IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No.: 3-09-CV-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD.,	§	
STANFORD GROUP COMPANY,	§	
STANFORD CAPITAL MANAGEMENT, LLC,	§	
R. ALLEN STANFORD, JAMES M. DAVIS, and	§	
LAURA PENDERGEST-HOLT,	§	
	§	
Defendants.	§	

APPENDIX TO NOTICE OF FILING

Dated: September 29, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

Kevin M. Sadler, Lead Attorney
Texas Bar No. 17512450
kevin.sadler@bakerbotts.com
Robert I. Howell
Texas Bar No. 10107300
robert.howell@bakerbotts.com
David T. Arlington
Texas Bar No. 00790238
david.arlington@bakerbotts.com
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701-4078
Tel: 512.322.2500
Fax: 512.322.2501

Timothy S. Durst
Texas Bar No. 00786924
tim.durst@bakerbotts.com
2001 Ross Avenue
Suite 600
Dallas, Texas 75201-2980
Tel: 214.953.6500
Fax: 214.953.6503

ATTORNEYS FOR RECEIVER RALPH S. JANVEY

CERTIFICATE OF SERVICE

On September 29, 2009 I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served the Court-appointed Examiner, all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler
Kevin M. Sadler

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No.: 3-09-CV-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., ET AL.,	§	
	§	
Defendants.	§	

STATE OF TEXAS	§
TRAVIS COUNTY	§

AFFIDAVIT OF STEVEN MINES

On this day, Steven Mines appeared before me, the undersigned notary public. After I administered the oath to him, he said:

1. "My name is Steven Mines. I reside at 5812 Avenue F, Austin, TX 78752. I am over the age of 18 and competent to make this oath.

2. A copy of my resume is attached as Exhibit A. It summarizes my education and relevant work experience. As it states, I am an experienced French-to-English translator. My native language is English. I have been professionally qualified as a French-English interpreter for the Federal Courts, and certified as a Spanish-English court interpreter since 1995, and a Texas Licensed Court Interpreter of French since 2002. In addition, I have been a contract conference interpreter from French to English for the Office of Language Services of the U.S. Department of State since 1991 and for the Canadian government's Multilingual Conferences Division of the Office of Public Works since 1996.

3. The statements made in this affidavit are based on my personal knowledge and are true and correct.

4. Attached as Exhibit B is a true and correct photocopy of the September 11, 2009 judgment on the petition of Ralph S. Janvey issued by the Cour Superieure (Chambre commerciale) of the Province of Quebec, District of Montreal, issued in French. An original and apostilled judgment, is available through counsel to the Receiver, Baker Botts L.L.P.

5. Upon carefully reviewing the judgment, I have translated it from French into English. I certify that the document attached as Exhibit C is a true, correct, and complete translation of the judgment on the petition of Ralph S. Janvey.

6. Attached as Exhibit D is a true and correct photocopy of the September 11, 2009 judgment on the petition of Nigel Hamilton-Smith and Peter Wastell of Vantis, issued by the Cour Superieure (Chambre commerciale) of the Province of Quebec, District of Montreal, issued in French. An original and apostilled judgment, is available through counsel to the Receiver, Baker Botts L.L.P.

7. Upon carefully reviewing the judgment, I have translated it from French into English. I certify that the document attached as Exhibit E is a true, correct, and complete translation of the judgment on the petition of Nigel Hamilton-Smith and Peter Wastell of Vantis."

8. Further affiant sayeth not.

Steven Mines

SWORN TO and SUBSCRIBED before me by Steven Mines on September 29, 2009.

NORA CASIANO
MY COMMISSION EXPIRES
September 13, 2011

Notary Public in an for the State of Texas

My commission expires on 9/13/2011.

EXHIBIT A

STEVEN MINES

Legal Translator & Conference Interpreter
SPANISH – ENGLISH (native speaker)
FRENCH – PORTUGUESE

stevemines@yahoo.com
+1 512.627.3726 *Austin, TX*
+1 202.438.3898 *Washington, DC*

Freelance translator, conference and court interpreter 1992-present
Translation and simultaneous interpretation on assignments for business meetings, medical, legal and technical conferences. Oil and gas drilling courses, internet technology and web software and hardware presentations, press briefings. For law firms and prosecutors and defense attorneys offices: witness depositions and court appearances, complex litigation involving financial and pharmaceutical patent documents, wiretap evidence preparation for cross-examination at trial. **Member, AIIC, TAALS, ATA.**

Administrative Office of United States Courts, Washington, DC 1995-present
Certified Federal Court Interpreter, rater for court interpreting examination (Spanish), Professionally qualified interpreter (Portuguese and French). NAJIT nationally certified court interpreter (Spanish-English examination).

U.S. Department of State, Office of Language Services, Washington, D.C. 1991-present
Contract translator – legal documents into English.
Simultaneous interpreter at multilateral conferences and meetings. Assigned to official delegations from Latin America and Europe; U.S. delegations abroad. Assigned in English and Spanish conference booths, simultaneous seminar assignments in Portuguese, and consecutive assignments in French.

Government of Canada, Multilingual conferences Office, Ottawa, Canada 1996-present
Conference interpreter (Spanish and English booths, from French and Portuguese)

communications work experience

Freelance Journalist, Writer 1991-1993
Reported for U.S. and Argentine media at United Nations Conferences on Human Rights, *(Austria, 1993);* on Environment and Development, *(Brazil, 1992);* Rio Environmental Summit NGO meetings, *(Argentina, 1991).*

- ABC-News / Beijing Bureau (1989) News desk assistant, covered Sino-Soviet summit, Tiananmen student uprising and government crackdown.
- Agencia EFE de Noticias, Spanish News Agency reporter (1989)
- Radio Nova Eldorado – radio news correspondent for São Paulo, Brazil news program from Beijing, China) (1989).

legal and political work experience

Attorney-at-law, District of Columbia, freelance legal consultant 1995-ongoing
Environmental Law Institute (DC), contract attorney on electronic reporting and Latin American mining law. Assisted habeas and defense counsel in death penalty appeals in Texas; investigation in Mexico and Chicago; mitigation expert for death penalty trial of Mexican national in Illinois. **Law clerk** to Federal Appeals Court Senior Judge Thomas M. Reavley, U.S. Court of Appeals, Fifth Circuit, (1996 – 1997)

Elections monitoring, Guatemala and Haiti presidential elections 1995
Observer, Organization of American States, Promotion of Democracy Unit; Guatemala Office on Human Rights.

Texas Rural Legal Aid, Inc., Edinburg, Texas Summer law clerk 1993, 1994

U.S. Presidential Campaigns, Advance staff, Voter protection legal team. 1988, 2000, 2004, 2008

education

University of Texas School of Law, J.D. 1995 Austin, Texas

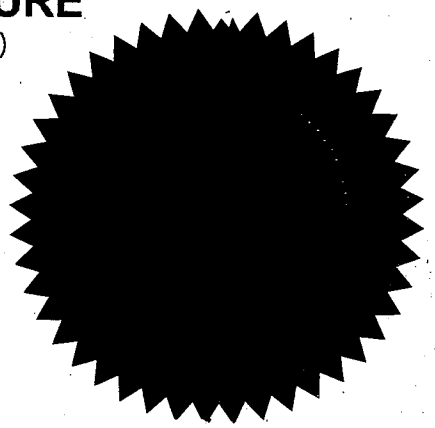
Institut d'Etudes Politiques de Paris, Economics and Finance Diploma Courses, 1989-1990 Paris, France.

Dartmouth College, B.A. *cum laude,* 1985 Hanover, New Hampshire

EXHIBIT B

COUR SUPÉRIEURE

(Chambre commerciale)



CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N° : 500-11-036045-090

DATE : Le 11 septembre 2009

SOUS LA PRÉSIDENCE DE : L'HONORABLE CLAUDE AUCLAIR, J.C.S.

IN THE MATTER OF THE RECEIVERSHIP OF :

STANFORD INTERNATIONAL BANK LIMITED
et
STANFORD TRUST COMPANY LIMITED
Débitrices
et
NIGEL JOHN HAMILTON-SMITH
et
PETER NICHOLAS WASTELL
Liquidateurs antiguais
et
RALPH S. JANVEY
Requérant
et
STANFORD INTERNATIONAL BANK LIMITED
et
STANFORD INTERNATIONAL BANK, LTD.
et
STANFORD TRUST COMPANY LIMITED
et
STANFORD GROUP COMPANY
et
STANFORD CAPITAL MANAGEMENT, LLC
et
STANFORD FINANCIAL GROUP

et
STANFORD FINANCIAL GROUP BLDG, INC.
et
BANK OF ANTIGUA
et
ROBERT ALLEN STANFORD
et
JAMES M. DAVIS
et
LAURA PENDERGEST-HOLT
Intimés
et
L'AUTORITÉ DES MARCHÉS FINANCIERS
Intervenante

MOTIFS ET JUGEMENT PRONONCÉS ORALEMENT

---

[1] Le requérant Janvey, séquestre nommé par la United States District Court for Northern District of Texas, à la demande de la Security & Exchange Commission « SEC » le 19 février 2009 requiert de cette Cour les ordonnances suivantes :

- Annuler l'ordonnance de la registraire Flamand en date du 6 avril 2009;
- Reconnaître Janvey comme représentant étranger deS procédures intentées à l'étranger conformément aux articles 267 et suivants *LFI.*
- Donner effet aux ordonnances américaines nommant Janvey séquestre;
- Nommer Ernst & Young, un syndic canadien, séquestre intérimaire des actifs canadiens des débitrices;
- Que le séquestre intérimaire assiste Janvey dans ses tâches au Canada;
- Tous remèdes additionnels accessoires aux demandes précédentes.

Le contexte international

Procédures engagées au Royaume-Uni

Au Royaume-Uni, le séquestre et les liquidateurs antiguais ont présenté une demande de reconnaissance en vertu du *Cross-Border Insolvency Regulations 2006*, inspirée de la loi type. Chacun d'entre eux a allégué devant le haut

tribunal de justice que les procédures dans lesquelles ils ont été respectivement nommés sont des «procédures principales» aux fins du 2006 Regulations.

Le tribunal anglais a rendu ses jugements le 3 juillet 2009. Les procédures antiguaises ont été reconnues en tant que « procédure principale ». Par conséquent, les liquidateurs antiguais ont droit aux fonds de la SIB au Royaume-Uni. Le tribunal a déclaré que le centre des intérêts principaux de SIB était situé à Antigua et la mise sous séquestre4 R.S. américaine a été jugée non admissible à titre de « procédure étrangère » étant donné qu'elle n'était pas fondée sur une « loi relative à l'insolvabilité ». Janvey a été reconnu en common law en tant que représentant de toutes les autres entités de Stanford, y compris STC.

Procédures ontariennes

SIB et Stanford Group Company détenaient environ 20 millions de dollars américains (les "**Fonds**") dans divers comptes établis auprès de la Banque Toronto-Dominion ("**Banque TD** ") à Toronto, en Ontario. Le 24 avril 2009, le procureur général de l'Ontario a déposé une demande en matière réelle d'obtention d'une ordonnance de confiscation des fonds en tant que produits provenant d'activités illégales et obtenu une ordonnance conservatoire provisoire exigeant que la Banque TD verse les fonds à la Cour supérieure de justice de l'Ontario. Les séquestres antiguais ont demandé que l'ordonnance conservatoire soit mise de côté et que les fonds leur soient versés, ce à quoi le séquestre américain s'est opposé. Après deux nomination dans les chambres, toutes les parties, y compris le séquestre américain, les séquestres antiguais et le procureur général, ont consenti à un ajournement de la demande de confiscation et au maintien de l'ordonnance conservatoire en attendant le déroulement des requêtes en reconnaissance présentées au Québec.

Procédures américaines et antiguaises

Vantis a été nommé liquidateur pour la SIB et la STC seulement, par le Tribunal antiguais et Janvey a été nommé séquestre pour l'ensemble des corporations du groupe Stanford, y compris SIB et STC, par le Tribunal américain.

[2] Vantis conteste la requête de Janvey pour les motifs suivants :

a) Le US Receivership n'est pas une procédure judiciaire ou administrative engagée à l'étranger contre un débiteur au titre du droit relatif à la faillite ou à l'insolvabilité et touchant les droits de l'ensemble des créanciers, car il a été nommé par un tribunal à la demande et en vertu d'une loi régissant les valeurs mobilières;

b) Il n'y a pas de lien réel et substantiel entre les États-Unis et la SIB;

c) Le *Receiver* américain favorise une consolidation des avoirs ce qui entraînerait une répartition et une distribution des avoirs canadiens à l'ensemble de tous les créanciers du groupe;

d) L'ordonnance rendue le 6 avril 2009 par la registraire Chantal Flamand soit maintenue;

[3] Il est surprenant que Vantis plaide que Janvey n'est pas nommé en vertu d'une loi de faillite ou d'insolvabilité touchant les droits de l'ensemble des créanciers quand lui-même s'est prévalu, le 3 avril 2009, à titre de *Receiver-Manager* en vertu de l'article 220 de Laws of Antigua and Barbuda, soit la loi The International Business Corporation Act lequel article se lit comme suit :

> 220. Upon an application by a Receiver or Receiver-Manager of a corporation, whether appointed by the court or under an instrument, or upon an application by any interested person, the court may make any order it thinks fit, including,
>
> (a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;
>
> (b) an order determining the notice to be given to any person, or dispensing with notice to any person;
>
> (c) an order declaring the rights of persons before the court or otherwise, or directing any person to do or abstrain from doing anything;
>
> (d) an order fixing the remuneration of the receiver or receiver-manager;
>
> (e) an order requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed,
>
> i. to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the corporation;
>
> ii. to relieve any such person from any default on such terms as the court thinks fit, and
>
> iii. to confirm any act of the receiver or receiver-manager;
>
> and
>
> (f) an order giving direction on any matter relating to the duties of the receiver or receiver-manager.

[4] Or, l'ordonnance du 26 février 2009 prévoyait :

> 4. Messrs Peter Nicholas Wastell and Nigel Hamilton-Smith be and are hereby appointed Joint Receivers-Managers of the Respondents/Defendants pursuant to Section 220 of the International Business Corporations Act (the Act) with such powers as the Court may determine.

5. The Joint Receivers-Managers do take immediate steps to stabilize the operations of the Respondents/Defendants unless ordered to do otherwise by further order of the Court.

6. The Joint Receivers-Managers do execute their duties in accordance with the Act and otherwise only in accordance with this order and the directions of the Court.

7. The Joint Receivers-Managers do prepare and file in court a Monthly Interim Report and financial Statement in repect of the affairs of the Respondents/Defendants within 30 days of the date of this order and thereafter at regular intervals on the fifth day of each ensuing month.

8. The Joint Receivers-Managers upon the completion of their duties do prepare and file Final Accounts including a Financial Statement with recommendations as to the further conduct of the affairs, if any, of the Respondents/Defendants.

9. The Joint Receivers-Managers do take into their custody and control all the property, undertakings and other assets of the Respondents/Defendants pursuant to section 221 of the Act and comply with all the other parts of the Section.

10. The Joint Receivers-Managers do open and maintain bank accounts within the jurisdiction or in such jurisdictions as they consider appropriate in their names as Joint Receivers-Managers of the Respondents/Defendants for the monies of the corporations coming under their control.

11. Subject to Section 220 of the Act, the Receivers-Managers do exercise, perform and discharge their duties independently or jointly and in so doing they shall be deemed to act as agents for the Respondents/Defendants without personal liability.

12. Without prejudice to the provisions of Section 373 of the Act, the Joint Receivers-managers be and are hereby authorized to disclose information concerning the management, operations, and financial situation of the Respondents/Defendants as they consider appropriate in the performance of their functions PROVIDED ALWAYS THAT

(1) no disclosure of customer specific information is authorized without further or other order of the court; and

(2) no disclosure of information is permitted under this Order to any foreign governmental or regulatory body unless such disclosure is subject to mutual disclosure obligations.

For the purposes of this Order, customer specific information means information of sufficient detail to enable a recipient of the information to identify the customer in question, the customer's address or other location, and/or the amount of such customer's credit balances or other investments in the Respondents/Defendants.

(...)

16. The Joint Receivers-Managers be directed from time to time on matters relating to their duties as the Court may determine on the application of the Applicant/Claimant or on the application of the Joint Receivers-Managers or on the application of the Respondents/Defendants.

(Le tribunal souligne)

[5] Les pouvoirs ainsi accordés à Vantis sont beaucoup moindres que ceux prévus à l'ordonnance de *Receivership* amendée obtenue par Janvey au Texas et qui sont résumés comme suit par les procureurs de Janvey :

Au paragraphe 1, le tribunal assume juridiction exclusive et prend possession de tous les actifs du groupe Stanford.

Au paragraphe 2, Janvey est nommé comme séquestre (*Receiver*).

Au paragraphe 4, le séquestre obtient le contrôle, la possession et la garde de tous les actifs du groupe Stanford.

Au paragraphe 5, le tribunal ordonne et permet au séquestre de contrôler l'actif, percevoir, prendre contrôle et possession des fonds et autres actifs, où qu'ils soient situés, instituer des procédures, obtenir les livres et documents, préserver la valeur des actifs et minimiser les dépenses en vue de la distribution diligente aux réclamants.

Au paragraphe 6, le séquestre est désigné comme seule personne ayant le pouvoir de mettre les débitrices en faillite, le cas échéant.

Le paragraphe 9 ordonne une suspension des procédures.

Le paragraphe 10 émet des restrictions au droit des créanciers.

Les paragraphes 12 et suivants constituent des ordonnances contre les débiteurs et leurs représentants.

Le séquestre a la saisine de tous les actifs des débitrices (le contrôle, la possession et la garde).

Le séquestre a les pouvoirs normalement dévolus à un syndic de faillite.

Il y a une suspension des procédures et des droits des créanciers.

Une obligation est imposée aux tiers de coopérer avec le syndic.

Le pouvoir des membres du groupe Stanford, de leur conseil d'administration ou de leurs actionnaires sont dévolus au séquestre.

Tout cela est ordonné dans un contexte d'insolvabilité (admise par les deux parties) résultant de la conduite frauduleuse des membres du groupe Stanford.

[6] Il faut noter que ces pouvoirs sont plus vastes que ceux que détenait Vantis au moment où il a demandé l'assistance du Canada dans sa requête le 3 avril 2009 présentée à la registraire Flamand, laquelle requête se lit comme suit :

> MOTION SEEKING THE APPOINTMENT OF A FOREIGN REPRESENTATIVE, THE RECOGNITION OF A FOREIGN ORDER, FOR JUDICIAL ASSISTANCE AND FOR THE APPOINTMENT OF AN INTERIM RECEIVER (Sections 46(1) and 267 and *seq.* of the *Bankruptcy and Insolvency Act*, R.S.C. (1985), c. B-3).
>
> 1. By the present Motion, Petitioners Nigel John Hamilton-Smith and Peter Nicholas Wastell, licensed insolvency practitioners and partners at Vantis Business Recovery Services (the "Joint Receivers-Managers") are seeking the following reliefs:
>
> a) a recognition of the Receivership Order (as defined in paragraph 8 below) pursuant to Sections 267 and *seq.* of Part XIII, *International Insolvencies*, of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "BIA");
>
> b) a recognition that their status of Joint Receivers-Managers of Stanford International Bank Limited (in receivership) and Stanford Trust Company Limited (in receivership) (collectively, the "Debtors" in Antigua and Barbuda under the Receivership Order is similar to the status of a "foreign representative" of an estate in a "foreign proceeding" pursuant to section 267 and *seq.* of the BIA;
>
> c) a recognition of their powers as Joint Receivers-Managers through the issuance of an order providing the following:
>
> i. the turnover to the Joint Receivers-Managers of any property, undertakings and other assets of the Debtors; and
>
> ii. granting the Joint Receivers-Managers the power to take immediate steps to stabilize the operations of the Debtors;
>
> d) any further relief necessary to assist the Joint Receivers-Managers in the due carriage of their duties under the Receivership Order and under Sections 267 and *seq.* of the BIA;

[7] Le Tribunal y voit là un aveu judiciaire que le simple pouvoir de Receiver-Manager de Vantis se qualifiait aux termes de l'article 267 de la *Loi sur la faillite et l'insolvabilité* à titre de procédures intentées à l'étranger et que de ce fait, Vantis reconnaissait que ce recours statutaire en vertu de la loi d'Antigua sur les corporations internationales donnant le pouvoir à un séquestre de protéger les actifs d'une corporation était une procédure assimilée à l'insolvabilité et à la faillite.

