

Marcus A. Wide
Liquidator of Horizon Bank
International Limited

c/o PricewaterhouseCoopers (WI) Inc.
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WEBSITE UPDATE

BERMUDA (MESSRS. WALSH AND TAAL PROPRIETARY CLAIM)

In November 2005, the Liquidator caused the Bank to commence ancillary winding-up proceedings in Bermuda designed to increase the efficiency, cost and logistical ease with which litigation and asset recovery in that jurisdiction could be carried forward. The Supreme Court of Bermuda, by Order dated November 10, 2005 (a copy of which can be accessed below at **Appendix 1**) appointed Marcus Wide and PricewaterhouseCoopers (Bermuda) partner Peter C.B. Mitchell, as Joint Provisional Liquidators (“JPLs”) of the Bank in Bermuda.

The application referred to in the Status of File Report posted on this site on April 6, 2006 (to settle the terms of the order of the interlocutory decision of the Court of February 2005) was brought on April 26 and 27, 2006. In addition, further applications made by the JPLs and by Messrs. Walsh and Taal were heard at the same time.

The JPLs application by summons (a copy of which can be accessed below at **Appendix 2**) sought various terms of relief, including:

- Payment out to the JPLs of funds held in Bermuda Commercial Bank (“BCB”) in excess of the lowest intermediate balance as found earlier by Kawaley J.;
- An anti-suit injunction to prevent Messrs. Walsh and Taal from joining the Liquidator or JPLs in their litigation in Toronto, Ontario, Canada; and,
- Case management directions in relation to the prosecution of Messrs. Walsh and Taal’s proprietary claim to the monies held in HBI’s accounts at BCB in Bermuda.

Messrs. Walsh and Taal’s application by summons (a copy of which can be accessed below at **Appendix 3**) sought relief including:

- Immediate payment to them of the lowest intermediate balance;
- No payment of any of the funds in Bermuda to the Liquidator; and,
- A direction that there should be a determination of all fraud issues by the Ontario Courts before their tracing issues could be tried by the Bermuda Court.

On the hearing of the applications, the JPLs relied upon the Affidavit of James Pomeroy. Messrs. Walsh and Taal relied on the Seventh and Eighth Walsh Affidavits filed earlier in the interpleader proceedings.

The Pomeroy Affidavit, based on records then in the JPLs' hands, deposed that the lowest intermediate balance figure should be \$4,422,863.43 based on the accounts being at their lowest balance as at August 4, 2003.

Counsel for the JPLs challenged the Seventh and Eighth Walsh Affidavits as disclosing no evidence in support of their proprietary claim to the funds in the HBI bank accounts. By way of response, counsel for Messrs. Walsh and Taal represented that they had not seen sufficient documents and bank records which they required before the issue of the amount of their proprietary claim could be resolved. Counsel for the JPLs, and on their instructions, offered to immediately make available to Mr. Walsh and/or his counsel all books and records seized by the Liquidator as soon as viewing could be arranged.

Counsel for the JPLs argued that, in view of the liquidation proceedings against HBI in St. Vincent and the ancillary proceedings in Bermuda which had the effect of staying the actions of all the parties to the interpleader proceedings, other than Messrs. Walsh and Taal who were no longer relevant, and what remained was the proprietary claim of Messrs. Walsh and Taal as plaintiffs against the Bank. The Court accepted that this was the case and accordingly made an order giving case management directions relating to the further prosecution of Messrs. Walsh and Taal's claim. A copy of the order can be accessed below.

The issue of an anti-suit injunction and the issue of possible jurisdiction of the Ontario Courts with respect to any matters in issue in the Bermuda proceeding was suspended pending the case management order which flowed out of the application (a copy of which can be accessed below at **Appendix 4**).

In summary, the order provided for:

- The proceedings to be reformatted with Messrs. Walsh and Taal as the plaintiffs and HBI, in Liquidation, as defendant,
- Inspection of HBI's documents by Messrs. Walsh and Taal within two weeks (which took place in May 2006),
- The filing of a Statement of Claim by Messrs. Walsh and Taal as Plaintiffs by June 1, 2006 (which took place; a copy of which can be accessed below at **Appendix 5**),
- Filing of a Defence by HBI by July 1, 2006 (which took place; a copy of which can be accessed below at **Appendix 6**),
- The Plaintiffs to give discovery by the provision of a list of documents and production of the said documents the Plaintiffs following the close of pleadings,
- A date to be fixed for a further directions hearing following discovery by Messrs. Walsh and Taal,
- And the other applications in the summonses of Messrs. Walsh and Taal, and HBI respectively were adjourned to the future directions hearing.

The JPLs served a request for further and better particulars of the Plaintiff's points of claim at the same time as they served the Bank's defence (a copy of the request can be accessed below at **Appendix 7**).

September 22, 2006 was fixed as the time to return before Kawaley J. for the hearing for further directions and directions for trial.

Notwithstanding requests for listing and production of documents for inspection and an answer to the request for particulars, the Plaintiffs failed to take any steps in that regard.

Over the summer months, the Liquidator and his advisors became aware that there were gaps in BCB account records for accounts held by HBI which might bear on the issue of the lowest intermediate balance in the accounts for the purposes of calculations of the amount to remain subject to the interim freeze pending trial. The JPLs requested production of further materials from BCB which, when reviewed by the Liquidator's staff and advisors, disclosed that the lowest balance in the accounts at BCB, upon which the lowest intermediate balance figure would be calculated, occurred in September 2000. This resulted in a recalculation of the lowest intermediate balance of \$4,246,007.30.

In September, 2006, the JPLs filed an application (a copy of the request can be accessed below at **Appendix 8**), returnable the same date as the directions hearing, September 22, 2006, seeking that an order that unless the Plaintiffs provided discovery and responded to the Bank's request for further and better particulars by September 29, 2006, their points of claim should be struck out.

Messrs. Walsh and Taal filed an application also returnable September 22, 2006 (a copy of the request can be accessed below at **Appendix 9**), seeking the following relief; a stay of the Bermuda proceeding pending an application being made in St. Vincent by Messrs. Walsh and Taal for "sanctions" against the Liquidator in relation to an alleged conflict of interest; or, in the alternative that the Plaintiffs be granted leave to file further evidence in relation to the applications of Messrs. Walsh and Taal, and the JPLs, which had been adjourned on April 27, 2006.

It was the Liquidator's view that it would cause the estate unnecessary expenses to participate in a wide reaching multi-party proceeding in Ontario in which the specific issues that were required to be adjudicated to resolve the interpleader matter in Bermuda would form only a minor part of the trial. Further, there could be significant delays in making this determination as the Ontario proceeding was outside the control of the JPLs, in a court to which the Liquidator had not submitted, and which may not have jurisdiction over the JPLs in any event.

At the hearing, the judge, from the Bench, dismissed the Plaintiffs' application for a stay of the proceedings pending resolution of the Plaintiffs' conflict allegation in St. Vincent. As the Judge was minded to grant the JPLs the order releasing the monies in excess of the lowest intermediate balance from the BCB accounts, Messrs. Walsh and Taal's counsel then made representations to the effect that Messrs. Walsh and Taal wanted an opportunity to argue that the amount of monies remaining frozen should not be the lowest intermediate balance calculated in the second Pomeroy affidavit, \$4,246,007.30, but approximately \$5.6 million and

to file further Affidavits (a copy of the affidavit can be accessed at **Appendix 10**). So as not to allow further delay, the JPLs agreed, if so ordered, to a payment out to the JPLs of all sums in excess of \$5.6 million without prejudice to their right to argue that the amount of the remaining subject to the interim freeze ought to be \$4,246,007.30. The Court so ordered.

The court directed that the Plaintiffs file a response to the request for further and better particulars and their list of documents within 28 days of September 22, 2006, and have their documents available forthwith. The court also granted the plaintiffs leave to file a reply to the defence within 28 days.

The Court reserved decision on the jurisdictional issues as to whether the fraud issues should be tried in Ontario and Bermuda, and by written decision of September 27, 2006 found that the proper forum for trial of all issues relating to the bank was Bermuda. In its ruling, the court gave a direction that the Plaintiffs file a summons for pre-trial directions within 28 days of September 27, 2006.

Copies of the ruling dated September 27, 2006 and the orders dated September 22, 2006 and September 27, 2006, can be accessed below at **Appendices 11** through **13** respectively).

Appendix 1

IN THE SUPREME COURT OF BERMUDA
COMPANIES (WINDING-UP)
2005: No. 359

IN THE MATTER OF THE COMPANIES ACT 1981
AND IN THE MATTER OF HORIZON BANK INTERNATIONAL LIMITED

ORDER

UPON the application by Ex Parte Summons dated 8 November 2005 of Marcus A Wide, the liquidator of Horizon Bank International Limited (“the Liquidator”);

AND UPON READING the affidavits sworn by the Liquidator on 4 November 2005 and 9 November 2005 in support

AND UPON HEARING Counsel for the Liquidator

IT IS HEREBY ORDERED THAT:

- 1 Marcus A. Wide, Director PricewaterhouseCoopers (WI) Inc, partner in PricewaterhouseCoopers LLP (who was appointed Liquidator of the Company by order of the High Court of Justice of Saint Vincent and the Grenadines in winding-up proceedings in Saint Vincent and the Grenadines on 9 June 2005), and Peter C.B. Mitchell, Managing Director of PricewaterhouseCoopers, Dorchester House, 7 Church Street, Hamilton, Bermuda, be appointed joint provisional liquidators of the Company (“the Joint Provisional Liquidators”) and that any act required or authorised to be done by a liquidator may be done by either one of the Joint Provisional Liquidators.
- 2 The Joint Provisional Liquidators shall have power to carry out the following functions namely:
 - 2.1 to locate, protect, secure, take possession of, collect and get in all the property or assets (of whatever nature) located in Bermuda to which the Company is or appears to be entitled, such assets and property not to be

distributed or parted with by the Joint Provisional Liquidators until further order except pursuant to the functions and powers hereby contained, and to review, where necessary, any and all records of Bermuda Commercial Bank Limited pertaining to the Company;

- 2.2 to locate, protect, secure, take possession of, collect and get in the books, papers and records of the Company located in Bermuda including the accounting, statutory records, bank account and bank records;
- 2.3 to investigate the affairs of the Company so far as it is necessary to locate, protect, secure, take possession of, collect and get in the assets of the Company located in Bermuda;
- 2.4 to do all such things as may be necessary or expedient for the protection of the Company's property or assets located in Bermuda.

3 The Joint Provisional Liquidators do have the following powers without prejudice to the generality of the powers set forth in paragraphs 2.1 to 2.4 above:

- 3.1 to carry on the business of the Company to the extent necessary to settle claims against the Company;
- 3.2 to investigate the affairs of the Company and obtain such information as is necessary to locate protect, secure, take possession of, collect and get in the assets of the Company located in Bermuda or to further a scheme of arrangement; and for this purpose to apply for orders under s.195 of the Companies Act 1981;
- 3.3 to continue to operate the existing bank accounts of the Company and to open and operate new bank accounts (whether within or outside the jurisdiction) as appropriate and to pay monies into such accounts and authorise payments from such accounts;
- 3.4 to incur and pay out of the assets of the Company the normal administrative expenses of the Company and any other payment which they are empowered to make pursuant to this Order which are necessary or incidental to the performance of the Joint Provisional Liquidators' duties and functions;

- 3.5 to terminate, complete, or perfect, any contracts or transactions relating to the business of the Company;
 - 3.6 to bring or defend or intervene in any action or other legal proceedings in the name and on behalf of the Company including, for the avoidance of doubt, the giving of any indemnity or cross undertaking in damages as may be necessary or if so required and including proceedings outside as well as within the jurisdiction and, in particular, if necessary proceedings in the High Court of Justice Saint Vincent and the Grenadines and the Bahamas;
 - 3.7 to do all acts and to execute, in the name and on behalf of the Company all deeds, receipts or other documents (and for that purpose using, where necessary, the Company's seal) pursuant to the powers conferred herein;
 - 3.8 to engage and retain and/or employ (whether within or outside the jurisdiction) any solicitors, counsel, lawyers, accountants, investment advisors, actuaries, run-off and claims consultants, loss adjusters, surveyors, and/or other qualified persons to assist them in the performance of their duties and functions and, in particular, to prepare such reports as the Joint Provisional Liquidators may consider necessary to assist in discharging their duties as Joint Provisional Liquidators under the law;
 - 3.9 to rank and claim in the bankruptcy, liquidation or insolvency of any person (including but not limited to any body corporate) indebted to the Company and to receive dividends, and to accede to trust deeds for the creditors of any such person;
 - 3.10 to do all things incidental to the exercise of the foregoing powers.
- 4 That no disposition of the Company's property by or with the authority of the Joint Provisional Liquidators in either case in the carrying out of their duties and functions and the exercise of their powers under this Order shall be avoided by virtue of the provisions of Section 382 of Saint Vincent and the Grenadines' Companies Act, No. 8 of 1994 or Section 166(1) of the Companies Act 1981.

- 5 That the application under paragraph 5 of the Ex Parte Summons dated 8 November 2005 seeking orders pursuant to section 195 of the Companies Act 1981 shall be adjourned to a date to be fixed by the Registrar.
- 6 That the application under paragraph 6 of the Ex Parte Summons dated 8 November 2005 seeking an order that no person shall be entitled to inspect the Court file in this matter without the leave of the Court shall be adjourned to a date to be fixed by the Registrar.
- 7 That there be liberty to apply to the Court for such further orders or directions whether in relation to the exercise of the above powers or otherwise as may appear to the Joint Provisional Liquidators to be necessary or appropriate.

Dated this 10th day of November 2005.



HON. DR. IAN R. C. KAWALEY
PUISNE JUDGE

IN THE SUPREME COURT OF BERMUDA

COMPANIES (WINDING-UP)

2005: No. 359

IN THE MATTER OF THE COMPANIES ACT 1981

AND IN THE MATTER OF HORIZON BANK
INTERNATIONAL LIMITED

ORDER

SUPREME COURT BERMUDA

2005 NOV 10 PM 3:58



Attride-Stirling & Woloniecki
Crawford House
50 Cedar Avenue
Hamilton HM 11
Attorneys to the Petitioner

Appendix 2

IN THE SUPREME COURT OF BERMUDA
CIVIL JURISDICTION
2004: No: 257

BERMUDA COMMERCIAL BANK LIMITED	Plaintiff
-and-	
HORIZON BANK INTERNATIONAL LIMITED	First Defendant
and	
THE BRITANNIA GROUP	Second Defendant
and	
FX BRIDGE LTD	Third Defendant
and	
FOUR SQUARE PARTNERS LTD	Fourth Defendant
and	
TRANSWORLD MANAGEMENT CONSULTANTS CORPORATION	Fifth Defendant
and	
INTERNATIONAL MONETARY RESOURCES LTD	Sixth Defendant
and	
SLALOM INVESTMENTS LTD	Seventh Defendant
and	
ALLEN WALSH	Eighth Defendant
and	
HANS TAAL	Ninth Defendant
and	
WWIN INTERNATIONAL LIMITED	Tenth Defendant
and	
INTERNATIONAL CORPORATE SERVICES LIMITED	Eleventh Defendant
and	
MARIJA STEVANOVIC	Twelfth Defendant
and	
MARGARET BARRY	Thirteenth Defendant

SUMMONS

LET ALL PARTIES concerned attend before one of Her Majesty's Judges sitting in Chambers at the Supreme Court, Hamilton in the Islands of Bermuda, on *Thurs* day the *20th* day of *April* 2006 at *9.30* o'clock in the *fore*noon, on the hearing of an application by HBI, Horizon Bank International Limited ("HBI") acting by its joint provisional liquidators ("the JPLs") for the following orders:

1. That the following directions be made in relation to the further prosecution of the 8th and 9th Defendants' (as notional plaintiffs) proprietary claim to the monies held in various accounts in the name of HBI at the Bermuda Commercial Bank:

1.1 Pleadings shall be exchanged as follows:

1.1.1. The 8th and 9th Defendants shall serve a statement of claim on HBI within 28 days of the date of this order;

1.1.2. HBI shall file a defence within 28 days of service on it of the 8th and 9th Defendants' statement of claim;

1.1.3. The 8th and 9th Defendants shall file their reply (if any) within 14 days of service on them of HBI's defence.

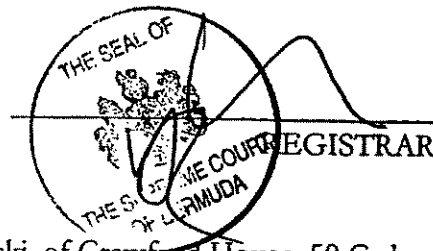
1.2 There shall be discovery by exchange of lists of documents in accordance with Order 24 of the Rules of the Supreme Court; and

1.3 The 8th and 9th Defendants shall issue a summons for directions relating to the trial in accordance with Order 25 of the Rules of the Supreme Court.

