointed are “main proceedings” for the purposes of the 2006 Regulations.

The Court rendered its judgments on July 3, 2009. The Antiguan proceedings were recognized as the “main proceeding” and therefore the Antiguan Liquidators were entitled to SIB’s funds in the U.K. The Court found that SIB’s center of main interest was in Antigua. The U.S. Receivership was held not to qualify as a “foreign proceeding” because it was not based on a “law relating to insolvency.” Janvey was recognized at common law as the representative of all other Stanford Entities, including STC

Ontario Proceedings

The SIB and Stanford Group Company held approximately \$20,000,000 U.S. (the “**Funds**”) in various accounts with the Toronto-Dominion Bank (“**TD Bank**”) in Toronto, Ontario. On April 24, 2009, the Attorney General of Ontario commenced an application in rem for an Order forfeiting the Funds as proceeds of unlawful activity and obtained an interim preservation Order requiring that the Funds be paid by the TD Bank to the Ontario Superior Court of Justice. The Antiguan Receivers initially moved to set aside the preservation Order and obtain the Funds, which the U.S. Receiver opposed. Following two chambers appointments, all parties, including the U.S. Receiver, the Antiguan Receivers and the Attorney General, consented to an adjournment of the forfeiture application and a continuation of the preservation Order pending developments in the Quebec recognition proceedings.

Antiguan and American Proceedings

Vantis has been named liquidator for the SIB and the STC only, by the Antiguan Court and Janvey has been named receiver by the United States court for all of the corporate entities of the Stanford Group, including SIB and STC.

[2] Vantis opposes Janvey’s motion on the following grounds:

- a) The US Receivership is not a judicial or administrative proceeding initiated outside of Canada in respect of a debtor, under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally, as he has been appointed by a Court upon a request and pursuant to a law regulating securities;
- b) There is no real and substantial connection between the United States and SIB;
- c) The American Receiver favors a consolidation of assets which would result in the apportionment and distribution of the Canadian assets to all of the group’s creditors;

- d) The order issued on April 6, 2009 by Registrar Chantal Flamand should be upheld;

[3] It is surprising that Vantis pleads that Janvey was not appointed pursuant to a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally when he himself invoked, on April 3, 2009, as Receiver-Manager pursuant to Section 220 of the Laws of Antigua and Barbuda, being The International Business Corporation Act, which reads as follows:

220. Upon an application by a Receiver or Receiver-Manager of a corporation, whether appointed by the court or under an instrument, or upon an application by any interested person, the court may make any order it thinks fit, including,

- a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;
 - b) an order determining the notice to be given to any person, or dispensing with notice to any person;
 - c) an order declaring the rights of persons before the court or otherwise, or directing any person to do or abstain from doing anything;
 - d) an order fixing the remuneration of the receiver or receiver-manager;
 - e) an order requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed,
 - i. to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the corporation;
 - ii. to relieve any such person from any default on such terms as the court thinks fit, and
 - iii. to confirm any act of the receiver or receiver-manager;
- and
- f) an order giving direction on any matter relating to the duties of the receiver or receiver-manager.

[4] However, the February 26, 2009 order provided that:

4. Messrs Peter Nicholas Wastell and Nigel Hamilton-Smith be and are hereby appointed Joint Receivers-Managers of the Respondents/Defendants pursuant to Section 220 of the International Business Corporations Act (the Act) with such powers as the Court may determine.

5. The Joint Receivers-Managers do take immediate steps to stabilize the operations of the Respondents/Defendants unless ordered to do otherwise by further order of the Court
6. The Joint Receivers-Managers do execute their duties in accordance with the Act and otherwise only in accordance with this order and the directions of the Court.
7. The Joint Receivers-Managers do prepare and file in court a Monthly Interim Report and financial Statement in respect of the affairs of the Respondents/Defendants within 30 days of the date of this order and thereafter at regular intervals on the fifth day of each ensuing month.
8. The Joint Receivers-Managers upon the completion of their duties do prepare and file Final Accounts including a Financial Statement with recommendations as to the further conduct of the affairs, if any, of the Respondents/Defendants.
9. The Joint Receivers-Managers do take into their custody and control all the property, undertakings and other assets of the Respondents/Defendants pursuant to Section 221 of the Act and comply with all the other parts of the Section.
10. The Joint Receivers-Managers do open and maintain bank accounts within the jurisdiction or in such jurisdictions as they consider appropriate in their names as Joint Receivers-Managers of the Respondents/Defendants for the monies of the corporations coming under their control.
11. Subject to Section 220 of the Act, the Receivers-Managers do exercise, perform and discharge their duties independently or jointly and in so doing they shall be deemed to act as agents for the Respondents/Defendants without personal liability.
12. Without prejudice to the provisions of Section 373 of the Act, the Joint Receivers-managers be and are hereby authorized to disclose information concerning the management, operations, and financial situation of the Respondents/Defendants as they consider appropriate in the performance of their functions PROVIDED ALWAYS THAT
 - (1) no disclosure of customer specific information is authorized without further or other order of the court; and
 - (2) no disclosure of information is permitted under this Order to any foreign governmental or regulatory body unless such disclosure is subject to mutual disclosure obligations.