[8] Il est surprenant de voir que Vantis, et encore plus choquant de constater qu'il maintient encore aujourd'hui que Janvey ne se qualifie pas alors qu'il a plaidé le contraire devant la registraire Flamand et qu'au surplus, il ne se désiste pas de cette ordonnance.

[9] La position de Vantis devant la registraire Flamand est dans la lignée de la jurisprudence que la nomination des *receiverships* application d'une loi sur les valeurs mobilières équivaut à des procédures à l'étranger relatives à la faillite ou à l'insolvabilité et touchant l'ensemble des droits des créanciers.

[10] Janvey, par l'ordonnance qui le nommait, avait la saisine des biens, des actifs de tout le groupe Stanford, devait s'assurer de geler tous les actifs, était muni de tous les pouvoirs de la compagnie car il devait protéger et recouvrer les actifs; de la suspension des droits de tous les créanciers, ses pouvoirs étant de la nature de ceux exercés par un syndic ou un liquidateur en matière d'insolvabilité et de faillite de séquestre intérimaire ou de réorganisation.

[11] L'ordonnance suspendant toutes les poursuites à l'égard des créanciers est un très bel exemple d'un pouvoir conféré à un syndic ou à un liquidateur.

[12] Le Tribunal n'a aucune hésitation à conclure que les procédures de Janvey devant lui sont des procédures intentées à l'étranger conformément à la définition prévue à l'article 267.

Le lien réel et substantiel

[13] Vantis soumet que le lien important et réel est à Antigua. Le Tribunal a déclaré irrecevable la requête de Vantis.

[14] SIB est une banque étrangère au sens de la loi d'Antigua et ne peut recevoir les dépôts de citoyens d'Antigua. Il s'agit d'une banque *offshore* où l'argent ne reste pas dans les coffres à Antigua mais transite plutôt par des banques situées à l'extérieur du territoire d'Antigua.

[15] Plus de 37 % en valeurs des détenteurs de certificats de dépôts sont des Américains, soit plus que tous autres citoyens d'autres pays.

[16] Vantis, dans ses Notes et Autorités, reconnaît que SIB fait partie d'un réseau mondial de sociétés de Stanford.

[17] Allen Stanford, président et actionnaire de toutes les corporations du groupe Stanford a la double citoyenneté : américaine et antiguaise, et est actuellement détenu en prison aux Etats-Unis.

[18] Le FSRC est le requérant à Antigua qui a demandé la nomination du *receivership* et plus tard, celle du liquidateur.

[19] Le Tribunal précise toutefois que les procédures ne sont pas signées par Leroy King, lui aussi accusé aux États-Unis comme complice de Stanford dans une plainte de blanchiment d'argent.

[20] Toutes les parties aux présentes reconnaissent l'insolvabilité de tout le groupe, y compris de SIB, et que SIB a des clients dans 113 pays différents.

[21] Le plus grand nombre de créanciers investisseurs clients provient de l'extérieur d'Antigua.

[22] Les actifs immobiliers à Antigua ont été expropriés par le gouvernement d'Antigua sans compensation et ce, en prévision de l'impact négatif du *receivership* américain à l'égard de l'économie antiguaise, selon la résolution du gouvernement antiguais.

[23] Dans ses Notes et Autorités, Vantis reconnaît que les sociétés clés du groupe Stanford sont les suivantes :

- Stanford Group Company (SGC) maison de courtage inscrite aux États-Unis et broker dealer;
- Stanford Financial Group Global Management (SFGGML) et Stanford Global Advisory LLC, deux sociétés des îles vierges américaines qui ont imputé d'importantes sommes à SIB, officiellement pour des services de conseil.

[24] Dans ses Notes et Autorités quant aux actifs, Vantis décrit ce qui suit :

> Ces avoirs qui ont été repérés jusqu'ici sont décrits dans le Deuxième affidavit de Hamilton-Smith. La valeur attribuée à certains des placements peut se révéler inexacte, et, lorsque l'institution financière qui détenait des avoirs a refusé jusqu'à maintenant d'en communiquer le solde courant, ces avoirs n'ont pas été inclus. Ces avoirs comprennent donc :
>
> i. encaisses (au Canada (19 M$), à Antigua (10 M$) et aux États-Unis (9 M$)) (« **Avoirs de catégorie 1** »);
>
> ii. fonds investis auprès d'institutions financières internationales (en Suisse (117 M$), au Royaume-Uni (105 M$) et aux États-Unis (12 M$)) (« **Avoirs de catégorie 2** »); et
>
> iii. autres avoirs, y compris des titres de participation, des comptes clients, des biens immobiliers situés à Antigua et des créances sur Stanford et d'autres entités de Stanford, y compris des réclamations de retraçage éventuelles à l'encontre d'actifs qu'ils ont achetés, par exemple, des placements effectués par Stanford à l'aide de la somme de 1,6 G$ que lui aurait « prêtée » SIB (« **Avoirs de catégorie 3** »).

[25] La High Court of Justice, Chancery Divison, (Companies Court) a reconnu que le groupe Stanford est à l'origine d'une fraude de style *Ponzi*.

[26] Toutes les opérations frauduleuses relient toutes les corporations du groupe Stanford.

[27] Une partie importante des opérations du groupe Stanford est située à Houston. Le groupe Stanford exécute pour 268 M$ de services rendus pour la SIB alors que la SIB a une dépense de salaire de 3 M$, ce qui démontre l'ampleur des services rendus à l'extérieur d'Antigua et démontre que SIB n'est qu'un paravent fiscal.

[28] Quant à Stanford Trust, il avait trois fois plus d'employés aux États-Unis qu'à Antigua.

[29] Dans l'arrêt *Holt Cargo*[1], la Cour suprême écrit :

> 93 L'argument le plus solide des appelants veut que le litige ne soit que faiblement lié au Canada. Cependant, dans l'arrêt *Antares Shipping Corp. c. Le navire « Capricorn »*, [1977] 2 R.C.S. 422, notre Cour a reconnu que l'absence de lien important avec *un* ressort particulier, y compris leur port d'attache, est une caractéristique des navires qui servent au commerce maritime international. Dans cette affaire, la Cour a refusé de suspendre les procédures *in rem* dans lesquelles trois sociétés libériennes contestaient au Canada la propriété d'un navire immatriculé au Libéria. Bien entendu, le pavillon du Libéria est un pavillon de complaisance. Les navires qui y sont immatriculés n'auront peut-être jamais l'occasion de « rentrer à la maison ». Dans *Antares Shipping*, le seul lien qui existait avec le Canada était que le navire avait été saisi à la demande d'une des sociétés libériennes, alors qu'il était en eaux canadiennes. Le juge Ritchie, s'exprimant au nom de la majorité, a reconnu que les navires de haute mer posent un problème particulier. (...)

[30] On pourrait faire un parallèle et dire que peut-être les banques *offshore* posent un problème particulier.

> (...) À la page 453, il a fait siennes les observations suivantes de lord Simon, dissident, dans *The Atlantic Star*, [1973] 2 All E.R. 175 (H.L.), p. 197 :
>
> [TRADUCTION] Les navires se dérobent facilement. (...)

[31] Le Tribunal ajoute : tout comme l'argent aujourd'hui et les transactions qui peuvent facilement transiter par voie informatique.

> Le pouvoir de les saisir dans n'importe quel port et d'intenter une action *in rem* est de plus en plus nécessaire, compte tenu de la coutume de la propriété unique des navires et l'usage des pavillons de complaisance. Un grand pétrolier, naviguant avec négligence, peut causer des dommages considérables aux

---

[1] *Holt Cargo Systems Inc.* c. *ABC Containerline N.V. (Syndics de)*, [2001] 3 R.C.S. 907, 2001 CSC 90.

> plages ou à d'autres navires; il évitera soigneusement les ports situés dans le ressort d'un tribunal « compétent ». Si la partie lésée parvient à le saisir ailleurs, on opposera énergiquement (comme le font les appelantes en l'espèce) que : « Le défendeur n'a aucun lien avec le tribunal, si ce n'est qu'il a été saisi dans son ressort. » Mais souvent, ce sera la seule façon d'obtenir justice.
>
> Le pavillon de la Belgique n'est pas un « pavillon de complaisance » comme l'était le pavillon du Libéria, mais le principe demeure le même. Le critère du « lien réel et important » doit tenir compte du « mode de vie » particulier des cargos.

[32] Le Tribunal paraphrase cette dernière phrase en ces mots : le lien réel et important doit tenir compte du mode de vie particulier des banques *offshore*.

[33] Le Tribunal y voit là un parallèle important avec notre affaire où SIB, une banque *offshore,* ne sert que de paravent et d'outil à l'opération frauduleuse, gigantesque de plusieurs milliards de dollars, et reliée à tout le groupe Stanford où les victimes sont dispersées dans plus de 113 pays.

[34] Or, le Tribunal, pour paraphraser la Cour suprême, est d'avis que « le mode de vie » de cette banque *offshore* est directement relié au siège social du groupe Stanford situé à Houston, SIB à Antigua n'en étant qu'un jalon et un maillon dans l'affaire.

[35] Le Tribunal est d'avis que pour des fraudes de style *Ponzi*, le lien réel et important se situe à la place d'affaires du centre nerveux ou comme on pourrait l'appeler, le centre de la toile d'araignée de cette fraude.

[36] L'importance du centre névralgique de Houston est incontestable. Et le plus équitable est que le Tribunal reconnaisse comme *foreign proceeding* le *receivership* et comme représentant étranger le US Receiver Janvey.

CONSOLIDATION

[37] Vantis, au nom des créanciers, prétend que seul le liquidateur antiguais pourrait mieux protéger les créanciers canadiens car il n'y aura pas de dilution des sommes recouvrées considérant qu'il n'a que le dossier de la SIB à gérer et à liquider, alors que Janvey a déjà annoncé qu'il voulait gérer l'ensemble et qu'il pourrait agir à moindre coût et qu'il pourrait y avoir dilution dans les répartitions.

[38] Le Tribunal rappelle l'affaire *Norbourg*[2] où la Cour d'appel, malgré la fraude de plusieurs compagnies reliées entre elles et administrées par un seul séquestre, a ordonné une distribution différente pour certains fonds. La consolidation n'est donc pas un obstacle à ce que Janvey soit nommé représentant étranger.

---

2 *Fonds Norbourg Placements équilibrés (Liquidation de)*, 2007 QCCA 1076.

[39] Il sera toujours plus facile par la suite de départager les différents actifs, d'autant plus que Janvey requiert la nomination d'un séquestre intérimaire canadien.

[40] À ce stade, il n'y a pas de danger pour qu'un seul séquestre agisse sur l'ensemble des actifs. Le temps viendra où, s'il y a contestation à ce moment-là, le Tribunal tranchera, l'argument de la consolidation étant prématuré.

L'AMF

[41] L'AMF est intervenue au présent dossier et demande au Tribunal d'ajouter une conclusion afin que le Tribunal puisse statuer ultérieurement sur la distribution, ce sur quoi Janvey était d'accord.

[42] Pour satisfaire le Tribunal et la demande de l'AMF, ce à quoi Janvey acquiesce, toutes les procédures au Canada devront être signifiées à l'AMF au moins quinze jours avant la date d'audition et relativement à la distribution d'actifs et à leur réalisation, avec une copie de tous les rapports appropriés.

L'ordonnance Flamand

[43] L'ordonnance de la registraire Flamand n'a plus d'objet et doit être annulé parce que :

1) Le Tribunal a rejeté la requête de Vantis;

2) Il s'agissait d'une ordonnance alors que Vantis agissait comme *Receiver* et non comme liquidateur, son mandat de *Receiver* étant terminé;

3) Vantis n'est pas un syndic conformément à la *LFI* et n'a pas droit d'agir comme séquestre intérimaire au Canada.

4) Pour tous les autres motifs déclarant irrecevable la requête de Vantis.

FOR THESE REASONS, THE COURT :

[44] **GRANTS** in part the Petitioner's Motion;

[45] **RESCINDS** and **REVOKES** the Order dated April 6, 2009 in this case;

[46] **ORDERS** the Antiguan Receivers to render a full written accounting of their administration of the property, assets, information and records, located in Canada, of the Debtors, Respondents and all entities they own or control (the **"Stanford Entities' Property"**), within a delay of 10 days from the date of judgment to intervene on this Motion, to remit to Ernst & Young within such delay any and all of the Stanford Entities'

Property which was in their possession or control since February 26, 2009 and to restore it in the condition in which they received it;

[47] **ORDERS AND DECLARES** that the U.S. Receivership Proceedings are hereby recognized as a "foreign proceeding" for the purpose of Sections 267 and following of the BIA and that this proceeding is to be constituted as an ancillary proceeding to the U.S. Receivership Proceedings;

[48] **ORDERS AND DECLARES** that the Petitioner is hereby recognized as a foreign representative of the Debtors, Respondents and of all entities they own or control pursuant to Sections 267 and following of the BIA;

[49] **RECOGNIZES** the appointment of the Petitioner as Receiver of the Debtors, Respondents and all entities they own or control pursuant to the terms of the Receivership Orders;

[50] **ORDERS** that pursuant to Sections 267 and following of the BIA, Ernst & Young Inc. is hereby appointed Interim Receiver (the "Interim Receiver"), without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever located in Canada including all proceeds thereof, of the Debtors, Respondents and of all entities they own or control (the "Property") to conduct his proceedings and actions as ancillary to the U.S. Receivership Proceedings;

[51] **ORDERS** that the Interim Receiver shall, in the exercise of its powers provided for herein, consult with the U.S. Receiver to ensure this proceeding is co-ordinated to the fullest extent possible with, and as a proceeding ancillary to, the U.S. Receivership Proceedings;

[52] **ORDERS** that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property in coordination with the Petitioner and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following in Canada having due regard for the consultation obligations and the relationship of these proceedings to the U.S. Receivership Proceedings:

(a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;

(d) to receive and collect all monies and accounts now owed or hereafter owing to the Respondents and, to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents;

(e) with approval of this Honourable Court, to settle, extend or compromise any indebtedness owing to the Respondents;

(f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Respondents, for any purpose pursuant to this Order;

(g) with the approval of this Honourable Court, to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Respondents, the Property or the Interim Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(h) with the approval of this Honourable Court, to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Interim Receiver in its discretion may deem appropriate;

(i) with the approval of this Honourable Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof;

(j) to apply (with adequate notice to or joinder by the Petitioner) for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof or any other person or entity entitled thereto, free and clear of any liens or encumbrances affecting such Property;

(k) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the receivership, and to share

information, subject to such terms as to confidentiality as the Interim Receiver deems advisable having due regard for the relationship with the U.S. Receivership Proceedings;

(l) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(m) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of the Respondents;

(n) with the approval of this Honourable Court, to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property that may be owned or leased by the Respondents;

(o) with the approval of this Honourable Court, to exercise any shareholder, partnership, joint venture or other rights which the Respondents may have; and

(p) to take any steps reasonably incidental to the exercise of these powers.

(q) and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of the Respondents and the Antiguan Receivers.

[53] **ORDERS** that the Interim Receiver shall not, without further order of this Court, manage or operate the business of the Respondents and shall not be deemed to have done so by virtue of the granting of this Order;

[54] **ORDERS** that (i) the Respondents, (ii) all the legal entity Respondents' current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf (excepting the Petitioner), and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (excepting the Petitioner), including landlords of premises leased to any of the Respondents in Canada (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request;

[55] **ORDERS** that all Persons (excepting the Petitioner) shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records located in Canada, and any other papers, records and information of any kind related to the business or affairs of the Respondents in Canada and of any personal computers, servers, computer programs, computer tapes, computer disks, or other data storage media located in Canada and containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 12 or in paragraph 13 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure;

[56] **ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage in Canada, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons in Canada shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information;

[57] **ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Honourable Court;

[58] **ORDERS** that no Proceeding against or in respect of the Respondents or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Respondents or the Property are hereby stayed and suspended pending further Order of this Honourable Court;

[59] **ORDERS** that all rights and remedies against the Respondents, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the

written consent of the Interim Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Interim Receiver or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Respondents from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien;

[60] **ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Respondents, without written consent of the Interim Receiver or leave of this Court;

[61] **ORDERS** that all Persons having oral or written agreements with the Respondents or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondents are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Respondents' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Respondents or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court;

[62] **ORDERS** that, subject to the following paragraph, all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim Receiver from and after the making of this Order from any source whatsoever in Canada, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Interim Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Interim Receiver and shall only be paid or disbursed by the Interim Receiver with the approval of this Honourable Court;

[63] **ORDERS** that the Petitioner may repatriate assets to the United States pursuant to paragraph 5 of the Receivership Order dated February 16, 2009, but only with the prior authorization of this Court or another Province in Canada having jurisdiction over the assets and after a notice of 15 days to the AMF.

[64] **ORDERS** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part;

[65] **ORDERS** that any expenditure or liability which shall properly be made or incurred by the Interim Receiver, including the fees of the Interim Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Interim Receiver and its counsel, shall, if approved in advance by this Court, be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge"), provided however, that the Receiver's Charge shall not be enforced without leave of Court;

[66] **ORDERS** the Interim Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial Chamber of the Quebec Superior Court, District of Montreal, with notice and right to appear given to the Petitioner in connection with any motion or other request for approval of same;

[67] **ORDERS** that the Interim Receiver may from time to time apply to this Honourable Court for advice and directions in the discharge of its powers and duties hereunder; provided, however, that in all such applications, and all actions, and other proceedings and actions of the Receiver and hearings and requests before this Honourable Court, the Petitioner will be granted prior notice and provided with an opportunity to be heard and furthermore that the Petitioner will have the right to bring actions in this Honourable Court to enforce the provisions and limitations hereof;

[68] **ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Respondents in Canada;

[69] **ORDERS** that this Order and any other orders in these proceedings shall have full force and effect in all provinces and territories in Canada as against all persons, firms, corporations, governmental, municipal or regulatory authorities or other entities against whom it may otherwise be enforceable;

[70] **THAT THIS COURT REQUEST** the aid and recognition of any and all courts, tribunals regulatory or administrative bodies in Canada, the United States or in any other foreign jurisdiction, to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order, all giving due regard to the actions and provisions herein being ancillary to the U.S. Receivership Proceedings.

