

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-CIV-21964-CMA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP, CORP. and
TCA GLOBAL CREDIT FUND, LTD.,

Defendants, and

TCA GLOBAL CREDIT FUND, LP; TCA GLOBAL
CREDIT FUND, LTD.; TCA GLOBAL CREDIT
MASTER FUND, LP,

Relief Defendants.

**OBJECTION TO RECEIVER’S MOTION FOR APPROVAL OF
DISTRIBUTION PLAN AND FIRST INTERIM DISTRIBUTION**

AW Exports Pty Ltd, Warwick Broxom, and Jonathan James Kaufman (“Objectors”), by their undersigned counsel, object to the Receiver’s Motion for Approval of Distribution Plan and First Interim Distribution (the “Distribution Plan”) [Doc. No. 208] and, in support of their objection, state as follows:

THE OBJECTION

1. This Court should reject the Receiver’s Distribution Plan because the Receiver has failed to even consider (i) the claims of unpaid trade creditors, and (ii) when those trade creditors should be paid. Objectors assert that undisputed trade creditors should be paid immediately, in full, and prior to equity investors. Objectors further assert that this Court should instruct the Receiver

to immediately propose a dispute resolution process for the timely resolution of any disputed claims.

THE OBJECTORS HAVE STANDING

2. Objectors are judgment creditors under a September 8, 2020 Australian judgment in the amount of AUD\$ 425,575.92 plus post-judgment interest accruing at the statutory rate of 6.1 per cent, per annum or AUD\$ 71.12 per day until paid in full (the “Judgment”) from the TCA Global Credit Fund, LP, the party liable to indemnify Objectors for the amount of their claim.

3. The Receiver has recognized the Objector’s claim in Exhibit F to the Receiver’s Distribution Plan and First Interim Distribution, the Receiver’s schedule of all known trade creditors which includes a specific entry for the Judgment. [See Exhibit F (Doc. No. 208-6) at 5].

4. To date, the Receiver has failed to acknowledge whether he disputes either the substance or amount of the Objectors’ claim.

THE RECEIVER’S PROPOSED DISTRIBUTION PLAN FAILS TO ADDRESS THE CLAIMS OF TRADE CREDITORS

5. The Receiver is holding \$67,008,922 of which he proposes to distribute \$55,452,651 solely to equity investors on an interim basis. [Doc. No. 206 at 21]

6. The Receiver filed a 40-page motion seeking to justify his distribution plan as equitable going into great detail regarding the distinctions between various equity investors. The Receiver uses those distinctions to argue that the Rising Tide distribution method is the most equitable basis for compensating equity investors who were defrauded.

7. In his 40-page submission, the Receiver devotes scant attention to trade creditors, i.e., a total of three paragraphs in his 40-page motion (two paragraphs on page 33 and one paragraph on page 36). The Receiver proposes no distribution to trade creditors at this time, but

states that he “*may* propose a distribution to trade creditors at a later date.” [Doc. No. 206 at 33, emphasis supplied]

8. Nowhere in the Distribution Plan does the Receiver make any recommendations as to how this Court should deal equitably with trade creditor claims. Instead, the Receiver simply assumes that this Court will be content to leave trade creditor claims to another day. Frankly, and while Objectors hope that they are wrong about this, the Receiver seems to hint that trade creditor claims can linger because doing so affords the opportunity for “[t]he Receiver [to] endeavor to negotiate trade creditor claims independently....” [Distribution Plan at 33] There is nothing equitable about delaying payment of undisputed claims to negotiate discounts on those undisputed claims. Only disputed claims should be negotiated.

THE TRADE CREDITOR CLAIMS

9. There are only 27 trade creditor claims. [See Distribution Plan, Exhibit F]

10. According to the Receiver, the current trade creditor claims total \$2,163,765.83 [Doc. No. 208-6 at 10] and are not expected to exceed \$3,000,000 [Doc. No. 208 at 33]

11. Although there are only 27 known trade creditors, the Receiver reported in November 2021 that:

The Receiver is in the process of establishing a formal claims process. The unique nature of this Receivership may present the need for multiple classifications of claims. The claims process is currently being developed and will be submitted to the Court for approval when finalized.

