

IN THE CENTRAL CRIMINAL COURT

Before the Honourable Mrs Justice Gloster DBE

4<sup>th</sup> August 2011

Varied on 17 October 2011 by the Honourable Mrs Justice Gloster DBE

✓ (2)

IN THE MATTER OF THE PROCEEDS OF CRIME ACT 2002

AND IN THE MATTER OF

(1) ROBERT ALLEN STANFORD  
(2) JAMES DAVIS  
(3) LAURA PRENDERGEST-HOLT

Defendants

BETWEEN:

STANFORD INTERNATIONAL BANK LIMITED  
(acting by its Joint Liquidators)

Applicant

-and-

(1) THE DIRECTOR OF THE SERIOUS FRAUD OFFICE  
(2) CREDIT SUISSE UK LIMITED  
(3) PERSHING SECURITIES LIMITED  
(4) HSBC BANK PLC  
(5) MAREX FINANCIAL LIMITED

Respondents

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ORDER

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**UPON THE APPLICATION** of Stanford International Bank Limited (in liquidation) ("SIB"), acting by its Joint Liquidators ("the Joint Liquidators"),

**AND UPON HEARING** Counsel for the Applicant and Leading and Junior Counsel for the First Respondent,

**AND UPON READING** the papers filed herein,

**IT IS ORDERED** that:

1. The Restraint Order of the Court of Appeal dated 25 February 2010 (but effective from 29 July 2009) ("the Restraint Order") be varied to insert the following:

"5A. Notwithstanding the terms of this Order, the Joint Liquidators be permitted to liquidate as necessary and draw down sums from SIB's assets, subject to this

Order, ("the Restrained Assets") in order to fund the ongoing liquidation of SIB only upon the following terms:

- (i) The Joint Liquidators may liquidate and draw down the sum of US\$5 million forthwith from the Restrained Assets;
- (ii) 30 days after the first application for drawdown referred to in paragraph 5A(i) above, the Joint Liquidators may liquidate and draw down such further sums as they may require to a maximum total amount of US\$20 million (inclusive of the sum drawn down pursuant to paragraph 5A(i) of this Order);
- (iii) The Joint Liquidators shall give the Serious Fraud Office ("SFO") two clear working days' notice before commencing the drawdown of any sum in excess of US\$5 million;
- (iv) All and any funds drawn down by the Joint Liquidators pursuant to this Order will attract simple interest from the drawdown date until such time as the funds are repaid to the Restrained Assets at a rate of 5.4% per annum;
- (v) The Joint Liquidators are entitled to draw down funds pursuant to this Order and to instruct the Second, Third, Fourth and Fifth Respondents to effect such currency conversions as the Joint Liquidators may specify (including a conversion from USD into GBP) in respect of such funds held by the Second, Third, Fourth and Fifth Respondent and which are the subject of this Order;
- (vi) The Joint Liquidators may specify the mechanism or method by which such payments are made, provided such mechanism or method is a mechanism or method habitually used by the Second, Third, Fourth or Fifth Respondent, as the case may be, as part of its business, and may direct such payment may be made to any Bank or Financial Institution which is capable of receiving such payment by such mechanism or method and to which the Second, Third, Fourth or Fifth Respondent as the case may be can lawfully make such payments;
- (vii) The Joint Liquidators shall issue a monthly summary to the SFO detailing (a) the funds that have been drawn down, (b) the date when such funds were drawn down, and (c) the purpose of each drawdown. The first such report shall be provided 30 days after the drawdown provided for in paragraph 5A(i) above, and each subsequent report shall be provided every 30 days thereafter. Each report shall be delivered not more than 15 calendar days after the expiry of the relevant 30 day period;
- (viii) As part of the monthly summary provided pursuant to paragraph 5A(vii) above, the Joint Liquidators shall provide a summary statement of recoveries in the preceding 30 days setting out:
  - (a) The gross amount of the recovery;
  - (b) A summary of the costs and disbursements incurred in effecting the recovery;
  - (c) A summary of the fees incurred by the Joint liquidators in effecting the recovery.

The Joint Liquidators shall, so far as practicable, seek the approval of the High Court of Antigua in relation to their fees, costs and disbursements in

relation to recoveries prior to deducting the same for the purposes of calculating the dividend payable pursuant to paragraph 5A(viii) below;

- (ix) Notwithstanding paragraphs 5A(vii) and (viii) above, the SFO shall have the right to make reasonable inquiry of the Joint Liquidators' expenditure of the drawn down funds and are entitled to a sufficient answer within 7 days of such an enquiry being received by the Joint Liquidators;
- (x) The Joint Liquidators will repay the funds drawn down pursuant to this Order on a dividend basis of 10% of the net proceeds realised from any recoveries to SIB's Estate (including, for the avoidance of doubt, any asset which is held within the liquidation estate as at the date of this Order) effected after the date of this Order (excluding recoveries subject to arrangements entered into before the date of this Order). For the avoidance of doubt, in this Order "net proceeds" shall mean:
  - (a) The proceeds of sale or realisation of any asset of SIB, net of the costs of sale and all fees (including, but not limited to the fees of the Joint Liquidators), costs and disbursements incurred in getting in, improving, marketing and/or managing that asset;
  - (b) The amount in any bank account belonging to SIB, net of all fees (including, but not limited to the fees of the Joint Liquidators), costs and disbursements incurred in getting in that bank account;
  - (c) Payments in satisfaction of judgment debts, settlement agreements or otherwise arising from litigation, whether undertaken or otherwise, or in any event that leads to a payment to the liquidation estate, net of all litigation costs and all other fees (including, but not limited to the Joint Liquidators' fees), costs and disbursements incurred in securing such judgment.