[71] **ORDERS** that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located in Canada, for the recognition of this Order as opening a receivership ancillary to the U.S. Receivership Proceeding and for assistance in carrying out the terms of this Order;

[72] **ORDERS** that Petitioner shall have his costs of this motion, up to and including entry and service of this Order to be paid by the Antiguan Receivers at such time as this Court may determine;

[73] **ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than ten (10) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;

[74] **ORDERS** the provisional execution of the judgment to intervene herein, notwithstanding appeal and without the necessity of furnishing any security;

[75] **THE WHOLE WITH COSTS** against the Antiguan Receivers.

CLAUDE AUCLAIR, J.C.S.

Me George R. Hendy
Me Martin Desrosiers
Me Nicholas Nadeau-Ouellette
Procureurs du requérant

Me Julie Himo
Me Philippe Giraldeau
Procureurs des liquidateurs antiguais

Me Émilie Robert
Procureure de l'intervenante

Date d'audience : 26, 27, 28 août 2009. Argumentations supplémentaires : 2, 4 et 8 septembre 2009

COUR SUPÉRIEURE SUPERIOR COURT DIV. 1 MONTREAL BANKRUPTCY FAILLITES

COPIE CONFORME

EXHIBIT C

SUPERIOR COURT

(Commercial chamber)

CANADA

PROVINCE OF QUÉBEC

DISTRICT OF MONTRÉAL

N°: 500-11-036045-090

DATE: September 11, 2009

THE HONOURABLE CLAUDE AUCLAIR, J.S.C., JUDGE PRESIDING

IN THE MATTER OF THE RECEIVERSHIP OF:

STANFORD INTERNATIONAL BANK LIMITED
and
STANFORD TRUST COMPANY LIMITED
Debtors
and
NIGEL JOHN HAMILTON-SMITH
and
PETER NICHOLAS WASTELL
Antiguan Liquidators
and
RALPH S. JANVEY
Applicant
and
STANFORD INTERNATIONAL BANK LIMITED
and
STANFORD INTERNATIONAL BANK, LTD.
and
STANFORD TRUST COMPANY LIMITED
and
STANFORD GROUP COMPANY
and
STANFORD CAPITAL MANAGEMENT, LLC
and
STANFORD FINANCIAL GROUP

and
STANFORD FINANCIAL GROUP BLDG, INC.
and
BANK OF ANTIGUA
and
ROBERT ALLEN STANFORD
and
JAMES M. DAVIS
and
LAURA PENDERGEST-HOLT
Respondents
and
L'AUTORITÉ DES MARCHÉS FINANCIERS
Intervener

REASONS AND DECISION DELIVERED ORALLY

---

[1] The Applicant Janvey, appointed as receiver by the United States District Court for [the] Northern District of Texas upon the request of the Securit[ies] & Exchange Commission ("SEC") on February 19, 2009, seeks that this Court:

- Quash the April 6, 2009 order of Registrar Flamand;
- Recognize Janvey as foreign representative of the proceedings instituted abroad pursuant to Sections 267 *BIA* and following.
- Give effect to the American court orders appointing Janvey as a receiver;
- Nominate Ernst & Young, a Canadian bankruptcy trustee, interim receiver of the Canadian assets of the debtors;
- Order that the interim receiver assist Janvey in his duties in Canada;
- Any additional remedies which are accessory to the foregoing relief.

The International Context

U.K. Proceedings

In the U.K., both the Receiver and the Antiguan Liquidators applied for recognition under the *Cross-Border Insolvency Regulations 2006*, inspired by the Model Law. Each of them alleged before the High Court of Justice that the

proceedings in which they have been respectively appointed are "main proceedings" for the purposes of the 2006 Regulations.

The Court rendered its judgments on July 3, 2009. The Antiguan proceedings were recognized as the "main proceeding" and therefore the Antiguan Liquidators were entitled to SIB's funds in the U.K. The Court found that SIB's center of main interest was in Antigua. The U.S. Receivership was held not to qualify as a "foreign proceeding" because it was not based on a "law relating to insolvency." Janvey was recognized at common law as the representative of all other Stanford Entities, including STC

Ontario Proceedings

The SIB and Stanford Group Company held approximately $20,000,000 U.S. (the "**Funds**") in various accounts with the Toronto-Dominion Bank ("**TD Bank**") in Toronto, Ontario. On April 24, 2009, the Attorney General of Ontario commenced an application in rem for an Order forfeiting the Funds as proceeds of unlawful activity and obtained an interim preservation Order requiring that the Funds be paid by the TD Bank to the Ontario Superior Court of Justice. The Antiguan Receivers initially moved to set aside the preservation Order and obtain the Funds, which the U.S. Receiver opposed. Following two chambers appointments, all parties, including the U.S. Receiver, the Antiguan Receivers and the Attorney General, consented to an adjournment of the forfeiture application and a continuation of the preservation Order pending developments in the Quebec recognition proceedings.

Antiguan and American Proceedings

Vantis has been named liquidator for the SIB and the STC only, by the Antiguan Court and Janvey has been named receiver by the United States court for all of the corporate entities of the Stanford Group, including SIB and STC.

[2] Vantis opposes Janvey's motion on the following grounds:

a) The US Receivership is not a judicial or administrative proceeding initiated outside of Canada in respect of a debtor, under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally, as he has been appointed by a Court upon a request and pursuant to a law regulating securities;

b) There is no real and substantial connection between the United States and SIB;

c) The American Receiver favors a consolidation of assets which would result in the apportionment and distribution of the Canadian assets to all of the group's creditors;

d) The order issued on April 6, 2009 by Registrar Chantal Flamand should be upheld;

[3] It is surprising that Vantis pleads that Janvey was not appointed pursuant to a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally when he himself invoked, on April 3, 2009, as Receiver-Manager pursuant to Section 220 of the Laws of Antigua and Barbuda, being The International Business Corporation Act, which reads as follows:

> 220. Upon an application by a Receiver or Receiver-Manager of a corporation, whether appointed by the court or under an instrument, or upon an application by any interested person, the court may make any order it thinks fit, including,
>
> a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;
>
> b) an order determining the notice to be given to any person, or dispensing with notice to any person;
>
> c) an order declaring the rights of persons before the court or otherwise, or directing any person to do or abstain from doing anything;
>
> d) an order fixing the remuneration of the receiver or receiver-manager;
>
> e) an order requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed,
>
> i. to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the corporation;
>
> ii. to relieve any such person form any default on such terms as the court thinks fit, and
>
> iii. to confirm any act of the receiver or receiver-manager;
>
> and
>
> f) an order giving direction on any matter relating to the duties of the receiver or receiver-manager.

[4] However, the February 26, 2009 order provided that:

> 4. Messrs Peter Nicholas Wastell and Nigel Hamilton-Smith be and are hereby appointed Joint Receivers-Managers of the Respondents/Defendants pursuant to Section 220 of the International Business Corporations Act (the Act) with such powers as the Court may determine.

5. The Joint Receivers-Managers do take immediate steps to stabilize the operations of the Respondents/Defendants unless ordered to do otherwise by further order of the Court

6. The Joint Receivers-Managers do execute their duties in accordance with the Act and otherwise only in accordance with this order and the directions of the Court.

7. The Joint Receivers-Managers do prepare and file in court a Monthly Interim Report and financial Statement in respect of the affairs of the Respondents/Defendants within 30 days of the date of this order and thereafter at regular intervals on the fifth day of each ensuing month.

8. The Joint Receivers-Managers upon the completion of their duties do prepare and file Final Accounts including a Financial Statement with recommendations as to the further conduct of the affairs, if any, of the Respondents/Defendants.

9. The Joint Receivers-Managers do take into their custody and control all the property, undertakings and other assets of the Respondents/Defendants pursuant to Section 221 of the Act and comply with all the other parts of the Section.

10. The Joint Receivers-Managers do open and maintain bank accounts within the jurisdiction or in such jurisdictions as they consider appropriate in their names as Joint Receivers-Managers of the Respondents/Defendants for the monies of the corporations coming under their control.

11. Subject to Section 220 of the Act, the Receivers-Managers do exercise, perform and discharge their duties independently or jointly and in so doing they shall be deemed to act as agents for the Respondents/Defendants without personal liability.

12. Without prejudice to the provisions of Section 373 of the Act, the Joint Receivers-managers be and are hereby authorized to disclose information concerning the management, operations, and financial situation of the Respondents/Defendants as they consider appropriate in the performance of their functions PROVIDED ALWAYS THAT

(1) no disclosure of customer specific information is authorized without further or other order of the court; and

(2) no disclosure of information is permitted under this Order to any foreign governmental or regulatory body unless such disclosure is subject to mutual disclosure obligations.

For the purpose of this Order, customer specific information means information of sufficient detail to enable a recipient of the information to identify the customer in question, the customer's address or other location, and/or the amount of such customer's credit balances or other investments in the Respondents/Defendants.

(...)

16. The Joint Receivers-Managers be directed from time to time on matters relating to their duties as the Court may determine on the application of the Applicant/Claimant or on the application of the Joint Receivers-Managers or on the application of the Respondents/Defendants.

(Emphasis added by the Court)

[5] The powers thus granted to Vantis are much less than those granted to Janvey in the Amended Receivership order issued in Texas, and which Janvey's attorneys summarize as follows:

> In paragraph 1, the Court assumes exclusive jurisdiction over and takes possession of all assets belonging to the Stanford group.
>
> In paragraph 2, Janvey is appointed Receiver.
>
> In paragraph 4, the receiver obtains control, possession and custody of all of the Stanford group assets.
>
> In paragraph 5, the Court orders and allows the receiver to control the assets; collect, take control and possession of funds and other assets, wherever located, institute proceedings, obtain records and documents, preserve the value of the assets and minimize expenses in preparation for a diligent distribution to claimants.
>
> In paragraph 6, the receiver is designated as the sole person with the power to place the debtors in bankruptcy, if necessary.
>
> Paragraph 9 orders that proceedings be stayed.
>
> Paragraph 10 restricts the rights of creditors.
>
> Paragraphs 12 and following constitute orders against debtors and their representatives.
>
> The receiver is granted the rights to all assets of the debtors (control, possession and custody).
>
> The receiver has the powers normally assigned to a trustee in bankruptcy.
>
> All proceedings and rights of creditors are suspended.
>
> An obligation is imposed on third parties to co-operate with the trustee.
>
> The powers of members of the Stanford Group, of their board of directors or their shareholders are vested in the receiver.

> All this is ordered in a context of insolvency (admitted by both parties) as a result of fraudulent conduct by the members of the Stanford group.

[6] It bears noting that these powers are broader than the powers granted to Vantis at the time when it sought Canada's assistance in the motion filed on April 3, 2009 before Registrar Flamand, which reads as follows:

> MOTION SEEKING THE APPOINTMENT OF A FOREIGN REPRESENTATIVE, THE RECOGNITION OF A FOREIGN ORDER, FOR JUDICIAL ASSISTANCE AND FOR THE APPOINTMENT OF AN INTERIM RECEIVER (Sections 46(1) and 267 and *seq*. of the *Bankruptcy and Insolvency Act*, R.S.C. (1985), c. B-3).
>
> 1. By the present Motion, Petitioners Nigel John Hamilton-Smith and Peter Nicholas Wastell, licensed insolvency practitioners and partners at Vantis Business Recovery Services (the "Joint Receivers-Managers") are seeking the following reliefs:
>
> a) a recognition of the Receivership Order (as defined in paragraph 8 below) pursuant to Sections 267 and *seq.* of Part XIII, *International Insolvencies*, of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "BIA");
>
> b) a recognition that their status of Joint Receivers-Managers of Stanford International Bank Limited (in receivership) and Stanford Trust Company Limited (in receivership) (collectively, the "Debtors" in Antigua and Barbuda under the Receivership Order is similar to the status of a "foreign representative" of an estate in a "foreign proceeding" pursuant to section 267 and *seq*. of the BIA;
>
> c) a recognition of their powers as Joint Receivers-Managers through the issuance of an order providing the following:
>
> i. the turnover to the Joint Receivers-Managers of any property, undertakings and other assets of the Debtors; and
>
> ii. granting the Joint Receivers-Managers the power to take immediate steps to stabilize the operations of the Debtors;
>
> d) any further relief necessary to assist the Joint Receivers-Managers in the due carriage of their duties under the Receivership Order and under Sections 267 and *seq*. of the BIA;

[7] The Court sees in this a judicial admission that Vantis' simple power as Receiver-Manager, under Section 267 of the *Bankruptcy and Insolvency Act,* qualified as a proceeding commenced outside Canada and that with this, Vantis recognized that the statutory recourse provided in the Antiguan legislation on international corporations giving a receiver the power to protect the assets of a corporation was a proceeding relating to insolvency and bankruptcy.

[8] It is surprising to see that Vantis [argues], and even more shocking to note that it maintains still today the position that Janvey does not qualify, while it pleaded the opposite in its filings before Registrar Flamand, and moreover, that it does not waive this order.

[9] Vantis' position before Registrar Flamand conforms with case law which held that appointing receiverships pursuant to a securities law is equivalent to foreign proceedings relating to bankruptcy and insolvency and dealing with the collective interests of creditors generally.

[10] Janvey, under the terms of the order appointing him, had control over the property --the assets of the entire Stanford Group--, had to ensure that all these assets be frozen, and was vested with all the powers of the company as he had to protect and recover the assets, and ensure the suspension of the rights of all creditors, his powers being of the nature of those exercised by a trustee in bankruptcy or a liquidator in insolvency and bankruptcy, interim receivership or restructuring.

[11] The order suspending all proceedings relating to creditors is a fine example of a power conferred to a trustee or a liquidator.

[12] The Court has no hesitation in concluding that these proceedings involving Janvey are proceedings instituted abroad which conform to the definition provided in Section 267.

The Real and Substantial Connection

[13] Vantis submits that the important and real connection is in Antigua. The Court has declared Vantis' motion inadmissible.

[14] SIB is a foreign bank under Antiguan law and cannot receive deposits from citizens of Antigua. It is an offshore bank where the deposits are not held in the Bank's vaults in Antigua, but rather transferred to banks located outside of the territory of Antigua.

[15] Americans hold over 37% of the value of certificates of deposit, an amount greater than that held by nationals of all other countries.

[16] Vantis, in its Notes and Authorities, recognizes that SIB is part of a worldwide network of Stanford companies.

[17] Allen Stanford, President and shareholder of all the corporations of the Stanford Group holds both American and Antiguan citizenship, and is currently incarcerated in the United States.

[18] The FSRC is the applicant in Antigua who sought the appointment of the receivership, and thereafter, that of the liquidator.

[19] The Court notes however, that the proceedings are not signed by Leroy King, also accused in the United States as a Stanford accomplice in a complaint for money laundering.

[20] All of the parties present before the Court recognize the insolvency of the entire group, including SIB, and also recognize that SIB has clients in 113 different countries.

[21] The largest number of investor client creditors are from outside Antigua.

[22] Real property assets in Antigua have been expropriated by the government of Antigua without compensation and this, in anticipation of the negative impact of the US receivership on the Antiguan economy, according to the resolution of the Antiguan government.

[23] In its Notes and Authorities, Vantis recognizes that the key corporations of the Stanford Group are the following:

- Stanford Group Company (SGC), a brokerage house registered in the United States and broker dealer;

- Stanford Financial Group Global Management (SFGGML) and Stanford Global Advisory LLC, two corporations of the American Virgin Islands that billed large sums to SIB, officially for advisory services.

[24] In its Notes and Authorities regarding assets, Vantis describes the following:

> Those assets which have been located to date are described in Hamilton-Smith Second Affidavit, paragraphs 67 to 73. The values put on some of the investments may prove not to be accurate and assets have not been included where the financial institution holding them has refused thus far to provide current balances. They include:
>
> i. cash balances (in Canada ($19 million), Antigua ($10 million) and the US ($9 million)) ("**Tier 1 assets**");
>
> ii. funds invested through international financial institutions (in Switzerland ($117 million), the UK ($105 million) and the US ($12 million)) ("**Tier 2 assets**"); and
>
> iii. other assets including equity investments, receivables, real estate in Antigua and claims against Stanford and other Stanford entities, including potential tracing claims on assets purchased by Stanford and Stanford entities, for example, investments made by Stanford using the $1.6 billion "loaned" to him by SIB ("**Tier 3 assets**").

[25] The High Court of Justice, Chancery Division, (Companies Court) recognized that the Stanford Group is responsible for a *Ponzi* style fraud.

[26] All of the fraudulent operations linked together all of the corporations of the Stanford Group.

[27] A substantial portion of the operations of the Stanford group is in Houston. The Stanford Group performed services for $ 268 million for SIB while SIB had $ 3 million of salary expenses, which shows the scope of services performed outside of Antigua and shows that SIB is but a screen for tax purposes.

[28] As for the Stanford Trust, it had three times more employees in the United States than in Antigua.

[29] In its decision in *Holt Cargo*[1], the Supreme Court writes:

> 93 The appellants' strongest argument is that the dispute is but weakly connected to Canada. This Court, however, in Antares Shipping Corp. v. The Ship "Capricorn", [1977] 2 S.C.R. 422, recognized that lack of substantive connections to any particular jurisdiction, including its home port, is a feature of ships engaged in international maritime commerce. In that case, the Court refused to stay proceedings in rem in which three Liberian corporations contested in Canada the ownership of a Liberian registered ship. Liberia, of course, is a flag of convenience. Ships registered there may never have occasion to "go home". In Antares Shipping, the only connection to Canada was that the ship was arrested at the suit of one of the Liberian corporations while it was in Canadian waters. Ritchie J., speaking for the majority, recognized that ocean-going ships present a particular problem. (…)

[30] One can draw a parallel here and say that offshore banks perhaps present a particular problem.

> (…) At p. 453, he adopted the following observations of Lord Simon, dissenting, in The Atlantic Star, [1973] 2 All E.R. 175 (H.L.), at p. 197:
>
> Ships are elusive. (…)

[31] The Court adds: just as money today and the transactions which can easily transit by electronic means.

> The power to arrest in any port and found thereon an action in rem is increasingly required with the custom of ships being owned singly and sailing under flags of convenience. A large tanker may by negligent navigation cause extensive damage to beaches or to other shipping: she

[1] *Holt Cargo Systems Inc.* v. *ABC Container Line N.V. (Trustees of)*, [2001] 3 S.C.R. 907.

> will take very good care to keep out of the ports of the 'convenient' forum. If the aggrieved party manages to arrest her elsewhere, it will be said forcibly (as the appellants say here): 'The defendant has no sort of connection with the forum except that she was arrested within its jurisdiction.' But that will frequently be the only way of securing justice.
>
> Belgium is not a "flag of convenience" like Liberia but the principle remains the same. The "real and substantial connection" test must take into account the special "lifestyle" of ocean-going freighters.

[32] The Court paraphrases this last sentence in the statement: the real and important connection must take into account the particular lifestyle of offshore banks.

[33] The Court sees therein an important parallel with this matter where SIB, an offshore bank, is used only as a screen and an instrument for fraudulent, enormous operations involving many billions of dollars, and which are linked to all of the Stanford Group whose victims are spread throughout more than 113 countries.

[34] As such, the Court, to paraphrase the Supreme Court, is of the view that the "lifestyle" of this offshore bank is directly linked to the Stanford Group headquarters in Houston, and that SIB in Antigua is but a spoke in this affair.

[35] The Court is of the view that for *Ponzi* style frauds, the real and important connection is situated at the place of business of the nerve center or as one could call it, the center of the spider web of this fraud.

[36] The importance of the nerve center in Houston is beyond dispute. The most equitable solution is that the Court recognize the receivership and Janvey, the United States Receiver, as foreign representative.

