

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-11076-shl

----- x

In the Matter of:

ARCAPITA BANK B.S.C.(C), et al.,

Debtors.

----- x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

November 15, 2012

11:04 AM

B E F O R E :

HON. SEAN H. LANE

U.S. BANKRUPTCY JUDGE

1 Hearing re: Doc.#525 (Status Conference) Re: Letter To
2 Dismiss Case Filed By Hani Alsohaibi.

3

4 Hearing re: Doc.# 540 First Application for Interim
5 Professional Compensation/First Interim Application of
6 Rothschild Inc. and N M Rothschild & Sons Limited as
7 Financial Advisor and Investment Banker to the Debtors for
8 Allowance and Payment of Compensation for Professional
9 Services Rendered and Reimbursement of Actual and Necessary
10 Expenses Incurred from March 19, 2012 through August 31,
11 2012.

12

13 Hearing re: Doc.#12 (FINAL) Motion For Interim and Final
14 Orders, (A) Authorizing Debtors To (I) Continue Use Of
15 Existing Cash Management System, Bank Accounts And Business
16 Forms And (II) Continue Ordinary Course Intercompany
17 Transactions; And (B) Granting An Extension Of The Time To
18 Comply With The Requirements Of Section 345(b) Of The
19 Bankruptcy Code. F(SHL)

20

21

22

23

24

25 Transcribed by: Pamela S. Skaw

1 A P P E A R A N C E S :

2 GIBSON, DUNN & CRUTCHER LLP

3 Attorney for Debtors

4 200 Park Avenue

5 New York, NY 10166-0193

6

7 BY: JOSH WEISSER, ESQ.

8

9 GIBSON, DUNN & CRUTCHER LLP

10 Attorney for Debtors

11 3161 Michelson Drive

12 Irvine, CA 92612-4412

13

14 BY: CRAIG H. MILLET, ESQ.

15

16 MILBANK, TWEED, HADLEY & McCLOY LLP

17 Attorney for Creditors' Committee

18 One Chase Manhattan Plaza

19 New York, NY 10005-1413

20

21 BY: NICHOLAS C. KAMPHAUS, ESQ.

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DECHERT LLP

Attorney for Standard Charter Bank
1095 Avenue of the Americas
New York, NY 10036-6797

BY: BRIAN E. GREER, ESQ.

DEBEVOISE & PLIMPTON LLP

Attorney for Rothschild, Inc.
919 Third Avenue
New York, NY 10022

BY: DEREK P. ALEXANDER, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE COURT: Good afternoon, or good morning.
Please be seated. All right. We're here for Arcapita Bank.
Let me get appearances.

MR. MILLET: Good morning, Your Honor, Gibson,
Dunn & Crutcher by Craig Millet and Josh Weisser for the
debtor related parties.

THE COURT: All right. Good morning.

MR. KAMPHAUS: Good morning, Your Honor.
Nick Kamphaus of Milbank, Tweed, Hadley & McCloy for the
creditors' committee.

THE COURT: Good morning.

MR. GREER: Good morning, Your Honor. Brian Greer
of Dechert LLP for Standard Chartered Bank.

THE COURT: All right. Good morning to you all.
All right. Proceed.

MR. MILLET: Thank you, Your Honor. Again,
Craig Millet for the debtor.

We think this will be short today and I know you
have other things to do so that'll be a good thing for all.
We certainly are glad to see you back, in Bowling Green,
high and dry.

THE COURT: Thank you. It's good to see everyone.
I hope everyone weathered the storm as well as can be
expected. I know for the most part things feel very much

1 back to normal which is nice but I know some people
2 personally still have some difficult situations. So, if
3 that applies to anybody in this room, I -- you have my
4 sympathy.

5 MR. MILLET: Yes, Your Honor. We've been watching
6 this from the west coast certainly where an eighth inch of
7 the rain is an apocalyptic event in California so it's been
8 quite something.

