

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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| In re: |) | Chapter 11 |
| |) | |
| SEA CONTAINERS LTD., <i>et al.</i> , ¹ |) | Case No. 06-11156 (KJC) |
| |) | (Jointly Administered) |
| |) | |
| Debtors. |) | Response Deadline: December 2, 2008 at 4:00 p.m. (ET) |
| |) | Hearing Date: December 9, 2008 at 1:30 p.m. (ET) |

DEBTORS' OBJECTION TO PROOF OF CLAIM NUMBER 1

The above-captioned debtors in possession (the "Debtors") submit this objection (this "Objection"), pursuant to sections 105 and 502(b) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), Rules 3001, 3003 and 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to proof of claim number 1 (the "Dacey Claim")² filed by Mervyn Dacey ("Dacey" or the "Claimant"), purportedly on behalf of "M. Barry (Trustee of Dacey Trust)." In support of this Objection, the Debtors contemporaneously have filed the Declaration of Edwin S. Hetherington, attached hereto as Exhibit C, and respectfully represent as follows:

SUMMARY OF OBJECTION

1. The Dacey Claim seeks a right to payment on account of various dividend checks, issued by SCL between May 5, 1997 and February 5, 2002, in a total amount of \$420,290 (the "Dividend Payments"). The Dividend Payments were issued to Muriel Barry ("Ms. Barry"), who owned shares in SCL. The Claimant filed the Dacey Claim in the amount of

¹ The Debtors in these chapter 11 cases are Sea Containers Caribbean Inc., Sea Containers Ltd. and Sea Containers Services Ltd.

² A copy of the Dacey Claim is attached hereto as Exhibit A.

\$420,290, and asserted that the Dacey Claim is entitled to treatment as an unsecured priority claim (but does not specify the applicable statutory provision giving rise to such asserted priority).

2. The Debtors object to the Dacey Claim on various bases.³ First, there is no basis for the Dacey Claim, even if valid, to be treated as an unsecured priority claim. Second, Ms. Barry died on February 26, 1997. The Bye-Laws of Sea Containers Ltd. (attached hereto as Exhibit B) (the "Bye-Laws") contain strict provisions governing how shares (and the rights thereunder) are transmitted from a deceased shareholder to survivors or estate representatives. Even if the Claimant is an authorized estate representative as of the Petition Date (as defined below), it failed to comply with the obligations under the Bye-Laws to establish that the Claimant is the proper representative of Ms. Barry's estate. Third, even if the Claimant were the proper estate representative, the Bye-Laws provide that a substantial portion of the Dividend Payments that purport to underlie the Claimant's right to payment have been forfeited and reverted to SCL.

JURISDICTION AND VENUE

3. This Court has jurisdiction to consider this Objection pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The relief requested herein is predicated on Bankruptcy Code sections 105 and 502(b) of the Bankruptcy Code, Bankruptcy Rules 3001, 3003 and 3007, and Local Rule 3007-1.

³ As noted below, the Debtors reserve their rights to file a complaint and initiate an adversary proceeding for a determination that the Dacey Claim (or the claim of any party asserting a right to payment on account of Ms. Barry's holding of equity interests in SCL) should be statutorily or equitably subordinated.

BACKGROUND

A. General Background

4. On October 15, 2006 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On October 17, 2006, the Court entered an order directing the joint administration and procedural consolidation of these chapter 11 cases.

5. The Debtors are continuing in possession of their respective properties and have continued to operate and maintain their respective businesses as debtors in possession pursuant to Bankruptcy Code § § 1107(a) and 1108.

6. At the outset of these cases, the United States Trustee appointed an Official Committee of Unsecured Creditors for SCL, the membership of which was modified on January 23, 2007. Also on January 23, 2007, the United States Trustee appointed an Official Committee of Unsecured Creditors for Sea Containers Services Ltd.

7. SCL is the ultimate parent of a group of affiliated companies that includes the other Debtors, as well as more than 100 non-debtor, wholly-owned foreign and U.S. subsidiaries (collectively, the "Company"). The Company operates as a global consolidated business and have employees, assets and creditors throughout the world. Historically, the Company primarily engaged in the marine container leasing business, but also had business interests in a diverse set of other industries. In recent years, the Company has taken steps to restructure its operations and focus on its core marine container leasing business.

B. The Dacey Claim

8. Prior to the Petition Date, in May of 1996, SCL completed a Class A Share exchange offer to shareholders of the Isle of Man Steam Packet Company Ltd.

("IOMSPC"), which was previously a London Stock Exchange listed company, in order to acquire the outstanding shares of IOMSPC.

9. Pursuant to this exchange offer, Ms. Barry, an individual who resided in the Isle of Man, tendered all her shares in IOMSPC to SCL, and in exchange, received 106,000 Class A shares in SCL.