CONSOLIDATION

[37] Vantis, on behalf of the creditors, submits that only the Antiguan liquidator could better protect Canadian creditors as there would be no dilution of the sums recovered considering that there is only the SIB file to manage and liquidate, whereas Janvey has already announced that he wanted to manage all the receiverships and that he could act at a lower cost and that there could be a dilution in the distributions.

[38] The Court recalls the *Norbourg*[2] affair where the Court of Appeal, despite the fraud of many interrelated companies which were administrated by a single receiver, ordered a different distribution for certain funds. Consolidation therefore is not an obstacle to naming Janvey as foreign representative.

---

2 *Fonds Norbourg Placements équilibrés (Liquidation of)*, 2007 QCCA 1076.

[39] It would always be easier subsequently to distinguish between different assets, especially considering that Janvey requests that a Canadian interim receiver be named.

[40] At this stage, there is no danger of a single receiver acting on the entirety of the assets. In time, the Court will rule any arguments opposing such measures; the argument regarding consolidation is premature.

THE AMF

[41] The AMF intervened in this case and asks the Court to add a conclusion whereby the Court could rule at a later date on the distribution, a point with which Janvey is in agreement.

[42] To satisfy the Court and the request of the AMF, to which Janvey is in agreement, notice shall be given to the AMF of any proceedings in Canada with at least fifteen days prior notice, and of the distribution of assets and of their liquidation, including copies of all relevant reports.

The Flamand Order

[43] The order of Registrar Flamand no longer serves any purpose and is to be quashed for the following reasons:

1) The Court has dismissed Vantis' motion;

2) The order was issued at a time when Vantis acted as Receiver and not as liquidator, and his mandate of Receiver is now terminated;

3) Vantis is not a trustee under the BIA and thus does not have the right to act as interim receiver in Canada.

4) On all the other grounds for which Vantis' motion was declared inadmissible.

FOR THESE REASONS, THE COURT:

[44] **GRANTS** in part the Petitioner's Motion;

[45] **RESCINDS** and **REVOKES** the Order dated April 6, 2009 in this case;

[46] **ORDERS** the Antiguan Receivers to render a full written accounting of their administration of the property, assets, information and records, located in Canada, of the Debtors, Respondents and all entities they own or control (the "**Stanford Entities' Property**"), within a delay of 10 days from the date of judgment to intervene on this Motion, to remit to Ernst & Young within such delay any and all of the Stanford Entities'

Property which was in their possession or control since February 26, 2009 and to restore it in the condition in which they received it;

[47] **ORDERS AND DECLARES** that the U.S. Receivership Proceedings are hereby recognized as a "foreign proceeding" for the purpose of Sections 267 and following of the BIA and that this proceeding is to be constituted as an ancillary proceeding to the U.S. Receivership Proceedings;

[48] **ORDERS AND DECLARES** that the Petitioner is hereby recognized as a foreign representative of the Debtors, Respondents and of all entities they own or control pursuant to Sections 267 and following of the BIA;

[49] **RECOGNIZES** the appointment of the Petitioner as Receiver of the Debtors, Respondents and all entities they own or control pursuant to the terms of the Receivership Orders;

[50] **ORDERS** that pursuant to Sections 267 and following of the BIA, Ernst & Young Inc. is hereby appointed Interim Receiver (the "Interim Receiver"), without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever located in Canada including all proceeds thereof, of the Debtors, Respondents and of all entities they own or control (the "Property") to conduct his proceedings and actions as ancillary to the U.S. Receivership Proceedings;

[51] **ORDERS** that the Interim Receiver shall, in the exercise of its powers provided for herein, consult with the U.S. Receiver to ensure this proceeding is co-ordinated to the fullest extent possible with, and as a proceeding ancillary to, the U.S. Receivership Proceedings;

[52] **ORDERS** that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property in coordination with the Petitioner and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following in Canada having due regard for the consultation obligations and the relationship of these proceedings to the U.S. Receivership Proceedings:

a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;

d) to receive and collect all monies and accounts now owed or hereafter owing to the Respondents and, to exercise ail remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents;

e) with approval of this Honourable Court, to settle, extend or compromise any indebtedness owing to the Respondents;

f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Respondents, for any purpose pursuant to this Order;

g) with the approval of this Honourable Court, to initiate, prosecute and continue the prosecution of any and all proceedings and to defend ail proceedings now pending or hereafter instituted with respect to the Respondents, the Property or the Interim Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

h) with the approval of this Honourable Court, to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Interim Receiver in its discretion may deem appropriate;

i) with the approval of this Honourable Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof;

j) to apply (with adequate notice to or joinder by the Petitioner) for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof or any other person or entity entitled thereto, free and clear of any liens or encumbrances affecting such Property;

k) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the receivership, and to share

information, subject to such terms as to confidentiality as the Interim Receiver deems advisable having due regard for the relationship with the U.S. Receivership Proceedings;

l) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

m) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of the Respondents;

n) with the approval of this Honourable Court, to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property that may be owned or leased by the Respondents;

o) with the approval of this Honourable Court, to exercise any shareholder, partnership, joint venture or other rights which the Respondents may have; and

p) to take any steps reasonably incidental to the exercise of these powers.

q) and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of the Respondents and the Antiguan Receivers.

[53] **ORDERS** that the Interim Receiver shall not, without further order of this Court, manage or operate the business of the Respondents and shall not be deemed to have done so by virtue of the granting of this Order;

[54] **ORDERS** that (i) the Respondents, (ii) ail the legal entity Respondents' current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and ail other persons acting on their instructions or behalf (excepting the Petitioner), and (iii) ail other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (excepting the Petitioner), including landlords of premises leased to any of the Respondents in Canada (ail of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver ail such Property to the Interim Receiver upon the Interim Receiver's request;

[55] **ORDERS** that all Persons (excepting the Petitioner) shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records located in Canada, and any other papers, records and information of any kind related to the business or affairs of the Respondents in Canada and of any persona) computers, servers, computer programs, computer tapes, computer disks, or other data storage media located in Canada and containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 12 or in paragraph 13 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure;

[56] **ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage in Canada, whether by independent service provider or otherwise, ail Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons in Canada shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information;

[57] **ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Honourable Court;

[58] **ORDERS** that no Proceeding against or in respect of the Respondents or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Respondents or the Property are hereby stayed and suspended pending further Order of this Honourable Court;

[59] **ORDERS** that all rights and remedies against the Respondents, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the

written consent of the Interim Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Interim Receiver or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Respondents from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien;

[60] **ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Respondents, without written consent of the Interim Receiver or leave of this Court;

[61] **ORDERS** that all Persons having oral or written agreements with the Respondents or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondents are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Respondents' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Respondents or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court;

[62] **ORDERS** that, subject to the following paragraph, all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim Receiver from and after the making of this Order from any source whatsoever in Canada, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Interim Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Interim Receiver and shall only be paid or disbursed by the Interim Receiver with the approval of this Honourable Court;

[63] **ORDERS** that the Petitioner may repatriate assets to the United States pursuant to paragraph 5 of the Receivership Order dated February 16, 2009, but only with the prior authorization of this Court or another Province in Canada having jurisdiction over the assets and after a notice of 15 days to the AMF.

[64] **ORDERS** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part;

[65] **ORDERS** that any expenditure or liability which shall properly be made or incurred by the Interim Receiver, including the fees of the Interim Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Interim Receiver and its counsel, shall, if approved in advance by this Court, be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge"), provided however, that the Receiver's Charge shall not be enforced without leave of Court;

[66] **ORDERS** the Interim Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial Chamber of the Quebec Superior Court, District of Montreal, with notice and right to appear given to the Petitioner in connection with any motion or other request for approval of same;

[67] **ORDERS** that the Interim Receiver may from time to time apply to this Honourable Court for advice and directions in the discharge of its powers and duties hereunder; provided, however, that in all such applications, and all actions, and other proceedings and actions of the Receiver and hearings and requests before this Honourable Court, the Petitioner will be granted prior notice and provided with an opportunity to be heard and furthermore that the Petitioner will have the right to bring actions in this Honourable Court to enforce the provisions and limitations hereof;

[68] **ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Respondents in Canada;

[69] **ORDERS** that this Order and any other orders in these proceedings shall have full force and effect in all provinces and territories in Canada as against all persons, firms, corporations, governmental, municipal or regulatory authorities or other entities against whom it may otherwise be enforceable;

[70] **THAT THIS COURT REQUEST** the aid and recognition of any and all courts, tribunals regulatory or administrative bodies in Canada, the United States or in any other foreign jurisdiction, to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order, all giving due regard to the actions and provisions herein being ancillary to the U.S. Receivership Proceedings.

[71] **ORDERS** that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located in Canada, for the recognition of this Order as opening a receivership ancillary to the U.S. Receivership Proceeding and for assistance in carrying out the terms of this Order;

[72] **ORDERS** that Petitioner shall have his costs of this motion, up to and including entry and service of this Order to be paid by the Antiguan Receivers at such time as this Court may determine;

[73] **ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than ten (10) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;

[74] **ORDERS** the provisional execution of the judgment to intervene herein, notwithstanding appeal and without the necessity of furnishing any security;

[75] **THE WHOLE WITH COSTS** against the Antiguan Receivers.

[*stamp: TRUE COPY*
[*signature*] Clerk of the Court

[*signature*]
CLAUDE AUCLAIR, J.S.C.

Atty. George R. Hendy
Atty. Martin Desrosiers
Atty. Nicholas Nadeau-Ouellette
Counsel for the Petitioner

Atty. Julie Himo
Atty. Philippe Giraldeau
Counsel for the Antiguan Liquidators

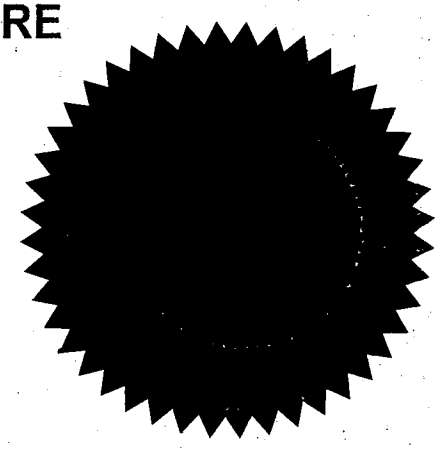
Atty. Émilie Robert
Counsel for the Intervener

Date of the hearing : August 26, 27, 28 2009. Supplementary arguments: September 2, 4 and 8, 2009.

EXHIBIT D

COUR SUPÉRIEURE

(Chambre commerciale)



CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N° : 500-11-036045-090

DATE : Le 11 septembre 2009

SOUS LA PRÉSIDENCE DE : L'HONORABLE CLAUDE AUCLAIR, J.C.S.

DANS L'AFFAIRE DE LA FAILLITE DE :

STANFORD INTERNATIONAL BANK LIMITED
Débitrice
et
NIGEL JOHN HAMILTON-SMITH
et
PETER WASTELL
Liquidateurs-Requérants
et
L'AUTORITÉ DES MARCHÉS FINANCIERS
Intervenante

MOTIFS ET JUGEMENT PRONONCÉS ORALEMENT

---

[1] Par leur requête du 22 avril 2009, les requérants Nigel John Hamilton-Smith et Peter Wastell (« Vantis ») recherchent :

> 1. By this Motion, Petitioners Nigel John Hamilton-Smith and Peter Wastell, licensed insolvency practitioners and partners at Vantis Business Recovery Services (the "**Liquidators**") are seeking the following reliefs:

a) a recognition of the Winding-Up Order pursuant to Sections 267 and *seq.* of Part XIII, *International Insolvencies*, of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**BIA**");

b) a recognition that their status as Liquidators of Stanford International Bank Limited (in liquidation) (the "**Bank**") in Antigua and Barbuda granted under the Winding-Up Order is similar to the status of a "foreign representative" of an estate in a "foreign proceeding" pursuant to section 267 and *seq.* of the BIA;

c) a recognition of their powers as Liquidators through the issuance of an order *inter alia*:

i. staying any present or future proceedings against the Bank or any of its property in Quebec, and generally in Canada, and authorizing the Liquidators to institute or continue any present legal proceedings initiated by the Bank in Quebec, and generally in Canada;

ii. ordering the turnover to the Liquidators of any property, assets and any documents, computer records, electronic records, programs, disks, books of account, corporate records, minutes, correspondence, opinions rendered to the Bank, documents of title, whether in an electronic media or otherwise held in the name of or traceable to the Bank; and

iii. availing the Liquidators of the facility to discover and trace any assets or property of the Bank that are located in Quebec and generally in Canada, (whether such assets or property are possessed in the name of the Bank or have in any way been misappropriated, fraudulently transferred and/or otherwise concealed from the Liquidators);

d) any further relief necessary to assist the Liquidators in the due carriage of their duties under the Winding-Up Order and under Sections 267 and *seq.* of the BIA;

[2] La requête est contestée par le *Receiver* nommé aux États-Unis, M. Ralph S. Janvey, séquestre américain (« Janvey »).

[3] Janvey plaide d'abord que les requérants antiguais Vantis n'ont pas les mains propres et, qu'en conséquence, leur procédure est irrecevable.

[4] De la chronologie préparée par les procureurs de Janvey, le Tribunal retient ce qui suit:

14. Le 16 février 2009, la SEC a obtenu une ordonnance de mise sous séquestre de la District Court des États-Unis nommant Ralph Janvey en tant que séquestre du Groupe Stanford, ordonnance qui a été modifiée le 12 mars 2009.

15. À la même date, la District Court des États-Unis a rendu une ordonnance de blocage dans laquelle elle enjoint aux membres du Groupe Stanford de poser d'autres gestes en violation de la *Securities Act* des États-Unis et d'effectuer des opérations sur les actifs de Stanford Group Ltd.

16. Le 19 février 2009, la FSRC a publié une ordonnance nommant MM. Wastell et Hamilton-Smith de Vantis en tant que séquestres-gérants de SIB et de STC. Le haut tribunal d'Antigua a rendu une ordonnance similaire le 26 février 2009.

17. Le 20 février 2009, les séquestres antiguais ont retenu les services de Stroz Friedderg Ltd., société inscrite du Royaume-Uni (le « **spécialiste en TI** ») pour s'ils se rendent au bureaux de SIB à Montréal afin d'examiner, de recueillir et de copier les dossiers électroniques de SIB.

18. Le 23 février 2009, l'AMF a entrepris une enquête au sujet des affaires de SIB.

19. Le 25 février 2009, l'AMF a écrit à Vantis pour l'informer du début de l'enquête au sujet des affaires de SIB et obtenir des renseignements au sujet du statut du bureau de Montréal et des dossiers de SIB s'y trouvant.

20. Le 26 février 2009, M. Hamilton-Smith « Vantis » a préparé un rapport au sujet de l'état d'avancement de ses travaux à titre de co-séquestres-gérants de SIB et de STC (**RSJ-53**).

«The Receivers-Managers arranged for members of their team to attend the offices of SIB along with legal counsel from Ogilvy Renault on Monday 23rd February 2009 for the purposes of securing the records and ITequipment held at the office and to advise the staff that operations are to cease. The offices are now shut with access under the control of the Receivers-Managers and their lawyers.»

22. Le 3 mars 2009, Vantis a répondu à la lettre du 25 février 2009 de l'AMF (**I-1**) par voie de courriel envoyé par Matthew Peat (**I-2**) que l'emploi des employés du bureau de Montréal avais pris fin le 27 février, que le locateur des locaux de SIB s'était engagé « agreed that no action would be taken against the Company's property without notice to the Receivers » et qu'il avait retenu les services de CapCon Holdings « to provide data recovery services».

23. Dans un courriel envoyé à la même date par Nick O'Reilly (**I-2**), l'AMF est informée par Vantis que « the office was closed last Monday. No client file was found on site and no one has dealt with the computers since the closure.». (Déclaration sous serment de M. Garon, par. 7; **I-2**).

24. Le 5 mars 2009, le spécialiste en TI de Vantis s'est rendu aux bureaux de Montréal de SIB pour s'acquitter de son mandat, qui était terminé le 8 mars (Admissions, par. 3 à 7).

25. Le 8 mars 2009, le spécialiste en TI a personnellement transporté les données électroniques images du bureau de Montréal de SIB au Royaume-Uni, puis fait parvenir une des copies de ces données images au liquidateur antiguais à Antigua.

26. Le 27 mars 2009, Dan Roffman, spécialiste en TI dont Ralph Janvey a retenu les services, s'est rendu aux bureaux de Montréal de SIB et s'est rendu compte que certains serveurs étaient en voie d'être supprimés.

28. Le 30 mars 2009, des représentants de l'AMF ont eu un entretien téléphonique avec les procureurs de Vantis au cours de laquelle ils ont été informés qu'un de ses collègues s'était rendu aux bureaux de SIB le 27 mars « pour faire un inventaire des biens et qu'elle n'était pas au courant de la demande d'informations que l'Autorité a envoyée le 25 février 2009 au séquestre d'Antigua » (Déclarations sous serment de M. Garon, par. 11).

29. Le 30 mars 2009, l'AMF a également parlé à l'un des avocats de Janvey, William Stutts, qui l'a informé (d'après les observations faites le 27 mars par Dan Roffma dont il est question ci-dessus) que les liquidateurs antiguais supprimaient les données électroniques du bureau de Montréal de SIB (Déclarations sous serment de M. Garon, par. 12).

30. Le 30 mars 2009, les avocats de Janvey ont écrit à Ogilvy Renault au sujet de la visite de M. Roffman aux bureaux de Montréal le 27 mars 2009 et demandé que les données détruites ou supprimées par Vantis des serveurs du bureau de Montréal soient immédiatement restaurées sur les serveurs appropriés (Motion to Revoke and to Rescind de Janvey, par. 30; se reporter à la pièce **R-9** qui est jointe).

31. Le 31 mars 2009, l'AMF a écrit à Vantis afin d'obtenir un suivi au sujet du courriel de Vantis du 3 mars 2009 (**I-2**), étant donné que l'AMF n'avait toujours pas reçu la liste des investisseurs canadiens et d'obtenir des renseignements au sujet de ce qui est arrivé aux documents et aux données électroniques de SIB (Déclarations sous serment de M. Garon, par. 13; **I-3**).

32. Le 1er avril 2009, Ogilvy a répondu à la lettre de Janvey (R-9) comme suit: « The information on the Bank's servers located in its Montreal premises has been imaged onto hard disks and have been preserved to the standards required in the criminal investigation matter. This was done by our client to make sure that this data would be securely maintained and that no one entering the Bank's Montreal premises could in any way tamper with said data or take a copy thereof or take a copy thereof without any right » (Motion to Revoke and Rescind, par. 37; **R-10**).

33. Le 1er avril 2009, Baker Botts a répondu par courriel à la lettre du 1er avril de Me Himo (**R-10**) (Motion to Revoke and Rescind, par. 37; **R-12**) et demandé à Me Himo de confirmer « that there was no erasure or deletion of data form the servers in the Montreal office... in other words, Vantis representatives have done nothing to remove data from those servers ». À la même date, Baker Botts a envoyé un autre courriel à ce sujet à Me Himo pour lui demander, dans l'éventualité où « Vantis representatives have in fact removed data from the Montreal servers, please advise promptly where the data currently is - - including in what country - - and whose possession... Also, are the servers still in the Montreal office?»

34. Le 1er avril 2009, Peat de Vantis a répondu au courriel du 31 mars de l'AMF (**I-3**) qu'il soumettrait la demande de l'AMF à l'attention de son collègue, Julian Greenup.