2. That the order dated 3 September 2004 by which all the sums in the accounts of HBI at Bermuda Commercial Bank were frozen, shall be varied to allow Bermuda Commercial Bank to pay the sum in excess of US\$4,422,863.43 ("the Excess Monies") to the JPLs, and that Bermuda Commercial Bank is directed to pay the Excess Monies to the JPLs upon their undertaking to this Court that the Excess Monies shall be administered in the Saint Vincent and Grenadines winding-up proceedings ("the SVG proceedings") in accordance with the order of the High Court of Saint Vincent and Grenadines ("the SVG Court") dated 10 February 2006 and such other orders as the SVG Court may make thereafter in the SVG proceedings, provided always that the JPLs acknowledge that the 10th to 13th Defendants shall have a *prima facie* right to prove in the SVG proceedings in the amount found to be due to them by this Court in its ruling dated 7 February 2006

3. That the 8th and 9th Defendants, whether by themselves their servants or agents or otherwise howsoever, be permanently restrained from taking any further steps to have HBI and/or Marcus A. Wide joined as defendants in the proceedings in the Supreme Court of Justice of Ontario captioned "*Allen Walsh & Hans Taal v DBM Financial Group Inc., Jerry Prucha, Mark Edwards, William F. Presnail & Daniel O'Connor*" Commercial List No, 04-CL-5414, or otherwise from bringing any other proceedings in the Supreme Court of Justice of Ontario against HBI and/or Marcus A. Wide arising from or in connection with their proprietary claim against HBI.
4. That the 8th affidavit of Allen Walsh sworn on 29 October 2005 and filed herein be struck out on the grounds that it is irrelevant and/or vexatious and/or prolix and that the 8th Defendant be order to pay the costs of the JPLs and their advisers occasioned by the said 8th affidavit on an indemnity basis.

Dated the 7th day of April 2006.



This Summons was issued by Attride-Stirling & Woloniecki, of Crawford House, 50 Cedar Avenue, Hamilton, Bermuda, Attorneys for the First Defendant.

To: Conyers Dill & Pearman
Clarendon House
2 Church Street
Attorneys to the 8th and 9th Defendants

IN THE SUPREME COURT OF BERMUDA
CIVIL JURISDICTION
2004: No: 257

BERMUDA COMMERCIAL BANK LIMITED Plaintiff
and
HORIZON BANK INTERNATIONAL LIMITED First
Defendant
and
THE BRITANIA GROUP Second Defendant
and
FX BRIDGE LTD Third Defendant
and
FOUR SQUARE PARTNERS LTD Fourth Defendant
and
TRANSWORLD MANAGEMENT CONSULTANTS
CORPORATION Fifth Defendant
and
INTERNATIONAL MONETARY RESOURCES LTD
Sixth Defendant
and
SLALOM INVESTMENTS LTD
Seventh Defendant
and
ALLEN WALSH Eighth Defendant
and
HANS TAAL Ninth Defendant
and
WWIN INTERNATIONAL LIMITED
Tenth Defendant
and
INTERNATIONAL CORPORATE SERVICES LIMITED
Eleventh Defendant
and
MARIJA STEVANOVIC Twelfth Defendant
and
MARGARET BARRY
Thirteenth Defendant

SUMMONS

Attride-Stirling & Woloniecki
Crawford House
50 Cedar Avenue
Hamilton HM 11
Bermuda
Attorneys for HBI



Appendix 3

IN THE SUPREME COURT OF BERMUDA
CIVIL JURISDICTION 2004 : NO. 257

BETWEEN:-

BERMUDA COMMERCIAL BANK LIMITED	Plaintiff
And	
HORIZON BANK INTERNATIONAL LIMITED	First Defendant
And	
BRITANIA GROUP	Second Defendant
And	
FX BRIDGE LIMITED	Third Defendant
And	
FOUR SQUARE PARTNERS INC.	Fourth Defendant
And	
TRANSWORLD MANAGEMENT CONSULTANTS CORPORATION	Fifth Defendant
And	
INTERNATIONAL MONETARY SERVICE INC.	Sixth Defendant
And	
SLALOM INVESTMENTS INC.	Seventh Defendant
And	
ALLEN WALSH	Eighth Defendant
And	
HANS TAAL	Ninth Defendant
And	
WWIN INTERNATIONAL LIMITED	Tenth Defendant
And	
INTERNATIONAL CORPORATE SERVICES LIMITED	Eleventh Defendant
And	
MARIJA STEVANOVIC	Twelfth Defendant
And	
MARGARET BARRY	Thirteenth Defendant

SUMMONS

LET ALL PARTIES attend before one of Her Majesty's Judges sitting in Supreme Court, in the city of Hamilton, in the Islands of Bermuda on the day of 2006 at o'clock in the or so soon thereafter as Counsel may be heard seeking the following orders namely that that:

1. That there be no release of any funds currently frozen at HBI's account at BCB (the "Frozen Funds") to the Liquidator, the Defendant Depositors or those claiming through them until after there has (a) been a trial in Ontario on the Fraud issues (b) a trial in Bermuda on the tracing issues.
2. That there be no determination of the tracing issues in Bermuda until after determination of the Toronto Fraud issues.
3. At the trial of the tracing issues in Bermuda, there shall be a determination as to whether the lowest intermediate balance rule ("LIBR") has any application to the facts of this case.
4. At that trial, if there is a determination that the lowest intermediate balance rule does apply, then the burden of proof lies upon the Liquidator and the other depositors to fully account at trial for the disposition of the proceeds of fraud removed from HBI's account and to prove that:
 - (i) It is not possible for any trust monies removed from HBI's account to return to the account because they were dissipated or squandered; and
 - (ii) That there was no intent for deposits made to HBI's accounts after the date of the lowest intermediate balance to replenish or restore the missing trust fund.
5. The said trial should also determine the issues set out at Appendix 1 hereto.

6. The Toronto action is the natural and appropriate forum in the circumstances for deciding all fraud issues including the question as to whether HBI and Kevin Coombes participated in the fraud with the Toronto defendants or knowingly received the proceeds of fraud into HBI's accounts at BCB.
7. That the sum of US\$4,422,863.43 shall be released to the 8th and 9th defendants immediately.
8. That there be an abridgement of time with respect to the service of this summons.

DATED this day of April 2006

REGISTRAR

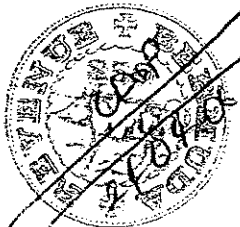
To:
Attride-Stirling and Woloniecki
Crawford House
50 Cedar Avenue
Hamilton
HM11

This Summons was taken out by Messrs Conyers Dill & Pearman, Clarendon House, 2 Church Street, Hamilton HM 11, Bermuda, Attorneys for the Eighth and Ninth Defendants whose address for service is the same.

APPENDIX 1

- 1.1 Whether the defendant depositors and their customers are **beneficially** owned by, or connected with, the perpetrators of the fraud on Walsh and Taal;
- 1.2 Whether funds deposited with HBI by the defendant depositors can be traced to monies stolen from Walsh and Taal or to other money-laundering or illegal activities;
- 1.3 Whether the suspicious transactions identified in the affidavits of Walsh relate to the stolen monies or to other money-laundering or illegal activities;
- 1.4 Whether funds deposited with HBI by the Five Depositors originated from *bona fide* business transactions with *bona fide* customers of each defendant;
- 1.5 Whether stolen monies deposited to HBI's accounts at BCB were sent to other parties or institutions and were returned either before or after the date of Lowest Intermediary Balance ("LIB") to HBI's accounts at BCB;
- 1.6 Whether Transworld can prove that the loan deposit of \$2.1 million dated March 9, 2004 was received by BCB or not, and whether its claim must be reduced by that amount;
- 1.7 Whether the defendants can, by evidence heard at trial, rebut the presumption that monies stolen by Walsh and Taal continue to be held on constructive trust for their benefit in HBI's accounts; and
- 1.8 Whether Walsh and Taal are entitled to participate in any distribution of funds currently on deposit in HBI's name at BCB.

IN THE SUPREME COURT OF BERMUDA
CIVIL JURISDICTION 2004 : NO. 257
B E T W E E N :-
BERMUDA COMMERCIAL BANK LIMITED
Plaintiff
And
HORIZON BANK INTERNATIONAL LIMITED
First Defendant
And
BRITANIA GROUP
Second Defendant
And
FX BRIDGE LIMITED
Third Defendant
And
FOUR SQUARE PARTNERS INC.
Fourth Defendant
And
TRANSWORLD MANAGEMENT CONSULTANTS
CORPORATION
Fifth Defendant
And
INTERNATIONAL MONETARY SERVICE INC.
Sixth Defendant
And
SLALOM INVESTMENTS INC.
Seventh Defendant
And
ALLEN WALSH
Eighth Defendant
And
HANS TAAL
Ninth Defendant
And
WWIN INTERNATIONAL LIMITED
Proposed Tenth Defendant
And
INTERNATIONAL CORPORATE SERVICES LIMITED
Proposed Eleventh Defendant
And
MARIJA STEVANOVIC
Proposed Twelfth Defendant
And
MARGARET BARRY
Proposed Thirteenth Defendant



SUMMONS

Conyers Dill & Pearman
Clarendon House, 2 Church Street
Hamilton, Bermuda
Attorneys for the 8th & 9th Defendants
Ref: CRL/nm/328388/litdocs.43388

Appendix 4

IN THE SUPREME COURT OF BERMUDA
CIVIL JURISDICTION
2004: No: 257

BERMUDA COMMERCIAL BANK LIMITED	Plaintiff
-and-	
HORIZON BANK INTERNATIONAL LIMITED	First Defendant
and	
THE BRITANIA GROUP	Second Defendant
and	
FX BRIDGE LTD	Third Defendant
and	
FOUR SQUARE PARTNERS LTD	Fourth Defendant
and	
TRANSWORLD MANAGEMENT CONSULTANTS CORPORATION	Fifth Defendant
and	
INTERNATIONAL MONETARY RESOURCES LTD	Sixth Defendant
and	
SLALOM INVESTMENTS LTD	Seventh Defendant
and	
ALLEN WALSH	Eighth Defendant
and	
HANS TAAL	Ninth Defendant
and	
WWIN INTERNATIONAL LIMITED	Tenth Defendant
and	
INTERNATIONAL CORPORATE SERVICES LIMITED	Eleventh Defendant
and	
MARIJA STEVANOVIC	Twelfth Defendant
and	
MARGARET BARRY	Thirteenth Defendant

ORDER

UPON THE APPLICATION by summons of the 1st Defendant, Horizon Bank International Ltd ("HBI"), acting by its joint provisional liquidators ("the JPLs"), dated 7 April 2006
AND UPON THE APPLICATION by summons of the 8th and 9th Defendants dated 24th April 2006

AND UPON THE APPLICATION of HBI made at the hearing on 27th April 2006 for these proceedings to be transferred to the commercial list

AND UPON READING the affidavit of Marcus Wide sworn on 28th March 2006 in support of the HBI summons and the affidavit of R. Bruce Smith sworn on 20th April 2006 in support of the 8th and 9th Defendants' summons

AND UPON HEARING counsel for HBI and counsel for the 8th and 9th Defendants

AND UPON counsel for HBI undertaking to this Court to permit the 8th and 9th Defendants and their counsel to inspect all of the documents belonging to HBI in the possession, custody or power of the JPLs ("HBI's documents"), provided that this undertaking does not extend to any third party documents in the possession, custody or power of the JPLs

AND UPON counsel for the 8th and 9th Defendants undertaking that they shall take no further steps, between the date of this order and the date of the directions hearing to be fixed pursuant to this order, to have HBI and/or its Liquidator in the Saint Vincent and Grenadines winding-up and/or the JPLs joined as defendants in the proceedings in the Supreme Court of Justice of Ontario captioned "*Allen Walsh & Hans Taal v DBM Financial Group Inc., Jerry Prucha, Mark Edwards, William F. Presnail & Daniel O'Connor*" Commercial List No, 04-CL-5414

THIS COURT DOES HEREBY ORDER as follows:

1. That pursuant to Order 72 rule 5 of the Rules of the Supreme Court, these proceedings shall be and are hereby transferred to the commercial list with the following caption:

"IN THE SUPREME COURT OF BERMUDA (COMMERCIAL COURT)
2004: No: 257

(1) ALLEN WALSH
(2) HANS TAAL

Plaintiffs

and

HORIZON BANK INTERNATIONAL LIMITED (IN LIQUIDATION)
Defendant"

2. That the following directions be made in relation to the further prosecution of the 8th and 9th Defendants' claim in these proceedings:

2.1 Inspection of HBI's documents by the 8th and 9th Defendants shall take place within 14 days of the date of this order or such longer period as may be agreed by the Parties;

2.2 Pleadings shall be exchanged as follows:

2.2.1. The 8th and 9th Defendants shall serve a statement of claim on HBI within 28 days of the completion of the 8th and 9th Defendants' inspection of HBI's documents;

2.2.2. HBI shall file a defence within 28 days of service on it of the 8th and 9th Defendants' statement of claim;

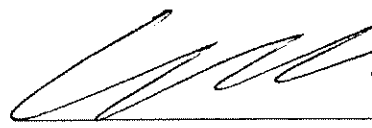
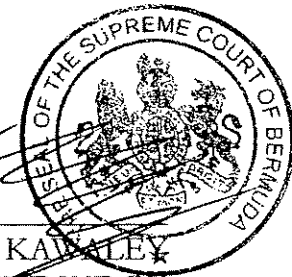
2.3 Within 14 days from the service of HBI's defence, there shall be discovery by the 8th and 9th Defendants in accordance with Order 24 of the Rules of the Supreme Court; and in particular, without limiting the foregoing, there shall be discovery in relation to the settlement reached by the 8th and 9th Defendants with Extant Management Ltd and Hamilton Securities Group LLC referred to in paragraph 86 of the 8th affidavit of the 8th Defendant sworn on 29 October 2005.

3. That a date shall be fixed by the Registrar for a directions hearing to take place following discovery by the 8th and 9th Defendants.

4. That the said summonses of HBI and the 8th and 9th Defendants be adjourned to the date of the said directions hearing at which hearing the Parties may advance such of their applications by those summonses as they may think fit.

5. That the costs of this application be reserved to the said directions hearing.

Dated the 27th day of April 2006.



HON. IAN R. C. KAWALEY
PUISNE JUDGE

IN THE SUPREME COURT OF BERMUDA
CIVIL JURISDICTION
2004: No: 257

BERMUDA COMMERCIAL BANK LIMITED Plaintiff
and
HORIZON BANK INTERNATIONAL LIMITED First
Defendant

and
THE BRITANIA GROUP Second Defendant
and

FX BRIDGE LTD Third Defendant
and

FOUR SQUARE PARTNERS LTD Fourth Defendant
and

TRANSWORLD MANAGEMENT CONSULTANTS
CORPORATION Fifth Defendant

and
INTERNATIONAL MONETARY RESOURCES LTD
Sixth Defendant

and
SLALOM INVESTMENTS LTD
Seventh Defendant

and
ALLEN WALSH Eighth Defendant

and
HANS TAAL Ninth Defendant

and
WWIN INTERNATIONAL LIMITED
Tenth Defendant

and
INTERNATIONAL CORPORATE SERVICES LIMITED
Eleventh Defendant

and
MARIJA STEVANOVIC Twelfth Defendant

and
MARGARET BARRY
Thirteenth Defendant

ORDER

Attride-Stirling & Woloniecki
Crawford House
50 Cedar Avenue
Hamilton HM 11
Bermuda
Attorneys for the First Defendant



2006 APR 27
SUPREME COURT



Appendix 5

IN THE SUPREME COURT OF BERMUDA (COMMERCIAL COURT)

2004: No: 257

BETWEEN

(1) ALLEN WALSH

(2) HANS TAAL

Plaintiffs

and

HORIZON BANK INTERNATIONAL LIMITED (IN LIQUIDATION)

Defendant

POINTS OF CLAIM

1. These Points of Claim are filed pursuant to an order for directions dated 27th April 2005 and are filed without prejudice to the plaintiffs' contention that if the defendant is not prepared to admit that it participated in or knowingly received the proceeds of the fraud practiced on the plaintiffs' that the proper court for the determination of the fraud issues is the Ontario Superior Court of Justice, Ontario Canada in the proceedings which are already pending before that court relating to the underlying fraud.
2. The Plaintiffs are businessmen and investors who reside in the City of Oakville, in the Province of Ontario, Canada.
3. The defendant Horizon Bank International Limited ("HBI") was incorporated in Antigua before

it was continued to St Vincent and the Grenadines and on 17 May 1999 licensed to operate as a bank under the laws of St. Vincent and the Grenadines.

