

## BERMUDA SUPREME COURT

***In the Matter of Celestial Nutrifoods Limited  
(in liquidation) [2017] SC (Bda) 10 Civ (31  
January 2017)***

CROSS-BORDER INSOLVENCY - COMMON LAW  
RECOGNITION OF SINGAPORE INSOLVENCY  
PROCEEDINGS IN RELATION TO BERMUDIAN  
COMPANY SUPPORTED BY STAY OF  
PROCEEDINGS AGAINST COMPANY IN BERMUDA -  
PROCEEDINGS COMMENCED BY LIQUIDATORS IN  
SINGAPORE AGAINST DIRECTORS - APPLICATION  
BY DIRECTORS TO LIFT STAY IN ORDER TO  
DETERMINE BERMUDA LAW ISSUES IN BERMUDA  
- ABUSE OF PROCESS-FORUM NON CONVENIENS

Celestial Nutrifoods Limited was a Bermudian company whose shares were traded on the Singapore Stock Exchange. The company was wound up by the Singapore Court in 2010 and a provisional liquidator appointed. It was placed into liquidation in Singapore in 2010. In 2011 the Singapore appointed provisional liquidator applied to the Bermuda Court and obtained an order that: (i) he be recognised in Bermuda, (ii) the automatic stay of proceedings in Bermuda under Section 167(4) of the Bermuda *Companies Act, 1981* (the "Act") be confirmed and imposed (It should be noted that the basis for the stay relied upon by the Chief Justice in his 2011 order has since held by the Privy Council to be wrong in law (*Singularis Holdings Ltd. -v- PricewaterhouseCoopers* [2015] AC 1675)) and (iii) the Bermuda Court would make an order under Section 195 of the Act, requiring a party with information about the Company to be examined and/or produce documents in its custody.

In 2016, two of the former directors of the Company applied for leave to bring proceedings against the Company in Bermuda, in order to pursue their rights to claim an indemnity against the Company under the bye-laws. The same directors were being sued in Singapore for breach of duty and were relying on the bye-law indemnity in the Singapore proceedings, but the point had not yet been ruled upon by the Singapore Courts. In determining the matter, the Chief Justice accepted that the

principles governing the lifting of the statutory stay should apply to a stay imposed under the Court's inherent jurisdiction by way of common law assistance to a foreign insolvency court. It was further accepted that the usual approach to lifting the liquidation stay by reference to the character of the claim, is that an attempt "by a debtor to establish non-liability will typically be allowed to be pursued". (see paragraph 18)

However, on the facts of the present case, the Chief Justice held that it would, in all the circumstances, be wrong and unfair to permit the applicant directors to sue the Company in Bermuda, given that the legal proceedings they wished to bring would undermine the purpose of the recognition order (which they did not contest), by impeding the efforts of the Singapore Court to liquidate the Company. Further the Chief Justice held that the present application was an abuse of the process of the Bermuda Court, since the proper time for seeking to invoke the Bermuda Court's jurisdiction, in respect of relief sought, had long passed. Finally, he ruled that the applicants had, by their conduct in the Singapore Proceedings, in any event waived the right to assert that Singapore was an inappropriate forum for adjudicating the Bermuda law issues and the applicants had submitted to the jurisdiction of the Singapore Court and made no attempt to invite that Court to decline jurisdiction in relation to the relevant Bermuda law issues.

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