35. Le 1er avril 2009, un appel conférence a eu lieu entre les représentants de l'AMF et les procureurs de Vantis, qui informent l'AMF qu'ils n'étaient pas autorisés à transmettre à l'Autorité la liste des investisseurs et qu'une ordonnance de la Cour à Antigua sera probablement nécessaire.

36. Le 2 avril 2009, les procureurs de Vantis ont répondu laconiquement au courriel précédent du 1er avril de Stutts (**R-12**) comme suit: "I will get back to you as soon as possible."

37. Le 3 avril 2009, Hamilton-Smith de Vantis a signé une déclaration sous serment à l'appui de la requête en reconnaissance de la décision de la FSRC (**P-1**) et de l'ordonnance de mise sous séquestre du haut tribunal de justice d'Antigua (**P-2**) qu'il présente le 6 avril devant la registraire Flamand.

38. Le 6 avril 2009, les séquestres antiguais ont présenté leur requête en reconnaissance à titre d'administrateur séquestre de SIB et de STC, datée du 3 avril 2009 et présentée sur une base *ex parte* à la registraire Chantal Flamand, sans avis à l'AMF ou à Ralph Janvey.

39. Le 15 avril 2009, les procureurs de Vantis écrivent à Stutts en réponse à son courriel du 1er avril afin de l'informer pour la première fois que les serveurs, bureaux et ordinateurs portatifs situés au bureau de Montréal de SIB avaient été "wiped", "there were no client records on the computers that were imaged and erased since the servers in Montreal were for designed for recovery purposes and all tests had client data removed given the need to preserve client confidentiality and privacy" and that "the imaged drives are currently held in Antigua under the control of the Antiguan Receivers-Managers". (Motion to Revoke and Rescind, par. 38.

40. Le 16 avril 2009, Janvey a déposé et signifié sa Motion to Revoke and Rescind la décision et l'ordonnance de la registraire Flamand.

> 41. Le 22 avril 2009, Vantis a signifié et déposé sa Motion Seeking the Recognition of the Winding-Up Order of the High Court of Antigua datée du 17 avril 2009 (**P-7**).
>
> 42. Après avoir appris lors de l'audience du 15 juillet 2009 dans cette affaire qu'il y avait trois serveurs au bureau de Montréal qui manifestement renfermaient des données au sujet d'autres membres du groupe Stanford n'ayant apparemment pas été copiés ou supprimés par le spécialiste en TI de Vantis (**Admissions - 5**), les avocats de Janvey ont demandé l'accès à ces serveurs lors d'un échange de correspondance entre les avocats des parties les 12, 14 et 18 août 2009. L'accès au serveur n'a pas encore été obtenu jusqu'à l'audition le 25 août.
>
> 43. Jusqu'à l'audition des 25, 26 et 27 août, les séquestres antiguais ont refusé de fournir à l'AMF la liste des investisseurs canadiens ainsi que des renseignements au sujet des documents et registres de SIB qui proviennent de son bureau de Montréal en dépit des demandes répétées de l'AMF (Garon, par. 21).
>
> 44. Les liquidateurs antiguais ont également refusé de remettre aux représentants de Janvey les registres images de SIB.
>
> (Le Tribunal souligne)

Le caractère discrétionnaire du recours ou fin de non-recevoir

[5] La partie 13 de la LFI qui s'intitule : *L'insolvabilité en contexte international* permet à un requérant de se faire qualifier comme représentant étranger en demandant l'autorisation au Tribunal et ainsi faciliter une coordination des procédures à l'égard de personnes insolvables.

[6] Les pouvoirs accordés au Tribunal sont extrêmement vastes, tout comme les pouvoirs demandés par les requérants Vantis. L'article 268(6) LFI précise :

> La présente partie n'a pas pour effet d'exiger du Tribunal qu'il rende des ordonnances qui sont contraires au droit canadien ou qui donne effet aux ordonnances rendues par un Tribunal étranger.

[7] Dans l'affaire *Les Immeubles Port Louis ltée*[1],un arrêt de la Cour suprême, le juge Gonthier, s'appuyant sur la décision *Homex*, déclare que le juge peut en outre examiner la conduite des parties pour rejeter le recours sans même prendre de décision sur le fond. Il va sans dire que le Tribunal doit exercer judiciairement son pouvoir de contrôle et respecter les principes qui s'appliquent.

---

[1] *Les Immeubles Port Louis ltée* c. *Corporation municipale du Village de Lafontaine* [1991] 1 R.C.S. 326, p. 364.

[8] Dans l'affaire de *Société de la Place des Arts*[2], treize ans plus tard, le juge Gonthier, discutant de l'émission d'une injonction, écrit :

> 13 (...) Le pouvoir de la Cour supérieure du Québec d'accorder une injonction est prévu par la loi. Mais, il s'agit d'un pouvoir discrétionnaire du genre de celui exercé en equity dans les juridictions de common law Au Québec comme ailleurs, l'injonction constitue une forme exceptionnelle et discrétionnaire de réparation. Le tribunal ne décernera pas une injonction en vertu de l'art. 751 et suiv. simplement parce que le demandeur y a droit en principe. Celui-ci doit en outre démontrer que les circonstances justifient l'octroi d'une telle réparation potentiellement contraignante et qu'il mérite pareille réparation.
>
> (Renvois omis)
> (Le tribunal souligne)

[9] Une partie qui désire obtenir une mesure discrétionnaire du tribunal doit avoir agi de bonne foi et n'avoir rien à se reprocher en relation avec l'objet de sa requête.

[10] Dans *Le contrôle judiciaire de l'action gouvernementale*[3], l'auteur Denis Lemieux écrit :

> Un raisonnement analogue est utilisé aux fins du contrôle judiciaire, notamment en matière d'injonction interlocutoire. Ce principe, souvent qualifié de théorie des mains nettes, implique qu'un requérant qui a, par son comportement, été partie à l'acte illégal, y a acquiescé ou a lui-même commis un acte fautif ou illégal ne peut obtenir les conclusions recherchées même s'il remplit les conditions générales de recevabilité du recours. Ainsi, l'honorable juge Sopinka, rappelait récemment «en exerçant son pouvoir discrétionnaire de rendre ou non un jugement déclaratoire, le Tribunal peut tenir compte de certains principes d'equity telle que la conduite de la partie qui demande le redressement». Ce pouvoir discrétionnaire de la Cour trouve un fondement dans la fin de non-recevoir. Il s'agit d'un principe général du droit civil d'application générale, qui peut se fonder sur les articles 6, 7 et 1375 du Code civil qui sanctionne la conduite abusive et la mauvaise foi.
>
> (Le Tribunal souligne)

[11] Le Tribunal jouit, par le truchement de l'article 268(6) LFI, d'une large discrétion dans sa reconnaissance d'un représentant étranger.

[12] Les conclusions de la requête de Vantis sont :

> **6. GRANT** the Liquidators the power to take possession of, gather in and realise all the present and future assets and property of the Bank, including without limitation, any real and personal property, cash, choses in action, negotiable

---

2 *A.I.E.S.T., local de scène no.* 56 c. Société *de la Place des Arts de Montréal* [2004] CSC 2, par. 13.
3 Denis LEMIEUX, *Le contrôle judiciaire de l'action gouvernementale*, feuilles mobiles, Brossard, CCH, paragr. 15-135.

instruments, security granted or assigned to the Bank by third parties including property held in trust or for the benefit of the Bank, and rights, tangible or intangible ("**Property**"), wheresoever situate and to take, such steps as are necessary or appropriate to verify the existence and location of all the assets of the Bank, or any assets formerly held whether directly or indirectly or to the order of or for the benefit of the Bank or any present or former subsidiary or company associated with the Bank, including the terms of all agreements or other arrangements relating thereto, whether written or oral, the existence or assertion of any lien, charge, encumbrance or security interest thereon, and any other matters which in the opinion of the Liquidators may affect the extent, value, existence, preservation, and liquidation of the assets and property of the Bank;

7. ORDER that all assets, tangible and intangible and wheresoever situated, shall vest in the Liquidators, who shall collect and gather in all such assets for the general benefit of the Bank's creditors and as may be directed by the High Court of Antigua;

11 ORDER that the Liquidators shall be at liberty, and without the necessity of any further order, to summon before this Court for examination under oath any person reasonably thought to have knowledge of the affairs of the Bank or any person who is or has been a director, officer, employee, agent, shareholder, accountant of the Bank, or such other person believed to be knowledgeable of the affairs of the Bank and to order such person(s) liable to be examined to produce any books, documents, correspondence or papers in his or her possession or power relating to all or in part to the Bank, its dealings, property and assets and the Liquidators are authorised to issue writs of subpoena ad testificandum and duces tecum for the compulsory attendance of any of the persons aforesaid required for such examination;

12 ORDER that the Bank and any person holding or reasonably believed to have in their possession or power any assets or property of the Bank including without limitation, computer records, programs, disks, documents, books of account, corporate records, minutes, opinions rendered to the Bank, documents of title, electronic or otherwise (collectively called "**Papers**") relating in whole or in part to the Bank or such persons, dealings, or property showing that he or she is indebted to the Bank may be required by the Liquidators to produce or deliver over such property forthwith to the Liquidators notwithstanding any claim or lien that such person may have or claim on such assets and property and the Liquidators shall have full and complete possession and control of such assets and property of the Bank including its premises. In the event of a bona fide dispute as to ownership and legal entitlement to such property and Papers, the Liquidators shall take away copies of such Papers;

13 ORDER that (i) the Bank; (ii) all of its current and former directors, officers, managers, employees, agents, accountants, holders of powers of attorney, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise

the Liquidators of the existence of any Property in such Person's possession, power, control, or knowledge, shall grant immediate and continued access to the Property to the Liquidators, and shall deliver all such Property to the Liquidators upon the Liquidators' request, subject only to any privilege attaching to solicitor-client communications or statutory provisions prohibiting such disclosure;

14 ORDER that all persons shall forthwith advise the Liquidators of the existence of and grant access to and deliver to the Liquidators or to such Agent or Agents they may appoint, any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Bank, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Liquidators or permit the Liquidators to make, retain and take away copies thereof and grant to the Liquidators unfettered access to and use of accounting, computer, software and physical facilities relating thereto, subject only to any privilege attaching to solicitor-client communications or statutory provisions prohibiting such disclosure;

15 ORDER that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all persons in possession or control of such Records shall forthwith give unfettered access to the Liquidators for the purpose of allowing the Liquidators to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Liquidators in their discretion deem expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Liquidators. Further, for the purposes of this paragraph, all Persons shall provide the Liquidators with all such assistance in gaining immediate access to the information in the Records as the Liquidators may in their discretion require including providing the Liquidators with instructions on the use of any computer or other system and providing the Liquidators with any and all access codes, account names and account numbers that may be required to gain access to the information;

16 ORDER the Persons are hereby restrained and enjoined from disturbing or interfering with the Liquidators and with the exercise of the powers and authority of the Liquidators conferred by this Order;

21. ORDER that no person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Bank, without written consent of the Liquidators or leave of this Honourable Court;

22 ORDER that all persons having oral or written agreements with the Bank or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services; insurance, transportation

and freight services, utility or other services to the Bank are hereby restrained until further Order of this Honourable Court from discontinuing, altering, interfering-with or terminating the supply of such goods or services as may be required by the Liquidators; and that the Liquidators shall be entitled to the continued use of the Bank's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Liquidators in accordance with normal payment practices of the Bank or such other practices as may be agreed upon by the supplier or service provider and the Liquidators, or as may be ordered by this Honourable Court;

23 RECOGNIZE that the Liquidators shall have the authority as officers of the High Court of Antigua to act in Antigua and Barbuda or any foreign jurisdiction where they believe assets, property or Papers of the Bank may be situate or traced at equity or otherwise, and shall have the right to bring any proceeding or action in Antigua and Barbuda and/or in a foreign jurisdiction for the purpose of fulfilling their duties and obligations under the Winding-Up Order and to seek the assistance of any Court of a foreign jurisdiction in the carrying out of the provisions of the Winding-Up Order, including without limitation, an order of examination of persons believed to be knowledgeable of the affairs, assets, property and Papers of the Bank and to assist the Liquidators in the recovery of the assets and property of the Bank;

24 ORDER that the Liquidators shall have the authority to initiate, prosecute and continue the prosecution of any and all proceedings, and to defend all proceedings for the benefit of the Bank's creditors now pending or hereinafter initiated with respect to the Bank and, upon receiving the approval of this Court, to settle or compromise any such proceeding;

30 ORDER that all actions, proceedings and any claims whatsoever and wheresoever initiated against the Bank, its assets and property, are hereby stayed and no person, which shall include a body corporate, shall bring or continue with a claim or proceeding in Antigua and Barbuda or elsewhere as against the Liquidators or the Bank without leave of this Honourable Court;

32 ORDER that the Liquidators, in their names or in the name of the Bank, shall be at liberty to apply for any permits, licenses, approvals or permissions as may be required by or deemed necessary pursuant to any laws, governmental or regulatory authority, in the pursuit and performance of their duties hereunder;

34 ORDER that the Liquidators shall exercise, perform or discharge their duties independently or jointly and in doing so shall be deemed to act as agents for the Bank and they act solely in their capacity as Liquidators and without personal liability if they rely in good faith upon the financial statements of the Bank or upon an opinion, report or statement of any professional adviser retained by them;

37 ORDER the provisional execution of this Order, notwithstanding any appeal and without the necessity of furnishing any security;

[13] Ces conclusions sont de la nature de l'injonction et certaines déclaratoires et les pouvoirs demandés sont extrêmement larges.

[14] Dans l'affaire *Saargummi*[4], la Cour supérieure a confirmé que la *LFI* est une loi d' «equity » et que l'exercice d'un pouvoir discrétionnaire en vertu de celle-ci est soumis à l'application de la théorie des mains propres :

> [92] Un septième critère qui n'est pas tiré de la Loi sur la faillite, mais plutôt de l'exercice général des pouvoirs discrétionnaires de la Cour supérieure, est que celui qui se présente devant le tribunal pour lui demander d'exercer une discrétion judiciaire devrait être de bonne foi et avoir «les mains propres».
>
> [...]
>
> [117] Lorsqu'un requérant demande à la Cour supérieure d'exercer sa discrétion judiciaire, il doit se présenter avec «les mains propres».
>
> [118] Cette théorie des mains propres remonte au 18ième siècle et a été utilisée à plusieurs reprises au Canada et au Québec. Cette théorie a été élaborée par soucis [sic] d'équité et justement la Loi sur la faillite et l'insolvabilité est une loi d'équité.

[15] En l'instance, Vantis ne désire pas seulement faire homologuer un jugement étranger. Il requiert plutôt de cette Cour qu'elle lui confère d'importants pouvoirs en sol canadien et lui permette même d'œuvrer en tant qu'officier de justice[5].

[16] Vantis recherche d'exercer d'importants pouvoirs au Canada. Sa conduite doit être considérée par le tribunal dans l'exercice de sa discrétion.

[17] La collaboration entre les différentes juridictions ne doit pas faire obstacle à l'exercice discrétionnaire du tribunal. Il en va de la sauvegarde des intérêts des créanciers québécois et canadiens et de la préservation des fondements du système judiciaire canadien.

[18] En matière de nomination de représentant étranger en vertu de la *LFI*, le Tribunal jouit d'une discrétion large et similaire à celle qu'il exerce en matière d'injonction ou déclaratoire, et rien n'indique que la conduite du requérant ne doit pas faire partie de l'équation, bien au contraire, le séquestre et/ou syndic étant un officier de la Cour.

[19] Parmi les principes énoncés dans l'arrêt *Holt Cargo*[6], on précise que malgré qu'il soit généralement souhaitable que les tribunaux des diverses juridictions fassent preuve de coopération dans des situations d'insolvabilité internationale, un « *tribunal de faillite*

---

[4] *Saargummi*, au paragr. 91, et *Murphy (Syndic de)*, 2006 QCCS, 989, paragr. 24.
[5] On note qu'à la conclusion [11] de sa Requête, Vantis requiert le pouvoir d'émettre des *subpoenas*.
[6] *Holt Cargo* c. *ABC Containerline*, [2001] 3 R.C.S. 907.

canadien doit tenir compte des intérêts des parties qui plaident devant lui et des autres parties touchées au Canada »[7].

[20] Toujours dans *Holt Cargo*, la Cour suprême enseigne que les tribunaux canadiens sont tenus de se questionner à savoir si le fait de reconnaître la procédure étrangère et d'y prêter leur concours fera perdre à une partie intéressée un avantage juridique dont elle aurait bénéficié au Canada. Bien que ce ne soit pas la perte de tout type d'avantage qui fera échec à la collaboration avec une juridiction donnée (Antigua) plutôt qu'une autre (É-U), « *l'étendue de l'avantage juridique pour les différentes parties constitu[e] nettement un facteur important qui d[oi]t être soupesé.* »[8].

[21] La Cour suprême dans *Holt Cargo*, écrit que l'approche pluraliste exige de la coordination, non pas de la subordination du Tribunal à l'égard des tribunaux étrangers.

[22] Dans l'affaire *Menegon v. Philip Services Corp*[9], le juge Blair, de la Cour supérieure de justice de l'Ontario, citant l'article 18.6(5) de la *Loi sur les arrangements avec les créanciers des compagnies*[10], (« **LAAC** ») (lequel est identique à l'article 268(6) *LFI*), explique que « *comity and international co-operation do not mean that one Court must cede its authority and jurisdiction over its own process or over the application of the substantive laws of its own jurisdiction* ».[11]

[23] Il est donc clair que cette Cour jouit d'une large discrétion en vertu de l'article 268(6) LFI et que cette discrétion ne doit pas être subordonnée à un souhait d'uniformité procédurale.

[24] Dans l'arrêt *In the Matter of Eurofood IFSC Ltd & In the Matter of the Companies Act 1963-2001*[12], , la Cour suprême de l'Irlande a interprété libéralement l'exception d'ordre public prévue à l'article 26 du *Règlement (CE) 1346/2000 du Conseil du 29 mai 2000 relatif aux procédures d'insolvabilité*[13] (« **Règlement CE** ») pour refuser de reconnaître la décision du tribunal italien au motif que l'administrateur extraordinaire avait fait fi du principe des procédures équitables.

[25] L'article 26 du Règlement CE est similaire à l'article 6 de la Loi type en ce qu'il se lit comme suit :

> Tout État membre peut refuser de reconnaître une procédure d'insolvabilité ouverte dans un autre État membre ou d'exécuter une décision prise dans le cadre d'une telle procédure, lorsque cette reconnaissance ou cette exécution produirait des effets manifestement contraires à son ordre public, en particulier à

---

7 Id. paragr. 33. Voir aussi paragr. 68 à 70.
8 Id. paragr. 34.
9 *Menegon v. Philip Services Corp*, (1999), 11 C.B.R. (4th) 262
10 L.R.C. 1985, c. C-36.
11 Au para. 48.
12 [2006] IESC 41é
13 [2000] J.O. L 160/1 à la p. 9

> ses principes fondamentaux ou aux droits et aux libertés individuelles garantis par sa constitution.

[26] Bien que cet article 26 ait une portée plus étroite que notre article 268(6) *LFI*, la Cour suprême de l'Irlande s'est quand même indignée des circonstances qu'elle avait devant elle.

[27] Dans cette affaire, l'administrateur extraordinaire avait omis d'aviser les créanciers d'*Eurofood* de la tenue de l'audience devant le tribunal italien. De plus, il n'avait remis les documents relatifs à la requête au syndic provisoire qu'après la tenue de l'audience.

[28] De même, Vantis a omis d'aviser Janvey ainsi que l'AMF de ses activités au bureau de Montréal ainsi que de la présentation de sa requête devant la Registraire Flamand.