4. HBI was one of the primary corporate vehicles utilized by DBM Financial Group Inc., Jerry Prucha, Mark Edwards, William F. Presnail, Daniel O'Connor, Kevin Coombes and Extant Management Limited to defraud the plaintiffs of amounts in excess of US \$20 million. Particulars of the fraud, so far as is relevant to these proceedings, are set out below. DBM Financial Group Inc., Jerry Prucha, Mark Edwards, William F. Presnail and Daniel O'Connor are Defendants in an action that is pending in the Ontario Superior Court of Justice, Commercial List, as No. 04-CL-5414 (the "Toronto Defendants").
5. After the fraud was perpetrated, HBI's regulatory authority in Saint Vincent and the Grenadines, the International Financial Services Authority (the "IFSA"), appointed Stanley DeFreitas as Controller of HBI effective November 11, 2004 pursuant to the IFSA's statutory powers (the "Controller"). The Controller was an accountant resident in that country. The Controller's mandate *inter alia* was to determine whether HBI had become insolvent, whether HBI had participated in fraudulent activities, whether it was beneficially owned or controlled by the individuals who perpetrated a fraud, and to report back to the IFSA on his findings.
6. As a result of adverse findings made on those issues in the Controller's Report of February 15, 2005, the Attorney General of the State of Saint Vincent and the Grenadines presented a petition on the 20th April 2005 the High Court of Justice in that country for an Order, granted effective April 21, 2005, which appointed Marcus A. Wide of PricewaterhouseCoopers (W.I.) Inc., a resident of Halifax, Nova Scotia, to be provisional liquidator of HBI. On 9th June 2005, that court has ordered that HBI shall be compulsorily wound up appointing Mr. Wide as

liquidator. HBI's license to operate as a Bank has been revoked and it has ceased all business operations.

7. By Order made in the Supreme Court of Bermuda dated November 10, 2005, pursuant to a winding up petition presented in Bermuda, , joint provisional liquidators of HBI were appointed in Bermuda, being the said Marcus A. Wide of PricewaterhouseCoopers (W.I.) Inc. and PricewaterhouseCoopers LLP and Peter C.B. Mitchell of PricewaterhouseCoopers in Bermuda (the "Liquidators"). Mr. Wide is and was resident at all times in the City of Halifax, in the Province of Nova Scotia, Canada. Mr. Mitchell is and was resident at all times in, Bermuda.

Individuals Who Controlled HBI and Perpetrated the Fraud

8. HBI was at all material times the alter ego of the Toronto Defendants and /or alternatively they, along with Kevin Coombes were its controlling and/ or directing minds.
9. Before the appointment of the Liquidators of HBI, its senior operating officer was Kevin Coombes of Nassau, Bahamas ("Coombes"), who was employed as its Vice-President Operations and was responsible for HBI's day to day management and operations. Mr. Coombes is a former resident of Canada and is a close business associate of the Toronto Defendants.
10. At all relevant times prior to the appointment of the Controller and the Liquidator,
 - (a) HBI's registered directors were in the first instance, Daniel O'Connor, William F Presnail, William Cooper and William Cooper when it was first incorporated in Antigua on 28 April 1995.

- (b) HBI carried on business in Toronto, Ontario, Canada through its representative and agent resident in Toronto, Jerry Prucha ("Prucha"). Prucha is one of the Toronto Defendants;
- (c) HBI also carried on business under Coombes' supervision and management offices located in Nassau, Bahamas and in St. Vincent and the Grenadines;
- (d) HBI, Coombes, and Prucha carried on business for HBI under the control and direction of the Toronto Defendants, William F. Presnail ("Presnail"), Mark Edwards ("Edwards") and Daniel O'Connor ("O'Connor");
- (e) Beneficial ownership of HBI was controlled by Presnail, Edwards and O'Connor;
- (f) Edwards is an accountant who acted effectively as the senior financial officer at HBI and directed and controlled its financial books, records and affairs with assistance from Coombes and the other Toronto Defendants;
- (g) Presnail and O'Connor were the founding officers and directors of HBI and exercised primary control over all its activities and business affairs through the actions of Coombes, Edwards and Prucha;
- (h) O'Connor supervised and controlled HBI's investment activities for its own account and for the accounts of HBI's customers and investors;
- (i) HBI provided financial services to North American customers, which included offshore investment planning, financial management and securities trading supervised and conducted under the primary direction and control of Presnail and

O'Connor;

(j) Prucha's role as HBI's Toronto representative and agent was to offer its services as a financial advisor and investment manager to Canadian customers interested in offshore investment opportunities. Prucha and Presnail are/were brothers-in-law.

(k) HBI maintained its own call accounts and fixed term deposits in its name with, *inter alia*, Bermuda Commercial Bank ("BCB") of Hamilton, Bermuda. Those accounts and deposits were operated and managed by Coombes for HBI under the control and direction of Presnail, Edwards, and O'Connor.

(l) Further Mr Wide filed a report dated May 13, 2005 with the High Court of Justice of St. Vincent and Grenadines which contains the following admissions:

"30. Mr. Coombes indicated when interviewed by my counsel and Agent in the Bahamas, that while he was aware of the ownership and who the Directors were, he took direction on the day to day operation of Horizon from a Mr. Mark Edwards, a resident of Ontario in Canada, who he believed acted on behalf of Mr. Presnail and Mr. O'Connor, also residents of Ontario, Canada...

34. Walsh and Tall also identified and assert that the perpetrators of the fraud are the same as those that have been exercising day to day management control of Horizon...

12... it is clear from a review of the documents examined to date and the informal examination of Mr. Coombes that the bulk of the transactions of Horizon were executed by him, and that he had knowledge of a number of companies controlled by those instructing him as to the operation of Horizon, and the companies associated with those persons...

2. Guiding Minds – Based on the books and records recovered in both St. Vincent and, with the assistance of the Bahamian Courts, in the Bahamas, after interviews with Mr. Kevin Coombes, the Vice-President of Operations who was fully cooperating with the Provisional Liquidator, and the review of the files of International Financial Services Authority, formerly the Offshore Financial Authority (the "Authority"), there are a number of indications that

the guiding minds of Horizon in the performance of its day to day activities for the last number of years, were not the owners authorized by the Authority nor its declared Directors, but persons not disclosed to the Authority. These include Mr. Edwards, Mr. Presnail and Mr. O'Connor, all residents of Ontario, Canada. This view is consistent with that reached by Mr. Stanley De Freitas, the controller in his report."

- (m) The conclusions reached by Mr. De Freitas in the Controller's report on HBI dated February 15, 2005, which are relevant to the Liquidator's admissions above, are as follows:

"6.0 FINANCIAL LINKAGES OF KEVIN COOMBS

While Mr. Coombes claims to be the owner of HBI, we believe that he is only an officer of the bank, based on the apparent effective control being exerted by Mark Edwards, Jerry Prucha, William Presnail and Daniel O'Connor. In addition, it appears, subject to further investigation, that Mr. Coombes is connected with the following entities namely:

- Extant Management Ltd. (Bahamas) – Beneficial Owner and Officer;
- Boomer Trading Company Ltd. (Bahamas) – Officer
- Aurora Management Ltd. (Bahamas) – Officer

7.0 ROLES OF MARK EDWARDS, JERRY PRUCHA, WILLIAM PRESNAIL AND DANIEL O'CONNOR IN HBI TRANSACTIONS

7.1 These gentlemen are purported to be agents of HBI but it appears that Mr. Kevin Coombes receives and execute directives from them. According to available information, subject to further testing, Mr. Mark Edwards is an accountant responsible for internal and external reporting to different stakeholders while the others are responsible for marketing the HBI's products and services as well as indirect administrative (policy) matters. In other words, they collectively formed a quasi board of directors...

11.1 The bank utilizes an accounting package to track all accounting transactions and to facilitate internal and external reports for all stakeholders. During our preliminary review, it appears that there is one person, Ms. Ynisc Hanna, in the Bahamas, responsible for all data entries. The accounting function is supervised by Mr. Mark Edwards, believed to be a designated accountant with prior high-level experience at KPMG and Deloitte & Touche at their Toronto, Ontario, Canada offices.

4.0 OWNERSHIP OF THE BANK

4.1. While we made progress in determining the beneficial owner of (HBI), such like determination is inconclusive due to the lack of a paper trail and unwillingness of the main players to divulge information for their own particular reasons. Discussions with Mr. Coombes and the HBI's Canadian agents suggest to us that ownership; effective control and knowledge of the affairs are within the collective domain of the said Canadian agents or at a minimum; two of them."

- (n) Mr Wide signed another Report dated October 6, 2005 and filed it with the High Court of Justice of St. Vincent and the Grenadines. That report contains the following admission against interest:

"2. Guiding Minds

My review has confirmed my preliminary view that the guiding minds of Horizon in the performance of its day to day activities for the last number of years were not only the owners authorized by the Authority and its Declared Directors and Officers, but persons not disclosed to the Authority. These include Mr. Edwards, Mr. Presnail and Mr. O'Connor, all residents of Ontario, Canada."

- (o) The St. Vincent Liquidator also signed and swore an affidavit dated November 8, 2005 in an Ontario application brought by him in the matter of HBI which contains the following admissions against interest:

"19. Based on information contained in the Company's Books and Records and as specifically set out in the Letter of Request, several individuals resident in Ontario played key roles with respect to the Company including William Presnail, Mark Edwards, Daniel O'Connor and Jerry Prucha (the "Additional Directing Minds"). Based on my investigation to date and as set out in the Letter of Request, the Additional Directing Minds collectively and/or individually provided primary instructions to Kevin Coombes, the Vice-President of Operations for the Company, and were individually and collectively instrumental in the day to day operations of the Company. It also appears that the Additional Directing Minds may possess documentation, books, records, property, assets and/or other information pertaining to the Company.

The Fraudulent Investment Structure

11. In March 1997, the plaintiffs were introduced to Prucha, who identified himself as the Toronto agent and representative for HBI and as a principal of DBM Financial Group Inc. ("DBM").
12. At all relevant times, DBM was a company incorporated under the laws of Ontario, operating its business of providing financial advice and services for offshore investments made by its clients from its offices located in the Greater Toronto Area in Markham, Ontario. DBM and Prucha's activities for DBM were controlled and directed at all relevant times by Presnail, Edwards and O'Connor.
13. Throughout 1997 and 1998, Prucha persuaded the plaintiffs to invest their assets worth in excess of US \$20 million in a corporate structure for offshore investments that was initially created (and then restructured) by HBI, DBM, Coombes and the Toronto Defendants. The primary corporate vehicle created to hold the plaintiffs' assets offshore was Boomer Trading Co. Ltd. ("Boomer").
14. At Prucha's urging, the plaintiffs agreed:
 - (a) to appoint Coombes to act as nominee shareholder, officer and director for Boomer and to deposit the plaintiffs' assets into accounts opened in Boomer's name with Lehman Brothers, Inc. of New York City;
 - (b) that Coombes was authorized on Boomer's behalf to (i) obtain margin loans from Lehman's, secured against Boomer's assets and (ii) to invest those loan proceeds to fund a day-trading program in American treasury bills ("T-Bills") to be held and

managed in Boomer's name at Lehmans in New York; and

- (c) that Coombes, on behalf of Boomer, appoint Extant Management Ltd. ("Extant") of Nassau, Bahamas as trading manager to direct the day-trading program for Boomer's T-bills at Lehmans.

15. At all material times, Extant was a company incorporated pursuant to the laws of the Bahamas and was managed day-to-day by Coombes as its senior operating officer. Boomer and Extant (and Coombes' actions on their behalf) were directed and controlled at all material times by the Toronto Defendants.

16. By persuading the plaintiffs (i) to adopt Prucha's financial advice and (ii) to transfer their assets to Boomer as part of the offshore investment structure, and (iii) to approve Extant's trading program, Prucha, Coombes, HBI and DBM acted at all material times under the control and direction of the Toronto Defendants, with the shared common intent from the outset of stealing the plaintiffs assets.

17. Other corporate vehicles (the "Other Companies") utilized in the investment structure designed to defraud the plaintiffs were also managed day-to-day by Coombes, acting under the direction and control of the Toronto Defendants, and included the following;

- (a) Echo Ventures Limited Liability Partnership, formed under the laws of the Bahamas and operated by Coombes from HBI's offices in Nassau through its general partner, Aurora Management Ltd.;
- (b) Aurora Management Ltd., a company incorporated under the laws of the Bahamas, was operated by Coombes at all material times from HBI's offices in Nassau

Bahamas;

(c) CLM Investments Ltd., a company incorporated under the laws of the Bahamas, was operated by Coombes at all material times from HBI's offices located in Nassau, Bahamas;

(d) Venture Capital Holdings Ltd., a company incorporated under the laws of the Bahamas, was operated by Coombes at all material times from HBI's offices in Nassau, Bahamas.

18. The plaintiffs gave Coombes (through Prucha), who were both at all material times was acting on behalf of HBI, Extant and the other Toronto Defendants or under their direction and control, limited authority to act as their nominee officer and director for Boomer. His authority to borrow against Boomer's assets was confined to raising funds to be held in Boomer's name for investment in the approved T- Bills day-trading program at Lehmans in New York City. Prucha, Coombes, HBI, Boomer and Extant had *no* authority to borrow funds against Boomer's assets for any other purpose.

19. In that manner, the plaintiffs entrusted their assets to the care of HBI, Coombes, Boomer, Extant and the Toronto Defendants in a manner that left the plaintiffs in a position of vulnerability and dependence and which gave rise to a fiduciary duty owed to the plaintiffs to act solely in the plaintiffs' best interest in the management of their assets in the offshore investment structure and its subsequent revisions or amendments.

20. In law and equity, only legal title for the Plaintiff's assets was transferred to Boomer. At all material times, the plaintiffs remained beneficial owners of those assets.

21. It is averred HBI, Extant, Coombes, the Toronto Defendants and the Other Companies formed a common intent from the outset to defraud the plaintiffs of their assets and to breach their fiduciary duties to the plaintiffs and to conceal the fraud from them for as long as possible. At all material times, their main design and purpose was to fraudulently convert the plaintiffs' assets to their own use.

Fraudulent Loan Transaction

22. In November 1998, the Toronto Defendants directed Coombes to make a loan application in the name of Extant to Lehman Brothers in New York for US\$15,000,000.00 and to offer a pledge of Boomer's assets as security for that loan.

23. As the plaintiffs' nominees, Coombes and the Toronto Defendants had no lawful right to grant security against T-bills, cash and other assets held in Boomer's name to support Lehman's loan to Extant. No such authority was given under any of the plaintiffs' instructions to, Prucha, Coombes, Extant, or Boomer. In doing so, Boomer, Extant, Coombes and the Toronto Defendants acted fraudulently, without lawful right, and in furtherance of their conspiracy when they caused Boomer to pledge its T-bills, cash and other assets as security for Lehman's loan to Extant.

24. The sum of US\$15,000,000.00 was advanced by Lehmans to Extant by way of loan on November 27, 1998, secured by the fraudulent pledge of Boomer's assets to Lehmans. The loan proceeds were paid by Lehmans pursuant to Coombes' direction to account #1010-924756 maintained by Bank of Bermuda in Hamilton, Bermuda for its customer Irwin Government Arbitrage Fund Ltd. ("Irwin"). In doing so, Coombes acted under the direction and control of the Toronto Defendants pursuant to their shared fraudulent intent to steal the Plaintiff's assets.

25. Irwin was a fund company whose seed capital of \$15,000,000 was provided by Presnail and O'Connor in December 1998, using the proceeds of the said fraudulent pledge. On December 1, 1998, Extant paid US\$15,000,000 of the plaintiffs' stolen monies to Irwin in exchange for 150,000 shares of Irwin. Subsequently, at the defendants' direction, Irwin caused \$10,000,000 of the plaintiffs' stolen monies to be transferred back to Extant over time between 1999 and 2000. Of that \$10,000,000, at least US\$9,261,612.85 of their stolen funds were transferred by Coombes on instructions from the Toronto Defendants and can be traced to HBI's accounts with the BCB in Hamilton, Bermuda. Payments into HBI's account at BCB are set out in Appendix A annexed hereto.

26. In February 1999, the Toronto Defendants, acting fraudulently, directed Coombes and Prucha to make a further loan application in the name of Extant to an affiliate of Lehman Brothers, Lehman Brothers Finance SA ("LBFSA") in New York for US\$5,000,000.00, offering to pledge Boomer's assets as security for that loan.

27. As the plaintiffs' nominees, Prucha and Coombes had no lawful right to grant security against T-bills, cash and other assets held in Boomer's name to support Lehman's or LBFSA's loans to Extant. No such authority was given under the plaintiffs' instructions to Prucha Coombes, Boomer or Extant. In doing so, Boomer, Extant, Coombes and the Toronto Defendants acted fraudulently, without lawful right, and in furtherance of their shared intent and conspiracy to steal the plaintiffs assets, when they caused Boomer to pledge its T-bills, cash and other assets as security for LBFSA's loan to Extant.

28. The sum of US\$5,000,000.00 was advanced by LBFSA to Extant by way of loan on February 22, 1999, secured by the fraudulent pledge of Boomer's assets to Lehman's. Pursuant to Coombes'

direction, the plaintiffs' stolen monies were paid over time between 1999 and 2003 to accounts maintained for Extant by Hamilton Securities Group LLC in New York City. At least US\$3,665,395.64 of their stolen monies were subsequently transferred by Coombes from Hamilton Securities on instructions from the Toronto Defendants, and were sent to (and can be traced to) HBI's accounts with BCB in Hamilton, Bermuda. Payments into HBI's account at BCB are set out in Appendix B annexed hereto.

29. Accordingly, the proceeds of assets stolen from the plaintiffs can be traced in the total amount of US\$12,927,008.59 to the accounts of HBI maintained by BCB in Hamilton, Bermuda. Those stolen proceeds remain frozen in those accounts today by order of this Honourable Court and are held on constructive trust for the plaintiffs in the full amount standing to HBI's credit.

