

Jeff J. Friedman
Merritt A. Pardini
KATTEN MUCHIN ROSENMAN LLP
575 Madison Avenue
New York, New York 10022-2585
Telephone: (212) 940-8800
Facsimile: (212) 940-8776

Attorneys for The Consumers Trust, as Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
:
In re: Chapter 11
:
THE CONSUMERS TRUST, Case No. 05 – 60155 (REG)
:
Debtor.
:
----- X

POST-CONFIRMATION STATUS REPORT

TO: THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

The Consumers Trust, the above-captioned debtor and debtor-in-possession (the “Debtor”), hereby files this post-confirmation status report and respectfully represents as follows:

Background

1. On December 5, 2005 (the “Petition Date”), the Debtor filed with this Court a petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Prior to the Petition Date, the Debtor operated a consumer rebate promotion program in the United States and Canada which involved issuing “Cashable Vouchers” to individuals purchasing a wide variety of consumer products. On October 24, 2007, this Court entered an

order confirming the Debtor's Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code (the "Plan").¹

Progress Toward Consummation of the Plan

A. Distributions to Creditors

2. The Debtor has hired A.B. Data Ltd. ("A.B. Data") to effectuate payments to holders of Allowed Class 2 General Unsecured Claims (primarily holders of cashable voucher claims).

3. In March of 2008, the Debtor, through A.B. Data, made an Interim Distribution by check (the "Distribution Checks") to all holders of Allowed Class 2 General Unsecured Claims for whom the Debtor believed it had a correct address and who had not previously declined to grant the Solicitor Trustees Release. The amount of each Distribution Check equaled approximately 1.5% of the recipient's Allowed Class 2 General Unsecured Claim. The entirety of this Interim Distribution came from the Solicitor Trustee Settlement Proceeds.

4. Since the last post-confirmation status report was filed with the Court, the Debtor's and Committee's professionals have fielded numerous telephone calls, emails and letters from holders of Class 2 General Unsecured Claims providing address updates, spelling corrections and otherwise requesting re-issuance of Distribution Checks. Additionally, returned mail from the March, 2008 Interim Distribution continues to trickle in to Debtor's counsel. Using an assistant (whose time is not billed to the Debtor except where overtime is necessary), Debtor's counsel has continuously updated the distribution list with this new information. Since making the Interim Distribution in March of last year, the Debtor has made five additional

¹ Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Plan.

mailings – and has directed A.B. Data to make a sixth mailing – of Interim Distribution checks to Consumers who have contacted the Debtor to provide a new address, request a re-issuance because of an improperly spelled name, or for similar reasons.

B. Enforcement Actions Against Adrian Roman and Others

5. As this Court is aware, the Debtor and the Committee have obtained default summary judgment against, inter alia, Adrian Roman, Justin Roman, Nicholas Roman and Eurofinance, S.A. – each of whom reside in England – in the amount of \$160,000,000 (the “Judgment”). The Debtor’s U.K. counsel filed with the High Court of Justice, Chancery Division, Companies Court, in London (the “High Court”) a recognition application pursuant to the U.K.’s Cross-Border Insolvency Regulations 2006 in order to obtain the High Court’s assistance in enforcing the Judgment. Adrian Roman, Justin Roman and Nicholas Roman opposed the recognition application and enforcement of the Judgment.

6. On July 31, 2009, the High Court rendered its decision recognizing this bankruptcy case under U.K.’s Cross-Border Insolvency Regulations 2006, but ultimately determined that enforcement of the Judgment in the U.K. was not appropriate. In reaching this decision, the High Court found the principal of universalism in bankruptcy (i.e., ensuring a uniform and fair system for distributing the assets of an insolvent estate with assets in more than one jurisdiction as between those who have a claim to them) was unrelated to how, or in what jurisdiction, a claim against third parties is established. The High Court determined that the Judgment went beyond simply enforcing rights between creditors, but was an in personam judgment against third parties who had not submitted themselves to the jurisdiction of the US Bankruptcy Court. A copy of the High Court’s decision is attached hereto.