In the event that the SFO considers the quantum of fees, costs and disbursements to be unreasonable, the onus shall be on the SFO to raise such concerns pursuant to paragraph 5A(vii) above and, if it not satisfied by the response of the Joint Liquidators, to apply to the Court.

- (xi) This exception to the Restraint Order shall continue until further Order of the Court.

5B. The Joint Liquidators hereby undertake to the Court to use and apply the funds drawn down pursuant to paragraph 5A(i) and (ii) of this Order towards the cost of:

- (i) The prevention of dissipation of assets in which SIB holds or may hold any legal or equitable proprietary claim or in relation to which it otherwise has or may have a valid claim, wheresoever such assets may be situate ("the Assets");
- (ii) The recovery of any Assets;
- (iii) The investigation and, if considered by the Joint Liquidators on the advice of counsel to be viable, the bringing of any claim against third parties for the benefit of the creditors of SIB;
- (iv) The professional marketing of the real property owned legally or beneficially by SIB in Antigua or elsewhere or which may be recovered as Assets, and to make improvements to such properties at the discretion of the Joint Liquidators to enhance their value of marketability;

- (v) The active management of any financial investment in which SIB is or may be entitled, if necessary in conjunction with appropriate asset managers;
- (vi) The fulfilment of all statutory, contractual or judicially imposed obligations of the Joint Liquidators including, but not limited to, paying fees and disbursements owed to professionals employed by the SIB Estate from and after 12 May 2011;
- (vii) The administration of the estate of SIB in the ordinary course of its business;
- (viii) Forensic accounting and asset tracing to search for and seek to preserve and recover any concealed Assets; and
- (ix) The achievement of any other object or purpose set forth in the Action Plan for Recovery Optimisation for Creditors of SIB dated 7 July 2011.

For the avoidance of doubt, funds drawn down by the Joint Liquidators pursuant to this Order shall not be used for the repayment of US\$1,711,206 previously released from the Restrained Assets to the Joint Liquidators' predecessors, or for payment of the former liquidators' fees or disbursements incurred in respect of SIB's liquidation incurred prior to the appointment of the Joint Liquidators on 12 May 2011.

5C. The Joint Liquidators shall be able to take all steps necessary to liquidate the Restrained Assets in order to realise US\$20 million in cash and to receive the funds detailed in sub-paragraphs 5A(i) and (ii) of this Order, subject to receipt of advice as to the most effective way of realising such sum, taking into account the current investment profile, and any practical concerns related to such liquidation.

5D. The Restrained Assets shall be managed by the Joint Liquidators, and in connection with the management of the Restrained Assets, the Joint Liquidators shall have the powers and responsibilities set out in Schedule C to this Order.

5E. The Second, Third, Fourth and Fifth Respondents shall comply with the instructions of the Joint Liquidators in carrying any of paragraphs 5A to 5D of and Schedule C to this Order into effect, so long as such instructions appear to be in compliance with the terms of this Order."

2. The Restraint Order be further varied to amend Schedule B by inserting the following:
 

"4. Account Number 18886GA held with Marex Financial Limited"
3. The Restraint Order be further varied to insert the Schedule to this Order as Schedule C to the Restraint Order.
4. The application of the SFO dated 15 March 2011 for repatriation of the Restrained Assets be treated as being before the Court. That application be adjourned to the handing down of reasons for the making of this Order for directions.
5. The costs of and occasioned by this Application be reserved to the handing down of reasons for the making of this Order. For the avoidance of doubt, the Joint Liquidators shall in any event be entitled to draw the costs of and occasioned by this application (to be subject to detailed assessment if not agreed) from the Restrained Assets, in addition to the total sum of US\$20 million referred to in paragraph 1 above. In the event that the costs cannot be agreed, the Joint Liquidators shall be entitled to draw 65% or the amount claimed on account, pending determination.

6. Liberty to apply.

Dated this 4<sup>th</sup> day of August 2011

BY THE COURT

Varied on 7 October 2011



by  
Kumtham Z...

**SCHEDULE****"Schedule C**

The Joint Liquidators shall have the following powers without prejudice to any existing powers vested in them whether by statute or otherwise:

1. Power to take possession of the Restrained Assets;
2. Power to manage or otherwise deal with the Restrained Assets;
3. Power to realise the Restrained Assets in such manner as they may in their discretion determine to be in the best interests of the creditors of SIB;
4. Power to start, carry on or defend any legal proceedings in respect of the Restrained Assets;
5. Power to realise so much of the Restrained Assets as is necessary to meet their fees, costs and disbursements incurred in connection with the management of the Restrained Assets;
6. Power to hold the Restrained Assets, enter into contracts, sue or be sued, execute powers of attorney, deeds or other instruments or take any other steps in relation to the Restrained Assets which they may determine in their discretion to be in the best interests of the creditors of SIB.

Provided always that the Joint Liquidators prepare and serve on the SFO each 90 days a full report detailing all and any steps taken in respect of the Restrained Assets, in particular notifying the SFO of any costs, fees or disbursements incurred in respect of the Restrained Assets, any investment decisions and any other action taken in connection with the Restrained Assets.

Provided also that the Joint Liquidators shall notify the SFO immediately of any proceedings commenced by either the Joint Liquidators or any third party relating to the Restrained Assets."