[29] La Cour suprême de l'Irlande s'est exprimée ainsi sur l'importance du principe des procédures équitables :

> I regret to say that it is quite shocking that the appellant should have deliberately refused to provide the Provisional Liquidator with the documents necessary for his appearance before the Parma Court in February 2004. (...) This Court is fully conscious of the important role now accorded to the principle of mutual recognition of judicial decisions in many contexts of European Community and Union law. It is based on a principle of mutual trust. This Court respects those principles. They must, therefore, entail respect for principles of fairness that are common to the traditions of the Member States and which have been affirmed again and again by the European Court.
>
> (Le Tribunal souligne)

[30] Comme l'ont soulevé les procureurs de l'AMF en cours d'audience, le jugement antiguais prive explicitement les autorités réglementaires et gouvernementales canadiennes et étrangères du bénéfice de la coopération des liquidateurs antiguais, sauf dans les cas où un protocole d'entente est en place, ce qui n'est pas le cas en l'espèce.

[31] Les dispositions du jugement antiguais nommant Vantis *Receiver* prévoyaient au paragraphe 12 de son dispositif :

> 12. Without prejudice to the provisions of Section 373 of the Act, the Joint Receiver Managers be and are hereby authorized to disclose information concerning the management, operations, and financial situation of the Respondents/Defendants as they consider appropriate in the performance of their functions PROVIDED ALWAYS THAT:

> (1) no disclosure of customer specific information is authorized without further or other order of the Court; and
>
> (2) no disclosure of information is permitted under this Order to any foreign governmental or regulatory body unless such disclosure is subject to mutual disclosure obligations.
>
> (Le Tribunal souligne)

[32] Ceci constitue un irritant majeur en l'espèce. Cette disposition n'est pas reproduite dans le jugement nommant Vantis liquidateur mais les procureurs de Vantis ont écrit ce qui suit dans leurs Notes et Autorités :

> 78. (...) Cette ordonnance de confidentialité a été rendue par la Haute Cour d'Antigua au paragraphe 12 de l'Ordonnance de séquestre d'Antigua, et l'Ordonnance Flamand l'a simplement reconnue. Elle découle en outre de l'existence de l'article 244 (tel qu'il est modifié) de l'IBCA, qui stipule le devoir de confidentialité de la Banque envers ses clients. Bien que ce devoir ne soit pas réitéré dans l'Ordonnance de liquidation, il demeure applicable, et les Liquidateurs ne peuvent communiquer de renseignements sur un client sans obtenir une ordonnance de la Haute Cour d'Antigua.

[33] Le Tribunal constate qu'il n'y a pas de déférence pour les autorités réglementaires d'ici par le tribunal d'Antigua. Pourtant, SIB a bel et bien opéré un bureau à Montréal.

[34] Dans l'affaire *Exchange Bank & Trust inc.* c. *British Columbia Securities Commission and Bank of Montreal*[14] la Cour d'appel de la Colombie-Britannique écrit :

> EBT stressed that its ability to present evidence was hampered by the privacy laws of Nevis. That may be so. However, the property subject to the Orders is in British Columbia and it is the securities laws of British Columbia, and those of the United States, that are alleged to have been contravened. EBT chose to locate assets outside the jurisdiction of Nevis and must accept that those assets are subject to laws of the jurisdiction in which they are located, in this case British Columbia. It would be an utter abandonment of the public interest if we were to conclude that a party subject to secrecy laws in another jurisdiction could use those laws to shield themselves from the legitimate exercise of powers to enforce securities regulation in British Columbia. In short, the Nevis privacy laws are not relevant.[15]
>
> (Le tribunal souligne)

[35] Vantis se devait d'obéir aux lois canadienne et québécoise.

---

[14] 2000 BCCA 389.
[15] Id. p. 12.

[36] Dans l'affaire *Richter* c. *Merrill Lynch*[16], la Cour d'appel du Québec écrit :

> [54] Je suis d'avis que la demande d'une partie ne peut être reçue en justice lorsqu'elle repose avant tout sur sa propre inconduite et sur des fausses représentations faites à ses cocontractants desquels elle recherche compensation pour dommages dont elle est responsable au premier chef.
>
> (...)
>
> [57] Quant à elle, la doctrine québécoise s'est plutôt attachée au fondement de certaines fins de non-recevoir qu'elle associe à la sanction judiciaire du comportement fautif d'une partie :
>
> (...)
>
> *La fin de non-recevoir sanctionne le comportement déloyal ou non coopératif par un refus de donner suite à la demande formulée par l'auteur même du problème.*
>
> *La fin de non-recevoir permet donc au magistrat de rejeter une demande, par ailleurs bien fondée en droit, dans la mesure où c'est précisément le comportement hautement répréhensible du demandeur qui est à l'origine du litige.*
>
> (...)
>
> [60] En l'espèce, la fin de non-recevoir invoquée prend appui avant tout sur l'obligation de bonne foi qui doit caractériser la conduite de toute personne dans l'exercice de ses droits et notamment dans ses rapports contractuels (art. 6, 7 et 1375 C.c.Q.).
>
> (...)
>
> [62] Il s'agit avant tout d'une question de fait qui doit être analysée sous l'angle de la bonne foi et de l'équité.
>
> (Renvois omis)
> (Le tribunal souligne)

[37] Vantis ne mérite pas la confiance de la Cour car sa conduite répréhensible n'a rien qui garantisse le futur en l'espèce. Le comportement d'Hamilton de chez Vantis est inacceptable et les circonstances font en sorte que sa procédure est irrecevable.

[38] Après que les séquestres américains aient été nommés aux États-Unis pour l'ensemble des corporations, à Antigua, la *Financial Service Regularity Commission*, dont le président d'alors Leroy King, quelque temps avant les procédures, est coaccusé par la suite criminellement de complicité avec Allen Stanford, président du Groupe Stanford, pour avoir entre autres contribué à blanchir de l'argent, requiert de la Cour

[16] *Richter& Associés inc.* c. *Merrill Lynch Canada inc.*, 2007 QCCA 124.

d'Antigua la nomination d'un séquestre à l'égard de SIB et STC le 26 février 2009, soit une semaine après que le séquestre américain fut nommé aux États-Unis pour agir à l'égard de toutes les corporations du groupe Stanford, incluant SIB et STC.

[39] Les séquestres antiguais ont présenté une requête *ex parte* en nomination d'un représentant étranger, en reconnaissance d'une ordonnance étrangère, en assistance judiciaire et en nomination d'un séquestre intérimaire à la registraire Chantal Flamand, omettant :

A. D'aviser l'AMF et Janvey de la présentation de leur requête.

B. De mentionner qu'environ un mois (c'est-à-dire le 8 mars 2009) avant la présentation de la requête, des représentants de Vantis s'étaient rendus au bureau de Montréal de SIB, avaient pris possession de ses registres et actifs (sans autorisation préalable de la Cour au Canada) et supprimé la version originale des données électroniques après en avoir fait des copies et avoir apporté toutes les copies à l'extérieur du pays.

C. Le fait que l'AMF avait entamé une enquête au sujet des affaires de SIB le 23 février 2009 et demandé aux séquestres antiguais de lui fournir des documents et des données provenant du bureau de Montréal pas plus tard que le 25 février 2009.

D. Le fait qu'ils n'étaient pas des syndics autorisés en vertu de la *Loi sur la faillite et l'insolvabilité*, ce qui rendaient illégaux tous les actes commis par les séquestres antiguais au Canada à l'égard des actifs et registres de SIB avant cette date, car en vertu de l'article 271 *LFI* qui prévoit que seul un syndic – tel que défini à l'article 2 de la *LFI* – peut agir, ce que Vantis n'est pas selon la définition de la *LFI*.

E. De mentionner expressément le rôle de Janvey pour l'ensemble des corporations, se contentant de renvoyer à l'ordonnance de blocage dans leur requête et non à l'ordonnance de mise sous séquestre américaine.

[40] La partie requérante doit divulguer pleinement et fidèlement tous les faits importants[17].

[41] En omettant de divulguer des renseignements clés, les liquidateurs antiguais ont réussi à obtenir l'ordonnance *ex* parte qu'ils voulaient.

[42] Comme l'explique le juge Dufresne, alors à notre Cour, le Tribunal peut révoquer par la suite une ordonnance *ex parte* si le demandeur a omis de révéler des faits importants pour sa décision:

---

[17] *Microcell Solutions inc. v. Telus Communications inc.*, J.E. 2004-738.

> [19] La partie qui obtient une autorisation d'un juge à la suite d'une demande entendue *ex parte* s'expose à voir sa demande rejetée subséquemment s'il devait être démontré que des faits significatifs pour la décision du juge 'émettre l'autorisation avaient fait l'objet d'omission délibérée ou stratégique de la part de celui qui recherchait l'autorisation. L'omission doit évidemment être flagrante.[18]

[43] Les omissions des séquestres antiguais dans la présente affaire sont flagrantes et inexcusables.

[44] Dans *TMR Energy Ltd.* c. *State Property Fund of Ukraine*, la Cour fédérale devait déterminer la validité de la décision du protonotaire d'accepter une demande d'enregistrement *ex parte* ainsi que de reconnaître et d'appliquer une sentence arbitrale étrangère. En appel, la Cour fédérale a annulé la décision du protonotaire au motif que ce dernier n'avait pas le pouvoir de rendre une telle décision et que le requérant avait de toute façon omis de divulguer au protonotaire certains faits s'opposant à l'enregistrement et à l'application de la sentence.

[45] La Cour d'appel fédérale a confirmé cette décision de la Cour fédérale et déclaré ce qui suit:

> [63] I have found no reviewable error in Martineau J.'s conclusion that "where a motion or application is made *ex parte*, the moving party or applicant has a duty of full and fair disclosure with respect to all material facts."[19]

[46] Les circonstances sont similaires dans la présente affaire étant donné que les séquestres antiguais ont omis de divulguer pleinement et franchement de l'information cruciale à la Cour.

[47] Les séquestres antiguais ont refusé toute demande de rapatriement des registres images de SIB au Québec ou de divulguer ou de remettre une copie de ces registres à Janvey ou à l'AMF.

Suppression des informations des serveurs

[48] Un mois avant que l'ordonnance de reconnaissance au Québec datée du 6 avril 2009 soit rendue, des représentants des séquestres antiguais se sont rendus au bureau de Montréal de SIB et ont «effacé» délibérément les serveurs de SIB qui s'y trouvaient, sans en aviser le séquestre américain, l'AMF ni cette Cour. Lorsque le séquestre américain a demandé, par l'intermédiaire de ses avocats, aux séquestres antiguais de s'expliquer à ce sujet, presque deux semaines (du 1er au 15 avril) se sont écoulées avant que leurs procureurs répondent en reconnaissant que les serveurs avaient été effacés, que les données avaient été transformées en données images et que les copies se trouvaient à Antigua. Les séquestres antiguais ont retiré toutes les données

---

[18] Id., paragr. 19.

[19] *TMR Energy Ltd.* c. *State Property Fund of Ukraine* (F.C.A.), 2005 FCA, paragr. 63.

électroniques du Canada pour les envoyer vers Antigua, et les soustraire ainsi à la compétence des tribunaux et des autorités de réglementation canadiens avant d'obtenir leur ordonnance de reconnaissance *ex parte*.

[49] La déclaration de Hamilton-Smith, qui a indiqué avoir informé Janvey de son intention de transformer en images les données sur les disques durs du bureau de Montréal, de les supprimer puis d'en envoyer des copies à l'extérieur du Canada, soit à Antigua le 26 février 2009 dans un rapport et que Janvey n'a soulevé aucune objection est malheureusement discutable. Les versions de Hamilton-Smith et Janvey sont contradictoires.

[50] Vantis déclare avoir divulgué l'essence de son projet au séquestre américain. Or, son rapport mentionne : "*The Receiver-Managers arranged for members of their team to attend the offices of SIB in Montreal along with legal counsel from Ogilvy Renault on Monday 23rd February 2009 for the purposes of securing the records and IT equipment held at the office and to advise the staff that operations are to cease. The offices are now shut with access under the control of the Receiver-Managers and their lawyers*." Le Tribunal ajoute : sans avoir été autorisé par un tribunal canadien.

[51] Dans les admissions de James Coulthard déposées par les séquestres antiguais le 19 août 2009, il est indiqué au paragraphe 6 que les "*Antiguan Liquidators were concerned that the electronic data be preserved to a criminal evidential standard for use in any subsequent legal proceedings against Mr Allen Stanford or others involved in the Stanford fraud*". Au lieu de préserver les éléments de preuve au Canada et les originaux, les séquestres antiguais en ont fait des copies, ont supprimé la version originale et envoyé les copies à Antigua, hors de la portée des autorités canadiennes, et refusé d'en fournir une copie au séquestre américain jusqu'à l'audition.

[52] Les séquestres antiguais ont également refusé de fournir une copie des données images à l'AMF. En fait, selon Sébastien Garon, l'AMF a reçu certains documents mais non la liste des investisseurs canadiens ni des renseignements au sujet des documents qui ont été retirés du bureau de Montréal de SIB et ce, en dépit de demandes répétées adressées aux représentants des séquestres antiguais depuis le 25 février 2009.

[53] L'argument selon lequel il ne s'agissait pas d'une ordonnance formelle n'est arrivé que très tardivement. Si c'était là l'argument de Vantis, il aurait dû dès la première occasion le soulever, ce qui n'a pas été fait. Le Tribunal considère cet argument comme un prétexte ou une justification *a posteriori.*

[54] Les procureurs de Vantis ont informé l'AMF qu'ils n'étaient pas autorisés à lui transmettre la liste des investisseurs et qu'une ordonnance du tribunal antiguais serait probablement nécessaire. On n'a pas parlé de la nécessité d'une ordonnance de l'AMF.

[55] Les séquestres antiguais ont justifié le processus d'effacement au paragraphe 6 des admissions de James Coulthard comme suit:

> "... the servers were to be left at SIB's Montreal premises and the Antiguan « Liquidators » were concerned that the Landlord may repossess the premises and/or exercise powers of distraint on the servers, potentially giving access to any data left on them".

[56] Comme s'il n'y avait pas de voûte au Canada pour protéger et conserver des archives !

[57] Si les séquestres antiguais avaient réellement craint que quelqu'un puisse accéder de façon non autorisée aux serveurs originaux situés au bureau de Montréal de SIB, ils n'avaient qu'à retirer les serveurs du bureau et à les mettre en lieu sûr de sorte que l'AMF et Janvey, ainsi que toute autre personne intéressée, puissent y avoir accès afin de vérifier si les copies effectuées par le spécialiste en TI étaient authentiques et complètes. Il n'y avait absolument pas lieu de détruire les serveurs originaux qui contenaient les données électroniques de SIB à Montréal. Où était l'urgence ? L'empressement n'est pas une justification mais plutôt un prétexte.

[58] Quels sont les motifs inavoués et inavouables justifiant l'opération *Blue Water*, soit la destruction des originaux pour en faire des copies images, avant même d'obtenir l'autorisation de la Cour et de rapatrier toutes informations à Antigua ?

[59] Le Tribunal conclut que le comportement de Vantis, par les requérants, le disqualifie d'agir et le rend irrecevable à présenter la requête car il ne peut lui faire confiance en ce que :

a) Il a agi au Canada avant même d'obtenir les permissions nécessaires du Tribunal;

b) Il a détruit des serveurs dont il prétend avoir fait des copies et a sorti les copies du pays sans que l'on puisse un jour en vérifier leur exactitude;

c) Le séquestre antiguais, lui-même et/ou ses représentants font fi des demandes répétées de l'AMF, ou lorsqu'ils daignent lui répondre, ils lui disent : « Faites des procédures à Antigua » alors que l'on sait d'ores et déjà qu'elles seront refusées puisqu'il n'y a pas de traité entre ces deux pays

d) Il est inacceptable que le requérant et/ou ses représentants disent aujourd'hui : « On va vous remettre une copie de ce qu'on a détruit parce que ça ne contient aucun renseignement confidentiel » alors qu'ils auraient détruit et fait des copies pour protéger justement des éléments confidentiels;

e) Parce qu'ils n'ont pas tout révélé à la registraire Me Chantal Flamand, ajoutant que le motif de la résiliation du bail n'est qu'un paravent et un prétexte pour obtenir *ex parte* l'ordonnance du 6 avril 2009;

f) Au surplus, ils obtiennent une ordonnance contre l'AMF sans qu'elle en soit avisée, sans que la registraire soit informée des demandes répétées de l'AMF, pourtant l'organisme réglementaire au Québec qui a juridiction pour les opérations tenues à Montréal.

g) Le fait que Janvey avait déjà été nommé par le tribunal américain en tant que séquestre des débitrices, des intimés et des entités qui leur sont reliées et qu'il avait le pouvoir de contrôler tous leurs actifs et ce, peu importe où ils étaient situés ;

h) Le fait qu'ils n'étaient pas des syndics autorisés en vertu de la *LFI* ;

i) Le fait que Janvey et les liquidateurs antiguais étaient en pleine bataille pour le contrôle et la possession des actifs appartenant aux débiteurs et aux intimés (d'une valeur de plus de 20 millions de dollars américains), lesquels sont en possession de la Banque TD, à Toronto.

[60] Le Tribunal ne croit pas Vantis quand il prétend avoir informé Janvey de l'opération de destruction des serveurs car Vantis ne parle que de sécurisation dans son rapport écrit et non de destruction, le Tribunal retenant l'écrit de Vantis plutôt que son témoignage.

[61] Même si le liquidateur avait raison sur le fond, il ne mérite pas la confiance du Tribunal, élément essentiel pour pouvoir soumettre sa requête, et ce, à cause de l'absence de bonne foi et de respect à l'égard de l'intérêt public canadien que représentent le Tribunal et les autorités réglementaires.

POUR CES MOTIFS, LE TRIBUNAL :

[62] **DÉCLARE** irrecevable la requête du 22 avril 2009 des liquidateurs requérants;

[63] **REJETTE** la requête des liquidateurs antiguais.

[64] **Le tout**, avec dépens.

CLAUDE AUCLAIR, J.C.S.