7. The Debtor and the Official Committee of Unsecured Creditors of The Consumers Trust (the "Committee") are currently determining whether to appeal the High Court's decision.

C. Payment of US Trustee Fees and Other Matters

8. The Debtor is working to finalize its quarterly operating reports and will thereafter satisfy all outstanding U.S. Trustee fees.

Notice

9. This status report has been filed with this Court and will be posted on the website maintained by the Committee. Additionally, copies of this Status Report will be served upon (i) the Committee; (ii) the Office of the United States Trustee; and (iii) all parties who have filed notices of appearance in this case.

Future Status Reports

10. The Debtor will file status reports on or about January 15, April 15, July 15 and October 15 of each year until a final decree has been entered. This particular status report was filed late because the Debtor was awaiting the High Court's decision.

Dated: New York, New York
August 11, 2009

KATTEN MUCHIN ROSENMAN LLP
Attorneys for The Consumers Trust

By: /s/ Merritt A. Pardini
Jeff J. Friedman
Merritt A. Pardini
575 Madison Avenue
New York, New York 10022-2585
Telephone: (212) 940-8800

In the High Court of Justice

No. 9798 of 2008

Chancery Division

Companies Court

In the matter of the Consumers Trust

and

In the matter of the Trustee Act 1925

and

In the matter of the Cross-Border Insolvency Regulations 2006

(1) David Rubin

(2) Henry Lan

Applicants

-and-

(1) Eurofinance SA

(2) Adrian Roman

(3) Justin Roman

(4) Nicholas Roman

Respondents

Before Mr. Nicholas Strauss Q.C. (sitting as a deputy judge)

Mr. Francis Tregear Q.C., instructed by Messrs Dundas & Wilson LLP, appeared for the applicants.

Mr. Marcus Staff, instructed by Brown Rudnick LLP, appeared for the respondents.

Approved judgment

31st July 2009

Introduction

1. This is an application by the joint receivers and managers of The Consumers Trust (“TCT”) under the Cross-Border Insolvency Regulations 2006, which gives effect to the UNCITRAL Model Law relating to cross-border insolvency, for:-

(1) recognition under article 15 of bankruptcy proceedings in the U.S. Bankruptcy Court of the Southern District of New York (Case No. 05-60155) as a “foreign main proceeding”, together with recognition of the applicants as foreign representatives; and

(2) an order under article 25 enforcing the decision of the U.S. bankruptcy court, holding the respondents liable for the debts of TCT totalling \$160 million, as a judgment of the English courts.

2. Two issues of some general interest are raised by the application. The first is whether the Regulations apply where the foreign bankruptcy proceedings relate to a debtor which, according to English law, has no legal personality either as an individual or as a body corporate. The second is whether a monetary judgment given in foreign bankruptcy proceedings can be enforced under the Model Law, when it could not have been enforced if it had been given in the ordinary courts of law of that foreign state.

The facts

3. TCT was settled by Eurofinance S.A. with a payment of £1. Eurofinance S.A. is a British Virgin Islands company which was wholly owned by Adrian Roman and is now owned by a Seychelles registered company. The trustees were two solicitors, Mr. Caplan

and Mr. Harrison, and two accountants, Mr. Davis and Mr. Bonley, all of whom practised in Harrow, London. The beneficiaries were “the consumers (members of the public or otherwise) who had successfully participated by claiming validly in a sales promotion or promotions owned or operated by the Settlor (“Promotions”)”.

4. The Promotions, sometimes known as Cashable Voucher Programmes, took place entirely in the USA and in Canada, although the administration work carried out by the trustees was carried out in England. The Promotions were governed by contracts between the trustees acting for TCT, a company called Consumer Promotions Inc. (or in Canada another company called CPI) and more than 1,000 participating merchants trained in the operation of the scheme by one of these companies.