For the purpose of this Order, customer specific information means information of sufficient detail to enable a recipient of the information to identify the customer in question, the customer's address or other location, and/or the amount of such customer's credit balances or other investments in the Respondents/Defendants.

(...)

16. The Joint Receivers-Managers be directed from time to time on matters relating to their duties as the Court may determine on the application of the Applicant/Claimant or on the application of the Joint Receivers-Managers or on the application of the Respondents/Defendants.

(Emphasis added by the Court)

[5] The powers thus granted to Vantis are much less than those granted to Janvey in the Amended Receivership order issued in Texas, and which Janvey's attorneys summarize as follows:

In paragraph 1, the Court assumes exclusive jurisdiction over and takes possession of all assets belonging to the Stanford group.

In paragraph 2, Janvey is appointed Receiver.

In paragraph 4, the receiver obtains control, possession and custody of all of the Stanford group assets.

In paragraph 5, the Court orders and allows the receiver to control the assets; collect, take control and possession of funds and other assets, wherever located, institute proceedings, obtain records and documents, preserve the value of the assets and minimize expenses in preparation for a diligent distribution to claimants.

In paragraph 6, the receiver is designated as the sole person with the power to place the debtors in bankruptcy, if necessary.

Paragraph 9 orders that proceedings be stayed.

Paragraph 10 restricts the rights of creditors.

Paragraphs 12 and following constitute orders against debtors and their representatives.

The receiver is granted the rights to all assets of the debtors (control, possession and custody).

The receiver has the powers normally assigned to a trustee in bankruptcy.

All proceedings and rights of creditors are suspended.

An obligation is imposed on third parties to co-operate with the trustee.

The powers of members of the Stanford Group, of their board of directors or their shareholders are vested in the receiver.

All this is ordered in a context of insolvency (admitted by both parties) as a result of fraudulent conduct by the members of the Stanford group.

[6] It bears noting that these powers are broader than the powers granted to Vantis at the time when it sought Canada's assistance in the motion filed on April 3, 2009 before Registrar Flamand, which reads as follows:

MOTION SEEKING THE APPOINTMENT OF A FOREIGN REPRESENTATIVE, THE RECOGNITION OF A FOREIGN ORDER, FOR JUDICIAL ASSISTANCE AND FOR THE APPOINTMENT OF AN INTERIM RECEIVER (Sections 46(1) and 267 and *seq.* of the *Bankruptcy and Insolvency Act*, R.S.C. (1985), c. B-3).

1. By the present Motion, Petitioners Nigel John Hamilton-Smith and Peter Nicholas Wastell, licensed insolvency practitioners and partners at Vantis Business Recovery Services (the "Joint Receivers-Managers") are seeking the following reliefs:

a) a recognition of the Receivership Order (as defined in paragraph 8 below) pursuant to Sections 267 and *seq.* of Part XIII, *International Insolvencies*, of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "BIA");

b) a recognition that their status of Joint Receivers-Managers of Stanford International Bank Limited (in receivership) and Stanford Trust Company Limited (in receivership) (collectively, the "Debtors" in Antigua and Barbuda under the Receivership Order is similar to the status of a "foreign representative" of an estate in a "foreign proceeding" pursuant to section 267 and *seq.* of the BIA;

c) a recognition of their powers as Joint Receivers-Managers through the issuance of an order providing the following:

- i. the turnover to the Joint Receivers-Managers of any property, undertakings and other assets of the Debtors; and
- ii. granting the Joint Receivers-Managers the power to take immediate steps to stabilize the operations of the Debtors;

d) any further relief necessary to assist the Joint Receivers-Managers in the due carriage of their duties under the Receivership Order and under Sections 267 and *seq.* of the BIA;

[7] The Court sees in this a judicial admission that Vantis' simple power as Receiver-Manager, under Section 267 of the *Bankruptcy and Insolvency Act*, qualified as a proceeding commenced outside Canada and that with this, Vantis recognized that the statutory recourse provided in the Antiguan legislation on international corporations giving a receiver the power to protect the assets of a corporation was a proceeding relating to insolvency and bankruptcy.