30. Following November 27, 1998, Edwards forwarded to the plaintiffs (through their accountant) bank account statements and other financial information which had been fraudulently prepared to conceal the said pledges of the assets and their investment at Irwin and Hamilton Securities respectively and give the false impression that the plaintiffs' assets remained safely on deposit in Boomer's name at Lehmans in New York City and to hide their fraudulent actions. Those acts formed part of the common design of the Coombes and Toronto defendants to fraudulently convert the plaintiffs' assets to their own use and to hide their wrongdoing from the plaintiffs.

31. All assets transferred by the plaintiffs to Boomer have since been sold into the public market or otherwise utilised to pay down Extant's loans with Lehmans and LBFSA.

32. In that manner, the Toronto Defendants converted and stole value from the plaintiffs' assets for their own use and deposited US \$12,927,008.59 of the stolen proceeds for their financial benefit into HBI's accounts at BCB.

33. The proceeds of the fraud, namely beneficial ownership interest in Boomer's assets can be traced or followed to the funds currently frozen in the accounts of HBI at BCB. The proceeds of fraud were received by HBI with the actual knowledge of the controlling minds of HBI, its officers or its agents including Coombes Extant and the Toronto Defendants. Alternatively, HBI knowingly assisted the Toronto Defendants in breaching their fiduciary duties to the plaintiffs. In the further alternative HBI received the funds as a volunteer.

34. Accordingly all such monies are held on constructive trust for the plaintiffs in priority to any claims asserted by the Liquidators to those frozen monies.

35. The plaintiffs also claim a full accounting from HBI and the Liquidators in respect of the tracing and final disposition of their stolen assets after they arrived in HBI's accounts at BCB.

36. Further and in the alternative, by an affidavit dated November 8th 2005, Marcus Wide has admitted that Extant Management Limited by its sole director Kevin Coombes using funds from HBI advanced a loan to an Ontario Company known as 1534865 Ontario Limited in the sum of \$1.18 million which was secured by a mortgage in favour of Extant over property located in Toronto Canada at 247 Yonge Street (PIN 21098-0068LT; LT E/S Yonge St. PL 22A Toronto. The sums representing the loan were transferred from the defendant's account at BCB in two payments to Gerald Wise, a property attorney in Ontario, the same property attorney who prepared the said mortgage referred to above to be held on trust on 3rd July 2002 and 16 July 2002 in sums of CAD\$ 475,000 and CAD\$ 705,000 respectively.

37. The loan receivable and the security received for the loan were acquired out of funds held by the defendant which are held on constructive trust by the defendant for the plaintiffs.

38. Alternatively, the plaintiff seeks an accounting in relation to the loan transaction. If the loan was advanced from the plaintiffs' funds

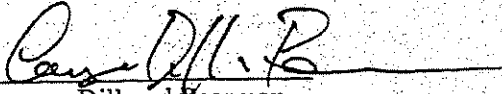
39. THE PLAINTIFFS THEREFORE CLAIM:

- (a) A declaration that some or all monies currently frozen in HBI's call accounts and fixed deposit accounts at Bermuda Commercial Bank in Hamilton, Bermuda are subject to a constructive trust in favour of the plaintiffs, in priority to the defendant's claims to such monies.
- (b) Further, a declaration that the proceeds of the loan of CAD\$1,180,000 and any security held by the defendant for payment of the said loan be subject to a constructive trust in favour of the Plaintiffs, in priority to the defendant's claims to such monies.
- (c) An order directing that all monies or assets subject to constructive trust shall be paid or transferred to the plaintiffs with accrued interest. Alternatively that the monies or assets subject to the constructive trust shall be paid or transferred to the Accountant of the Superior Court of Ontario in Toronto Canada pursuant to the Order of Justice Lax dated 28 October 2004 to stand to the credit of the action styled, *Walsh and Taal v. DBM Financial Group Inc., Jerry Prucha, Mark Edwards, William F. Presnail and Daniel O'Connor* in the Ontario Superior Court of Justice, Commercial List, as No. 04-CL-5414.
- (d) A full accounting of any constructive trust monies removed from HBI's accounts at BCB and an accounting of the source of funds paid by HBI to fund the loan of

CAD\$1,800,000 to 1534865 Ontario Limited.

- (e) Compound or alternatively simple interest in equity or alternatively under section 10 of the Interest and Credit Charges (Regulation) Act, 1975 at the commercial rate or alternatively at the statutory rate or at such rate as this court shall determine appropriate in the circumstances.
- (f) Costs.

Dated this 5th day of June 2006


Conyers Dill and Pearman
Attorneys for the Plaintiffs.

Appendix A

Irwin Government Arbitrage Fund
\$9,281,813 Redemption of Investment by Extant Management Ltd
Tracing From Bank of Bermuda to HBI - Bermuda Commercial Bank

Date	Description	Au3	Ref #	Amount
1-Dec-98	Lehman Loan pledged by 250,560 MSFT shares	2	1	\$ 740,258.85
2-Dec-98	Lehman wires loan to Irwin Gov't Arbitrage Fund @ Bank of Bermuda acct 1010924756	3	2	\$ 759,634.74
22-Apr-98	Redemption frm Bank of Bermuda acct 1010924756 to Bermuda Commercial Bank acct 6800027039	4-5	3/243	\$ 500,000.00
9-Aug-98	Redemption frm Bank of Bermuda acct 1010924756 to Bermuda Commercial Bank acct 6800027039	6-7	4/245	\$ 250,000.00
18-Sep-99	Redemption frm Bank of Bermuda acct 1010924756 to Bermuda Commercial Bank acct 6800027039	1-2	5/245	\$ 7,002,031.81
18-Nov-99	Redemption frm Bank of Bermuda acct 1010924756 to Bermuda Commercial Bank acct 6800027039	4-5	6/247	\$ 9,687.85
12-May-00	Redemption frm Bank of Bermuda acct 1010924756 to Bermuda Commercial Bank acct 6800027039	10-11	7/261	
21-Jun-00	Redemption frm Bank of Bermuda acct 1010924756 to Bermuda Commercial Bank acct 6800027039	12-14	8/9	
	Total Redemptions paid by Irwin Government arbitrage to HBI at Bermuda Commercial Bank			<u>\$ 9,281,812.85</u>
				<u>\$15,000,000</u>
				<u>\$15,000,000</u>

Appendix B

Lehman Brothara
 \$5 Million Loan Proceeds
 Tracing From Lehmans to HBI - Bermuda Commercial Bank

Date	Description	AW#3	Ref #	Amount
February 12, 1999	Loan from Lehmans	32	1	\$ 5,000,000
February 19, 1999	Purchase of 110,290 put derivatives	37-38	2	\$ 1,335,000
	Net Proceeds			\$ 3,665,000
February 19, 1999	Wire to Bank of NY acct # 6301577395 - Hamilton Securities Group LLC	33-36	3	\$ -
	Remainder of Loan Balance @ Lehmans			\$ -
				\$ 3,665,000
February 23, 1999	Funds rec'd by Hamilton Securities Group LLC Bank of NY acct # - 6301577395	37-36	A,4B	
December 27, 2001	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	39	439	\$ 102,727.17
March 26, 2002	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	40	489	\$ 80,886.80
June 21, 2002	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	41	536	\$ 89,444.24
September 25, 2002	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	42	580	\$ 89,444.24
January 8, 2003	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	43	650	\$ 88,472.02
April 8, 2003	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	44	720	\$ 87,499.80
July 15, 2003	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	45	780	\$ 89,444.24
August 25, 2003	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	46	800	\$ 2,000,000.00
October 15, 2003	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	47	836	\$ 87,110.90
November 27, 2003	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	48	893	\$ 850,000.00
January 6, 2004	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	49	891	\$ 53,083.03
January 8, 2004	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	50	895	\$ 41,835.00
April 18, 2004	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	51	1005	\$ 38,043.46
July 15, 2004	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	52	1117	\$ 12,803.34
July 21, 2004	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	53	1123	\$ 12,803.34
July 22, 2004	Funds received by HBI - Bermuda Commercial Bank acct #800027039 frm Bank of NY	54	1125	\$ 25,658.10
	Residual Balance from Transfers			\$ 3,665,386.74
				\$ 395.74

* Bank of New York via Sterling Bank.

**IN THE SUPREME COURT OF BERMUDA
(COMMERCIAL COURT)**

2004: No: 257

BETWEEN

(1) ALLEN WALSH

(2) HANS TAAL

Plaintiffs

and

**HORIZON BANK INTERNATIONAL LIMITED
(IN LIQUIDATION)**

Defendant

POINTS OF CLAIM



CONYERS DILL & PEARMAN

Clarendon House, 2 Church Street
Hamilton, Bermuda
Attorneys for the Plaintiffs
CRL/nm/jitdocs44785

Appendix 6

IN THE SUPREME COURT OF BERMUDA (COMMERCIAL COURT)
2004: No. 257

BETWEEN

(1) ALLEN WALSH

(2) HANS TAAL

Plaintiffs

and

HORIZON BANK INTERNATIONAL LIMITED (IN LIQUIDATION)

Defendant

POINTS OF DEFENCE

1. These Points of Defence are filed without prejudice to any application by the Defendant to strike out the Points of Claim in whole or in part as disclosing no cause of action.
2. Paragraph 2 of the Points of Claim is admitted.
3. Paragraph 3 of the Points of Claim is admitted.
4. It is denied that HBI was a primary corporate vehicle utilized by the Toronto Defendants to defraud the Plaintiffs of amounts in excess of US \$20 million as alleged in paragraph 4 of the Points of Claim. The Defendant's positive case with respect to the fraud that was committed by the Toronto Defendants and the involvement (or lack of involvement) of HBI in the said fraud is set out in paragraphs 40 to 46 below.
5. Paragraph 5 of the Points of Claim is admitted save as follows:

-
- 5.1 The phrase "after the fraud was perpetrated" is only admitted referring to the fraud pleaded in paragraph 45 below and not the fraud alleged in the Points of Claim.
- 5.2 No admissions are made as to the Controller's mandate referred to in the last sentence of paragraph 5.
6. Paragraph 6 of the Points of Claim is admitted.
7. Paragraph 7 of the Points of Claim is admitted.
8. It is admitted and averred that at all material times Kevin Coombes was the controlling and/or directing mind of HBI who acted upon the instructions of the other individual Toronto Defendants. Save as aforesaid, paragraph 8 of the Points of Claim is denied.
9. Paragraph 9 of the Points of Claim is admitted.
10. With respect to paragraph 10 of the Points of Claim:
- (a) Subparagraph (a) is admitted.
 - (b) Subparagraph (b) is denied.
 - (c) Subparagraph (c) is admitted.
 - (d) It is admitted and averred that at all material times Kevin Coombes was the controlling and/or directing mind of HBI who acted upon the instructions of the other individual Toronto Defendants. Save as aforesaid, subparagraph (d) is denied.

(e) The Defendant is unable to plead in relation to subparagraph (e) pending a response to the Request for Further and Better Particulars served herewith.

(f) It is admitted and averred that Edwards (i) is an accountant; (ii) is not an officer or director of HBI; (iii) prepared certain books and records of HBI. Save as aforesaid, subparagraph (f) is not admitted.

(g) It is admitted and averred that at all material times Kevin Coombes was the controlling and/or directing mind of HBI who acted upon the instructions of the other individual Toronto Defendants. The Defendant does not know who exercised "primary control" over the activities and business affairs of HBI and is unable to plead further to subparagraph (g).

(h) The Defendant does not know who, if anyone, supervised and controlled HBI's investment activities for its own account and is unable to plead to the allegation in subparagraph (h) that it was O'Connor. It is denied that HBI conducted any investment activities on behalf of customers or investors.

(i) Subparagraph (i) is denied.

(j) It is denied that HBI offered services as a financial adviser and investment manager through Prucha as alleged in subparagraph (j) or otherwise. The Defendant does not know of the relationship between Prucha and Presnail and is unable to plead to the second sentence of subparagraph (j).

(k) Subparagraph (k) is admitted.

(l) It is admitted that the passage quoted in subparagraph (l) is from Mr. Wide's report dated 13 May 2005. It is denied that the passage quoted contains any admissions binding upon the Defendant in these proceedings.

(m) It is admitted that the passage quoted in subparagraph (m) is from the Controller's report dated 15 February 2005. It is denied that the passage quoted contains any admissions binding upon the Defendant in these proceedings.

(n) It is admitted that the passage quoted in subparagraph (n) is from Mr Wide's report dated 6 October 2005. It is denied that the passage quoted contains any admissions binding upon the Defendant in these proceedings.

(o) It is admitted that the passage quoted in subparagraph (o) is from Mr Wide's affidavit dated 8 November 2005. It is denied that the passage quoted contains any admissions binding upon the Defendant in these proceedings.

11. Paragraph 11 of the Points of Claim is not admitted.

12. Save that no admissions are made as to the extent to which Prucha's activities for DBM were controlled and directed by Presnail, Edwards and O'Connor, paragraph 12 of the Points of Claim is admitted.

13. With respect to the first sentence of paragraph 13 of the Points of Claim:

(a) It is denied that HBI had any part in the creation or restructuring of the offshore investment structure that was entered into between the Plaintiffs and the Toronto Defendants.

(b) It is denied, if it is intended to allege, that Coombes played any active role in the creation or restructuring of the aforesaid offshore investment structure.

(c) No admissions are made as to the amount of the Plaintiffs' assets which Prucha allegedly persuaded them to invest.

The second sentence of paragraph 13 of the Points of Claim is admitted.

14. The contractual arrangements relating to the offshore investment structure entered into between the Plaintiffs and the Toronto Defendants are set out in two letters dated 28 August 1997 signed by the first and second Plaintiffs respectively and addressed to Prucha. The Defendant will rely at trial on the 28 August 1997 letters for their full terms and effect. Save as aforesaid, paragraph 14 of the Points of Claim is denied.

15. Paragraph 15 of the Points of Claim is admitted.

16. Paragraph 16 of the Points of Claim is denied. In particular it is denied that there was any shared common intent "from the outset" of stealing the Plaintiffs' assets. If, which is denied, any of the Toronto Defendants intended "from the outset" to steal any of the Plaintiffs' assets the same was not known to either Coombes or HBI.

17. It is denied that the investment structure referred to in paragraph 17 of the Points of Claim was designed to defraud the Plaintiffs. It is further denied that the office occupied by Coombes in Nassau from which he directed the affairs of HBI and various other companies can be described as "HBI's offices". Save as aforesaid, paragraph 17 of the Points of Claim is admitted.

18. It is admitted that the Plaintiffs gave Coombes limited authority to act as their nominee officer and director in respect of Boomer. Save as aforesaid, the Defendant is unable to

plead in relation to paragraph 18 of the Points of Claim pending a response to the Request for Further and Better Particulars served herewith.

19. It is denied that HBI owed any fiduciary to the Plaintiffs or that any assets of the Plaintiffs were entrusted to the care of HBI. Save as aforesaid, the Defendant is unable to plead in relation to paragraph 19 of the Points of Claim pending a response to the Request for Further and Better Particulars served herewith.

20. No admissions are made as to the legal effect of transactions entered into with Boomer which are referred to in paragraph 20 of the Points of Claim.

21. Paragraph 21 of the Points of Claim is denied. In particular it is denied that there was any common intent formed "from the outset" of defrauding the Plaintiffs of their assets. It is further denied that HBI owed any fiduciary duty to the Plaintiffs. If, which is denied, any of the Toronto Defendants intended "from the outset" to fraudulently convert the Plaintiffs' assets to their own use the same was not known to either Coombes or HBI.

22. Paragraph 22 of the Points of Claim is admitted.

23. Paragraph 23 of the Points of Claim is denied. It is admitted and averred that under the investment structure documents Coombes and/or the Toronto Defendants had express, alternatively implied, authority to use the Microsoft shares as security for trading activities.

24. It is denied that the pledge of Boomer's assets to Lehmans was fraudulent as alleged in paragraph 24 of the Points of Claim or at all. The second sentence of paragraph 24 of the Points of Claim is admitted. It is denied that Coombes or any of the Toronto Defendants shared a fraudulent intent to steal the Plaintiffs' assets in or about November 1998.

25. The Defendant has no knowledge of and does not plead to the allegation in paragraph 25 of the points of claim that Irwin used the sum of US\$15,000,000 as "seed capital". The following allegations in paragraph 25 of the Points of Claim are denied:

- (a) It is denied that the pledge referred to in the first sentence was fraudulent.
- (b) It is denied that the US\$15,000,000 referred to in the second and the third sentences were the Plaintiffs' "stolen monies".
- (c) It is denied that US\$9,261, 612.85 referred to in the fourth sentence were the Plaintiffs' "stolen funds".
- (d) It is denied that the Plaintiffs' are entitled to trace into HBI's accounts with BCB any of the sums referred to the fourth sentence.

The payments set out in Appendix A are admitted. If, which is denied, any of the sums are the "stolen funds" of the Plaintiffs it is in any event denied that they are traceable at law or in equity into the hands of HBI. The Defendant's case with respect to Irwin is set out in paragraphs 40, 41 and 42 below.