5. The basis of the scheme was a cashable voucher which the merchants issued whenever they made a sale, which was payable by TCT to the merchant’s customer, if but only if he succeeded in following the precise instructions for the steps he needed to go through to claim the amount due on the maturity date. The face value of the voucher was the same as the price of the product.

6. The Promotions were financed in this way. The merchants paid 15% of the face amount of the vouchers which they had issued. Of this 6% was retained by the trustees to meet claims. Just over half the balance was paid to Eurofinance, and so effectively to Adrian Roman. The remainder was paid to Consumer Promotions Inc., CPI, various US service providers involved in the operation of the scheme, some US attorneys involved in the scheme and in the later stages to Adrian Roman’s sons.

7. In order to succeed, the customer had to successfully overcome inertia, and then navigate a complex and obscure process involving both memory and comprehension tests. The assessment of whether they had succeeded was carried out in a pedantic manner. The low success rate is evidenced by the fact that, even though the trustees only received some 6% of the face value of the vouchers, they nevertheless had nearly \$10 million in bank accounts in the United States and Canada by the time the scheme folded in 2005.

8. The reason, or at least one of the main reasons, why TCT's business failed was that proceedings were brought by the Attorney-General for the State of Missouri under Missouri consumer protection legislation, which resulted in a settlement involving a payment by the trustees of US\$1,650,000 and \$200,000 in costs, and it became clear that further proceedings were likely in other states.

9. Eurofinance then decided to institute proceedings under Chapter 11 of the United States bankruptcy code, and successfully applied to Lewison J. on 14th November 2005 for an order appointing the present applicants as joint receivers and managers of TCT: the trustees undertook to assist them, make available all books, records, and other documents relating to TCT's affairs and generally to take all necessary steps to facilitate the bringing of a petition under Chapter 11, and similar action in Canada. The reasons why such action was desirable included the fact that all or virtually all of the 60,000 creditors were in the United States or Canada, the fact that all the assets were in the United States and the availability in the United States of the bankruptcy process for TCT as if it were a separate legal entity, under the classification of "Business Trust".

10. The petition was issued on 5th December 2005. In the box for “Type of Debtor” TCT was referred to as a “Business Trust”. It is common ground that bankruptcy proceedings can be brought in New York in relation to a business trust, even though it has no separate legal personality for any other purpose. The petition confirmed that TCT had been domiciled or had had a residence or principal place of business or principal assets in the District for the immediately preceding 180 days.

11. On 3rd October 2006, various orders were made against Eurofinance and Mr. Roman “on behalf of the Debtor”, including an order for their examination, but they did not comply with them and were held to be in contempt on 10th January 2007.

12. In May or June 2007 the receivers settled TCT’s potential claims against the solicitor trustees for \$3.2 million.

13. On 24th October 2007, the United States bankruptcy court approved a Plan of Liquidation under Chapter 11, which provided amongst other things for the prosecution of “Causes of Action” (very widely defined) against Potential Defendants including the present respondents. This plan had previously been put before Lewison J., who had ordered, on 25th September 2007, that the receivers should be at liberty to seek approval of it from the United States bankruptcy court.

14. On the same day as the United States bankruptcy court approved the plan, it also appointed the present applicants to serve as foreign representatives on behalf of TCT and to seek recognition of the Chapter 11 case in Great Britain as a foreign main proceeding

under the 2006 Regulations. The order provided that the present applicants were appointed to serve for all purposes under the Regulations and specifically

“(i) to make application to the High Court of Justice, Chancery Division (“the High Court”) in London for recognition of this Chapter 11 case as a foreign main proceeding under the (regulations);

(ii) to seek assistance and cooperation from the High Court in connection with the Chapter 11 case, and, in particular, to seek the High Court’s assistance and cooperation in the prosecution of litigation which may be commenced in this court, including relief regarding service of process, discovery, and the enforcement of judgments of this Court that may be obtained against persons and entities residing or owning property in Great Britain (my emphasis); and

(iii) to take such further actions on behalf of the Debtor as may be necessary or appropriate in accordance with the applicable provisions of the (Regulations).”