[8] It is surprising to see that Vantis [argues], and even more shocking to note that it maintains still today the position that Janvey does not qualify, while it pleaded the opposite in its filings before Registrar Flamand, and moreover, that it does not waive this order.

[9] Vantis' position before Registrar Flamand conforms with case law which held that appointing receiverships pursuant to a securities law is equivalent to foreign proceedings relating to bankruptcy and insolvency and dealing with the collective interests of creditors generally.

[10] Janvey, under the terms of the order appointing him, had control over the property --the assets of the entire Stanford Group--, had to ensure that all these assets be frozen, and was vested with all the powers of the company as he had to protect and recover the assets, and ensure the suspension of the rights of all creditors, his powers being of the nature of those exercised by a trustee in bankruptcy or a liquidator in insolvency and bankruptcy, interim receivership or restructuring.

[11] The order suspending all proceedings relating to creditors is a fine example of a power conferred to a trustee or a liquidator.

[12] The Court has no hesitation in concluding that these proceedings involving Janvey are proceedings instituted abroad which conform to the definition provided in Section 267.

The Real and Substantial Connection

[13] Vantis submits that the important and real connection is in Antigua. The Court has declared Vantis' motion inadmissible.

[14] SIB is a foreign bank under Antiguan law and cannot receive deposits from citizens of Antigua. It is an offshore bank where the deposits are not held in the Bank's vaults in Antigua, but rather transferred to banks located outside of the territory of Antigua.

[15] Americans hold over 37% of the value of certificates of deposit, an amount greater than that held by nationals of all other countries.

[16] Vantis, in its Notes and Authorities, recognizes that SIB is part of a worldwide network of Stanford companies.

[17] Allen Stanford, President and shareholder of all the corporations of the Stanford Group holds both American and Antiguan citizenship, and is currently incarcerated in the United States.

[18] The FSRC is the applicant in Antigua who sought the appointment of the receivership, and thereafter, that of the liquidator.

[19] The Court notes however, that the proceedings are not signed by Leroy King, also accused in the United States as a Stanford accomplice in a complaint for money laundering.

[20] All of the parties present before the Court recognize the insolvency of the entire group, including SIB, and also recognize that SIB has clients in 113 different countries.

[21] The largest number of investor client creditors are from outside Antigua.

[22] Real property assets in Antigua have been expropriated by the government of Antigua without compensation and this, in anticipation of the negative impact of the US receivership on the Antiguan economy, according to the resolution of the Antiguan government.

[23] In its Notes and Authorities, Vantis recognizes that the key corporations of the Stanford Group are the following:

- Stanford Group Company (SGC), a brokerage house registered in the United States and broker dealer;
- Stanford Financial Group Global Management (SFGGML) and Stanford Global Advisory LLC, two corporations of the American Virgin Islands that billed large sums to SIB, officially for advisory services.

[24] In its Notes and Authorities regarding assets, Vantis describes the following:

Those assets which have been located to date are described in Hamilton-Smith Second Affidavit, paragraphs 67 to 73. The values put on some of the investments may prove not to be accurate and assets have not been included where the financial institution holding them has refused thus far to provide current balances. They include:

- i. cash balances (in Canada (\$19 million), Antigua (\$10 million) and the US (\$9 million)) ("**Tier 1 assets**");
- ii. funds invested through international financial institutions (in Switzerland (\$117 million), the UK (\$105 million) and the US (\$12 million)) ("**Tier 2 assets**"); and
- iii. other assets including equity investments, receivables, real estate in Antigua and claims against Stanford and other Stanford entities, including potential tracing claims on assets purchased by Stanford and Stanford entities, for example, investments made by Stanford using the \$1.6 billion "loaned" to him by SIB ("**Tier 3 assets**").