26. Save that it is denied that the Toronto Defendants were acting fraudulently in directing Coombes and Prucha, paragraph 26 of the Points of Claim is admitted. .

27. The first and second sentences of paragraph 27 of the Points of Claim are denied. It is admitted and averred that under the investment structure documents Coombes and/or the Toronto Defendants had express, alternatively implied, authority to use the Microsoft shares as security for trading activities. It is denied that in or about February 1999 any of Boomer, Extant, Coombes and the Toronto Defendants (a) acted fraudulently, or (b)

without lawful right, or (c) in furtherance of a shared intent and conspiracy to steal the Plaintiff's assets as alleged in the third sentence of paragraph 27 of the Points of Claim.

28. The following allegations in paragraph 28 of the Points of Claim are denied:

- (a) It is denied that the pledge referred to in the first sentence was fraudulent.
- (b) It is denied that the monies referred to in the second and the third sentences were the Plaintiffs' "stolen monies".
- (c) It is denied that the Plaintiffs' are entitled to trace into HBI's accounts with BCB any of the sums referred to the third sentence.

The payments set out in Appendix B are admitted. If, which is denied, any of the sums are the "stolen monies" of the Plaintiffs it is in any event denied that they are traceable at law or in equity into the hands of HBI. The Defendant's case with respect to Hamilton Securities is set out in paragraphs 43, 44 and 46 below.

29. Paragraph 29 of the Points of Claim is denied.

30. It is admitted that between about December 1998 and June 2002 Edwards forwarded certain bank statements and financial information to the Plaintiffs which had been prepared fraudulently. As pleaded in paragraph 45 below the individual Toronto Defendants conspired to conceal from the Plaintiffs the Irwin trading losses and to give the false impression that the Plaintiffs' assets remained safely on deposit in Boomer's name at Lehmans. Save as aforesaid, paragraph 30 of the Points of Claim is denied. In particular it is denied that Coombes was party to any common design or conspiracy with the Toronto Defendants to fraudulently convert the Plaintiffs' assets to their own use.

31. Paragraph 31 of the Points of Claim is admitted.

32. Paragraph 32 of the Points of Claim is denied.

33. The following allegations in paragraph 33 of the Points of Claim are denied:

- (a) The allegation in the first sentence that any funds currently frozen in the accounts of HBI at BCB represent the proceeds of fraud is denied.
- (b) If, which is denied, any fraud with respect to "beneficial ownership interest in Boomer's assets" occurred, it is denied that the proceeds thereof can be traced or followed into said funds.
- (c) The allegation in the second sentence that any funds representing the proceeds of fraud were received by HBI with the actual knowledge of HBI is denied.
- (d) Save that it is admitted that the knowledge of Coombes as an officer of HBI is to be imputed to HBI the second sentence is denied in its entirety.
- (e) The allegation in the third sentence that HBI knowingly assisted the Toronto Defendants in a breach of fiduciary duty to the Plaintiffs is denied.
- (f) The allegation in the fourth sentence that HBI received the funds as a volunteer is denied.

34. Paragraph 34 of the Points of Claim is denied.

35. It is denied that the Plaintiffs are entitled to the accounting claimed in paragraph 35 of the Points of Claim.

36. Paragraph 36 of the Points of Claim is admitted.

37. Paragraph 37 of the Points of Claim is denied.

38. It is denied that the Plaintiffs are entitled to the accounting claimed in the first sentence of paragraph 38 of the Points of Claim. The Defendant is unable to plead to the second sentence of paragraph 38 of the Points of Claim which is incomplete and ungrammatical.

39. The Plaintiffs' prayer for relief in paragraph 39 of the Points of Claim is denied. The Defendant's positive case is set out in out paragraphs 40 to 46.

40. In or about October of 1997, the Toronto Defendants entered into agreements with the Plaintiffs involving the incorporation of international business corporations in the Bahamas whereby assets of the Plaintiffs, comprised primarily of Microsoft shares, would be invested and managed by the Toronto Defendants. Such agreements, as amended from time to time, shall be referred to at trial for their full force and effect. To the knowledge of the Plaintiffs, those assets were pledged, levered or margined by a corporate entity or entities, Boomer and/or Extant, at Lehman Brothers, New York, New York, and trading was undertaken on behalf of the Plaintiffs in mainly T-bills and US government instruments, with any trading gains or losses truly reported to the Plaintiffs from time to time through to and including October 1997 to December 1998.

41. In or about December 1998, the Toronto Defendants, on the security of the Plaintiffs' assets, caused Boomer and/or Extant to borrow from Lehman Brothers the sum of \$15 million and caused that money to be invested on behalf of the Plaintiffs by way of subscription of 150,000 common shares in Irwin at \$100 per share. Extant caused all of the shares to be redeemed at the times and in the amounts and at the then current net

asset value of shares as they appeared in Appendix A to the Points of Claim herein, and trading losses were suffered in the amount of \$5,739,387.15.

42. Extant deposited the aforesaid sums referred to in paragraph 41 herein in its account at HBI, which received the said sums for good consideration as a banker from its customer Extant. The said funds were subsequently withdrawn by Extant by way of deposit or wire transfer to other parties or entities, and at the time of said withdrawals, HBI had no knowledge of the recipients' use of those funds being for anything other than investment purposes for the Plaintiffs.
43. In or about February 1999, the Toronto Defendants, on the security of the Plaintiffs' assets, caused Boomer and/or Extant to borrow from Lehman Brothers the sum of \$5 million dollars, \$1,335,000 of which was traded and lost on behalf of the Plaintiffs involving the purchase of put derivatives, with the balance loaned or placed with Hamilton Securities for the purpose of trading on behalf of the Plaintiffs.
44. Between February 23, 1999 to July 22, 2004, Hamilton Securities deposited at the time and in the amounts provided in Appendix B of the said Points of Claim to Extant's account at HBI a sum totaling \$3,665,395.74, and HBI received these funds not as a volunteer. The Defendant has no knowledge as to whether the deposits received are in any way related to the monies that were received by Hamilton Securities on February 19, 1999 referred to in the preceding paragraph. Those funds were subsequently withdrawn by way of deposit or wire transfer to other parties or entities, and at the time of the said withdrawals, HBI had no knowledge of the recipients' use of those funds being for anything other than investment purposes for the Plaintiffs. The Defendant has no knowledge prior to discovery and/or interrogatories as to whether there were trading gains or losses through the activities of Hamilton Securities with respect to Plaintiffs' assets.

45. The Defendant admits and avers that, between about December 1998 and June 2002, the Toronto Defendants caused to be forwarded to the Plaintiffs altered and/or false statements on Lehman Brothers' stationery, which fraudulently misrepresented the values of the Plaintiffs' assets and the nature of the trading program actually being carried out and concealed from the Plaintiffs the losses to the extent they were occurring in the actual trading that was engaged in.

46. During the course of the trading pleaded in paragraphs 42 and 44 herein, Extant directly or indirectly returned to the First Plaintiff part of his assets amounting to the sum of \$5,040,575. The Defendant has no knowledge, prior to discovery and/or interrogatories, as to what other returns of assets may have been made to the Second Plaintiff. In late 2005, pursuant to a settlement of proceedings commenced in the Courts of New York, the Plaintiffs received from Hamilton Securities and/or Extant, by way of return of their assets, the sum of \$3,400,000. The Plaintiffs are required to give credit for all moneys returned by Hamilton Securities and/or Extant.

Dated this 4th day of July 2006

Attride-Stirling + Wolowiecki

ATTRIDE-STIRLING & WOLONIECKI
Attorneys for the Defendant

IN THE SUPREME COURT OF BERMUDA
(COMMERCIAL COURT)

2004: No. 257

BETWEEN

(1) ALLEN WALSH

(2) HANS TAAL

Plaintiffs

and

HORIZON BANK INTERNATIONAL LIMITED (IN
LIQUIDATION)

Defendant

POINTS OF DEFENCE



SUPREME COURT BERMUDA
2005 JUL -4 PM 2:41

Attride-Stirling & Woloniecki
Crawford House
50 Cedar Avenue
Hamilton HM11
Attorneys to the Defendant

Appendix 7

IN THE SUPREME COURT OF BERMUDA (COMMERCIAL COURT)
2004: No. 257

BETWEEN

(1) ALLEN WALSH

(2) HANS TAAL

Plaintiffs

and

HORIZON BANK INTERNATIONAL LIMITED (IN LIQUIDATION)

Defendant

REQUEST FOR FURTHER AND BETTER PARTICULARS
OF THE POINTS OF CLAIM

Under paragraph 10

Of subparagraph (e): *"Beneficial ownership of HBI was controlled by Presnail, Edwards and O'Connor"*

Request:

- (1) Explain what is meant by the allegation that Presnail, Edwards and O'Connor "controlled" the beneficial ownership of HBI.
- (2) Without prejudice to the generality of (1) is it alleged that each of Presnail, Edwards and O'Connor were in fact the beneficial owners of HBI?

Of subparagraph (h): *"O'Connor supervised and controlled HBI's investment activities ... for the accounts of HBI's customers and investors."*

Request:

- (1) Give full particulars of any and all investment activities allegedly undertaken by HBI on behalf of customers and investors.
- (2) Explain what is meant by "investors" as opposed to "customers" and identify all "investors" referred to.

Under paragraph 19

Of: "... *the plaintiffs entrusted their assets to the care of HBI ... in a manner ... which gave rise to a fiduciary duty*"

Request:

- (1) Identify all assets of the plaintiffs which it is alleged they entrusted to the care of HBI.
- (2) Give full particulars, so that the Defendant may understand the nature of the plaintiffs' case, to support the allegation that HBI owed the plaintiffs a fiduciary duty.

Under paragraph 21

Of: "... *HBI ... formed a common intent from the outset to defraud the plaintiffs of their assets and to breach their fiduciary duties to plaintiffs.*"

Request:

- (1) Identify the natural person or persons who it is alleged formed the common intent that is allegedly attributable to HBI.
- (2) Give full particulars, so that the Defendant may understand the nature of the plaintiffs' case, of the fiduciary duties which it is alleged HBI owed to the plaintiffs.

Under paragraph 25

Of: "... *At least US\$9,261,612.85 of their stolen funds ... can be traced to HBI's accounts with the BCB ... Payments into HBI's account at BCB are set out in Appendix A ...*"

Request:

- (1) Identify the natural person or persons who it is alleged stole money from the the plaintiffs.
- (2) State whether it is alleged that HBI had any knowledge of the alleged theft and, if it is so alleged, identify the natural person or persons through whom it is alleged the aforesaid knowledge is attributable to HBI.
- (3) Give full particulars, so that the Defendant may understand the nature of of the plainiffs' case, of all facts and matters relied upon to support the allegation that the payments set out in Appendix A are traceable at law or in equity into the monies presently held in HBI's account at BCB.

Under paragraph 28

Of: "... at least US\$3,665,395.64 of their stolen monies... were sent to (and can be traced to) HBI's accounts with BCB ... Payments into HBI's account at BCB are set out in Appendix B ..."

Request:

- (1) Identify the natural person or persons who it is alleged stole money from the the plaintiffs.
- (2) State whether it is alleged that HBI had any knowledge of the alleged theft and, if it is so alleged, identify the natural person or persons through whom it is alleged the aforesaid knowledge is attributable to HBI.
- (3) Give full particulars, so that the Defendant may understand the nature of of the plaintiffs' case, of all facts and matters relied upon to support the allegation that the payments set out in Appendix B are traceable at law or in equity into the monies presently held in HBI's account at BCB.

Under paragraph 33

Of: "The proceeds of the fraud were received by HBI with the actual knowledge of the controlling minds of HBI ..."

Request

- (1) Identify each and every natural person who it is alleged was a controlling mind of HBI and/or whose knowledge is allegedly attributable to HBI.
- (2) Give full particulars of the knowledge of the alleged fraud which it is alleged each of the natural persons identified in (1) possessed and which is allegedly attributable to HBI.

Of: "HBI knowingly assisted the Toronto Defendants in breaching their fiduciary duties to the plaintiffs."

Request

- (1) Give full particulars, so that the Defendant may understand the nature of the plaintiffs' case, of the fiduciary duties which it is alleged HBI owed to the plaintiffs.
- (2) Identify the natural person or persons who it is alleged knew that HBI was allegedly breaching fiduciary duties and whose knowledge is allegedly attributable to HBI.

Of: "HBI received the funds as a volunteer."

Request

- (1) Identify each and every transaction in respect of which it is alleged that HBI received funds as a volunteer.
- (2) State whether it is the plaintiffs' case that a bank receiving a deposit from a customer which it credits to the customer's account is receiving funds as a volunteer.

Under paragraph 38

Of: "If the loan was advanced from the plaintiffs' funds"

Request:

Restate the above allegation in the form of a complete and grammatical sentence.

Dated this 4th day of July 2006
Attride-Stirling Woloniecki
ATTRIDE-STIRLING & WOLONIECKI
Attorneys for the Defendant

IN THE SUPREME COURT OF BERMUDA
(COMMERCIAL COURT)
2004: No. 257

BETWEEN

(1) ALLEN WALSH

(2) HANS TAAL

Plaintiffs

and

HORIZON BANK INTERNATIONAL LIMITED (IN
LIQUIDATION)

Defendant

REQUEST FOR FURTHER AND BETTER
PARTICULARS OF THE POINTS OF CLAIM



Attride-Stirling & Woloniecki
Crawford House
50 Cedar Avenue
Hamilton HM11
Attorneys to the Defendant

SUPREME COURT BERMUDA

2004 JUL -4 PM 2:41

Appendix 8

IN THE SUPREME COURT OF BERMUDA
(COMMERCIAL COURT)
2004: No: 257

(1) ALLEN WALSH
(2) HANS TAAL
and

Plaintiffs

HORIZON BANK INTERNATIONAL LIMITED
(IN LIQUIDATION)

Defendant

SUMMONS

LET ALL PARTIES concerned attend before one of Her Majesty's Judges sitting in Chambers at the Supreme Court, Hamilton in the Islands of Bermuda, on *FR* day the *22nd* day of *Sept* 2006 at *9.30* o'clock in the *far* noon, on the hearing of an application by the Defendant for an Order that:

1. Unless the Plaintiffs serve their list of documents and response to the Defendant's request for further and better particulars of the Plaintiffs' points of claim on the Defendant on or before 29 September 2006 the Plaintiffs' points of claim shall be struck out.
2. Costs to be provided for.

Dated the *6th* day of *September* 2006.



[Signature]
REGISTRAR

This Summons was issued by Attride-Stirling & Woloniecki, of Crawford House, 50 Cedar Avenue, Hamilton, Bermuda, Attorneys for the Defendant.

To: Conyers Dill & Pearman
Clarendon House
2 Church Street
Hamilton HM 11

IN THE SUPREME COURT OF BERMUDA
(COMMERCIAL COURT)

2004: No: 257

(1) ALLEN WALSH
(2) HANS TAAL

Plaintiffs

and

HORIZON BANK INTERNATIONAL LIMITED
(IN LIQUIDATION)

Defendant

SUMMONS



Attridge-Stirling & Woloniecki
Crawford House
50 Cedar Avenue
Hamilton HM 11
Bermuda
Attorneys for the Defendant

SUPREME COURT BERMUDA

2005 SEP -5 PM 4: 12

Appendix 9

IN THE SUPREME COURT OF BERMUDA (COMMERCIAL COURT)

2004: No: 257

BETWEEN

(1) ALLEN WALSH

(2) HANS TAAL

Plaintiffs

and

HORIZON BANK INTERNATIONAL LIMITED (IN LIQUIDATION)

Defendant

SUMMONS

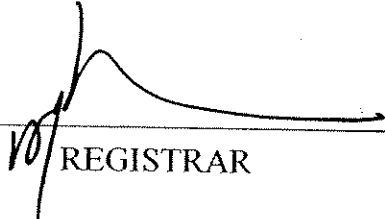
LET ALL PARTIES concerned attend before one of Her Majesty's Judges sitting in Supreme Court, in the city of Hamilton, in the Islands of Bermuda on the 22nd day of September 2006 at 9.30 o'clock in the forenoon or so soon thereafter as Counsel may be heard for an order that:

1. The action herein be stayed, and all time requirements be extended, until determination of the Plaintiffs' application in St Vincent and the Grenadines on the issue of conflicts of interest;
2. That in the alternative, the Plaintiffs be at liberty to file further affidavit evidence in relation to the Plaintiffs' summons of 22 April 2006 and the Defendant's summons of 7th April 2006 within 21 days, and thereafter that the said summons of 22 April 2006 and summons of 7 April 2006 be set down for hearing for two days;

3. That there be liberty to apply; and

4. That the costs be in the cause.

DATED this 14th day of September 2006



REGISTRAR

This Summons was taken out by Messrs. Conyers Dill & Pearman, Clarendon House, 2 Church Street, Hamilton HM 11, Bermuda, Attorneys for the Plaintiffs whose address for service is the same.