10. Upon information and belief, on February 26, 1997, Ms. Barry died. The Debtors did not become aware of this until June of 2002. However, after the time of Ms. Barry's death, the Debtors received a number of calls and letters, allegedly from both Ms. Barry and from the Claimant purporting to act for Ms. Barry, regarding Ms. Barry's shares. However, as of the Petition Date, the Claimant never satisfied any of the requirements in the Bye-Laws governing transmission of shares from deceased individuals to estate representatives.

11. On August 17, 2007, the Debtors filed their First Omnibus Objection (Non-Substantive) to Claims Pursuant to Sections 105 and 502(b) of the Bankruptcy Code and Rules 3001, 3003 and 3007 of the Federal Rules of Bankruptcy Procedure [Docket No. 938] (the "Objection"). The Objection sought, among other things, an order expunging the Claim.⁴

12. The parties subsequently agreed to schedule a hearing on the Objection, solely with respect to the Claim, for December 13, 2007 at 10:00 a.m. (ET) (the "Initial Hearing"). At the Initial Hearing, the Court requested supplemental briefing regarding whether uncashed checks on account of the Dividend Payments should be treated as unsecured claims against the Debtors or treated as an interest "based on ownership of stock."

⁴ The Debtors objected to the Claim, which was listed on Exhibit C to the Objection, on the basis that the obligation asserted therein relates to the Claimant's alleged ownership of shares of the Debtors' stock, and therefore gives rise to an interest in, and not a claim against, the Debtors' estates. The Debtors also objected to claim number 37 filed by the Claimant, which was listed on Exhibit B to the Objection, as duplicative of the Claim. An order was entered expunging claim number 37.

13. The Debtors subsequently determined to withdraw, without prejudice, the Objection solely as it related to the Claim, and filed a form of withdrawal order (the “Partial Withdrawal Order”) with the Court. On January 22, 2008, the Court entered the Partial Withdrawal Order [Docket No. 1358]. The Partial Withdrawal Order expressly preserved the Debtors’ right to object to the claim on an substantive bases upon which the Claim could be expunged and disallowed, or alternatively, subordinated to general unsecured claims against the Debtors’ estates.

RELIEF REQUESTED

14. The Debtors object to the Dacey Claim in its entirety, and seek entry of an order pursuant to section 502 of the Bankruptcy Code and Bankruptcy Rule 3007 (i) disallowing the Dacey Claim on the grounds that no amounts are owed to the “Dacey Trust” pursuant to the terms of the Bye-Laws, and expunging the Dacey Claim from the Debtors’ claim register; or alternatively (ii) reclassifying the Dacey Claim to a general unsecured, non-priority claim (subject to the right to seek the subordination of the Dacey Claim by the filing of an adversary proceeding), and reducing the Dacey Claim as described below.

ARGUMENT

A. There exists no basis for priority treatment of the Dacey Claim.

15. Even if the Dacey Claim were a valid claim, the Dacey Claim presents no basis for according the claim with any priority treatment. The proof of claim form executed by the Claimant indicates an assertion of priority under some “other” basis but does not specify any statutory provision giving rise to such asserted priority. Indeed, there is no authority in the Bankruptcy Code or elsewhere that would accord priority to a valid claim such as that asserted by the Claimant.

16. On its proof of claim form, the Claimant indicated that all \$420,290 of the asserted Dacey Claim is allegedly entitled to priority. The Claimant asserts that the basis for the asserted priority is "Other" but fails to specify any applicable provision of the Bankruptcy Code or other applicable authority that would entitle the Dacey Claim to priority treatment.

17. Section 507 of the Bankruptcy Code provides that, in bankruptcy cases such as the Debtors' cases, expenses and claims such as administrative expenses, claims related to wages, salaries or commissions earned by an individual, claims for contributions to employee benefit plans, claims of individuals arising from deposits of money for consumer purchases, and certain claims of governmental units are entitled to priority. 11 U.S.C. § 507.

18. The Dacey Claim, if valid, does not fall under any category for which priority treatment is available. Accordingly, if the Dacey Claim is found to be valid in any amount, such claim be reclassified to a general unsecured, non-priority claim, subject to the right to seek the subordination thereof as discussed further below. Otherwise, lower priority creditors will receive less than the full amounts for which they may be entitled if the Dacey Claim were improperly paid in full under the incorrect classification.

B. The Claimant failed to assert any right to the Dividend Payments made on account of Ms. Barry's holding of SCL stock.

19. The Claimant purports to act on behalf of Ms. Barry in asserting the right to payment on account of the Dividend Checks,⁵ but has never produced required documentation under the terms of the Bye-Laws to establish the Claimant's authority to act as the estate

⁵ In fact, it appears that the Dacey Claim was signed by "M. Barry," however, Ms. Barry was deceased at the time the Dacey Claim was signed. To the extent that the Dacey Claim was signed by someone on behalf of Ms. Barry, the Claimant failed to follow the instructions on the proof of claim form requiring the attachment of a copy of the power of attorney, if any, authorizing a person to file the Dacey Claim.

representative for Ms. Barry, either as the holder of Ms. Barry's shares upon her death or as the successor in interest to the dividend payments underlying the asserted Dacey Claim.