[25] The High Court of Justice, Chancery Division, (Companies Court) recognized that the Stanford Group is responsible for a *Ponzi* style fraud.

[26] All of the fraudulent operations linked together all of the corporations of the Stanford Group.

[27] A substantial portion of the operations of the Stanford group is in Houston. The Stanford Group performed services for \$ 268 million for SIB while SIB had \$ 3 million of salary expenses, which shows the scope of services performed outside of Antigua and shows that SIB is but a screen for tax purposes.

[28] As for the Stanford Trust, it had three times more employees in the United States than in Antigua.

[29] In its decision in *Holt Cargo*¹, the Supreme Court writes:

93 The appellants' strongest argument is that the dispute is but weakly connected to Canada. This Court, however, in *Antares Shipping Corp. v. The Ship "Capricorn"*, [1977] 2 S.C.R. 422, recognized that lack of substantive connections to any particular jurisdiction, including its home port, is a feature of ships engaged in international maritime commerce. In that case, the Court refused to stay proceedings in rem in which three Liberian corporations contested in Canada the ownership of a Liberian registered ship. Liberia, of course, is a flag of convenience. Ships registered there may never have occasion to "go home". In *Antares Shipping*, the only connection to Canada was that the ship was arrested at the suit of one of the Liberian corporations while it was in Canadian waters. Ritchie J., speaking for the majority, recognized that ocean-going ships present a particular problem. (...)

[30] One can draw a parallel here and say that offshore banks perhaps present a particular problem.

(...) At p. 453, he adopted the following observations of Lord Simon, dissenting, in *The Atlantic Star*, [1973] 2 All E.R. 175 (H.L.), at p. 197:

Ships are elusive. (...)

[31] The Court adds: just as money today and the transactions which can easily transit by electronic means.

The power to arrest in any port and found thereon an action in rem is increasingly required with the custom of ships being owned singly and sailing under flags of convenience. A large tanker may by negligent navigation cause extensive damage to beaches or to other shipping: she

¹ *Holt Cargo Systems Inc. v. ABC Container Line N.V. (Trustees of)*, [2001] 3 S.C.R. 907.

will take very good care to keep out of the ports of the 'convenient' forum. If the aggrieved party manages to arrest her elsewhere, it will be said forcibly (as the appellants say here): 'The defendant has no sort of connection with the forum except that she was arrested within its jurisdiction.' But that will frequently be the only way of securing justice.

Belgium is not a "flag of convenience" like Liberia but the principle remains the same. The "real and substantial connection" test must take into account the special "lifestyle" of ocean-going freighters.

[32] The Court paraphrases this last sentence in the statement: the real and important connection must take into account the particular lifestyle of offshore banks.

[33] The Court sees therein an important parallel with this matter where SIB, an offshore bank, is used only as a screen and an instrument for fraudulent, enormous operations involving many billions of dollars, and which are linked to all of the Stanford Group whose victims are spread throughout more than 113 countries.

[34] As such, the Court, to paraphrase the Supreme Court, is of the view that the "lifestyle" of this offshore bank is directly linked to the Stanford Group headquarters in Houston, and that SIB in Antigua is but a spoke in this affair.

[35] The Court is of the view that for *Ponzi* style frauds, the real and important connection is situated at the place of business of the nerve center or as one could call it, the center of the spider web of this fraud.

[36] The importance of the nerve center in Houston is beyond dispute. The most equitable solution is that the Court recognize the receivership and Janvey, the United States Receiver, as foreign representative.

CONSOLIDATION

[37] Vantis, on behalf of the creditors, submits that only the Antiguan liquidator could better protect Canadian creditors as there would be no dilution of the sums recovered considering that there is only the SIB file to manage and liquidate, whereas Janvey has already announced that he wanted to manage all the receiverships and that he could act at a lower cost and that there could be a dilution in the distributions.

[38] The Court recalls the *Norbourn*² affair where the Court of Appeal, despite the fraud of many interrelated companies which were administrated by a single receiver, ordered a different distribution for certain funds. Consolidation therefore is not an obstacle to naming Janvey as foreign representative.

² *Fonds Norbourg Placements équilibrés (Liquidation of)*, 2007 QCCA 1076.

[39] It would always be easier subsequently to distinguish between different assets, especially considering that Janvey requests that a Canadian interim receiver be named.

[40] At this stage, there is no danger of a single receiver acting on the entirety of the assets. In time, the Court will rule any arguments opposing such measures; the argument regarding consolidation is premature.

