

JERSEY / JUDGMENT

Representation of CI Traders

[2007] JRC 149A (02 August 2007)

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judgment

the commissioner: 1. The Court has before it a Representation filed on behalf of C I Traders Limited seeking sanction of a scheme of arrangement to enable the implementation of a proposal that Sandpiper Bidco Limited acquire the whole of the issued capital of C I Traders Limited for case. 2. The Representation first came before this Court on 4 th July when directions were given for the convening of a meeting referred to as the Court meeting of ordinary share holders of the company for considering and approving the scheme of arrangement. The Court meeting was duly convened and held on 30 th July, Monday of this week. The Court satisfied itself that despite an initial mix-up over the colour of the voting slips and the failure to enclose a reply paid envelope in the original mailing, the appropriate formalities were observed in giving notice to the membership of the companies as required in the original order of the Court. 3. The Court has read the Affidavit of Sir Michael Wilkes reporting on the meetings of 30 th July. Sir Michael is the Deputy Chairman of C I Traders and Chairman of the Committee of Independent Directors. He records fully in his report the issues that concerned some of those attending. These seem to have centred on arrangements made by Sandpiper Bidco Limited after the initial offer price had been negotiated, to offload at a discount a part of the company's property portfolio to a vehicle controlled by the current Chairman of C I Traders, Mr T H Scott. This was to take place prior to completion and would thus reduce the amount of money that the bidder would be required to find in order to achieve the takeover. We should further add that as part of a scheme of arrangement C I Traders was to hold an Extraordinary General Meeting immediately after the Court meeting to approve certain reorganisation arrangements that were necessary in connection with the scheme of arrangement and more importantly approve the arrangements concerning the property transfers to Mr Scott, to which we have already alluded. 4. Sir Michael Wilkes reports on the results of the ballots, both the Court meeting and the Extraordinary General Meeting, and it is clear that the majorities for approval of the scheme of arrangement and consequential approval of a reorganisation and property transactions, were well over the statutory requirements. We record that in the case of the Court meeting on a poll, 97.81% of the votes recorded were in favour, and 2.19% against. Early on in the hearing this afternoon I called for opposition and there was none. 5. The Court has had the benefit of hearing from Mr Thompson on behalf of C I Traders Limited and we are obliged for the very succinct and clear

way in which he put forward the issues for this Court to consider. We adopt his submissions as to the role of the Court in approving applications of this kind. 6. We are satisfied that this is an application that is properly to be considered under Section 125 of the Companies (Jersey) Law 1991 and we also have noted previous authority of this Court in the case of TSB of the C I

[1992] JLR 160 and Telewest Finance Jersey Limited

[2004] JRC 109 which persuades us that we should continue to follow English authority in interpreting the Section and the way in which the Court exercises its discretion in matters of this kind. For the sake of bringing the authorities up to date, we adopt the words of paragraph 1477 of volume 7(2) of Halsbury's Laws of England 2004 edition on Companies:- "1477. Compromises of arrangements sanctioned. Any kind of compromise or arrangement maybe sanctioned. In exercising its power of sanction, the Court must be satisfied

- (1) that the provisions of the statute have been complied with;
- (2) that the classes of creditors or members have been fairly represented by those who attended the meeting and the statutory majority approving the scheme is acting in good faith in the interests of the class it professes to represent and is not coercing the minority in order to promote interest adverse to those of the class whom they purport to represent; and
- (3) that the arrangement was such as an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve." We note some of the concerns of those who spoke at the meetings. These cannot however stand in the face of the large majority of members who have reached their conclusions to vote in favour of these proposals intelligently and honestly. 7. We have been assured by Mr MacRae that Sandpiper continues to be committed to implementing the scheme so that full approval for it can be recorded tomorrow after the conclusion of the business of the Samedi Court. We therefore exercise our discretion to approve the scheme of arrangement which is the subject of the meeting of the company earlier this week and this matter will be formally adjourned until the sitting of the Samedi Court tomorrow when it can be concluded. Authorities Companies (Jersey) Law 1991. TSB of the C I

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