9 THE COURT: Well, the problem is this storm -- I'm
10 a native New Yorker and this storm is -- a storm like this
11 has been talked about for so many decades that people have
12 gotten a bit cavalier about it. I know people who've taken
13 like lawn chairs and put them on the beach to watch the next
14 hurricane come in, and this was really the perfect storm,
15 unfortunately. But it is very nice to be back as gracious
16 as everyone was in White Plains to have us.

17 MR. MILLET: We appreciate your time last week too
18 on the Fortress commitment letter. We're moving ahead with
19 a great deal of speed on that to try to negotiate that --

20 THE COURT: All right.

21 MR. MILLET: -- into a formal agreement that we
22 can then present to the Court.

23 As the Court knows, we do have a hearing scheduled
24 on that for September -- pardon me, December 4th --

25 THE COURT: Right.

1 MR. MILLET: -- on a DIP approval. We're working
2 to try to make that a final hearing if we can to get our
3 papers filed especially before. However, there is a great
4 deal of complexity in the docs still to go.

5 THE COURT: Right.

6 MR. MILLET: It may --

7 THE COURT: Well, I think you have another hearing
8 date as well, so if you have to do interim and final you can
9 do it that way.

10 MR. MILLET: The Court read my mind. That was
11 exactly the point; that if we do have to use the 4th as an
12 interim hearing, that we would hope to then be able to come
13 back on the 13th, which is our omnibus date, of December --

14 THE COURT: All right.

15 MR. MILLET: -- and do that as the final hearing.
16 But we're going to try to see if we can get it
17 done.

18 THE COURT: All right.

19 MR. MILLET: Since we were recently before the
20 Court, we don't have a great deal of information in terms of
21 an update so I'll spare the Court a long detailed recitation
22 of where we are.

23 Generally, with the budget we continue to be ahead
24 in terms of receipts and also ahead in terms of limiting
25 expenditures. So, that's a good thing, but December is

1 going to be a critical time and therefore the DIP is going
2 to be critical as money runs low.

3 One thing that I wanted to inform the Court about
4 too is we did have the mediation scheduled in Falcon, the
5 very same week that Sandy also scheduled its appearance, so,
6 hence, that mediation has been put off and delayed. But we
7 are now rescheduled for December 4th so we should be back on
8 track for that --

9 THE COURT: All right.

10 MR. MILLET: -- mediation.

11 THE COURT: That's good to know.

12 MR. MILLET: We also have the required Cayman
13 creditors' meeting. In other words, the creditors' meeting
14 required under Cayman law, with respect to the JPL
15 proceeding, it did occur on November 6th in London. So we
16 have that now behind us and have accomplished that.

17 And I mentioned we have been working on the DIP.

18 But, most important, we have -- been having
19 extensive discussions with various parties regarding a
20 structure of a plan which, like we said in the last
21 exclusivity hearing that we would do. There are meetings in
22 fact ongoing now.

23 We left Mr. Rosenthal there figuring his use was
24 better as those meetings and that I would come down here and
25 we'd double-track this today. But those meetings are

1 ongoing and we're talking to all the relevant parties to try
2 to get our plan done and we fully intend, as the Court
3 knows, intend to file our plan on time. I hope
4 (indiscernible - 00:45:05) on December 14th or before
5 exclusivity runs out. So we are on track for that.

6 We'll cut the update short there so that we can
7 move ahead and today we have three matters on calendar. One
8 is a fee application for Rothschild. Another is our cash
9 management order. And the third is our status conference on
10 a motion to dismiss filed by Captain Hani Alsohaibi. I
11 wasn't sure in what order the Court wanted to proceed.

12 THE COURT: Any order that you wish.

13 MR. MILLET: Fine, Your Honor. Let's -- perhaps
14 take up the Rothschild fee application first.

15 THE COURT: All right.

16 MR. MILLET: The good news is with respect to both
17 motions is we have no opposition, and so starting with the
18 Rothschild fee application it pretty much is what everyone
19 expected because, of course, the fees here applied for are
20 as provided in their engagement letter and the engagement
21 approved by the Court some time ago.

22 Again, we have had no objection to that and so
23 just to keep the matter simple, I would request that that be
24 approved since we have no objection unless the Court has
25 questions or concerns.