15. On 3rd December 2007, proceedings which have been referred to as “the adversary proceedings” were brought in the United States bankruptcy court against a number of parties including the present respondents. These were not defended and on 23rd July 2008 default summary judgment was given against all the defendants, including the present respondents, jointly and severally, in the amount of US\$160 million. Judgment was given on the basis that they were general partners in TCT, and liable for its debts, and on the basis of breach of fiduciary duty and negligence. The amount of US\$160 million represents the estimated amount which would be due to all participants in the Promotions, on the assumption that they successfully completed the process. As I understand it, the basis for this is that it would be impracticable to determine which participants have, or would have, been successful and which would not: therefore it would be necessary to admit all claims.

16. Default judgment was also entered against Eurofinance and Adrian Roman for \$8,377,504.76, and against his sons for the amounts of \$432,338.86 and \$238,514.31 respectively, in respect of transfers of money made to them at a time when TCT was insolvent.

17. The basis for exercising personal jurisdiction over the defendants is set out in the order granting the Plaintiffs' motion for default judgment and summary judgment. The Court held that it had statutory "long-arm" personal jurisdiction under Bankruptcy Rule 7004(f), essentially because the defendants chose the United States as the place to carry on their business. The defendants had the opportunity to challenge this, but did not do so. The defendants did not, of course, have any opportunity to make submissions to the United States bankruptcy court on the issue which is now relevant, namely whether the judgment of that court is enforceable in this country.

The Model Law

18. UNCITRAL adopted the Model Law on Cross-Border Insolvency in May 1997, and issued a substantial Guide to Enactment for the benefit of States which might consider enacting it. The Model Law is, as its name suggests, a blueprint, and individual Enacting States are free to adopt it in whole or in part and subject to whatever modification they may consider to be suitable. Once enacted, the provisions are directly enforceable within the Enacting State whether or not there are reciprocal provisions in the country where the foreign proceedings are taking place.

19. The Guide to Enactment expresses the purpose of the Model Law in its opening paragraphs in the following terms:-

“1. The UNCITRAL Model Law on Cross-Border Insolvency, adopted in 1997, is designed to assist States to equip their insolvency laws with a modern, harmonized and fair framework to address more effectively instances of cross-border insolvency. Those instances include cases where the insolvent debtor has assets in more than one State of where some of the creditors of the debtor are not from the State where the insolvency proceeding is taking place.

2. The Model Law reflects practices in cross-border insolvency matters that are characteristic of modern, efficient insolvency systems. Thus, the States enacting the Model Law (“enacting States”) would be introducing useful additions and improvements in national insolvency regimes designed to resolve problems arising in cross-border insolvency cases. Both jurisdictions that currently have to deal with numerous cases of cross-border insolvency and jurisdictions that wish to be well prepared for the increasing likelihood of cases of cross-border insolvency will find the Model Law useful.

3. The Model law respects the differences among national procedural laws and does not attempt a substantive unification of insolvency law. It offers solutions that help in several modest but significant ways. These include the following:

(a) Providing the person administering a foreign insolvency proceeding (“foreign representative”) with access to the courts of the enacting State, thereby permitting the foreign representative to seek a temporary “breathing space”, and allowing the courts in the enacting State to determine what coordination among the jurisdictions or other relief is warranted for optimal disposition of the insolvency;

(b) Determining when a foreign insolvency proceeding should be accorded “recognition” and what the consequences of the recognition may be;

(c) Providing a transparent regime for the right of foreign creditors to commence, or participate in, an insolvency proceeding in the enacting State;

(d) Permitting courts in the enacting State to cooperate more effectively with foreign courts and foreign representatives involved in an insolvency matter;

(e) Authorizing courts in the enacting State and person administering insolvency proceedings in the enacting State to seek assistance abroad;

(f) Providing for court jurisdiction and establishing rules for coordination where an insolvency proceeding in the enacting State is taking place concurrently with an insolvency proceedings in a foreign State;