20. Paragraph 9 of the Bye-Laws provides that:

Except as ordered by a court of competent jurisdiction or as required by law, no person shall be recognized by the Company as holding any share upon trust and the Company shall not be bound by or required in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as otherwise provided in these Bye-Laws or by law) any other right in respect of any share except an absolute right to the entirety thereof in the registered holder.

Bye-Laws at ¶9, p. 3. Even if the "Dacey Trust" is indeed the valid designee of Ms. Barry's estate (which remains in doubt, as set forth hereinbelow), the Bye-Laws require the entry of an appropriate court order or demonstration of authority under applicable law to this effect prior to recognition of any such entity under the Bye-Laws. The Claimant has made no such showing to otherwise meet this requirement and establish the validity of its status as the appropriate designee of Ms. Barry's shares.

21. Further, the Bye-Laws have explicit requirements concerning recognition of transfers of title to shares upon the death of a shareholder, none of which the Claimant satisfied. Paragraphs 34 and 35 of the Bye-Laws state that:

34. In the case of the death of a shareholder, the survivor or survivors, where the deceased was a joint holder, and the estate representative, where he was sole holder, shall be the only person recognized by the Company as having any title to his shares.... For the purpose of this Bye-Law, estate representative means the person to whom probate or letters of administration has or have been granted or, failing any such person, such other person as the Board may in its absolute discretion determine to be the person recognised by the Company for the purpose of this Bye-Law.

35. (a) Any person becoming entitled to a share in consequence of the death of a shareholder or otherwise by operation of applicable law may, subject as hereinafter provided and upon such evidence being produced as may from time to time be required by the Board as to his entitlement, either be registered himself as the holder of the share or elect to have some person nominated by him registered as the transferee thereof. If the person so becoming entitled elects to

be registered himself, he shall deliver or send to the Company a notice in writing signed by him stating that he so elects. If he shall elect to have his nominee registered, he shall signify his election by signing an instrument of transfer of such share in favour of his nominee.

(b) All the limitations, restrictions and provisions of these Bye-Laws relating to the right to transfer and the registration of transfer of shares shall be applicable to any such notice or instrument of transfer as aforesaid as if the death of the shareholder or other event giving rise to the transmission had not occurred on the notice or instrument of transfer signed by such shareholder.

Bye-Laws at ¶¶ 34-35, p. 7.

22. It has been over eleven years since the death of Ms. Barry. To date, nobody has produced letters of administration establishing that the Claimant is the proper representative of Ms. Barry's estate, which would give rise to the Board recognizing a third party as having title to Ms. Barry's shares. Accordingly, because no evidence has been produced regarding the shift of title to the Claimant, and the Claimant has not become the party registered as entitled to the rights and benefits of Ms. Barry's shares.

23. Further, facts surrounding the Dacey Claim underscore that the Claimant's failure to comply with the provisions of the Bye-Laws provisions is not a mere formality. In June of 2002, the Debtors' then general counsel, Edwin S. Hetherington, was visited by Detective Constable Robert Glen from the Thames Valley Police Department, Headquarters Fraud Squad. Detective Glen indicated that the police were investigating the Claimant's attempts to act for Ms. Barry in various matters after Ms. Barry's death.

24. While the Debtors have done no independent investigation and have no further information about the status or results of the Thames Valley Police Department's investigation, the investigation itself underscores the importance of the provisions of the Bye-Laws that require evidence a party is indeed an authorized estate representative.

25. As no evidence has been proffered that the Debtors owe any obligation to the Claimant as an authorized estate representative, the Bye-Laws prohibit the Debtors from recognizing the "Dacey Trust" as the holder of any interest in Ms. Barry's stock or the Dividend Payments that arose therefrom. Consequently, the Dacey Claim is not valid and should be expunged.

C. Even if the Dacey Claim represents a valid obligation owed to the Claimant, a significant portion of the Dividend Payments were forfeited pursuant to the terms of the Bye-Laws and the Dacey Claim must, at minimum, be reduced.

26. While the Debtors submit that no liability is owed to the Claimant for the reasons set forth above, paragraph 106 of the Bye-Laws provide that "[a]ny dividend unclaimed for a period of six (6) years from the date of declaration of such dividend shall be forfeited and shall revert to the Company and the payment by the Board of any unclaimed dividend, interest or other sum payable on or in respect of the share into a separate account shall not constitute the Company a trustee in respect thereof." Bye-Laws, at ¶ 106, p. 18.