1 THE COURT: All right. Anyone want to be heard on
2 the first interim application of Rothschild, Inc.?

3 MR. KAMPHAUS: Yeah, just very quickly, Your
4 Honor. Again, Nick Kamphaus for the committee.

5 The committee just wants to state on the record
6 its understanding that failure to file any objection or
7 object to the interim allowance of fees is not prejudicial
8 to any objection we might want to make later on at a final
9 allowance.

10 THE COURT: All right.

11 MR. KAMPHAUS: Okay. Thank you.

12 THE COURT: So noted. Anyone else?

13 All right. With that, I'm happy to grant the
14 first interim application for fees for Rothschild, Inc. and
15 Ann Rothschild & Sons, Limited.

16 MR. MILLET: Very well. Thank you, Your Honor.

17 Perhaps we should take up the cash management
18 motion also. We believe to be a quick one.

19 THE COURT: All right.

20 MR. MILLET: We have -- as we have always done in
21 the last several months, we have had extensive meetings with
22 the committee and its professionals and also with the JPL
23 and have gone over the budget items, and this month I am
24 pleased to report that we have no disputes as to any items
25 in the budget.

1 One housekeeping matter, we did file a budget, I
2 believe yesterday, and since then A & M -- Alvarez and
3 myself found one clerical item that needed to be corrected
4 in it.

5 There's actually an additional expenditure of
6 about \$600,000 for payment of fees to King & Spaulding which
7 were approved by the Court in a fee app back in September.
8 However, the money simply didn't get paid in a prior budget
9 time when it was budgeted in the October period.

10 THE COURT: All right.

11 MR. MILLET: So rather than simply have that sort
12 of drift off, it's simply been re-included. So it's not
13 really new money, but simply money that didn't get paid
14 previously and so that will now be paid in the next budget
15 period.

16 We informed, of course, the committee and the JPL
17 and the various parties about that and we understand there's
18 no objection to that. So we will lodge a new order with a
19 corrected budget attached.

20 THE COURT: All right. Anyone want to be heard as
21 to the debtors' request for -- on this matter which is the
22 budget?

23 MR. GREER: Good morning, Your Honor. Brian Greer
24 of Dechert LLP for Standard Chartered Bank.

25 We have no objection to the motion. We just

1 wanted to note, for the record, that we've reached agreement
2 with the debtors and the committee that the cash management
3 orders will not be superseding, amending or altering our
4 settlement order which is its own stand alone document. So
5 you'll see in this interim order -- or, you know, in this
6 cash management order and probably all the likely orders to
7 follow --

8 THE COURT: Right.

9 MR. GREER: -- there'll be a new paragraph that
10 just -- you know, to that effect.

11 THE COURT: All right. That's fine. All right.
12 With that, I am happy to grant the debtors' motion and
13 appreciate the parties' efforts to work together as
14 consistent with how it's been done in this case.

15 MR. MILLET: This is -- it continues to be an
16 interim order, Your Honor, because we're still working on
17 the plan, and now that's come to fruition we've just
18 proceeded in that fashion since, to some extent, if it's not
19 broken, don't fix it and it's been working well to this
20 point.

21 THE COURT: Yes.

22 MR. MILLET: So it is still an interim order.

23 THE COURT: No, I understand that. I've lost
24 track of what number interim order it is and I think it's --
25 it may be the tenth? Is that right?

1 MR. MILLET: I think that's right, Your Honor.

2 THE COURT: So you're -- if you keep it up --

3 MR. MILLET: Yes.

4 THE COURT: -- you'll be in the running for --

5 MR. MILLET: That's correct.

6 THE COURT: -- the biggest number in front of the
7 word interim order. But we'll see how it goes. All right.
8 But I'm happy to approve it in either event which, I guess,
9 just leaves the motion to dismiss on for a status.

10 My first question -- I wasn't clear whether this
11 individual has any counsel that you're aware of. It didn't
12 appear to be the case from what I've -- saw when looking at
13 the papers.