THE AMF

[41] The AMF intervened in this case and asks the Court to add a conclusion whereby the Court could rule at a later date on the distribution, a point with which Janvey is in agreement.

[42] To satisfy the Court and the request of the AMF, to which Janvey is in agreement, notice shall be given to the AMF of any proceedings in Canada with at least fifteen days prior notice, and of the distribution of assets and of their liquidation, including copies of all relevant reports.

The Flamand Order

[43] The order of Registrar Flamand no longer serves any purpose and is to be quashed for the following reasons:

- 1) The Court has dismissed Vantis' motion;
- 2) The order was issued at a time when Vantis acted as Receiver and not as liquidator, and his mandate of Receiver is now terminated;
- 3) Vantis is not a trustee under the BIA and thus does not have the right to act as interim receiver in Canada.
- 4) On all the other grounds for which Vantis' motion was declared inadmissible.

FOR THESE REASONS, THE COURT:

[44] **GRANTS** in part the Petitioner's Motion;

[45] **RESCINDS** and **REVOKES** the Order dated April 6, 2009 in this case;

[46] **ORDERS** the Antigua Receivers to render a full written accounting of their administration of the property, assets, information and records, located in Canada, of the Debtors, Respondents and all entities they own or control (the "**Stanford Entities' Property**"), within a delay of 10 days from the date of judgment to intervene on this Motion, to remit to Ernst & Young within such delay any and all of the Stanford Entities'

Property which was in their possession or control since February 26, 2009 and to restore it in the condition in which they received it;

[47] **ORDERS AND DECLARES** that the U.S. Receivership Proceedings are hereby recognized as a "foreign proceeding" for the purpose of Sections 267 and following of the BIA and that this proceeding is to be constituted as an ancillary proceeding to the U.S. Receivership Proceedings;

[48] **ORDERS AND DECLARES** that the Petitioner is hereby recognized as a foreign representative of the Debtors, Respondents and of all entities they own or control pursuant to Sections 267 and following of the BIA;

[49] **RECOGNIZES** the appointment of the Petitioner as Receiver of the Debtors, Respondents and all entities they own or control pursuant to the terms of the Receivership Orders;

[50] **ORDERS** that pursuant to Sections 267 and following of the BIA, Ernst & Young Inc. is hereby appointed Interim Receiver (the "Interim Receiver"), without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever located in Canada including all proceeds thereof, of the Debtors, Respondents and of all entities they own or control (the "Property") to conduct his proceedings and actions as ancillary to the U.S. Receivership Proceedings;

[51] **ORDERS** that the Interim Receiver shall, in the exercise of its powers provided for herein, consult with the U.S. Receiver to ensure this proceeding is co-ordinated to the fullest extent possible with, and as a proceeding ancillary to, the U.S. Receivership Proceedings;

[52] **ORDERS** that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property in coordination with the Petitioner and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following in Canada having due regard for the consultation obligations and the relationship of these proceedings to the U.S. Receivership Proceedings:

- a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- d) to receive and collect all monies and accounts now owed or hereafter owing to the Respondents and, to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents;
- e) with approval of this Honourable Court, to settle, extend or compromise any indebtedness owing to the Respondents;
- f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Respondents, for any purpose pursuant to this Order;
- g) with the approval of this Honourable Court, to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Respondents, the Property or the Interim Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- h) with the approval of this Honourable Court, to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Interim Receiver in its discretion may deem appropriate;
- i) with the approval of this Honourable Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof;
- j) to apply (with adequate notice to or joinder by the Petitioner) for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof or any other person or entity entitled thereto, free and clear of any liens or encumbrances affecting such Property;
- k) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the receivership, and to share

information, subject to such terms as to confidentiality as the Interim Receiver deems advisable having due regard for the relationship with the U.S. Receivership Proceedings;

- l) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- m) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of the Respondents;
- n) with the approval of this Honourable Court, to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property that may be owned or leased by the Respondents;
- o) with the approval of this Honourable Court, to exercise any shareholder, partnership, joint venture or other rights which the Respondents may have; and
- p) to take any steps reasonably incidental to the exercise of these powers.
- q) and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of the Respondents and the Antiguan Receivers.