IN THE SUPREME COURT OF BERMUDA
(COMMERCIAL COURT)

2004: No: 257

BETWEEN

(1) ALLEN WALSH

(2) HANS TAAL

Plaintiffs

and

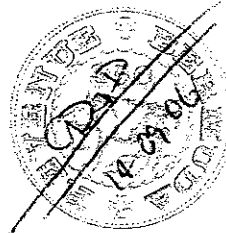
HORIZON BANK INTERNATIONAL LIMITED (IN
LIQUIDATION)

Defendant

SUMMONS

SUPREME COURT BERMUDA

2005 SEP 14 PM 12: 33



CONYERS DILL & PEARMAN

Clarendon House, 2 Church Street
Hamilton, Bermuda
Attorneys for the Plaintiffs
CRL/nm/litdocs47715

Appendix 10

Sworn on behalf of: Defendant
Name of deponent: James A. Pomeroy
No. of Affidavit: 2nd
Sworn on: September 13, 2006

IN THE SUPREME COURT OF BERMUDA
(COMMERCIAL COURT)
2004 : No. 257

BETWEEN:

(1) ALLEN WALSH
(2) HANS TAAL

Plaintiffs

- and -

HORIZON BANK INTERNATIONAL LIMITED
(IN LIQUIDATION)

Defendant

SECOND AFFIDAVIT OF JAMES A. POMEROY

I, JAMES A. POMEROY, of Head of St. Margaret's Bay, in the Province of Nova Scotia, Canada, MAKE OATH AND SAY as follows:

1. I am a Manager at PricewaterhouseCoopers LLP and am the duly appointed agent of Marcus A. Wide ("Liquidator"), the Liquidator of the Defendant, Horizon Bank International Limited ("Horizon"), and as such I have personal knowledge of the matters herein deposed to except where otherwise stated to be based on information and belief, which matters I verily believe to be true. A true copy of the Notice of Appointment by which I was appointed the Liquidator's agent is on file with this Honourable Court.
2. I have reviewed the Decision of Kawaley J. of this Honourable Court in relation to this matter dated February 7, 2005 ("the Decision"), and specifically that segment of the Decision in which the lowest intermediate balance of funds deposited by Horizon in Bermuda Commercial Bank Limited ("BCBL") was considered and determined. In the Decision, Kawaley J. determined that the lowest intermediate balance occurred on August 8, 2002 when this balance stood at \$2,155,222.37. From the evidence placed before His Lordship, it was determined that deposits attributable to traced funds of the Plaintiffs, Walsh and Taal, after this date were in the amount of \$3,476,197.47. It was therefore His Lordship's finding that the total sum of **\$5,631,439.84** was to be frozen on an interim basis.

3. At the request of the Liquidator, in late September/early October 2005, I conducted a review of all Horizon banking records maintained by BCBL then in the Liquidator's possession, and other account information gathered by the Liquidator to that point in time, for the purpose of calculating the account's lowest intermediate balance. The records I reviewed to that point in time disclosed that the lowest intermediate balance in fact occurred on August 4, 2003, when the balance in the account was \$1,343,361.26. According to my review of the records at the time, deposits attributable to traced funds of the Plaintiffs, Walsh and Taal, made subsequent to this date totalled \$3,079,502.17. Employing the methodology used by Kawaley J. in the Decision to these figures, I therefore calculated and deposed in my First Affidavit, filed with this Honourable Court on October 3, 2005, that the proper amount of funds which ought to have been frozen totalled **\$4,422,863.43**.

4. In the months following the filing of my First Affidavit, the Liquidator received, through mandatory and voluntary productions, additional account statements for the accounts of Horizon at BCBL which covered transactions and the state of accounts prior to the accounts previously reviewed for which no records had been previously obtained. These accumulated materials came into the Liquidator's hands in April or May of this year. In or around June/July 2006, at the request of the Liquidator, I conducted a further review of the newly produced BCBL account statements for the purpose of calculating the account's lowest intermediate balance.

5. Following my review of the materials aforesaid, I discovered that the lowest intermediate balance in fact did not occur on August 4, 2003, but rather the lowest intermediate balance occurred on September 14, 2000, when the account stood at **\$580,611.56**. Coupled with the post-lowest intermediate balance deposits as recognized in the Decision as being properly subject to the Plaintiffs', Walsh and Taal's, *prima facie* tracing right, I calculated the total amount of lowest intermediate balance plus permitted post-lowest intermediate balance deposits to be **\$4,246,007.30**.

6. Attached hereto and marked Exhibit "JP-4" is a bundle containing an Excel spreadsheet summarizing the analysis of balances on a daily basis which supports the conclusion in the preceding paragraph, together with relevant BCBL account statements.

7. I make this Affidavit in support of an Application by the Liquidator to vary the terms of the Decision and have certain frozen funds released from Horizon's account at BCBL for possible interim distribution to creditors, and for no improper purpose.

SWORN TO at Halifax, County of Halifax,)
 Province of Nova Scotia, this 3rd day)
 of September, 2006, before me:)
 _____)
 A Notary Public in and for the Province)
 of Nova Scotia)

BENJAMIN R. DURNFORD

 JAMES A. POMEROY

Sworn on behalf of: Defendant
Name of deponent: James A. Pomeroy
No. of Affidavit: 2nd
Sworn on: September 13, 2006

IN THE SUPREME COURT OF BERMUDA
(COMMERCIAL COURT)
2004 : No. 257

BETWEEN:

(1) ALLEN WALSH
(2) HANS TAAL

Plaintiffs

- and -

HORIZON BANK INTERNATIONAL LIMITED
(IN LIQUIDATION)

Defendant

EXHIBIT "JP-4"

This is the document referred to in the Affidavit of JAMES A. POMEROY sworn before me this 13th day of September, 2006.


A Notary Public

BENJAMIN R. DURNFORD

"JP-4"

Horizon Bank International Limited
 Lowest Intermediate Balance
 Prepared September 13, 2006

DATE	A US CURRENT ACCOUNT	B=C+D+E Sum of Fixed Deposits	C US FIX DEPOSIT ACCOUNT - no code	D US FIX DEPOSIT ACCOUNT - 00	E US FIX DEPOSIT ACCOUNT - 01	F=A+B TOTAL OF ALL US ACCOUNTS	G CAD CURRENT ACCOUNT (in CAD)	H Canadian Dollar Call Account (in USD at 0.731)	I=F+H TOTAL of ALL Accounts in US DOLLARS	J WALSH DEPOSITS	K Cumulative Future WALSH DEPOSITS	L+HK BCB Balance Plus Cumulative Future Walsh Deposits
9/14/2000	47,234.17	530,341.22	285,077.27	205,297.16	39,966.79	577,575.39	4,510.53	3,036.17	580,611.56		3,665,395.74	4,246,007.30
12/27/2001										102,727.17	3,665,395.74	3,665,395.74
3/26/2002										80,696.86	3,562,668.57	3,562,668.57
6/21/2002										69,444.24	3,461,971.71	3,461,971.71
1/8/2003										89,444.24	3,392,527.47	3,392,527.47
4/8/2003										88,472.02	3,303,053.23	3,303,053.23
7/15/2003										87,499.80	3,214,611.21	3,214,611.21
8/25/2003										89,444.24	3,127,111.41	3,127,111.41
10/15/2003										2,000,000.00	3,037,667.17	3,037,667.17
11/27/2003										87,110.90	1,037,667.17	1,037,667.17
1/6/2004										850,000.00	950,556.27	950,556.27
1/8/2004										55,083.03	100,556.27	100,556.27
4/16/2004										(41,835.00)	47,473.24	47,473.24
7/15/2004										36,043.46	89,308.24	89,308.24
7/21/2004										12,803.34	51,264.78	51,264.78
7/22/2004										12,803.34	38,461.44	38,461.44
										25,698.10	25,698.10	25,698.10

HORIZONS BANK INT'L LTD

06800/027039/

CALL ACCOUNTS



BERMUDA
COMMERCIAL
BANK LIMITED

05 MAY 2006

ADHOC

/ 9 USD

05 SEP 00 BALANCE B/F									
06 SEP 00 W/T-TONY BOYDEN									329,574.17
06 SEP 00 WIRE CHG									254,574.17
06 SEP 00 R/E 05/9/00 DUPLICATE									254,534.17
ENTRY									179,546.17
08 SEP 00 W/T-AURORA MGMT LTD									147,366.17
08 SEP 00 WIRE CHG									147,326.17
08 SEP 00 W/T-BF INVESTMENT CORP									47,326.17
08 SEP 00 WIRE CHG									47,286.17
04 SEP 00 Wire:GEORGIA PACIFIC SECU									97,274.17
/RFB/SWF OF 00/09/13 ABA									
026002574 FOR:BERMUDA BK									
04 SEP 00 W/T-TONY BOYDEN									47,274.17
04 SEP 00 WIRE CHG									47,234.17
08 SEP 00 Wire:MPS LTD 9 75 FIRST S									247,234.17
TREET ORANGEVILLE ONTARIO									
08 SEP 00 Wire:MPS									397,234.17
/RFB/TI000918S5721700 FOR									
FURTHUR CREDIT TO MPS LT									
09 SEP 00 Wire:57TH STREET 1-212-33									535,978.45
REF.EXTANT MGMT LTD									
00 SEP 00 Wire:GEORGIA PACIFIC SECU									560,966.45
/RFB/SWF OF 00/09/19 ABA									
026002574 FOR:BERMUDA COM									
00 SEP 00 W/T-TONY BOYDEN									535,966.45
00 SEP 00 WIRE CHG									535,926.45
01 SEP 00 B/O ROBO									597,926.45
RE:SEARCY WAY BOWLING									
GREEN									
01 SEP 00 BALANCE C/F									597,926.45

HORIZONS BANK INT'L LTD

ATTN: NIGEL CHATTERJEE
C/O PRICEWATERHOUSECOOPERS
P.O. BOX HM 1171
HAMILTON HMEX

Account Statement



**BERMUDA
COMMERCIAL
BANK LIMITED**

Bermuda Commercial Bank Limited

Bermuda Commercial Bank Building
43 Victoria Street
P.O. Box HM 1748
Hamilton HMGX Bermuda
Telephone: 441-295-5678
Facsimile: 441-295-8091

Name HORIZONS BANK INT'L LTD

Account Number 068/09/027039/

Account Deposits FIXED DEPOSITS

Interest Rates 4.500

Statement Date 15 MAY 06

Statement Number 2

Page Number 6 USD Currency

Post Date	Particulars	Value Date	Debit	Credit	Balance
	BALANCE BROUGHT FORWARD				376,548.18CR
03 APR 00	INTEREST TO DATE	03 APR 00		1,722.58	378,270.76
05 APR 00	INTEREST TO	05 APR 00		115.58	378,386.34
05 APR 00	ACCEPTANCE DEP BREAK	05 APR 00			378,386.34
05 APR 00	FUNDS TO CALL AC PLUS OUR BREAK FEE CHARGE	05 APR 00	100,250.00		278,136.34
01 MAY 00	ACCEPTANCE ROLLOVER	03 MAY 00			278,136.34
03 MAY 00	INTEREST TO DATE	03 MAY 00		1,189.81	279,326.15
01 JUN 00	ACCEPTANCE ROLLOVER	05 JUN 00			279,326.15
05 JUN 00	INTEREST TO DATE	05 JUN 00		1,424.27	280,750.42
03 JUL 00	ACCEPTANCE ROLLOVER	05 JUL 00			280,750.42
05 JUL 00	INTEREST TO DATE	05 JUL 00		1,403.75	282,154.17
01 AUG 00	ACCEPTANCE ROLLOVER	07 AUG 00			282,154.17
07 AUG 00	INTEREST TO DATE	07 AUG 00		1,551.85	283,706.02
31 AUG 00	ACCEPTANCE ROLLOVER	05 SEP 00			283,706.02
05 SEP 00	INTEREST TO DATE	05 SEP 00		1,371.25	285,077.27

Failing receipt by the bank, within 15 days from the date of dispatch of this statement, of notice of disagreement with any of the entries, confirmation of the statement as rendered will be assumed.
Any communication intimating disagreement with the statement should be addressed to the Customer Service Department.

DR = OVERDRAWN BALANCE
ATM = AUTOMATED TELLER MACHINE

HORIZONS BANK INT'L LTD

ATTN: NIGEL CHATTERJEE
C/O PRICEWATERHOUSECOOPERS
P.O. BOX HM 1171
HAMILTON HMEK

CONTINUED

Account Statement



Bermuda Commercial Bank Limited
 Bermuda Commercial Bank Building
 43 Victoria Street
 P.O. Box HM 1748
 Hamilton HMGX Bermuda
 Telephone: 441-295-5678
 Facsimile: 441-295-8091

Name HORIZONS BANK INT'L LTD

Account Number 068/09/027039/

Account Deposits FIXED DEPOSITS

Interest Rates 4.500

Statement Date 15 MAY 06

Statement Number 2

Page Number 7 USD Currency

Post Date	Particulars	Value Date	Debit	Credit	Balance
	BALANCE BROUGHT FORWARD				285,077.27CR
03 OCT 00	ACCEPTANCE ROLLOVER	05 OCT 00			285,077.27
05 OCT 00	INTEREST TO DATE	05 OCT 00		1,425.39	286,502.66
02 NOV 00	ACCEPTANCE ROLLOVER	06 NOV 00			286,502.66
06 NOV 00	INTEREST TO DATE	06 NOV 00		1,528.01	288,030.67
04 DEC 00	ACCEPTANCE ROLLOVER	06 DEC 00			288,030.67
06 DEC 00	INTEREST TO DATE	06 DEC 00		1,440.15	289,470.82
04 JAN 01	ACCEPTANCE ROLLOVER	08 JAN 01			289,470.82
08 JAN 01	INTEREST TO DATE	08 JAN 01		1,592.09	291,062.91
06 FEB 01	ACCEPTANCE ROLLOVER	08 FEB 01			291,062.91
08 FEB 01	INTEREST TO DATE	08 FEB 01		1,378.51	292,441.42
08 MAR 01	INTEREST TO DATE	08 MAR 01		1,123.06	293,564.48
08 MAR 01	AUTO-MATURITY CREDIT	08 MAR 01			293,564.48
09 APR 01	INTEREST TO DATE	09 APR 01		1,174.26	294,738.74
09 APR 01	AUTO-MATURITY CREDIT	09 APR 01			294,738.74

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DR = OVERDRAWN BALANCE
 ATM = AUTOMATED TELLER MACHINE

HORIZONS BANK INT'L LTD

ATTN: NIGEL CHATTERJEE
 C/O PRICEWATERHOUSECOOPERS
 P.O. BOX HM 1171
 HAMILTON HMEX

CONTINUED

Account Statement



**BERMUDA
COMMERCIAL
BANK LIMITED**

Bermuda Commercial Bank Limited

Bermuda Commercial Bank Building
43 Victoria Street
P.O. Box HM 1748
Hamilton HMGX Bermuda
Telephone: 441-295-5678
Facsimile: 441-295-8091

Name HORIZONS BANK INT'L LTD

Account Number 068/09/027039/00

Account Deposits FIXED DEPOSITS

Interest Rates 4.500

Statement Date 15 MAY 06

Statement Number 2

Page Number 6 USD Currency

Post Date	Particulars	Value Date	Debit	Credit	Balance
	BALANCE BROUGHT FORWARD				204,103.77CR
16 AUG 00	INTEREST TO DATE	16 AUG 00		238.12	204,341.89
21 AUG 00	ACCEPTANCE ROLLOVER	23 AUG 00			204,341.89
23 AUG 00	INTEREST TO DATE	23 AUG 00		238.40	204,580.29
28 AUG 00	ACCEPTANCE ROLLOVER	30 AUG 00			204,580.29
30 AUG 00	INTEREST TO DATE	30 AUG 00		238.68	204,818.97
01 SEP 00	ACCEPTANCE ROLLOVER	06 SEP 00			204,818.97
06 SEP 00	INTEREST TO DATE	06 SEP 00		238.96	205,057.93
11 SEP 00	ACCEPTANCE ROLLOVER	13 SEP 00			205,057.93
13 SEP 00	INTEREST TO DATE	13 SEP 00		239.23	205,297.16
18 SEP 00	ACCEPTANCE ROLLOVER	20 SEP 00			205,297.16
20 SEP 00	INTEREST TO DATE	20 SEP 00		239.51	205,536.67
25 SEP 00	ACCEPTANCE ROLLOVER	27 SEP 00			205,536.67
27 SEP 00	INTEREST TO DATE	27 SEP 00		239.79	205,776.46
02 OCT 00	ACCEPTANCE ROLLOVER	04 OCT 00			205,776.46

Failing receipt by the bank, within 15 days from the date of dispatch of this statement, of notice of disagreement with any of the entries, confirmation of the statement as rendered will be assumed.
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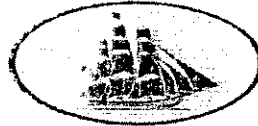
DR = OVERDRAWN BALANCE
ATM = AUTOMATED TELLER MACHINE

HORIZONS BANK INT'L LTD

ATTN: NIGEL CHATTERJEE
C/O PRICEWATERHOUSECOOPERS
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HAMILTON HMEX

CONTINUED

Account Statement



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BANK LIMITED**

Bermuda Commercial Bank Limited

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43 Victoria Street
P.O. Box HM 1748
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Telephone: 441-295-5678
Facsimile: 441-295-8091

Name HORIZONS BANK INT'L LTD

Account Number 068/09/027039/01

Account Deposits FIXED DEPOSITS

Interest Rates 4.500

Statement Date 15 MAY 06

Statement Number 1

Page Number 5 USD Currency

Post Date	Particulars	Value Date	Debit	Credit	Balance
	BALANCE BROUGHT FORWARD				58,174.18CR
13 JUN 00	INTEREST TO	13 JUN 00		9.29	58,183.47
13 JUN 00		13 JUN 00			58,183.47
13 JUN 00	FUNDS TO CALL AC	13 JUN 00	58,183.47		0.00
31 AUG 00	FUNDS FROM CALL	31 AUG 00		100,000.00	100,000.00
05 SEP 00	ACCEPTANCE ROLLOVER	07 SEP 00			100,000.00
07 SEP 00	INTEREST TO DATE	07 SEP 00		116.67	100,116.67
13 SEP 00	INTEREST TO	13 SEP 00		100.12	100,216.79
13 SEP 00	ACCEPTANCE DEP BREAK	13 SEP 00			100,216.79
13 SEP 00	FUNDS TO CALL AC PLUS OUR BREAK FEE CHARGE	13 SEP 00	60,250.00		39,966.79
19 SEP 00	ACCEPTANCE ROLLOVER	21 SEP 00			39,966.79
21 SEP 00	INTEREST TO DATE	21 SEP 00		51.07	40,017.86
26 SEP 00	ACCEPTANCE ROLLOVER	28 SEP 00			40,017.86
28 SEP 00	INTEREST TO DATE	28 SEP 00		41.34	40,059.20
03 OCT 00	ACCEPTANCE ROLLOVER	05 OCT 00			40,059.20

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Any communication intimating disagreement with the statement should be addressed to the Customer Service Department.