14 MR. MILLET: We're not aware of any counsel, Your
15 Honor.

16 THE COURT: All right.

17 MR. MILLET: We've not heard other than what the
18 Court has seen in the papers from this individual, as
19 reflected in his papers some time ago. This individual had
20 made his intents are clear to sue the company and others in
21 Saudi Arabia.

22 We did remind him of the automatic stay by
23 correspondence to which he attached. The result was this
24 motion to dismiss.

25 However, we've not heard from him or counsel --

1 THE COURT: All right.

2 MR. MILLET: -- since this matter's been filed.

3 THE COURT: And this got flagged because I
4 obviously get a lot of correspondence in a lot of cases and
5 I docket it just so it's a matter of public record unless
6 there's some extraordinary circumstances or someone's asked
7 for it not to be docketed, then I bring it to the attention
8 of the parties in other ways.

9 I -- most things do not ask me to do anything.
10 And those I docket and then they -- they're part of the
11 record but nothing needs to be done. Occasionally, like
12 this letter, I get a letter that asks me to do something.
13 And so I construe it -- and something like this is clearly
14 in the nature of a motion. So I appreciate that it's on for
15 a status today so we can figure out how to sort of tee it up
16 and address it.

17 I'm open to any suggestions you have. My
18 preliminary thought is fairly straightforward which is to
19 just have debtors file whatever response they want to file
20 and we can tee it up for one of these hearings in December.

21 MR. MILLET: We're fine with that, Your Honor. Of
22 course, we always would like to avoid any expense we can.
23 We looked at this sort of is if the Court were to apply a
24 Rule 12 standard, say accepting the allegations even as
25 true, which are, in essence, that a license is required in

1 Saudi Arabia but our Captain doesn't have one and that there
2 is an investigation ongoing by the Saudi authorities.

3 If we accept those facts simply as true for the
4 purposes of this, it still does not amount to support for
5 dismissing the case. Therefore, we would ask on the papers
6 if that could be done preliminarily; like denied without
7 prejudiced and we've (indiscernible - 00:51:41) a proper
8 motion or if the Court feels we need to have a --

9 THE COURT: Well, I just --

10 MR. MILLET: -- motions hearing.

11 THE COURT: -- because I don't have the person in
12 front of me and sort of due process can sometimes be a very
13 sticky thing to sort of figure out what the appropriate
14 level of process is, I wouldn't say that you need to file
15 anything lengthy, but I just think a short -- some short
16 submission and I'll -- so that you don't run the risk of
17 saying, well, I don't know what that means. I'll cap it.
18 It can't be any longer than six pages.

19 And so that way you can just give me -- it's on
20 the record and it's filed and if this individual's checking
21 the docket, it'll be there for him to see, and then attach
22 with that you can just put a notice that it's going to be
23 heard on whichever date you'd want to deal with it in
24 December, probably the 4th, I would think and we'll just --

25 MR. MILLET: Would the Court consider perhaps

1 doing it in January considering the amount of tasks we have
2 before us in December? If the Court --

3 THE COURT: Well --

4 MR. MILLET: -- prefers (indiscernible - 00:52:46)
5 that's fine.

6 THE COURT: -- I think the six pages is not going
7 to be --

8 MR. MILLET: That's fine.

9 THE COURT: -- a -- that's why I'll give you the
10 limit, because I know sometimes it's -- if you feel like you
11 want to address -- people say, well, if I address everything
12 in this letter I can't -- it actually will become a more --

13 MR. MILLET: I'm confident --

14 THE COURT: -- lengthy thing. So --

15 MR. MILLET: -- I -- we can do it in six pages.

16 THE COURT: -- but I'm confident that you can do
17 the job in a limited space. So I think we could get it teed
18 up and out of the way in December. So --

19 MR. MILLET: What would the Court's preference be
20 as far as the date? Which is best on your calendar?

21 THE COURT: Well, I do --

22 MR. MILLETT: The 4th or the 13th?

23 THE COURT: -- realize you are doing other things,
24 so whichever one works for you. But I just think we can
25 just tee it up and --

1 MR. MILLET: Why don't we say then the 13th, which
2 is our omnibus date?

3 THE COURT: All right.

4 MR. MILLET: It makes sense if that's okay with
5 the Court.

6 THE COURT: All right. And that -- and yes, so
7 just -- and then also -- that'll be fine.

8 That brings me to one thing I did want to raise is
9 as a result of the hurricane situation, December has become
10 an awfully crowded month, particularly that week of
11 December 10th, which now has, I think, three or four
12 different evidentiary things and some other folks clamoring
13 to get in that week as well.