[Receiver’s Sixth Interim Omnibus Application for Allowance and Payment of Professional Fees and Reimbursement of Expenses (Doc. No. 191) at 7]

12. Now, almost six months later, we learn that there still is no “formal claims process” and, instead, nearly 24 months after his appointment the Receiver is now apparently “in the process

of evaluating and negotiating trade creditor claims.” [Doc. No. 208 at 36] Objectors can only assume that the Receiver is doing so with one of the other 26 known trade creditors.

13. The Receiver’s process of evaluating and negotiating trade creditor claims is, at best, a haphazard substitute for a claims resolution process and, at worst, a pretextual justification for ignoring trade creditors.

THIS COURT SHOULD EXERCISE ITS VAST DISCRETION IN APPROVING A PLAN OF DISTRIBUTION TO REQUIRE DISTRIBUTION TO TRADE CREDITORS

14. A district court has “broad powers and wide discretion to determine relief in an equity receivership.” S.E.C. v. Elliott, 953 F.2d 1560, 1566 (11th Cir. 1992). “Given the similarity between bankruptcy and receivership proceedings, we often apply bankruptcy principles to receivership cases because we have limited receivership precedent.” SEC v. Quiros, 966 F.3d 1195, 1199 (11th Cir. 2020). The guiding principle for the district court is whether, given consideration of all the facts and circumstances, is the relief equitable.

15. Generally, under Bankruptcy law, Florida law, Grand Cayman law, and Australian law, creditors are given preferential treatment in liquidation of corporate entities over investors. Given as much, recognizing and applying a preference to trade creditors in this matter over investors is hardly an abuse of discretion. Indeed, one would expect as much to be the norm and the Receiver’s failure to present facts and arguments to justify a deviation from that norm is, instead, an abuse of discretion.

16. This is a Receivership which has over \$66,000,000 in cash (plus other assets) and 27 trade creditor claims of just over \$2,100,000 (approximately 3.2% of the cash-on-hand).

17. Concurrent with the appointment of the Receiver, this Court stayed all actions of the trade creditors to enforce their claims to facilitate the smooth administration of the receivership.

By implication, the stay assures creditors that their claims will be dealt with in an efficient and equitable manner as part of the receivership process.

18. In this case, the Receiver has failed to uphold that bargain and wants, instead, to disregard the trade creditor's claims while making distributions to investors.

19. Although the Receiver has not argued as much, presumably he believes that the trade creditor claims can simply be dealt with at a later date because there are sufficient assets available to cover all the trade creditor claims. And, under some fact patterns, such an argument might be entitled to some deference.

20. This is not one of those cases. Two years into the receivership, the Receiver has not advised the trade creditors whether the claims are disputed or not. The receiver has made no showing why he could not have determined the merit of the 27-trade creditor claims by this time to know whether they are disputed or not. And, if one or more of the claims are undisputed, then there is no reason to reserve funds to pay the claim as opposed to simply paying the claims.

21. To the extent that claims are disputed, then there should be an appropriate claims resolution policy on place.

CONCLUSION

22. Because the Receiver has failed to establish an equitable basis for disregarding the trade creditor's claims, this Court should deny the Receiver's Motion for Approval of Distribution Plan and First Interim Distribution.

23. Alternatively, this Court should require the Receiver, within 30 days, to:
- a. review and dispute the 27 pending trade creditor claims;
 - b. file a motion with the Court presenting a plan for immediate payment of all undisputed claims; and

- c. submit a claims review process for any disputed claims.

**AW EXPORTS PTY LTD, WARWICK BROXOM,
AND JONATHAN JAMES KAUFMAN**

By: 

Charles A. Valente

(FL Bar No. 43508)

KAPLAN SAUNDERS VALENTE &
BENINATI, LLP

500 North Dearborn Street, Suite 200

Chicago, Illinois 60654

Telephone: 312-755-5700

E-mail: cvalente@kaplansaunders.com