

SOBERS LTD AND KANHAI'S POSITION PAPER

Mayfair Property

1. Worrall acted in his personal capacity (and not as a director of the trustee company) in negotiating with Benaud, and when he permitted, and procured, Kallicharran to bid for the property (including possibly funding the purchase, as the company's only asset is the property). Worrall was Kallicharran's sole shareholder, and his apparent control of the company may entitle Benaud to relief against Kallicharran.
2. The nature of Benaud's claim (proprietary, personal, restitutionary) may dictate whether the property settled by Worrall, and held by Sobers includes all the shares in Kallicharran or only 75% thereof, or whether Kallicharran holds 25% of the property for Benaud. Consider joint venture propriety estoppel, constructive trusts, (see *Yeoman's Row Management Ltd v Cobbe* [2008] UKHL 55). A *Pallant v Morgan* equity in favour of Benaud may be enforceable against Kallicharran.
3. The sale of the Kallicharran shares to Lloyd was made with knowledge (certainly of Mr Worrall, a director of Sobers) of Benaud's alleged interest. Consideration must be given to exposure of Sobers (and/or Mr Kanhai, subject to corporate and trust indemnities) to *in personam* accessory liability.
4. A personal claim against Worrall and/or Kallicharran should not attract any third party liability on the part of Sobers as trustees or Mr Kanhai as a director of the trust company.
5. Investigations are needed of any New York connections of Worrall, Benaud and Kallicharran (which although registered in the BVI may have US based directors or business), to be prepared to resist any attempt by Benaud to bring a claim in New York.

Lara Corp

1. Sobers Ltd holds all the shares in Lara Corp as trustee for the Worrall Trust. Lloyd is answerable to Sobers as a director of Lara Corp (as is the settlor).
2. Lloyd has personal interests in trust assets and/or issues affecting the trust which may conflict with his duties as enforcer: He is a director of Lara Corp (which has a contractual/tortious claim against Chappell and Co) and a close personal friend of the owner of Chappell and Co. Consideration must be given to requiring Lloyd to step down as enforcer or be replaced.
3. Sobers (or if Mr Worrall will not agree then Mr Kanhai) should consider seeking directions from the Cayman court as to whether a claim should be pursued against Chappell.
4. Investigations of jurisdiction and proper forum are required. Chappell is London based. A claim in contract/tort may lie there. Madoff controlled funds may span several jurisdictions and as yet there has been no identification of where Lara Corp funds were invested. Courtney may have sufficient connections with other jurisdictions to consider commencing a claim outside Cayman, but this should be resisted.

Finally

5. Who is paying for this meeting?

Teresa Rosen Peacocke
April 2009