14 It may be that I might ask you to move from the
15 13th to the 18th. I don't know yet. I have some other
16 folks getting on the phone this afternoon to try to get some
17 clarity as to what their needs are, scheduling-wise, and
18 we'll communicate to you as quickly as possible. But if
19 that doesn't appear to represent a problem I just wanted to
20 give you a heads up.

21 MR. MILLET: That's fine, Your Honor. If the
22 Court wishes to do that now, we can accept that or --

23 THE COURT: Well, let me see. I don't like to
24 move people and then have to move them back.

25 MR. MILLET: I understand.

1 THE COURT: So let me -- I'm getting sort of mixed
2 signals from other folks in other cases. So it's not your
3 problem but --

4 MR. MILLET: That would be fine --

5 THE COURT: -- we'll get to the --

6 MR. MILLET: -- with us if that suits the Court.

7 THE COURT: -- bottom of that this afternoon and
8 we'll let you know. But I just wanted, since you're here, I
9 wanted to give you a heads up and we would move whatever
10 we'd have for the 13th onto the 18th if that's what we do.
11 And, if not, we'll leave it on the 13th if folks -- if the
12 folks in the other case sort of want to wonder around the
13 calendar in the month of December. So --

14 MR. MILLET: Well, we're fine whichever is best
15 for you, Your Honor, just let us know. We're happy to move
16 it.

17 THE COURT: All right. So let's do that and --
18 but I mention that to the extent that you're going to notice
19 anything, obviously that would change. But we'll have that
20 date for you fairly soon.

21 MR. MILLET: Very well. With respect -- back to
22 the motion, do you wish us to give a notice of any sort so
23 that Captain Hani receives it, or what would the Court like?

24 THE COURT: Well, what I would say is certainly it
25 should be on the docket but I would sent it to whatever

1 address you have available.

2 MR. MILLET: Will do.

3 THE COURT: Yeah. I think that that makes sense
4 when you file your response, your limited response, you can
5 title it --

6 MR. MILLET: Certainly.

7 THE COURT: -- title it that note that the Court
8 gave you a -- you know, a page limitation. And just -- I
9 would send it to whatever information you have in terms of
10 service.

11 MR. MILLET: Yes.

12 THE COURT: I don't know the most reliable way to
13 get it over there but I'm sure that you folks are --

14 MR. MILLET: The movant has a business in Saudi
15 Arabia and yeah we're confident that we --

16 THE COURT: All right.

17 MR. MILLET: -- can get it to him.

18 THE COURT: Great.

19 MR. MILLET: So, very well, Your Honor.

20 THE COURT: Anything else that --

21 MR. MILLET: I believe that's it for us.

22 THE COURT: -- we should address here this
23 morning? All right. Well, thank you very much.

24 MR. MILLET: Thank you, Your Honor.

25 (Whereupon these proceedings were concluded at

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

11:19 AM)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

RULINGS

	Page	Line
First Interim Application of Rothschild Inc. and N M Rothschild & Sons Limited	10	13
Motion For Interim Order For Continued Use Of Existing Cash Management System	12	12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Pamela A. Skaw, certify that the foregoing transcript is a true and accurate record of the proceedings.

**Pamela A.
Skaw**

Digitally signed by Pamela A. Skaw
DN: cn=Pamela A. Skaw,
o=Veritext, ou,
email=digital@veritext.com, c=US
Date: 2012.11.16 15:17:24 -05'00'

Veritext
200 Old Country Road
Suite 580
Mineola, NY 11501
Date: November 16, 2012