

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 Case No. 12-11076-shl

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7 In the Matter of:

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

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11 Debtors.

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13 - - - - - x

14 United States Bankruptcy Court  
15 One Bowling Green  
16 New York, New York

17  
18 March 5, 2013  
19 3:12 p.m.

20  
21 B E F O R E :  
22 HON SEAN H. LANE  
23 U.S. BANKRUPTCY JUDGE

24  
25

1 Doc. #843 Motion to Authorize / Motion of Official Committee  
2 of Unsecured Creditors for Entry of an Order Pursuant to  
3 Fed. R. Bankr. P. 2004, 9006, and 9016 Authorizing Expedited  
4 Discovery from the Debtors

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25 Transcribed by: Sherri L. Breach, CERT\*D-397

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Good afternoon. Please be seated.

All right. We are here this afternoon for a --  
the continuation of a hearing begun on Monday, a motion to  
auth -- of the committee to authorize certain discovery  
under Rule 2004.

Let me make sure that I have track of everybody  
who is on the phone or who should be on the phone. Who is  
it who we expected to dial in today?

MR. FLECK: Your Honor, my partner, Dennis Dunne,  
should be on the line as well as our co-counsel, Jalli Al-  
Aradi from the Hassan Radhi firm.

THE COURT: All right. Are they on listen only or  
are they -- it's a live line?

MR. FLECK: They should have live lines.

THE COURT: All right. Are both those folks on  
the line?

MR. DUNNE: Good afternoon, Your Honor. It's  
Dennis Dunne.

MR. ROSENTHAL: And, Your Honor, I believe that  
for the -- from the debtor's side we have some -- Henry  
Thompson. We may have Attefab Dumaleck (ph), Mohammed  
Chowdhery. We have some -- some of the senior management  
team at Arcapita in Bahrain on the line as well.

1 THE COURT: All right. And are the folks in  
2 Bahrain able to hear us okay?

3 They may be in a listen-only line as well.

4 MR. ROSENTHAL: Okay.

5 THE COURT: All right. So where do things stand?

6 MR. ROSENTHAL: Well, first, Your Honor, good  
7 afternoon. Michael Rosenthal on behalf of the Arcapita  
8 debtors.

9 The good news, Your Honor, is that we do have an  
10 agreement that I will report to you in a second. But -- but  
11 I would like to give a little preface and I -- it seems like  
12 the way to start was that from adversity comes strength  
13 because although we have had a scuffle in the last day or so  
14 over this issue, I want to bring us back to the center.

15 And I think it's important, particularly in this  
16 case because we have international creditors and  
17 international investors. And sometimes the way of the  
18 Bankruptcy Court and the bankruptcy system in the United  
19 States are not as -- not entirely clear, not -- not as  
20 familiar to -- to those -- to those parties as it is to  
21 those of us who practice this day in and day out.

22 And I know that there may be some people who read  
23 the record and I -- and I think we both share -- the  
24 committee and the debtors -- we both share the need to  
25 reassure our creditor and investor-base that, you know, the

1 case is -- the case is proceeding smoothly and that these  
2 kinds of small bumps in the road are just small bumps in the  
3 road.

4 We've all worked hard --

5 THE COURT: Well -- and let me interject here. It  
6 would be a first for me if -- if there were -- in a case of  
7 this size and complexity if there were no bumps in the road.  
8 And I would probably be out of a job if -- if that were the  
9 case. And, in fact, this case has been a mile of  
10 cooperation in trying to work out issues where I've had this  
11 kind of cooperation and excellent lawyering (sic) in all my  
12 matters before me.

13 So the mere fact that a motion comes up and is  
14 vigorously contested is -- really reflects nothing more than  
15 parties doing what they think they have to do to protect  
16 their clients' interests vigorously. So -- so that's --  
17 that's what I took the issue that we discussed Monday and  
18 are still discussing today to be.

19 MR. ROSENTHAL: Well, thank you, Your Honor. We  
20 -- we've all worked hard to move the process along. You  
21 know, we've -- we have gotten past the stage where the  
22 committee has -- has -- and the debtors have talked about  
23 allocation issues. The debtors have been considering  
24 management issues for some time and now we've got all the  
25 parties in -- in the room to talk about management issues,

1 which -- which are critical here.

2 I want to emphasize, we have a limited time to  
3 focus on -- on these issues because we're -- we would like  
4 very much to keep to the timetable that we have before the  
5 Court. And so we hope that from here forward, the process  
6 can unfold quickly and we hope that our agreement actually  
7 will implement that.

8 And as you know, we're -- we're trying to move the  
9 Chapter 11 process forward, but we're also trying to keep  
10 stability among the investor and the creditor ranks. And I  
11 -- and I think we've been very successful at doing that so  
12 far, and we hope to do it in the future.