27. The Dacey Claim attaches twenty-one (21) separate checks issued to Muriel Barry that constitute the Dividend Payments. Of those 21 checks, all but seven (7) remained unclaimed for a six-year period after the date that a Dividend Payment was declared.

28. The only seven checks that, as of the Petition Date, had not remained unclaimed for the six-year period relate to Dividend Payments that were declared as of the following record dates: November 6, 2000 (\$7,950); February 5, 2001 (\$7,950); May 4, 2001 (\$7,950); August 3, 2001 (\$7,950); November 5, 2001 (\$7,950); February 5, 2002 (\$5,565); and May 6, 2002 (\$7,950), for a grand total of \$53,265. Because the balance of the Dividend Payments were not claimed for a six year period following the declaration of dividends, such Dividend Payments were forfeited and properly reverted back to the Company.

29. Thus, even if the Claimant is the proper beneficiary of Ms. Barry's rights to the Dividend Payments or is the representative of her estate, the Dacey Claim is only allowable up to \$53,265, subject to such claim being equitably or statutorily subordinated, as discussed in further detail below.

D. To the extent that the Dacey Claim is allowed in any amount, the Debtors reserve all rights to seek the subordination of any allowed portion of the Dacey Claim.

30. Section 510 of the Bankruptcy Code provides in pertinent part:

(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under § 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

11 U.S.C. § 510(b).

31. The Debtors submit that the Dividend Payments "aris[e] from" Ms. Barry's ownership of shares in the Company, and therefore the subordination provisions of section 510(b) apply. See, e.g., Rombro v. Dufrayne (In re Med Diversified, Inc.), 461 F.3d 251, 255 (2d Cir. N.Y. 2006), (holding that section 510(b) is interpreted broadly); In re Enron Corp., 341 B.R. 141, 162-63 (Bankr. S.D.N.Y. 2006) ("the broad applica[tion] of section 510(b) is now quite settled"). Further, to subordinate a claim under section 510(b), "some causal link must exist between the purchase or sale and the claim at issue, but that the causal link need not arise contemporaneously with the purchase or sale of a security." Weissmann v. Pre-Press Graphics Co. (In re Pre-Press Graphics Co.), 307 B.R. 65, 78 (N.D. Ill. 2004)(citing In re Telegroup, Inc., 281 F.3d 133, 144 n.2 (3d Cir. 2002)). Ms. Barry's right to payment on account of the Dividend Payments clearly arose on account of her ownership of stock in the Company; thus, the Debtors

submit that the claim of any party on account of the Dividend Payments should be subordinated under section 510(b).

32. Further, any payment to an unsecured claimant on account of the Dividend Payments would serve to provide value to a shareholder (or her heirs) on account of his or her shareholdings, and not on the basis of consideration provided to the Debtors prior to the Petition Date. Accordingly, the Debtors submit that a basis exists for any valid portion of the Dacey Claim to be equitably subordinated to all allowed general unsecured creditors pursuant to section 510(c). See, e.g., In re SPM Mfg. Corp., 163 B.R. 411, 416 (Bankr. D. Mass. 1994) (“a stock redemption claimant is usually seeking profit in the sale of the stock. A redemption claimant, moreover, is trying to recover what is essentially a liquidating dividend on his stock. And because of the absence of consideration, prior payments on the claim will have contributed to the debtor's financial collapse. I conclude that this claim must be equitably subordinated for these reasons.”)

33. Bankruptcy Rule 7001 states that any proceeding to subordinate any allowed claim or interest is an adversary proceeding. As set forth above, however, the Debtors do not believe that any allowed claim exists to be subordinated. In the event the Court finds that any portion of the Dacey Claim is an allowed claim, the Debtors reserve all rights to initiate an adversary proceeding to seek the subordination of such allowed claim.

CONCLUSION

34. For the reasons set forth above, no basis exists to grant the Dacey Claim any priority treatment. Further, the Claimant has not demonstrated any right of himself or the “Dacey Trust” to be the beneficiary of any claim on account of the Dividend Payments. The Dacey Claim should be disallowed, or at a minimum, it should be reclassified and reduced as set

forth in the instant Objection, subject to any such allowed claim being subordinated pursuant to section 510 of the Bankruptcy Code.

NOTICE

35. No trustee or examiner has been appointed in these chapter 11 cases.

Notice of this Objection has been provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) the SCL Committee; (c) the SCSL Committee; (d) the Claimant; and (e) parties entitled to receive notices under Rule 2002 of the Federal Rules of Bankruptcy Procedure. In light of the nature of the relief requested, the Debtors submit that no further notice need be given.

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto as Exhibit D, granting the relief requested and such other and further relief as this Court may deem just and proper.

Dated: Wilmington, Delaware
October 23, 2008

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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