Me Julie Himo
Me Philippe Giraldeau
Procureurs des liquidateurs-requérants

Me Émilie Robert
Me Amélie Hébert
Procureures de l'intervenante

Date d'audience : 26, 27, 28 août 2009. Argumentations supplémentaires : 2, 4 et 8 septembre 2009

COUR SUPÉRIEURE SUPERIOR COURT DIV. T MONTRÉAL BANKRUPTCY FAILLITES

COPIE CONFORME

Greffier adjoint

EXHIBIT E

SUPERIOR COURT

(Commercial chamber)

CANADA

PROVINCE OF QUÉBEC

DISTRICT OF MONTRÉAL

N°: 500-11-036045-090

DATE: September 11, 2009

THE HONOURABLE CLAUDE AUCLAIR, J.S.C., JUDGE PRESIDING

IN THE CASE OF THE BANKRUPTCY OF:

STANFORD INTERNATIONAL BANK LIMITED
Debtor
and

NIGEL JOHN HAMILTON-SMITH
and
PETER WASTELL
Petitioners - Liquidators
and
L'AUTORITÉ DES MARCHÉS FINANCIERS
Intervener

REASONS AND DECISION RENDERED ORALLY

[1] By their motion dated April 22, 2009, Petitioners Nigel John Hamilton-Smith and Peter Wastell ("Vantis") seek:

> 1. By this Motion, Petitioners Nigel Hamilton-Smith and Peter Wastell, licensed insolvency practitioners and partners at Vantis Business Recovery Services (the "**Liquidators**") are seeking the following reliefs:

a) a recognition of the Winding-Up Order pursuant to Sections 267 and *seq.* of Part XIII, *International Insolvencies,* of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**BIA**");

b) a recognition that their status as Liquidators of Stanford International Bank Limited (in liquidation) (the "**Bank**") in Antigua and Barbuda granted under the Winding-Up Order is similar to the status of a "foreign representative" of an estate in a "foreign proceeding" pursuant to section 267 and *seq.* of the BIA;

c) a recognition of their powers as Liquidators through the issuance of an order *inter alia*:

i. staying any present or future proceedings against the Bank or any of its property in Quebec, and generally in Canada, and authorizing the Liquidators to institute or continue any present legal proceedings initiated by the Bank in Quebec, and generally in Canada;

ii. ordering the turnover to the Liquidators of any property, assets and any documents, computer records, electronic records, programs, disks, books of account, corporate records, minutes, correspondence, opinions rendered to the Bank, documents of title, whether in an electronic media or otherwise held in the name of or traceable to the Bank; and

iii. availing the Liquidators of the facility to discover and trace any assets or property of the Bank that are located in Quebec and generally in Canada, (whether such assets or property are possessed in the name of the Bank or have in any way been misappropriated, fraudulently transferred and/or otherwise concealed from the Liquidators);

d) any further relief necessary to assist the Liquidators in the due carriage of their duties under the Winding-Up Order and under Sections 267 and *seq.* of the BIA;

[2] The motion is opposed by the Receiver appointed in the United States, Mr. Ralph S. Janvey, the American Receiver ("Janvey").

[3] Janvey first argues that the Antiguan Petitioners Vantis do not come with clean hands and that therefore, their petition is inadmissible.

[4] From the chronology prepared by Janvey's attorneys, the Court considers the following:

14. On February 16, 2009, the SEC obtained a Receivership Order from the U.S. District Court naming Ralph Janvey as receiver of the Stanford Group, which order was amended on March 12, 2009.

15. On the same date, the U.S. District Court issued a Freeze Order enjoining the members of the Stanford Group from committing any further violations of the U.S. *Securities Act* and from dealing with the assets of the Stanford Group Ltd.

16. On February 19, 2009, the FSRC issued an order naming Messrs. Wastell and Hamilton-Smith of Vantis as the joint Receivers-Managers of SIB and STC. A similar order was rendered by the High Court of Antigua on February 26, 2009.

17. On February 20, 2009, the Antiguan Liquidators retained the services of Stroz Friedberg Ltd., a U.K. registered company (the "**IT Specialist**"), for the purpose of having it attend of the offices of SIB in Montreal to review, collect and copy SIB's electronic records.

18. On February 23, 2009, the AMF commenced an investigation into the affairs of SIB.

19. On February 25, 2009, the AMF wrote to Vantis advising it of the commencement of the investigation into the affairs of SIB and requesting information regarding the status of the Montreal office and the records of SIB therein.

20. On February 26, 2009, Mr. Hamilton-Smith "Vantis" prepared a report regarding the status of his work as co-Receiver-Manager of SIB and STC (**RSJ-53**).

"The Receivers-Managers arranged for members of their team to attend the offices of SIB along with legal counsel from Ogilvy Renault on Monday 23rd February 2009 for the purposes of securing the records and IT equipment held at the office and to advise the staff that operations are to cease. The offices are now shut with access under the control of the Receivers-Managers and their lawyers."

22. On March 3, 2009, Vantis responded to the AMF's letter of February 25, 2009 (**I-1**) by way of Mathew Peat's email (**I-2**), advising that the employees at the Montreal office had been terminated on February 27, that SIB's landlord had "agreed that no action would be taken against the Company's property without notice to the Receivers", and that the services of CapCon Holdings had been retained "to provide data recovery services".

23. In an earlier email on the same date from Nick O'Reilly (**I-2**), the AMF was advised by Vantis that "the office was closed last Monday. No client file was found on site and no one has dealt with the computers since the closure." (Garon's affidavit, par. 7; **I-2**).

24. On March 5, 2009, Vantis' IT Specialist attended SIB's Montreal office to carry out his mandate, which was completed by March 8 (Admissions, par. 3 to 7).

25. On March 8, 2009, the IT Specialist personally brought the imaged electronic data from SIB's Montreal office to the U.K. and eventually forwarded one of the copies of this imaged data to the Antiguan Liquidators in Antigua.

26. On March 27, 2009, Dan Roffman, an IT specialist whose services were retained by Ralph Janvey, attended at the Montreal office of SIB and saw that some servers appeared to be in the process of being deleted.

28. On March 30, 2009, representatives of the AMF held a telephone conversation with Vantis' attorneys, during which conversation they were informed that one of their colleagues had attended at the offices of SIB on March 27th "to do an inventory of the property and that she was not aware of the request for information that the Autorité had sent on February 25, 2009 to the Antiguan receiver" (Garon's affidavit, par. 11).

29. On March 30, 2009, the AMF also spoke to one of Janvey's attorneys, William Stutts, and was advised (based on Dan Roffman's above-described observations of March 27th) that the Antiguan Liquidators were erasing electronic information in the Montreal office of SIB (Garon's affidavit, par. 12).

30. On March 30, 2009, Janvey's counsel wrote to Ogilvy Renault regarding Mr. Roffman's visit to the Montreal office on March 27, 2009 and requested that any information destroyed or otherwise erased by Vantis from the servers at the Montreal office be immediately restored to the relevant servers (Janvey's Motion to Revoke and Rescind, par. 30; see **R-9** attached to same).

31. On March 31, 2009, the AMF wrote to Vantis requesting a follow-up to Vantis' email of March 3, 2009 (**I-2**), because the AMF had still not received the list of Canadian investors, and requesting information as to what had happened to the documents and electronic information of SIB (Garon' s affidavit, par. 13; **I-3**).

32. On April 1, 2009, Ogilvy responded to Janvey's letter (R-9) by stating that "The information on the Bank's servers located in its Montreal premises has been imaged onto hard disks and have been preserved to the standards required in the criminal investigation matter. This was done by our client to make sure that this data would be securely maintained and that no one entering the Bank's Montreal premises could in any way tamper with said data or take a copy thereof or take a copy thereof without any right" (Motion to Revoke and Rescind, par. 37; **R-10**).

33. On April 1, 2009, Baker Botts replied to Atty. Himo's letter of April 1st (**R-10**) by email (Motion to Revoke and Rescind, par. 37; **R-12**) requesting Atty. Himo confirm "that there was no erasure or deletion of data from the servers in the Montreal office...in other words, Vantis representatives have done nothing to remove data from those servers". A follow-up email was sent by Baker Botts on the same date, requesting that Atty. Himo confirm whether "Vantis representatives have in fact removed data from the Montreal servers, please advise promptly where the data currently is - - including in what country - - and whose possession... Also, are the servers still in the Montreal office?".

34. On April 1, 2009, Peat of Vantis responded to the AMF's email of March 31st (**I-3**) that he would refer the AMF's request to his colleague, Julian Greenup.

35. On April 1, 2009, a conference call was held between representatives of the AMF and Vantis' attorneys, who informed the AMF that they were not authorized to send the list of investors to the Autorité and that an order of the Court in Antigua would probably be necessary.

36. On April 2, 2009, Atty. Himo responded tersely to Mr. Stutts' foregoing email of April 1st (**R-12**) as follows: "I will get back to you as soon as possible."

37. On April 3, 2009, Hamilton-Smith of Vantis signed an affidavit in support of the Motion for Recognition of the decision of the FSRC (**P-1**) and the Receivership Order of the High Court of Justice of Antigua (**P-2**), which he presents on April 6 before the Registrar Flamand.

38. On April 6, 2009, the Antiguan Liquidators presented their Motion for Recognition as Receivers-Managers of SIB and STC, dated April 3, 2009, which Motion was presented on an *ex parte* basis to Registrar Chantal Flamand, without notice to the AMF or Ralph Janvey.

39. On April 15, 2009, Vantis' attorneys wrote to Mr. Stutts, responding to his email of April 1st, advising him for the first time that the servers, desktops and laptops in SIB's Montreal office had been "wiped", that "there were no client records on the computers that were imaged and erased since the servers in Montreal were for designed for recovery purposes and all tests had client data removed, given the need to preserve client confidentiality and privacy", and that "the imaged drives are currently held in Antigua under the control of the Antiguan Receivers-Managers" (Motion to Revoke and Rescind, par. 38).

40. On April 16, 2009, Janvey filed and served his Motion to Revoke and Rescind the decision and the order of the Registrar Flamand.

> 41. On April 22, 2009, Vantis served and filed its Motion Seeking the Recognition of the Winding-Up Order of the High Court of Antigua dated April 17, 2009 (**P-7**).
>
> 42. After learning at the hearing of July 15, 2009 in this case that there were three servers at the Montreal office which ostensibly contained information relating to other members of the Stanford Group which were apparently not copied or deleted by Vantis' IT Specialist (**Admissions - 5**), Janvey's attorneys requested access to said servers, as appears from an exchange of correspondence between the parties' attorney on August 12, 14 and 18, 2009. No access to said servers had been granted until the hearing of August 25.
>
> 43. Until the hearings on August 25, 26 and 27, the Antiguan Liquidators have refused to provide to the AMF the list of Canadian investors as well as any information regarding the documents and records of SIB which were taken from its Montreal office, despite the repeated requests of the AMF (Garon, par. 21).
>
> 44. The Antiguan Liquidators have also refused to give Janvey's representatives the imaged records of SIB.
>
> (Emphasis added)

The discretionary nature of the remedy or application of the doctrine of estoppel

[5] Part 13 of the *BIA* entitled: *International Insolvencies* allows a petitioner to qualify as a foreign representative by requesting the Court's authorization and thus facilitating the coordination of proceedings in regards to insolvent persons.

[6] The powers of the Court are extremely broad, as are the powers requested by the petitioners Vantis. Section 268(6) BIA states that:

> Nothing in this part requires the Court to make any order that is not in compliance with the laws of Canada or to enforce any order made by a foreign court.

[7] In the case of *Les Immeubles Port Louis ltée*[1], a decision of the Supreme Court, Justice Gonthier relied on the holding in *Homex* and found that a judge may in addition look to the conduct of the parties in order to rule on whether to deny a motion, without ever ruling on the merits. It is understood that the Court must exercise judiciously its power to grant or deny review, and respect applicable principles.

---

[1] *Les Immeubles Port Louis ltée* v. *Corporation municipale du Village de Lafontaine*, [1991] 1 S.C.R. 326, p. 364.

[8] Thirteen years later, in *Société de la Place des Arts*[2], Justice Gonthier, discussing the granting of an injunction, writes:

> 13 (...) The power of the Quebec Superior Court to grant injunctions rests on statutory footing. Yet it is a discretionary power of the sort exercised by common law jurisdictions in equity. In Quebec as elsewhere, it is an exceptional and discretionary form of relief. The court will not grant an injunction under arts. 751 *et seq.* simply because the applicant is strictly entitled to one. The applicant must also demonstrate that the circumstances warrant such a potentially intrusive remedy, and that he is deserving of it.
>
> (References omitted)
> (Emphasis added by the Court)

[9] A party seeking to have the Court grant a discretionary measure must have acted in good faith and all of its actions must be beyond reproach in regards to the object of its motion.

[10] Denis Lemieux, the author of *Le contrôle judiciaire de l'action gouvernementale*[3], (*Judicial control of governmental action)* writes:

> [TRANSLATION] A similar reasoning is used in regards to judicial review, notably in cases of interlocutory injunctions. This principle, often described as the clean hands theory, means that a petitioner who, by his conduct, was party to an illegal act, by either acquiescing to it or committing a liable or illegal act himself, may not obtain the relief sought even if he meets the general conditions for the remedy sought to be granted. Thus, the Honourable Justice Sopinka recently stated that ""in the exercise of the discretion whether or not to grant a declaration, the court may take into account certain equitable principles such as the conduct of the party seeking the relief." This discretionary power of the Court is based on the principle of estoppel. It is a general principle of civil law which applies broadly, and may also find support in Sections 6, 7 and 1375 of the Civil Code, which sanction unreasonable conduct and bad faith.
>
> (Emphasis added by the Court)

[11] The Court has, by way of section 268(6) BIA, great discretion in deciding whether to recognize a foreign representative.

[12] The conclusions sought by Vantis' petition are as follows:

> **6. GRANT** the Liquidators the power to take possession of, gather in and realise all the present and future assets and property of the Bank, including without limitation, any real and personal property, cash, choses in action, negotiable

---

2 *I.A.T.S.E., Stage local 56* v. *Société de la Place des Arts de Montréal*, [2004] SCC 2, par. 13.

3 Denis LEMIEUX, *Le contrôle judiciaire de l'action gouvernementale*, looseleaf edition, Brossard, CCH, par. 15-135.

instruments, security granted or assigned to the Bank by third parties including property held in trust or for the benefit of the Bank, and rights, tangible or intangible ("**Property**"), wheresoever situate and to take, such steps as are necessary or appropriate to verify the existence and location of all the assets of the Bank, or any assets formerly held whether directly or indirectly or to the order of or for the benefit of the Bank or any present or former subsidiary or company associated with the Bank, including the terms of all agreements or other arrangements relating thereto, whether written or oral, the existence or assertion of any lien, charge, encumbrance or security interest thereon, and any other matters which in the opinion of the Liquidators may affect the extent, value, existence, preservation, and liquidation of the assets and property of the Bank;

7. ORDER that all assets, tangible and intangible and wheresoever situated, shall vest in the Liquidators, who shall collect and gather in all such assets for the general benefit of the Bank's creditors and as may be directed by the High Court of Antigua;

11 ORDER that the Liquidators shall be at liberty, and without the necessity of any further order, to summon before this Court for examination under oath any person reasonably thought to have knowledge of the affairs of the Bank or any person who is or has been a director, officer, employee, agent, shareholder, accountant of the Bank, or such other person believed to be knowledgeable of the affairs of the Bank and to order such person(s) liable to be examined to produce any books, documents, correspondence or papers in his or her possession or power relating to all or in part to the Bank, its dealings, property and assets and the Liquidators are authorised to issue writs of subpoena ad testificandum and duces tecum for the compulsory attendance of any of the persons aforesaid required for such examination;

12 ORDER that the Bank and any person holding or reasonably believed to have in their possession or power any assets or property of the Bank including without limitation, computer records, programs, disks, documents, books of account, corporate records, minutes, opinions rendered to the Bank, documents of title, electronic or otherwise (collectively called "**Papers**") relating in whole or in part to the Bank or such persons, dealings, or property showing that he or she is indebted to the Bank may be required by the Liquidators to produce or deliver over such property forthwith to the Liquidators notwithstanding any claim or lien that such person may have or claim on such assets and property and the Liquidators shall have full and complete possession and control of such assets and property to the Bank including its premises. In the event of a bona fide dispute as to ownership and legal entitlement to such property and Papers, the Liquidators shall take away copies of such Papers;

13 ORDER that (i) the Bank; (ii) all of its current and former directors, officers, managers, employees, agents, accountants, holders of powers of attorney, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise

the Liquidators of the existence of any Property in such Person's possession, power, control, or knowledge, shall grant immediate and continued access to the Property to the Liquidators, and shall deliver all such Property to the Liquidators upon the Liquidators' request, subject only to any privilege attaching to solicitor-client communications or statutory provisions prohibiting such disclosure;

14 ORDER that all persons shall forthwith advise the Liquidators of the existence of and grant access to and deliver to the Liquidators or to such Agent or Agents they may appoint, any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Bank, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the forgoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Liquidators or permit the Liquidators to make, retain and take away copies thereof and grant to the Liquidators unfettered access to and use of accounting, computer, software and physical facilities relating thereto, subject only to any privilege attaching to solicitor-client communications or statutory provisions prohibiting such disclosure;

15 ORDER that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all persons in possession or control of such Records shall forthwith give unfettered access to the Liquidators for the purpose of allowing the Liquidators to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Liquidators in their discretion deem expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Liquidators. Further, for the purposes of this paragraph, all Persons shall provide the Liquidators with all such assistance in gaining immediate access to the information in the Records as the Liquidators may in their discretion require including providing the Liquidators with instructions on the use of any computer or other system and providing the Liquidators with any and all access codes, account names and account numbers that may be required to gain access to the information;

16 ORDER the Persons are hereby restrained and enjoined from disturbing or interfering with the Liquidators and with the exercise of the powers and authority of the Liquidators conferred by this Order;

21. ORDER that no person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Bank, without written consent of the Liquidators or leave of this Honourable Court;

22 ORDER that all persons having oral or written agreements with the Bank or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation

and freight services, utility or other services to the Bank are hereby restrained until further Order of this Honourable Court from discontinuing, altering, interfering-with or terminating the supply of such goods or services as may be required by the Liquidators; and that the Liquidators shall be entitled to the continued use of the Bank's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Liquidators in accordance with normal payment practices of the Bank or such other practices as may be agreed upon by the supplier or service provider and the Liquidators, or as may be ordered by this Honourable Court;

23 RECOGNIZE that the Liquidators shall have the authority as officers of the High Court of Antigua to act in Antigua and Barbuda or any foreign jurisdiction where they believe assets, property or Papers of the Bank may be situated or traced at equity or otherwise, and shall have the right to bring any proceeding or action in Antigua and Barbuda and/or in a foreign jurisdiction for the purpose of fulfilling their duties and obligations under the Winding-Up Order and to seek the assistance of any Court of a foreign jurisdiction in the carrying out of the provisions of the Winding-Up Order, including without limitation, an order of examination of persons believed to be knowledgeable of the affairs, assets, property and Papers of the Bank and to assist the Liquidators in the recovery of the assets and property of the Bank;

24 ORDER that the Liquidators shall have the authority to initiate, prosecute and continue the prosecution of any and all proceedings, and to defend all proceedings for the benefit of the Bank's creditors now pending or hereinafter initiated with respect to the Bank and, upon receiving the approval of this Court, to settle or compromise any such proceeding;

30 ORDER that all actions, proceedings and any claims whatsoever and wheresoever initiated against the Bank, its assets and property, are hereby stayed and no person, which shall include a body corporate, shall bring or continue with a claim or proceeding in Antigua and Barbuda or elsewhere as against the Liquidators or the Bank without leave of this Honourable Court;

32 ORDER that the Liquidators, in their names or in the name of the Bank, shall be at liberty to apply for any permits, licenses, approvals or permissions as may be required by or deemed necessary pursuant to any laws, governmental or regulatory authority, in the pursuit and performance of their duties hereunder;

34 ORDER that the Liquidators shall exercise, perform or discharge their duties independently or jointly and in doing so shall be deemed to act as agents for the Bank and they act solely in their capacity as Liquidators and without personal liability if they rely in good faith upon the financial statements of the Bank or upon an opinion, report or statement of any professional adviser retained by them;

37 ORDER the provisional execution of this Order, notwithstanding any appeal and without the necessity of furnishing any security;

[13] These conclusions are injunctive and in some cases, declaratory, and the powers sought are extremely broad.