DR = OVERDRAWN BALANCE
ATM = AUTOMATED TELLER MACHINE

HORIZONS BANK INT'L LTD

ATTN: NIGEL CHATTERJEE
C/O PRICEWATERHOUSECOOPERS
P.O. BOX HM 1171
HAMILTON HMEX

CONTINUED

HORIZONS BANK INT'L LTD

02800/027039/

CALL ACCOUNTS



05 MAY 2006

ADHOC

/ 1 CAD

2 DEC 99	BALANCE B/F				0.00
Z2 DEC 99	BROUGHT FORWARD BALANCE	22 DEC 99			
1 JAN 00	INTEREST TO DATE	01 JAN 00	10,402.05		10,402.05
13 FEB 00	TFR FROM USD CALL ACCT	23 FEB 00	67.36		10,469.41
13 FEB 00	W/T-PERRIGRINE LTD	23 FEB 00	130,000.00		140,469.41
13 FEB 00	WIRE CHG	23 FEB 00	535,000.00		5,469.41
1 APR 00	INTEREST TO DATE	23 FEB 00	50.00		5,419.41
17 APR 00	TFR FROM USD CALL A/C	01 APR 00		21.13	5,440.54
	USD122000.00 @ .6814	27 APR 00		179,043.15	184,483.69
7 APR 00	W/T-BRAWLEY CATHERS LTD	27 APR 00	174,300.00		
7 APR 00	WIRE CHG	27 APR 00	50.00		10,183.69
2 JUN 00	TFR FROM USD A/C	02 JUN 00		44,497.18	10,133.69
	USD 30000.00 @ .6742				54,630.87
2 JUN 00	W/T-CNJ	02 JUN 00	50,000.00		
2 JUN 00	WIRE CHG	02 JUN 00	50.00		4,630.87
8 JUN 00	TFR FROM USD A/C	08 JUN 00		61,773.79	4,580.87
	CAD61773.79 @ .6799				66,354.66
8 JUN 00	W/T-ROSTEN INVESTMENTS	08 JUN 00	60,000.00		
8 JUN 00	WIRE CHG	08 JUN 00	50.00		6,354.66
1 JUL 00	INTEREST TO DATE	01 JUL 00		18.64	6,304.66
3 JUL 00	TFR FROM USD ACCT.	03 JUL 00		85,000.00	6,323.30
3 JUL 00	W/T-PERRIGRINE LTD.	04 JUL 00	85,000.00		91,323.30
3 JUL 00	WIRE CHG	04 JUL 00	50.00		6,323.30
3 SEP 00	W/T-PERRIGRINE LTD	13 SEP 00	90,000.00		6,273.30
3 SEP 00	WIRE CHG	13 SEP 00	50.00		83,726.70Di
3 SEP 00	FUNDS FROM FIXED DEPOSIT	13 SEP 00		88,287.23	83,776.70Di
1 OCT 00	INTEREST TO DATE	01 OCT 00		4.44	4,510.53
0 OCT 00	TFR FROM USD CALL A/C	20 OCT 00		12,503.90	4,514.97
	USD19000.00 @ .6581				17,018.87
0 OCT 00	BALANCE C/F				17,018.87

USD Fixed deposit @ .6823
 $60,250.00 \div .6823 = 88,287.23$

HORIZONS BANK INT'L LTD

ATTN: NIGEL CHATTERJEE
 C/O PRICEWATERHOUSECOOPERS
 P.O. BOX HM 1171
 HAMILTON HMEX

Sworn on behalf of: Defendant
Name of deponent: James A. Pomeroy
No. of Affidavit: 2nd
Sworn on: September 13, 2006

IN THE SUPREME COURT OF BERMUDA
(COMMERCIAL COURT)
2004 : No. 257

BETWEEN:

(1) ALLEN WALSH
(2) HANS TAAL

Plaintiffs

- and -

HORIZON BANK INTERNATIONAL LIMITED
(IN LIQUIDATION)

Defendant

EXHIBIT "JP-4"

Attride-Stirling & Woloniecki
Crawford House
50 Cedar Avenue
Hamilton HM-11
Bermuda

Appendix 11

In the Supreme Court of Bermuda

COMMERCIAL COURT

2004 : No. 25

BETWEEN :

ALLEN WALSH

and

HANS TAAL

Plaintiffs

and

HORIZON BANK INTERNATIONAL LIMITED

(in Provisional Liquidation)

Defendant

RULING

Date of hearing: September 22 , 2006

Date of Ruling : September 27, 2006

Mr. Christian Luthi, Conyers Dill & Pearman , for the Plaintiffs

Mr. Jan Woloniecki and Ms. Kehinde George, Attride-Stirling & Woloniecki,
for the Joint Liquidators of the Defendant

Introductory

1. The present proceedings were commenced by the Bermuda Commercial Bank by Originating Summons dated August 19, 2004 and resulted in an Order dated September 3, 2005 effectively freezing certain monies held in the Defendant's account there. Various customers of the Defendant, a St. Vincent and Grenadines bank, shortly thereafter formally joined the proceedings, and an interpleader action to determine entitlement to the monies, and in particular the Plaintiff's proprietary claim, proceeded with the original Plaintiff withdrawing from the proceedings in or about April 2005.
2. From the outset, the Court was concerned about the implications of tying up the monies of innocent depositors while the Plaintiff sought to establish its proprietary claim. On February 7, 2005, the Court ruled that the Plaintiff had a good arguable case for tracing its allegedly stolen monies into the Defendant's accounts based on an application of the lowest intermediate balance rule. The contention that a good arguable case was made out for a tracing claim attaching all the monies in the account was rejected at the interlocutory stage. The Plaintiffs' claim was that the Defendant was controlled by one company and certain individuals based in Ontario, Canada ("the Toronto Defendants"), and that the Defendant

received the Plaintiff's monies with notice of the fact that they were stolen monies, so that the monies received were impressed with a constructive trust in the Plaintiffs' favour. On April 22, 2004, the Plaintiffs had already sued the Toronto Defendants in Ontario, and alleged that the Defendant company was controlled by the Toronto Defendants.

3. This Court's Order of February 7, 2005, envisaging an expedited trial of the Plaintiff's seemingly somewhat tenuous claim to monies in excess of the lowest intermediate balance with a view to expediting the possibility of innocent depositors receiving their monies, proposed that a limited issue be tried. On the assumption that the monies were held on constructive trust for the Plaintiffs, could they prove as matter of evidence the right to trace monies in excess of the lowest intermediate balance? I envisaged that the other Defendants would likely receive some, if not all, of their monies in early course, and that the issue of whether or not as a matter of fact and law the Defendant did receive the Plaintiffs' monies impressed with a constructive trust could conveniently be tried in the Toronto action. This would minimize the prejudice to the depositors, enable the Plaintiffs to prove their proprietary claim in their preferred forum, should this prove feasible from an Ontario law perspective. The Defendant was, at this juncture, still under the formal control of the alleged perpetrators of the fraud, and it seemed possible that any deficit owing to its depositors might be made good out of other resources, and that any prejudice it might sustain in being sued in Ontario need not be taken into account. The ramifications of ordering a split trial on a non-consensual basis were simply not analyzed at this stage.
4. On April 5, 2005, when I declined an application by the Defendant's then attorneys for payment of their fees out of the Bermuda monies, I indicated that the information then before the Court suggested that independent management should be appointed because of the actual or contingent insolvency of the Defendant. On or about April 21, 2005 Marcus Wide of PricewaterhouseCoopers Toronto was appointed Provisional Liquidator of the Defendant in St. Vincent, and fresh lawyers were retained in Bermuda. At a hearing on October 6, 2005 with attempts still being made to finalize an order giving effect to the February 7, 2005 Ruling, Mr. Woloniecki for the Provisional Liquidator placed before the Court his client's First Report. This indicated that: (a) the Plaintiffs appeared to have a good proprietary claim; and (b) that the Defendant was clearly insolvent with additional unsecured creditors not before the Bermuda Court. Counsel further stated that the only live issue was the extent of the proprietary claim. The matter was adjourned to a date to be fixed for further arguments on the terms of the February 7, 2005 Order, and further evidence was directed to be filed within 14 days. This First Report gave credence to the earlier view that the existence of the proprietary claim might not need to be adjudicated by this Court.
5. However, on November 10, 2005, ancillary liquidation proceedings were commenced in respect of the Defendant in Bermuda, and Messrs. Peter Mitchell and Marcus Wide were appointed Joint Provisional Liquidators ("JPLs") by this Court in Companies (Winding-Up) 2005: 359. The application was granted by me primarily on the jurisdictional ground that the Defendant was carrying on business thorough an agent, the Bermuda Commercial Bank Limited, in Bermuda. It followed that the External Companies (Jurisdiction in Actions) Act 1888 (as read with section 4 of the Companies Act) applied to give this Court jurisdiction as of right over the Defendant. The Petitioner's Counsel, Ms. George, cited Wade-Miller J's decision in *Informission-v- Convertix Corporation* [2000] Bda LR 75. The JPLs subsequently consented to the liquidation stay being lifted to permit the Plaintiffs to pursue the present claim. The other depositors, as unsecured creditors, were now prevented by the liquidation stay from further participating in the Bermuda proceedings.

6. By Summons dated April 7, 2006, the JPLs sought orders (a) directing the exchange of pleadings and trial of the Plaintiff's proprietary claim, and (b) payment out to them of monies in excess of the lowest intermediate balance. On April 26, 2006, by way of response, the Plaintiffs issued a Summons seeking orders that: (a) the issue of whether or not the Defendant was through Kevin Coombs fixed with knowledge of the Toronto Defendants' fraud when it received the Plaintiffs' monies should be tried in Toronto, which was the natural and most appropriate forum, (b) that tracing issues should only be determined after that adjudication, and (c) that the JPLs should not in the interim have recourse to the monies in excess of the lowest intermediate balance amount, which latter amount should be paid out to the Plaintiffs forthwith.
7. On April 26, 2006, the two Summonses were argued. Mr. Woloniecki opposed trial of the issue of whether the Defendant was a constructive trustee in Ontario because that forum was not a competent jurisdiction. Written submissions on jurisdiction were filed on both sides. The JPLs' position on the fraud issue was tentatively revised to the position that (a) the Plaintiffs' loss was essentially an investment loss, and (b) accordingly the Defendant did not receive the monies with notice that they were stolen. I encouraged the parties to consider whether, in light of the discovery and the pleadings which I ordered on that date, agreement on the fraud issue could be reached so that only tracing issues need be actually tried in the present proceedings. Such a compromise would obviously save time and costs, and also avoid this Court trying any issues which overlapped with matters likely to be determined in the Ontario action. Pleadings were ordered to be exchanged on the entirety of the proprietary claim, but the Plaintiffs' application for a cross-jurisdictional split trial, as it were, was adjourned, together with the JPLs' application for (a) full discovery, and (b) a permanent injunction restraining the Plaintiffs from seeking to join them as defendants in the Ontario action. The matter was adjourned for a further directions hearing after the exchange of pleadings, which hearing took place before me on September 22, 2006.

The issues for determination

8. At last week's hearing, anxious to avoid further delays, I refused the Plaintiffs' application for a stay of the present proceedings pending an application to the St. Vincent Court to have Mr. Wide removed as Liquidator of the Defendant on conflict grounds. I reserved the costs of that application as the JPLs sought indemnity costs and it seemed wrong to adjudicate such an application until after the St. Vincent Court had dealt with the conflict application, notwithstanding my view that such overseas application provided no good justification for placing the present application before this Court on hold. I ordered that the Plaintiffs provide the further and better particulars sought by JPLs in respect of the entirety of the proprietary claim but, after hearing further summary argument on the forum issue, declined the Plaintiffs' request that I fix an extended two-day hearing on this issue. Instead, I reserved judgment on the issue of whether or not, absent consent, I should follow the unusual course of allowing a portion of the Plaintiffs' claim to be determined in a foreign action. While it seemed improbable that I could properly compel the JPLs to submit to the Ontario Court's jurisdiction for the trial of the liability portion of the Plaintiffs' proprietary claim, the rules of law and practice applicable to this unusual scenario were not immediately clear.
9. The issue of *forum non conveniens* to my mind only strictly arises at all in respect of an entire cause of action. Mr. Luthi did not cite any authorities where the doctrine has been applied to one portion of a claim, and no doubt relied on the doctrine not in its strict sense, but by way of analogy. He relied principally on *Donoghue v. Armco* [2002] 1 Lloyds Law Rep

425, where the House of Lords held that because it was desirable that all issues of a common dispute involving third party interests be resolved in one forum, they would not grant an anti-suit injunction restraining the applicant from being sued outside of England (in particular in proceedings already commenced against the applicant in New York) for breach of English exclusive jurisdiction clauses. The latter case turned on whether or not an anti-suit injunction should be granted, not on classic *forum non conveniens* principles in any event. The Plaintiffs may not have formally entered an unconditional appearance in the present proceedings, but they have appeared through Counsel on various occasions over some 18 months before they first applied for relief on forum grounds, and sought substantive relief by way of an interpleader order in the First Affidavit of Allen Walsh sworn on or about September 14, 2004. They elected to seek relief in this Court in respect of the Bermuda monies before considering suing the Defendant in the Ontario action. In my view they have unarguably submitted to the jurisdiction of this Court. The issue of forum was first formally raised, and then only as regards one aspect of their claim, in April 2006. By this time the fund the Plaintiffs assert a claim to is the principal liquidation asset of the Defendant's provisional liquidation under the supervision of this Court. Bermuda is, against this background, the most appropriate forum for a dispute over title to assets located here to be tried in any event. So I would reject the forum argument on these fundamental grounds, without deciding Mr. Woloniecki's contention that the Ontario Court is not a "competent" jurisdiction for forum purposes.

10. Ontario need only be "*competent*" in the sense of possessing personal jurisdiction as of right over the Defendant, for forum purposes, it seems to me, if this Court itself has jurisdiction "*as of right*": *Arabian American Insurance Company (Bahrain) E.C. -v- Al Amana Insurance and Reinsurance Company Limited* [1994] Bda LR 27, per Ground J (as he then was) at page 6, following da Costa JA of the Court of Appeal for Bermuda in *National Iranian Oil Company -v- Ashland Overseas Trading Limited* [1988] Bda LR 13. As indicated above when giving the history of these proceedings, this Court in its winding-up jurisdiction has already determined that this Court has jurisdiction as of right over the Defendant company when appointing the JPLs, an appointment which the Plaintiffs have never challenged on jurisdictional grounds. So whether the *forum non conveniens* doctrine applies strictly or is applied merely by way of analogy, the present proceedings may not be stayed on forum grounds in favour of Ontario unless the Plaintiffs are able to show that that jurisdiction is competent as of right over the Defendant. There is presently no evidence before the Court to the effect that Ontario is a competent court, a point which was first taken by the JPLs on April 26, 2006, and this basic factual assertion was not disputed by Counsel either then or at the renewed hearing of the Plaintiffs' forum Summons. In these circumstances it does not seem to me, even assuming Ontario law to be the same as Bermuda law and further assuming that legislation similar to our External Companies (Jurisdiction in Actions) Act 1888 exists there, that Ontario is a competent jurisdiction. The Plaintiffs' own case is that the Toronto Defendants were the *alter egos* or principals of the Defendant company, not its agents, so no basis for asserting personal jurisdiction over the company in Ontario would necessarily follow just because the Toronto Defendants controlled the company from there. So on this further ground I would hold in the alternative that Bermuda is the natural and most appropriate forum.
11. However, it seems to me that the real issue to decide is not which jurisdiction is the most appropriate forum for the trial, the Plaintiffs having had little choice but to elect to sue in Bermuda to recover assets located here. Rather, the relevant question is whether as a matter of case management this Court can and should compel the JPLs to submit to the jurisdiction of the Ontario Courts to determine one discrete issue which

appears to overlap with wider issues likely to be tried in a wider and far longer trial, on the grounds that the needs of justice so require.

