

JERSEY / JUDGMENT

Leisurenet v [2002] JRC 46 (26 February 2002)

[2002] JRC 46

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judgment

the deputy bailiff: 1. Robert John Walters and Gavin Cecil Gainsford are the joint liquidators or LeisureNet Limited ("LeisureNet"), a public company which was listed on the Johannesburg Securities Exchange in South Africa. LeisureNet was ordered to be wound up on 30th November, 2000, by the High Court of South Africa on the grounds that it was insolvent. It is estimated that its liabilities exceed its assets by some R681million (£42million at current exchange rates). 2. The joint liquidators now seek the assistance of this Court in relation to the liquidation and winding up of LeisureNet in the following circumstances. On 30th November 2000 the High Court in South Africa appointed a Commissioner pursuant to Sections 417 and 418 of the Companies Act of South Africa in order to enquire into the trade, dealings, affairs and property of LeisureNet. We have received evidence on affidavit concerning the evidence which emerged from the hearings before the Commissioner. 3. The story is a complicated one but, for our purposes, can be reduced to the following: LeisureNet, through subsidiaries, was the owner of 50% of Healthland Germany Limited ("Healthland Germany"), a United Kingdom company, which in turn owned Healthland Germany GmbH, a company incorporated and carrying on business in Germany. The other 50% of Healthland Germany was owned by Dalmore Limited ("Dalmore") a company incorporated in Jersey and administered by Royal Bank of Canada Trust Company (International) Limited. It was said before the Commissioner that the joint chief executive officers of LeisureNet, namely Peter Gardener and Rodney Mitchell, each beneficially owned 20% of Dalmore. 4. On 16th April 1999 LeisureNet - through a subsidiary called LeisureNet International Limited

- purchased Dalmore's 50% interest in Healthland Germany for DM10million. It is said that this was a fraudulent transaction in a number of respects:- (i) The price was grossly inflated. At the time Healthland Germany was technically insolvent and worth almost nothing. (ii) The beneficial interest of Mr Gardner and Mr Mitchell in Dalmore was unknown to the remaining members of the board of directors of LeisureNet when they agreed to the transaction. (iii) The board of LeisureNet understood that the purchase price was to be funded by the issue of shares in LeisureNet but, in fact, the price was paid by way of a cash payment. 5. It is also alleged, on the basis of evidence given before the Commissioner, that unjustified commissions of some £245,000 were paid to Dalmore and other sums were paid

to four companies incorporated in the British Virgin Islands but administered in Jersey. 6. In short, it is alleged that the two chief executive officers have improperly extracted company funds for their own benefit and the joint liquidators wish, if appropriate, to trace and recover these monies. They have obtained a letter of request from the High Court of South Africa seeking the Court's assistance. 7. Article 48 of the Bankruptcy (Desastre) (Jersey) Law 1990 contains statutory provisions governing requests by foreign courts; but that is of no assistance in this case. The article is applicable only to designated countries and territories and South Africa has not been so designated as yet. 8. It is however clear that the Court has an inherent jurisdiction to make orders in aid on the basis of comity and reciprocity (e.g. *Re First International Bank of Grenada Limited* (Jersey Unreported) 23rd January 2002). 9. It is clear from the very detailed memorandum before us from South African counsel to the liquidators that the High Court of South Africa would offer reciprocal assistance in such circumstances. 10. In essence the joint liquidators ask for the following relief:- (i) That their authority and status be recognised and enforced by this Court; (ii) That certain banks and the company administrators of Dalmore and the BVI companies disclose information concerning the matters in question; (iii) That the same institutions disclose documents concerning the matters in question; (iv) That injunctive relief freezing the appropriate assets be granted for a limited period pending consideration whether, following production of the information and documents, substantive proceedings for recovery of funds should be instituted. 11. We consider it appropriate to grant the assistance requested by the letter of request and articulated in the terms of the prayer of the representation. The prayer is granted subject to the following points:- (i) Paragraphs (d) to (g), which require disclosure of information and documents, are granted subject to receipt of an undertaking that the joint liquidators will pay the reasonable costs of the named institutions in complying with the orders. (ii) The freezing injunctions contained at paragraphs (h) to (k) inclusive will be limited to a period of two months. This is intended to give time for substantive proceedings to be instituted which could then seek injunctive relief if appropriate. There will be liberty to apply so that the joint liquidators will be able to apply for an extension of these injunctions should this become necessary. (iii) Paragraph (k) will be extended to cover the four BVI companies. (iv) The application for paragraph (l), which was a gagging order, was withdrawn by Mr Speck during the course of the hearing. (v) We are not willing to grant paragraph (m) which allows the joint liquidators to summon an officer of the relevant institutions before the Viscount for examination in relation to these matters. The request is too general. Should the exercise of this power become necessary, the joint liquidators may apply to this Court for a specific order setting out the grounds upon which it is required. (vi) As to paragraph (n) we confirm that the joint liquidators may make use of the copy documents and information disclosed for the purpose of tracing actions elsewhere and for the purposes of reporting to the Commissioner and for the purposes of any proceedings before the High Court of South Africa but not for any other purpose. If they do require to use the documents for any other purpose, they will need to make specific application to this Court. Authorities. Bankruptcy (Désastre) (Jersey) Law 1990: Article 48. *Re First International Bank of Grenada Limited* (23rd January 2002) Jersey Unreported; [2002/21].

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