

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2009-404-006312

IN THE MATTER OF the Insolvency (Cross-border) Act 2006

AND

IN THE MATTER OF Pacific Northstar Property Group, LLC

PACIFIC NORTHSTAR PROPERTY
GROUP, LLC
Applicant

Hearing: 29 September 2009
(on the papers)

Counsel: DM Hughes for applicant

Judgment: 29 September 2009 at 5:00 pm

**JUDGMENT OF ASSOCIATE JUDGE FAIRE
[on application for recognition of foreign proceeding]**

Solicitors: Kensington Swan, Private Bag 92 101, Auckland

[1] Pacific Northstar Property Group, LLC's Chapter 11 bankruptcy was filed in the United States' Bankruptcy Court in the Central District of California, Los Angeles Division on 28 July 2009.

[2] Levene Neale, Bender, Rankin and Brill LLP's employment as Pacific Northstar Property Group, LLC's bankruptcy counsel was approved by the Court.

[3] Pacific Northstar Property Group, LLC has a valuable interest in only one entity as confirmed by the affidavit of David B Golubchik. It is a 25% share in Pacific Northstar Reeves, LLC which owns a 23-Unit condominium project at 263 S. Reeves Drive, Beverley Hills, California, USA. As that is its only asset, the centre of Pacific Northstar Property Group, LLC's main assets is in the United States.

[4] Pacific Northstar Property Group, LLC commenced the Reeves project as a joint venture with Hanover Finance Limited. A dispute arose between Pacific Northstar Property Group, LLC and Hanover Finance Limited which is the subject of litigation commenced by Hanover Finance Limited in the Superior Court of the State of California on 7 April 2008. That litigation has been stayed since Pacific Northstar Property Group, LLC was placed into bankruptcy.

[5] A New Zealand company, United Finance Limited, which is a subsidiary of Hanover Finance Ltd, has filed a motion to dismiss Pacific Northstar Property Group, LLC's bankruptcy case. It has a scheduled hearing for 13 October 2009. One of the issues on that application will be whether there is a debt owed to United Finance Limited by Pacific Northstar Property Group, LLC and, more particularly, whether it has been satisfied.

[6] Mr Golubchik advises that discovery of documents held by the auditors of Hanover Finance Limited and United Finance Limited, who is the accountancy firm, PriceWaterhouseCoopers is necessary. In addition, he advises that the accountancy firm, KPMG, prepares the financial accounts and annual audit for Hanover Finance Limited. He further reports that as Hanover Finance Limited and its related entities and auditors are all based in New Zealand, it was not possible to obtain the necessary discovery orders to test the position concerning the alleged debt in the USA. The

applicant, therefore, seeks the assistance of the New Zealand Court to obtain orders for discovery and/or subpoenas against these New Zealand entities.

[7] The above summary indicates that:

- a) The applicant is a foreign representative as defined in Article 2(d) to the Schedule to the Insolvency (Cross-border) Act 2006; and
- b) The proceeding is a foreign proceeding as defined in Article 2(a) to the Schedule to the Insolvency (Cross Border) Act 2006.

[8] In addition, I am satisfied as to the matters required to be proved in terms of Article 15(2) of the First Schedule to the Insolvency (Cross Border) Act 2006.

[9] Rule 24.56 of the High Court Rules requires any application for recognition of the foreign proceeding to be served on the debtor or a New Zealand agent or representative of the debtor unless a Judge directs that the application may in all the circumstances proceed without that service.

[10] The application here is made on behalf of the debtor who is a debtor in possession.

[11] The affidavit in support identifies all foreign proceedings in respect of which the debtor is involved. I am also satisfied in terms of Article 2(d) to the First Schedule to the Insolvency (Cross Border) Act 2006 that the proceeding taking place in that United States is a foreign main proceeding. I am satisfied that this is an appropriate case for the applicant to be entitled to relief which includes provision for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities in terms of Article 21(1)(d) of the First Schedule to the Insolvency (Cross Border) Act 2006.

[12] The application is made without notice. I have already recorded that the application is made by the debtor. High Court Rule 24.59 makes provision for any person affected by the relief granted under Articles 19 and 21 to apply by interlocutory application for an order modifying or terminating the relief granted.

That, however, may not be sufficient to cover any concerns of the New Zealand entities who may be affected by an order made. To cover that position I am granting leave for any applications to be made to vary or set aside the order I make, to be made within three days of service of the order I make on such entity.

[13] I order, recognising the bankruptcy case filed under Chapter 11 of the United States Bankruptcy Code in the Central District of California in respect of Pacific Northstar Property Group, LLC.

[14] This order is made without notice and on the basis that leave is reserved to any creditor to apply to set aside this order provided application to do so is made within three days of the service of this order on the creditor.

JA Faire
Associate Judge