

Filed on behalf of: Petitioner
Deponent: J. Kevin Higgins
No. of affidavit: Fourth
Date of swearing: 20th day of September 2010
Date of filing: day of September 2010
Exhibits: JKH 19 – 20

Petition No. W4/10

IN THE SUPREME COURT OF
THE TURKS AND CAICOS ISLANDS

IN THE MATTER OF TCI BANK LIMITED.

AND IN THE MATTER OF THE COMPANIES ORDINANCE (CAP 122)

B E T W E E N:

THE TURKS AND CAICOS ISLANDS FINANCIAL SERVICES COMMISSION

Petitioner

- and -

TCI BANK LIMITED

Respondent

FOURTH AFFIDAVIT OF J KEVIN HIGGINS

I, **J KEVIN HIGGINS**, Managing Director of the Financial Services Commission care of Harry E. Francis Bldg., Pond Street, Grand Turk, Turks and Caicos Islands **HEREBY MAKE OATH** and **SAY** as follows:

1. I am the same Kevin Higgins who has previously sworn affidavits in the above titled proceedings and I continue to be duly authorised by the Petitioner to make this Affidavit on its behalf. I swear this affidavit pursuant to the order of Mr. Justice Williams made on September 9, 2010 to provide updating evidence from the FSC's point of view.
2. As the court is aware the FSC has been concerned with the progress of the offer made by ECIC Holdings Limited ("ECIC") ostensibly on behalf of certain OECS banks namely St

Kitts Nevis Anguilla National Bank Ltd. (“SKNANB”) and National Bank of Dominica Ltd. (the “EC Banks”). The court will recall that the Provisional Liquidators, in their report analysing the various rescue proposals dated July 13, 2010, set out certain key requirements for the rescue (see page 11 of the report). One of those key requirements was for a capital injection of \$12.5 million of new cash, which funds were to be placed in an escrow account in a bank in the TCI. In addition there needed to be a minimum of \$12.5 million in new deposits that will be fixed for a period of 3 years.

3. In paragraph 2 of their offer letter of July 29, 2010 ECIC confirmed, that if their offer were accepted, there would be a capital injection of \$12.5 million by way of equity investment in return for a mixture of ordinary and preference shares. There is now shown to me an exhibited hereto marked “JKH 19” a copy of that offer letter. As at the time of swearing this affidavit I have not been informed that the EC Banks have set up the escrow account in a bank in the TCI or even that they have earmarked the requisite funds for the capital investment.
4. Following the making of the offer I, on behalf of the FSC, expressed some regulatory concerns relating to the offer. Although it was a matter for the EC Banks how they chose to proceed with their offer, I was somewhat surprised that they had not discussed their proposals with the FSC, being the Bank’s regulator, prior to formulating their offer and making it public. In any event, on August 6, 2010, following the making of the offer a meeting took place at which I was present along with Mr. Lawrence on behalf of ECIC, Mr. Bascom on behalf of SKNANB, Mr. Chapman as their attorney and Mr Butterfield Jr. and Mr. Williams on behalf of the creditors committee. There is now shown to me and exhibited hereto marked “JKH 20” minutes of that meeting.
5. As can be seen the FSC had two general areas of concern over and above those raised by the Provisional Liquidators. The first was the level of proposed funding for ongoing liquidity of the bank. The second was whether the EC Banks had the necessary internal approvals and external regulatory approvals. I believe that it is accepted that the issues

raised by the FSC were reasonable and I have certainly received no suggestion that the ECIC/EC Banks did not wish to or should not comply with our requests.

6. As can be seen from the minutes the FSC adopted the Provisional Liquidator's view that the sum of \$12.5 million was required to replace the original capital of the bank. However, in light of the fact that the NIB required their loan to be repaid the FSC took the view that this would need to be done by way of additional capital funding and not a line of credit. Put simply, the FSC could not endorse swapping one form of loan for another.
7. The question of liquidity is separate from that of capital investment. The liquidity concerns arose from the proposals that account holders would have at least a certain level of access to their funds. The view the FSC took, which in my view is the only prudent view to take, is that any account holder who could withdraw funds, would withdraw the maximum permissible amount – the “cash burn”. This cash burn is where the second figure comes from and is an additional sum to the capital investment, which cannot be used to pay out deposit and current account holders.
8. We also raised the issue of the ‘Olint’ money, but following the ruling of the court it appears that this is no longer an issue.
9. The internal approval issue arose from the fact that the offer had been made by ECIC which was not a licensed entity. The FSC needed to have proper evidence that the boards of directors of the EC Banks had considered and approved the offer. Further, in the case of SKNANB as the bank's majority shareholder was the government of St. Kitts and Nevis, the approval of the government would also be required.
10. Finally, the FSC required regulatory sign off by the EC Banks' regulator – the Eastern Caribbean Central Bank (“ECCB”), either confirming they were approving the offer or that they did not consider that it raised any regulatory issues for them. The FSC considered the latter was unlikely as the practical result of the proposed offer would be

that TCI Bank would become a subsidiary or almost a branch of the EC Banks. In regulatory terms this means that the ECCB would be the lead regulator as TCI Bank would be controlled from their jurisdiction.

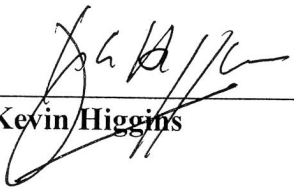
11. At the last court hearing I am informed by my attorney that Mr. Guy Chapman on behalf of the EC Banks confirmed that there was to be a meeting of the EC Banks on Friday September 17, 2010. I have not received any reports from that meeting and do not know what transpired. Therefore far as I am aware, as at the time I am swearing this affidavit, the position is as follows:-
 - No money has been placed in escrow.
 - No indication has been received that the EC Banks have the funds to meet the liquidity requirements of the Bank.
 - No resolutions have been passed by the EC Banks directors or shareholders approving the offer.
 - No approval from the government of St. Kitts.
 - No approval has been received or waiver of the need for approval has been obtained from ECCB.
12. In light of the above and notwithstanding the approval of the shareholders and creditors to the offer, which I can well understand in all the circumstances, the FSC cannot endorse the offer nor the scheme of arrangements based on the offer.
13. Finally, I would just like to confirm that I have read the affidavits of Paul Jobling and Henley Richardson dated 15th April 2010 and Norman Hamilton dated 24th April 2010. I take issue with much that is said in those affidavits and the fact that I have not dealt with those affidavits here should not be taken that I accept their contents. I think things have moved on since April and debating the issues they raise will not help the court, but if the court would be assisted by a detailed response I will happily deal with each and every point made. Further, I am informed by my attorney and verily believe that the substance of the issues raised in those affidavits would only be relevant if there were an application

to discharge the order appointing the Provisional Liquidators (see paragraph 12 of Mr. Hamilton's affidavit). As far as I am aware no such application has or is about to be made.

Conclusion

14. In light of the matters set out above I can see no alternative but for an order to be made for the winding up of the contrary.

SWORN at Providenciales)
This ²⁶ day of September, 2010)
Before me)
_____)
Attorney/Commissioner for Oaths)
Am/acting Attorney



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