[14] In *Saargummi*[4], the Superior Court confirmed that the *BIA* is a law of equity and that the exercise of discretionary powers provided for in said legislation is subject to the application of the theory of clean hands:

> [TRANSLATION]
>
> [92] A seventh criteria which is not taken from the Bankruptcy Act, but rather from the general exercise of discretionary powers of the Superior Court, is that a party which comes before the Court asking it to exercise judicial discretion must be in good faith, and have "clean hands".
>
> [...]
>
> [117] When an applicant requests that the Superior Court exercise its judicial discretion, he must present himself with "clean hands".
>
> [118] This theory of clean hands dates from the 18th century and has been applied many times in Canada and in Québec. The theory developed in the search for equity and the Bankruptcy and insolvency Act is precisely that, a law of equity.

[15] In this case, Vantis seeks not only the recognition of a foreign judgment. Rather, it seeks that this Court grant it considerable powers within the territory of Canada and even to be allowed to act as an officer of the court.[5]

[16] Vantis seeks to exercise important powers in Canada. Its conduct must be considered by the Court in exercising its discretion.

[17] Collaboration between various jurisdictions must not constitute an obstacle to the Court's exercise of discretion. What is at stake is safeguarding the interests of Quebec and Canadian creditors and upholding the foundations of the Canadian judicial system.

[18] In regards to the nomination of a foreign representative by operation of the *BIA*, the Court has broad discretion, similar to that which it exercises in issuing injunctions or declaratory judgments, and nothing demonstrates that the conduct of the Petitioner must not be part of the factors considered by the court, quite the contrary, since the receiver and/or trustee are officers of the Court.

[19] Among the principles outlined in *Holt Cargo*[6], the Court notes that although it is generally desirable for the courts of various jurisdictions to cooperate in cases of

---

4 *Saargummi*, at par. 91, and *Murphy (Syndic de)*, 2006 Q.C.C.S. 989, par. 24.

5 We note that at conclusion [11] of its Motion, Vantis seeks the power to emit *subpoenas*.

6 *Holt Cargo* v. *ABC Containerline*, [2001] 3 S.C.R. 907.

international insolvencies, a "*Canadian bankruptcy court has a responsibility to consider the interests of the litigants before it and other affected parties in Canada*"[7].

[20] In *Holt Cargo*, the Supreme Court also ruled that Canadian courts must inquire as to whether the recognition of a foreign proceeding and assistance in enforcing such rulings would cause an interested party to lose some juridical advantage it would have had under Canadian laws. Even though it isn't that the protection of any type of advantage will bar collaboration with one jurisdiction (Antigua) rather than another (U.S.), the *"extent of juridical advantage for the various parties [i]s clearly an important factor to throw into the balance."*[8]

[21] The Supreme Court in *Holt Cargo* writes that the pluralist approach requires that a court coordinate with, but not be subordinate to, foreign courts.

[22] In *Menegon* v. *Philip Services Corp.*[9], Justice Blair of the Ontario Superior Court of Justice, citing Section 18.6(5) of the *Companies Creditors Arrangement Act*[10], ("**CCAA**") (which is identical to Section 268(6) *BIA*), explains that "*comity and international co-operation do not mean that one Court must cede its authority and jurisdiction over its own process or over the application of the substantive laws of its own jurisdiction.*"[11]

[23] It is thus clear that this Court has broad discretion under section 268(6) BIA and that this discretion should not be subordinated to a desire for procedural uniformity.

[24] The Supreme Court of Ireland, ruling in the case *In the Matter of Eurofood IFSC Ltd. & In the Matter of the Companies Act 1963-2001*[12], liberally interpreted the public policy exception provided for in Section 26 of *Regulation (EC) 1346/2000 of the Council of 29 May 2000 on insolvency proceedings*[13] ("**EC Regulation**") to refuse recognition of the decision of an Italian court on the grounds that the special administrator had disregarded the principle of fairness.

[25] Section 26 of the EC Regulation is similar to Section 6 of the Model Law, in that it reads as follows:

---

7 Ibid. par. 33. See also par. 68 to 70.

8 Ibid. par. 34.

9 *Menegon* v. *Philip Services Corp.*, (1999) 11 C.B.R. (4th) 262.

10 L.R.C. 1985, c. C-36.

11 At par. 48.

12 [2006] IESC 41e.

13 [2000] J.O.L. 160/1 at p. 9.

> Any Member State may refuse to recognise insolvency proceedings opened in another member state or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.

[26] Although that Section 26 is narrower than our *BIA* Section 268(6), the Supreme Court of Ireland was nevertheless shocked by the circumstances before it.

[27] In this case, the special administrator failed to advise the creditors of *Eurofood* of the hearing before the Italian court. Moreover, he only provided the provisional liquidator the documentation relating to the application after the hearing had taken place.

[28] Similarly, Vantis failed to inform Janvey as well as the AMF of its actions in the Montreal office and of the presentation of its motion before Registrar Flamand.

[29] The Supreme Court of Ireland stated the following in regards to the importance of equitable procedures:

> I regret to say that it is quite shocking that the appellant should have deliberately refused to provide the Provisional Liquidator with the documents necessary for his appearance before the Parma Court in February 2004. (...) This Court is fully conscious of the important role now accorded to the principle of mutual recognition of judicial decisions in many contexts of European Community and Union law. It is based on a principle of mutual trust. This Court respects those principles. They must, therefore, entail respect for principles of fairness that are common to the traditions of the Member States and which have been affirmed again and again by the European Court.
>
> (Emphasis added)

[30] As was argued by the attorney's for the AMF in the course of the hearing, the Antiguan judgment explicitly deprives Canadian and foreign governmental and regulatory authorities of the benefits of cooperation from the Antiguan liquidators, except in cases where mutual disclosure obligations exist, which is not the case in this instance.

[31] The conclusions of the Antiguan judgment naming Vantis as Receiver stated in paragraph 12 as follows:

> 12. Without prejudice to the provisions of Section 373 of the Act, the Joint Receiver Managers be and are hereby authorized to disclose information concerning the management, operations, and financial situation of the Respondents/Defendants as they consider appropriate in the performance of their functions PROVIDED ALWAYS THAT:

> (1) no disclosure of customer specific information is authorized without further or other order of the Court; and
>
> (2) no disclosure of information is permitted under this Order to any foreign governmental or regulatory body unless such disclosure is subject to mutual disclosure obligations.
>
> (Emphasis added)

[32] This is a major irritant in this case. This provision is not restated in the judgment naming Vantis as liquidator, but Vantis' attorneys wrote the following in their Notes and Authorities:

> 78. (...) This confidentiality provision was made by the High Court of Antigua in the Antigua Receivership Order at paragraph 12 and the Flamand Order simply recognized it. It further results from the existence of Section 244 (as amended) of the IBCA, which provides the Bank's duty of confidentiality in favour of its customers. Although this duty is not repeated in the winding-up order, it still applies and the liquidators cannot disclose any customer information without an order by the High Court of Antigua.

[33] The Court notes that the Antiguan Court shows no deference for our regulatory authorities. However, SIB did in fact operate an office in Montreal.

[34] In *Exchange Bank & Trust inc.* v. *British Columbia Securities Commission and Bank of Montreal*[14], the Court of Appeal of British Columbia writes:

> EBT stressed that its ability to present evidence was hampered by the privacy laws of Nevis. That may be so. However, the property subject to the Orders is in British Columbia and it is the securities laws of British Columbia, and those of the United States, that are alleged to have been contravened. EBT chose to locate assets outside the jurisdiction of Nevis and must accept that those assets are subject to laws of the jurisdiction in which they are located, in this case British Columbia. It would be an utter abandonment of the public interest if we were to conclude that a party subject to secrecy laws in another jurisdiction could use those laws to shield themselves from the legitimate exercise of powers to enforce securities regulation in British Columbia. In short, the Nevis privacy laws are not relevant.[15]
>
> (Emphasis added)

[35] Vantis had an obligation to obey the laws of Canada and Quebec.

---

14 2000 B.C.C.A. 389.

15 Ibid. p. 12.

[36] In the matter of *Richter* v. *Merrill Lynch*[16], the Court of Appeal of Québec writes:

> [*TRANSLATION*]
>
> [54] I am of the opinion that the application of a party cannot be lawfully heard when it is based above all on the misconduct and false representations made by that party to its contracting partners from whom it seeks compensation for damages for which it is principally responsible.
>
> (...)
>
> [57] Québec's legal doctrine instead finds its basis in certain principles of estoppel which are likened to judicial sanctions applied to the wrongful conduct by one party.
>
> (...)
>
> *The principle of estoppel sanctions conduct that is unfair or non cooperative by refusing to grant an application presented by the very author of the problem.*
>
> *The principle of estoppel therefore allows the Court to reject an application, otherwise well founded in law, when the applicant's highly objectionable conduct is precisely what gave rise to the dispute*.
>
> (...)
>
> [60] Here, the principle of estoppel which is invoked is above all founded on the obligation of good faith that must guide the conduct of any person in the exercise of its rights and particularly in its contractual relationships (Sections 6, 7 and 1375 C.C.Q.).
>
> (...)
>
> [62] This is foremost a question of fact that must be reviewed applying the doctrine of good faith and equity.
>
> (Footnotes omitted)
> (Emphasis added)

[37] Vantis does not deserve the trust of the Court, as its own reprehensible conduct in no way offers any assurances for the future in this case. The conduct by Hamilton from Vantis is unacceptable and the circumstances are such that its motion is inadmissible.

[38] Following the appointment in the United States of the American receivers for all of the corporations, the *Financial Service Regulatory Commission* of Antigua, whose president was then Leroy King, --who was also criminally accused at some point prior to the proceedings of conspiracy with Allen Stanford, President of the Stanford Group, for having, among other things, assisted in money-laundering operations— requested on

[16] *Richter & Associés inc.* v. *Merrill Lynch Canada inc.*, 2007 Q.C.C.A. 124.

February 26, 2009, that the Antiguan Court appoint a receiver for SIB and STC; that is, one week after the American Receiver had been named in the United States to act as receiver for all the corporations of the Stanford Group, including SIB and STC.

[39] The Antiguan Receivers presented before Registrar Chantal Flamand an *ex parte* motion for the appointment of a foreign representative, for recognition of a foreign order, for judicial assistance and for the appointment of an interim receiver, yet failed to do the following:

a) Notify AMF and Janvey of the filing of said motion.

b) Mention that approximately one month (that is on March 8, 2009) before the filing of the motion, Vantis' representatives had gone to the Montreal offices of SIB, took possession of its records and assets (without prior authorization of the Canadian Court) and deleted the original electronic data after having made copies and having taken all such copies out of the country.

c) Report that the AMF had begun an investigation into the business dealings of SIB on February 23, 2009 and had requested that the Antiguan Receivers provide documents and data from the Montreal office no later than February 25, 2009.

d) Note that they were not authorized trustees in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, which therefore rendered illegal any acts committed by the Antiguan Receivers in Canada with regard to the assets and records of SIB prior to this date, as Section 271 *BIA* provides that such actions may only be carried out by a bankruptcy trustee – as defined in Section 2 of the *BIA*–, which Vantis is not according to the definition of the *BIA*.

e) Expressly mention the role of Janvey for the whole of the corporations, and in their motion merely referenced the freeze order rather than the American order instituting the receivership.

[40] The moving party must fully and faithfully divulge all important facts[17].

[41] By failing to divulge key information, the Antiguan Liquidators succeeded in obtaining the *ex parte* order they sought.

[42] As Justice Dufresne, at the time sitting on our Court, the Court may subsequently revoke an *ex parte* order if the applicant has failed to reveal facts which are important for its decision:

[17] *Microcell Solutions inc. v. Telus Communications inc.*, J.E. 2004-738.

[TRANSLATION]

> [19] The party whose *ex parte* motion is granted by a Court is then exposed to the possibility that it will subsequently be dismissed upon a showing that significant facts on which the Court based the decision to grant the authorization were omitted, either deliberately or as part of a strategy of the party seeking the motion. The omission must obviously be blatant.[18]

[43] The omissions of the Antiguan Receivers in the present matter are blatant and inexcusable.

[44] In *TMR Energy Ltd.* v. *State Property Fund of Ukraine*, the Federal Court had to rule on the validity of the decision by a Prothonotary to accept a request for registration *ex parte,* and recognition and enforcement of a foreign arbitral award. On appeal, the Federal Court quashed the decision of the Prothonotary on the grounds that the latter did not have the power to render such a decision and that the petitioner had in any event not fully disclosed to the Prothonotary the impediments of the registration and enforcement of the award.

[45] The Federal Court of Appeal upheld the decision of the Federal Court and declared as follows:

> [63] I have found no reviewable error in Martineau J.'s conclusion that "where a motion or application is made *ex parte*, the moving party or applicant has a duty of full and fair disclosure with respect to all material facts."[19]

[46] The circumstances in the present case are similar given that the Antiguan Receivers failed to fully and openly disclose material information to the Court.

[47] The Antiguan Receivers have refused all demands for repatriation of the imaged records of SIB to Québec or to disclose or provide a copy of these records to Janvey or to the AMF.

Deletion of the Data from the Servers

[48] One month before the issuance of the April 6 recognition order in Quebec, representatives of the Antiguan Receivers went to SIB's Montreal office and deliberately "erased" the SIB servers found there, without advising the American Receiver, the AMF or this Court. To the American Receiver's request, through counsel, that the Antiguan Receivers explain these actions, their own counsel replied only after two weeks (April 1 to 15) acknowledging that the servers had been erased, that the data had been transformed into imaged data and that said copies were now in Antigua. The Antiguan

---

[18] Ibid., par. 19.

[19] *TMR Energy Ltd.* v. *State Property Fund of Ukraine* (F.C.A.), 2006 F.C.A., par. 63.

Receivers removed all of the electronic data from Canada to Antigua, and therefore removed the data from the jurisdiction of Canadian courts and regulatory authorities prior to obtaining their *ex parte* recognition order.

[49] Hamilton-Smith's statements claimed that in a report he informed Janvey of his intention to image the data on the hard drives at the Montreal office, to delete them and to send the copies out of Canada, that is, to Antigua, on February 26, 2009, and that Janvey did not reply objecting in any way, is unfortunately, questionable. Hamilton-Smith's and Janvey's version of this account contradict each other.

[50] Vantis states that the basic terms of its plan were disclosed to the American Receiver. However, their report states that: "*The Receiver-Managers arranged for members of their team to attend the offices of SIB in Montreal along with legal counsel from Ogilvy Renault on Monday 23rd February 2009 for the purposes of securing the records and IT equipment held at the office and to advise the staff that operations are to cease. The offices are now shut with access under the control of the Receiver-Managers and their lawyers."* The Court adds: without having been authorized by a Canadian Court.

[51] James Coulthard admissions, filed by the Antiguan Receivers on August 19, 2009, indicate at paragraph 6 that the "*Antiguan Liquidators were concerned that the electronic data be preserved to a criminal evidential standard for use in any subsequent legal proceedings against Mr. Allen Stanford or others involved in the Stanford fraud*". Instead of preserving the evidence in Canada and the originals, the Antiguan Receivers made copies, deleted the original version and sent the copies to Antigua, out of the reach of the Canadian authorities, and refused to provide a copy to the American Receiver until the time of the hearing.

[52] The Antiguan Receivers also refused to provide a copy of the imaged data to the AMF. In fact, according to Sébastien Garon, the AMF was sent certain documents, but not the list of Canadian investors nor information pertaining to the documents that were removed from SIB's Montreal office, and this despite the repeated requests made of the representatives of the Antiguan Receivers after February 25, 2009.

[53] The argument that these did not constitute formal orders was only made very late. If this was Vantis' argument, it should have been raised early on, and it was not. The Court considers this argument a pretext or justification after the fact.

[54] Counsel for Vantis informed the AMF that they were not authorized to disclose the list of investors and that an order of the Antiguan Court would likely be necessary. The necessity of an order from the AMF was not raised.

[55] At paragraph 6 of James Coulthard's statement, the Antiguan Receivers justified the process of erasure in this way:

> "... the servers were to be left at SIB's Montreal premises and the Antiguan «Liquidators» were concerned that the Landlord may repossess the premises and/or exercise powers of distraint on the servers, potentially giving access to any data left on them."

[56] As if safes were not available in Canada where files could be protected and safeguarded!

[57] If the Antiguan Receivers had genuinely feared that someone could have unauthorized access to the original servers found at SIB's Montreal office, they had only to remove the servers from the office and place them in a safe place, thus allowing the AMF and Janvey, as well as any other interested person, to have access to them in order to verify whether the copies made by the IT specialist were authentic and complete. It was entirely unnecessary to destroy the original servers which contained SIB's electronic data in Montreal. Where was the urgency? The concern is not a justification but rather a pretext.

[58] What motives --unspoken and unspeakable-- justify the *Blue Water* operation, i.e. destroying the originals making imaged copies, before even obtaining Court authorization and moving all information out of the country to Antigua?

[59] The Court concludes that Vantis' conduct, through the Petitioners, disqualifies it from acting and precludes it from presenting the motion, as it cannot be trusted by the Court, given that:

a) It acted in Canada before even obtaining the necessary permission from the Court;

b) It destroyed the servers from which it claims to have made copies, and removed such copies from Canada making it impossible for the Court to ever confirm their accuracy;

c) The Antiguan Receiver, personally and/or through its representatives, repeatedly ignored requests from the AMF, or when they did, responded by replying that: "Proceedings should be instituted in Antigua," while knowing that these will be dismissed as no treaty exists between the two countries;

d) It is unacceptable for the applicant and/or his representatives to now argue: "We will provide you with a copy of what we destroyed as it does not contain any confidential information", and yet claim to have destroyed and made copies for the very purpose of protecting confidential matters;

e) They failed to disclose everything to Registrar Chantal Flamand, and furthermore the lease termination was merely a screen and a pretext used by them to obtain the *ex parte* order of April 6, 2009;

f) In addition, they obtained an order against the AMF without notice to the AMF, and without disclosing to the Registrar the repeated requests from the AMF,

which is after all the Quebec regulatory organization which has jurisdiction over SIB's operations in Montreal;

g) The fact that Janvey had already been appointed by the American Court as receiver of the debtors, the Respondents and the entities related to them and that he had the power to control all their assets and this, wherever they were located;

h) The fact that they were not authorized trustees in bankruptcy pursuant to the *BIA*;

i) The fact that Janvey and the Antiguan Liquidators were engaged in a dispute for the control and the possession of the assets belonging to the debtors and the Respondents (valued at more than $20 million U.S.), which are in the possession of the TD Bank, in Toronto.

[60] The Court does not believe Vantis when it claims to have informed Janvey of the operation of the destruction of the servers, as Vantis's written report refers only to protection and not destruction, for which reason the Court will rely on Vantis' written documents rather than its testimony.

[61] Even if the liquidator's motion was well-founded on the merits, it does not deserve the confidence of the Court, an essential element enabling it to submit its motion, and this, because of the absence of good faith and of respect towards the Canadian public interest, represented by the Court and the regulatory authorities.

FOR THESE REASONS, THE COURT:

[62] **DECLARES** inadmissible the Antiguan Liquidators' motion of April 22, 2009;

[63] **DISMISSES** the motion of the Antiguan Liquidators;

[64] **THE WHOLE WITH COSTS**.

[*stamp:*] *TRUE COPY*
[*signature*] Clerk of the Court

[*signature*]
CLAUDE AUCLAIR, S.C.J.

Atty. Julie Himo
Atty. Philippe Giraldeau
Counsel for Liquidators-Petitioners

Atty. George R. Hendy
Atty. Martin Desrosiers
Atty. Nicolas Nadeau-Ouellet
Counsel for Petitioner Ralph S. Janvey

Atty. Émilie Robert
Atty. Amélie Hébert
Counsel for the Intervener

Date of hearing: August 26, 27, 28, 2009. Supplementary arguments: September 2, 4 and 8, 2009