[53] **ORDERS** that the Interim Receiver shall not, without further order of this Court, manage or operate the business of the Respondents and shall not be deemed to have done so by virtue of the granting of this Order;

[54] **ORDERS** that (i) the Respondents, (ii) all the legal entity Respondents' current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf (excepting the Petitioner), and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (excepting the Petitioner), including landlords of premises leased to any of the Respondents in Canada (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request;

[55] **ORDERS** that all Persons (excepting the Petitioner) shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records located in Canada, and any other papers, records and information of any kind related to the business or affairs of the Respondents in Canada and of any persona) computers, servers, computer programs, computer tapes, computer disks, or other data storage media located in Canada and containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 12 or in paragraph 13 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure;

[56] **ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage in Canada, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons in Canada shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information;

[57] **ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Honourable Court;

[58] **ORDERS** that no Proceeding against or in respect of the Respondents or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Respondents or the Property are hereby stayed and suspended pending further Order of this Honourable Court;

[59] **ORDERS** that all rights and remedies against the Respondents, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the

written consent of the Interim Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Interim Receiver or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Respondents from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien;

[60] **ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Respondents, without written consent of the Interim Receiver or leave of this Court;

[61] **ORDERS** that all Persons having oral or written agreements with the Respondents or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondents are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Respondents' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Respondents or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court;

[62] **ORDERS** that, subject to the following paragraph, all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim Receiver from and after the making of this Order from any source whatsoever in Canada, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Interim Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Interim Receiver and shall only be paid or disbursed by the Interim Receiver with the approval of this Honourable Court;

[63] **ORDERS** that the Petitioner may repatriate assets to the United States pursuant to paragraph 5 of the Receivership Order dated February 16, 2009, but only with the prior authorization of this Court or another Province in Canada having jurisdiction over the assets and after a notice of 15 days to the AMF.

[64] **ORDERS** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part;

[65] **ORDERS** that any expenditure or liability which shall properly be made or incurred by the Interim Receiver, including the fees of the Interim Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Interim Receiver and its counsel, shall, if approved in advance by this Court, be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge"), provided however, that the Receiver's Charge shall not be enforced without leave of Court;

[66] **ORDERS** the Interim Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial Chamber of the Quebec Superior Court, District of Montreal, with notice and right to appear given to the Petitioner in connection with any motion or other request for approval of same;

[67] **ORDERS** that the Interim Receiver may from time to time apply to this Honourable Court for advice and directions in the discharge of its powers and duties hereunder; provided, however, that in all such applications, and all actions, and other proceedings and actions of the Receiver and hearings and requests before this Honourable Court, the Petitioner will be granted prior notice and provided with an opportunity to be heard and furthermore that the Petitioner will have the right to bring actions in this Honourable Court to enforce the provisions and limitations hereof;

[68] **ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Respondents in Canada;

[69] **ORDERS** that this Order and any other orders in these proceedings shall have full force and effect in all provinces and territories in Canada as against all persons, firms, corporations, governmental, municipal or regulatory authorities or other entities against whom it may otherwise be enforceable;

[70] **THAT THIS COURT REQUEST** the aid and recognition of any and all courts, tribunals regulatory or administrative bodies in Canada, the United States or in any other foreign jurisdiction, to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order, all giving due regard to the actions and provisions herein being ancillary to the U.S. Receivership Proceedings.

[71] **ORDERS** that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located in Canada, for the recognition of this Order as opening a receivership ancillary to the U.S. Receivership Proceeding and for assistance in carrying out the terms of this Order;

[72] **ORDERS** that Petitioner shall have his costs of this motion, up to and including entry and service of this Order to be paid by the Antiguan Receivers at such time as this Court may determine;

[73] **ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than ten (10) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;

[74] **ORDERS** the provisional execution of the judgment to intervene herein, notwithstanding appeal and without the necessity of furnishing any security;

[75] **THE WHOLE WITH COSTS** against the Antiguan Receivers.

[stamp: TRUE COPY
[signature] Clerk of the Court

[signature]

CLAUDE AUCLAIR, J.S.C.

Atty. George R. Hendy
Atty. Martin Desrosiers
Atty. Nicholas Nadeau-Ouellette
Counsel for the Petitioner

Atty. Julie Himo
Atty. Philippe Giraldeau
Counsel for the Antiguan Liquidators

Atty. Émilie Robert
Counsel for the Intervener

Date of the hearing : August 26, 27, 28 2009. Supplementary arguments: September 2, 4 and 8, 2009.