Principles relevant to the exercise of the Court's discretion

12. The Plaintiffs require leave of this Court to continue to sue the Defendant, a company in provisional liquidation, as opposed to being left to their remedy of proving in the liquidation. It appears that their proprietary claim has been dismissed in St. Vincent, triggering the curious complaint that they only consented to Mr. Wide serving as liquidator because they believed he would agree that claim. Leave has been granted in respect of these proceedings alone, in line with the general rule that purported secured creditors should not have to prove in the liquidation of an insolvent company, which process is designed for persons having claims against the company's property as opposed to those seeking to recover their own property. But the automatic stay triggered by the appointment of the JPLs under section 167(4) of the Companies Act 1981 would still have to be lifted to permit the Plaintiffs, as matter of Bermuda law, to seek to join the Defendant as a party to the Ontario Proceedings. Section 167(4) provides as follows:

“(4) *When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose.*”

13. The primary object of this stay provision is to (a) prevent an insolvent company's assets from being depleted through litigation with unsecured creditors, and (b) prevent individual unsecured creditors making preferential recoveries. But this does not mean that the Court does not retain a discretion, in appropriate circumstances, to refuse leave to proceed to a disputed secured creditor, even with respect to proceedings within the jurisdiction of this Court. Leave is usually granted absent “*special circumstances*”: *In re Atlantic Computer Systems PLC* [1992] Ch.505 at 520-521 (C.A.). In my view it is obvious, without authority, that this Court in considering how to manage the present litigation must have regard to the impact of the litigation on the Defendant's unsecured creditors, even if both parties in any event (by virtue of the Overriding Objective) have a common obligation to save time and costs. It also obvious that seeking leave to sue a company in liquidation in a foreign court, in respect a portion only of a proprietary claim which is also to be pursued here, is clearly a highly unusual set of circumstances.
14. Mr. Woloniecki made the rather bellicose suggestion that even if this Court lifted the stay to permit the Plaintiffs to seek to join the Defendant in the Ontario proceedings, the JPLs would simply ignore the proceedings and argue before this Court that any findings made against them were not binding because they were not made by a competent court. This robust position to some extent overlooks the fact that the JPLs are officers of this Court, and this Court must potentially possess the competence to direct liquidators it has appointed to participate in foreign proceedings where such participation would be in the best interests of the liquidation estate. Section 175 (3) of the Companies Act as read with section 175(1) provides that the liquidators powers to, *inter alia*, bring and defend proceedings shall be “*shall be subject to the control of the Court*”.
15. But, this technicality aside, this Court in its winding-up jurisdiction will rarely second-guess liquidators' judgment as to where the best interests of creditors lie unless such judgment is clearly awry. Because where (as is the case here) creditors are likely to be informed of all material steps taken by the liquidators, the creditors, and not the court, will usually be the best

judges of where their own interests lie. And, bearing in mind that the proceedings here are only ancillary to the principal liquidation in St. Vincent and the Grenadines, this Court should be cautious in the extent to which it seeks to supervise the JPLs at all.

16. But the primary guide to deciding how issues should be tried is now the Overriding Objective, which in my view implicitly empowers this Court to direct that certain issues should be determined in foreign proceedings, although the primary aim of the rules is obviously to regulate proceedings before this Court, and it is difficult to imagine such a direction being routinely made absent all parties consenting to the proposed multi-jurisdictional division of issues. Order 1A of the Rules of the Supreme Court provides as follows:

“1A/1 The Overriding Objective

1 (1) These Rules shall have the overriding objective of enabling the court to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable —

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate —

(i) to the amount of money involved;

(ii) to the importance of the case;

(iii) to the complexity of the issues; and

(iv) to the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly; and

(e) allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases.

1A/2 Application by the Court of the Overriding Objective

2 The court must seek to give effect to the overriding objective when it —

(a) exercises any power given to it by the Rules; or

(b) interprets any rule. 1A/3 Duty of the Parties

3 The parties are required to help the court to further the overriding objective.

1A/4 Court’s Duty to Manage Cases

4 (1) The court must further the overriding objective by actively managing cases.

(2) Active case management includes —

(a) encouraging the parties to co-operate with each other in the conduct of the proceedings;

(b) identifying the issues at an early stage;

(c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;

(d) deciding the order in which issues are to be resolved;

(e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure.

- (f) helping the parties to settle the whole or part of the case;*
- (g) fixing timetables or otherwise controlling the progress of the case;*
- (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;*
- (i) dealing with as many aspects of the case as it can on the same occasion;*
- (j) dealing with the case without the parties needing to attend at court;*
- (k) making use of technology; and*
- (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently." [emphasis added]*

Key factors relevant to the exercise of the Court's discretion

17. I have had regard to the above principles in encouraging the parties to reach agreement on the further conduct of these proceedings and in declining to allow further extended argument on the forum case management issue. I also apply the above principles to the issues at hand. The Plaintiffs seek to have the issue of whether or not the Defendant Company received their monies with notice of the Toronto Defendants' fraud tried in Ontario together with their main fraud case against the Toronto Defendants. From paragraphs 71-82 of the Eighth Walsh Affidavit, it appears that they rely primarily on the pre-liquidation somewhat superficial view this Court expressed in January, 2005, rather than on any direct evidence that trying this issue in Ontario would be more just to all concerned. When Mr. Luthi was challenged to justify the practical merits of his position, he did not refer me to any evidence. I took the view that in light of the passage of time since the Plaintiffs' forum application was first filed (April 16, 2006), they had had more than sufficient time to file evidence in this regard.
18. When the Defendant bank was still to some extent under the control of an individual linked with the Toronto Defendants and apparently solvent, it seemed obviously desirable that the Plaintiffs should be able to advance overlapping fraud allegations against all defendants in one trial, and have one discovery process. It was hoped that the upper limits of the Plaintiffs' claims could have been quantified in the course of 2005, and that the other depositors would be returned their money almost in full within the same time-frame. The position is no longer the same in that the manifestly insolvent Defendant is now completely under independent Court-supervised management in St. Vincent and Bermuda, and is now clear not only that the other depositors cannot be paid in full, but that the timeline for determining the Plaintiffs' substantive claim (which now clearly impacts on the other depositors) is far longer than previously hoped.
19. The JPLs suggest that it is unclear whether all issues relevant to the tracing claim would be determined in Toronto. This is not a substantial objection as, assuming the proprietary claim was asserted in the Ontario action with the JPLs participation, there is no reasons why the parties to the present action should not fully adjudicate all issues relevant to the merits of the substantive claim in those proceedings, leaving only the application of the tracing remedy to be determined here. Would the Plaintiffs be unduly prejudiced by having that claim tried here, and if so how? It is true that their ability to cross-examine the Toronto Defendants would be taken away, but that is to a large extent offset by the fact that those Defendants would not be here to directly contradict the allegations of fraudulent intention laid against them.

20. The main controversy on fraud appears to be whether or not the Plaintiffs' monies were lost in bad investments, as the JPLs contend, or were stolen, as the Plaintiffs contend. That question seems likely to depend more on an assessment of documentary records rather than on questions of fraudulent intent. The Plaintiffs will likely find it easier to make out a prima facie case of fraudulent intent without the perpetrators here to defend themselves in the present proceedings, provided their characterisation of the transactions which resulted in what they claim to be their monies coming to Bermuda can first be made out. On the pleadings, the Defendant has essentially admitted that the Toronto Defendants were its *alter ego*, so the participation of the Toronto Defendants is in this important regard irrelevant. This is not a case for contending that manifest injustice will be suffered by the Plaintiffs if forced to establish their proprietary claim in the present action and to separately establish their fraud claims in the Ontario action against defendants who are not party to the present proceedings at all. It cannot be credibly suggested that the Plaintiffs' pursuit of the Ontario action in way depends on the present claim, which deals with a wholly distinct issue, which is on the pleadings now even narrower than it appeared to be in early 2005, when I was sympathetic to the notion of a split trial.
21. Would the fact that this Court finds that the Plaintiffs' monies were not stolen prejudice the Plaintiffs' position in the Ontario action, assuming that this Court makes such determination first? Such tactical prejudice is plausible, even though the JPLs accept that fraud of some kind took place. Even though this Court's findings would not have any formal effect on the Ontario proceedings, the Plaintiffs would hardly be assisted by an early adverse finding here, and their negotiating position there would likely be weakened. The other side of this coin is that if they try their proprietary claim here first, come what may the Plaintiffs will have a better grasp of the overlapping fraud issues which will likely assist them in presenting a more realistic case against the Toronto Defendants. If they win here, a further moral advantage would be gained in their wider campaign for justice in respect of the alleged fraud.
22. Even if the Plaintiffs will be prejudiced to some extent by trying those elements of its proprietary claim which genuinely overlap with issues before the Ontario court (and it only a case of overlapping issues arising out of a wholly distinct claim), the goal of sensible case management in the context of cross-border civil litigation in a real world can never be to eliminate all incidental injustices which inevitably flow from the multi-jurisdictional subject-matter of the litigation before the Court. And the fundamental goal of dealing with cases justly must take into account the position of all parties before the Court.
23. The JPLs object to being compelled to litigate the proprietary claim in Canada on two cogent grounds. Firstly they assert that it is unclear how long the Ontario proceedings will last, and secondly they complain about the costs implications for their estate of becoming embroiled in litigation involving issues which are of no direct concern to the Defendant. The Defendant no longer represents the interests of alleged fraudsters, but the interests of the unsecured creditors of an insolvent company. Postponing this Court's adjudication of the tracing claim until after the disputed proprietary claim is adjudicated in Ontario would cause obvious delay which would unarguably be prejudicial to the interests of the Defendant's creditors. If the JPLs were to participate in two sets of proceedings instead of one (admittedly if the proprietary claim was lost by the Plaintiffs in Ontario, no further proceedings here would be required) would clearly impose an additional costs burden on the Defendant's estate, and minimize funds available to meet creditors claims. It seems obvious that trying the narrowly defined claim against the Defendant in Bermuda, both as to

liability and quantum, would be quicker and cheaper for all concerned. Indeed, it may be that the liability issue should be tried first before the quantum issue in any event, by this Court.

Conclusion

24. In summary, the JPLs can demonstrate far more obvious prejudice to the Defendant, if the proprietary claim is tried abroad, than would obviously be suffered by the Plaintiffs if the entirety of their claim is tried here. In these circumstances, it is not open to this Court to grant the extraordinary relief which the Plaintiffs ultimately seek.
25. There is no basis for concluding that the JPLs have misconstrued the best interests of the Defendant in declining to consent to trying the proprietary claim in Ontario, and thereafter resolving tracing issues here. Accordingly, there are no grounds for this Court to take what would in any event be an unprecedented step in terms of judicial case management by compelling the Defendant to submit to the jurisdiction of a court which does not appear to be competent for the trial of a portion of the Plaintiff's claim. Absent truly exceptional circumstances, the directions for a split trial in Ontario and Bermuda that the Plaintiffs seek could only properly be ordered by consent.
26. Accordingly, the Plaintiffs' application for the relief set out in paragraphs 1,2 and 6 of their April 24, 2006 Directions Summons is dismissed. I will hear Counsel, if required, as to costs, but would otherwise order that the costs of these aspects of their Summons should be in the cause.
27. I would further order that the Plaintiff within 21 days issue a Summons for Directions so that pre-trial directions can be given with regard to, *inter alia*, entry for trial, the exchange of witness statements, expert evidence (if applicable), and issues to be tried. Counsel should seek to agree as many directions as possible, and should in particular consider whether it would be feasible to try the issue of the existence of the Plaintiffs' proprietary claim first on the basis that however this threshold issue is determined, it may be possible to avoid a trial on the extent of the tracing remedy issue.

Dated this 27th day of September, 2006



KAWALEY J

Appendix 12

**IN THE SUPREME COURT OF BERMUDA
(COMMERCIAL COURT)
2004: No: 257**

**(1) ALLEN WALSH
(2) HANS TAAL
and**

Plaintiffs

**HORIZON BANK INTERNATIONAL LIMITED
(IN LIQUIDATION)**

Defendant

ORDER

UPON THE APPLICATION by summonses of the Defendant, Horizon Bank International Ltd (“HBI”), acting by its joint provisional liquidators (“the JPLs”), dated 7 April 2006 and 6 September 2006; and the application by summonses of the Plaintiffs dated 24 April 2006 and 14 September 2006

AND UPON HEARING counsel for HBI and counsel for the Plaintiffs

AND UPON the JPLs undertaking to this Court that the Excess Monies (as defined in paragraph 1 of this Order) shall be administered in the Saint Vincent and Grenadines winding-up proceedings (“the SVG proceedings”) in accordance with the order of the High Court of Saint Vincent and Grenadines (“the SVG Court”) dated 10 February 2006 and such other orders as the SVG Court may make thereafter in the SVG proceedings

IT IS HEREBY ORDERED THAT:

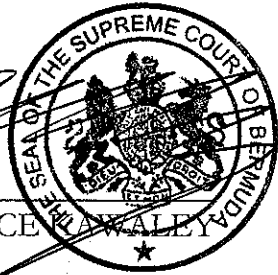
1. The sum in excess of US\$5,600,000 (“the Excess Monies”) in the Defendant’s accounts at HSBC Bank of Bermuda (to be established pursuant to the consent order of this Court dated 22 September 2006 (the “HBI Accounts”)), shall be paid to the JPLs upon their undertaking above, and accordingly the JPLs are authorized to withdraw the Excess Monies from the HBI Accounts. **PROVIDED THAT** this Order shall be

without prejudice to the right of the Plaintiffs to seek to prove that their proprietary claim against the Defendant is for an amount in excess of \$5,600,000.

2. The Plaintiffs' application that the action herein be stayed and that all time requirements be extended until the determination of the Plaintiff's application in Saint Vincent and the Grenadines on the issue of conflicts of interest is dismissed.
3. The Plaintiffs shall serve their list of documents in accordance with Order 24 of the Rules of the Supreme Court within 28 days and shall allow inspection of their documents forthwith.
4. The Plaintiffs shall file and serve their response to the Defendant's request for further & better particulars of the Plaintiffs' Points of Claim on the Defendant within 28 days.
5. The Plaintiffs be granted leave to file and serve their reply to the Points of Defence within 28 days.
6. Costs in relation to:
 - 6.1. the stay application are reserved.
 - 6.2. the applications for directions concerning discovery, further and better particulars and reply are costs in the cause.
 - 6.3. all other issues heard before the court on 22 September 2006 are reserved.

Dated the 22nd day of September 2006.


MR. JUSTICE ALLEY



The seal of the Supreme Court of Bermuda is circular, featuring a central coat of arms with two figures holding a shield. The text around the seal reads "THE SEAL OF THE SUPREME COURT OF BERMUDA" and "1819". A small star is positioned at the bottom center of the seal.

IN THE SUPREME COURT OF
BERMUDA (COMMERCIAL COURT)
2004: No: 257

(1) ALLEN WALSH
(2) HANS TAAL

Plaintiffs

and

HORIZON BANK INTERNATIONAL
LIMITED
(IN LIQUIDATION)

Defendant

ORDER



SUPREME COURT BERMUDA

2005 SEP 28 PM 4:30

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Attorneys for the Defendant

Appendix 13

IN THE SUPREME COURT OF BERMUDA
(COMMERCIAL COURT)
2004: No: 257

(1) ALLEN WALSH
(2) HANS TAAL
and

Plaintiffs

HORIZON BANK INTERNATIONAL LIMITED
(IN LIQUIDATION)

Defendant

ORDER

UPON THE APPLICATION by summons of the Plaintiffs dated 24 April 2006
("Directions Summons")

AND UPON HEARING counsel for the Plaintiffs and the Defendant

IT IS HEREBY ORDERED THAT:

1. Paragraphs 1, 2 and 6 of the Plaintiffs' Directions Summons are dismissed with costs in the cause.
2. The Plaintiffs shall issue a summons within 21 days for pre-trial directions including in relation to:
 - 2.1. entry for trial;
 - 2.2. the exchange of witness statements;
 - 2.3. expert evidence (if applicable); and
 - 2.4. issues to be tried.

Dated the 27th day of September 2006.




MR. JUSTICE KAWALEY

IN THE SUPREME COURT OF
BERMUDA (COMMERCIAL COURT)
2004: No: 257

(1) ALLEN WALSH
(2) HANS TAAL

Plaintiffs

and

HORIZON BANK INTERNATIONAL
LIMITED
(IN LIQUIDATION)

Defendant

ORDER

SUPREME COURT BERMUDA

2004 SEP 28 PM 4:30



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