13 Let me -- let me talk to you about the proposal  
14 for the disclosure of the investor list. But, again, before  
15 I do that, I want to -- I want to make clear that we are  
16 ultra-sensitive to the privacy and confidentiality concerns  
17 of our investors. And this isn't just a matter of contract  
18 or even of applicable law. It's a matter of culture. It's  
19 a matter of custom in the middle east. And, frankly, when  
20 dealing with a number of our investors who have connections  
21 with sovereign entities, it's a matter of protocol for how  
22 you handle the Royal Court of, you know, a foreign state.

23 So that's one of the reasons we've been very  
24 sensitive to this and we know that the U.C.C. will be  
25 sensitive with this information as well, but we want to make

1 sure that -- that that's on the record.

2 So our -- our understanding with the U.C.C. is  
3 that we would provide a list of our investors together with  
4 their ownership percentages in the various syndication  
5 companies, and that would be provided -- it would be a list  
6 with names only and their ownership percentages. That would  
7 be provided to the professionals for the committee and to a  
8 sub-committee of the full committee. We were -- we were  
9 thinking between two and four of the members, they would  
10 form a sub-committee.

11 Those parties would receive the list in  
12 confidence. They would not be able to disclose the list  
13 generally, even to others in their own organization. And we  
14 would put all of this in -- in the order. And we would  
15 separately provide a list, a shorter list, of the 25 largest  
16 investors in the -- in the various syndication companies.  
17 And that list would actually have contact information. We  
18 would provide that to the professionals for the -- for the  
19 committee and to this sub-committee of the -- of the  
20 committee. And, again, they would be under an order to keep  
21 it confidential and not disclose it.

22 For Your Honor's information, we believe that the  
23 top 25 represents roughly 50 percent of the assets under  
24 management at the syndication company level.

25 Now we have an additional agreement with the

1 U.C.C. that if that 25 -- if those 25 investors are not  
2 enough for the purposes of the U.C.C., that we would provide  
3 contact information for another r-- up to another 25  
4 investors after they review the initial list and give us --  
5 give us their comments.

6 The issue, then, Your Honor, that we -- we  
7 discussed was what -- what could the committee do with that  
8 list. And what we have agreed is that the professionals for  
9 the committee and the members of the committee would be  
10 prevented from contacting or meeting with anyone on the  
11 investor list except the 25 largest or, if that 25 list is  
12 expanded, to -- to include some additional creditors.

13 And that if -- that if a meeting were, in fact,  
14 scheduled and occurred, that it could be attended not only  
15 by the U.C.C. professionals, but by all of the members of  
16 the committee, not just the sub-committee. Again, everyone  
17 would be bound by confidentiality.

18 Now we -- a couple of further points. First,  
19 we've agreed that under no circumstances would these  
20 investor lists be made available to third party asset  
21 managers. We've also agreed that nothing -- while nothing  
22 prevents a member of the U.C.C. from contacting someone that  
23 they now know to be an Arcapita investor, I mean, because --  
24 through public information -- so if they publicly know -- if  
25 they know as a result of a public source that someone is an

1 investor in Arcapita, they -- they can call them. I assume  
2 they could call them now. They could call them later.

3 On the other hand, they cannot look at the list  
4 and say, oh, I know this particular party on the list and  
5 now that -- since I know that party, I happen to -- and I  
6 know -- I now know they're an investor and put two and two  
7 together and use that as a basis for -- for contacting them.

8 Two final points. Your Honor, we would -- because  
9 of the Bahrain law issues involved, we would -- we would ask  
10 -- we would like a period of time to discuss this with the  
11 CBB and the results of that discussion will be embodied in  
12 an -- in the order that we present to the Court later in the  
13 week.

14 And, finally, Your Honor, if -- if we -- we've  
15 agreed with the committee that if there are further issues  
16 regarding these lists, we will -- you know, we'll work with  
17 the -- we'll work with the committee to have matters heard  
18 before the Court on a relatively expedited basis, consistent  
19 with the Court's calendar.

20 THE COURT: All right. That's all fine. Thank  
21 you very much for the update.

22 MR. FLECK: Your Honor, good afternoon. Evan  
23 Fleck of Milbank, Tweed on behalf of the official committee.

24 The committee is pleased to have reached a  
25 resolution of this issue. We -- we obviously think it's

1 very important and the committee -- all the members of the  
2 committee felt that it did rise to the level of something to  
3 bring to Your Honor's attention as a gating issue for us to  
4 move to the next step in the plan process.

5 I just want to mention a few points with respect  
6 to the agreement. This will all be memorialized in an  
7 order, obviously, and the language will be clear there. But  
8 for purposes of the record, just three points that I just  
9 wanted to highlight and clarify.

10 The sub-committee that Mr. Rosenthal mentioned  
11 will be of the committee's choosing. The debtors are not  
12 going to determine who is on that sub-committee. The  
13 committee itself will decide. There are no criteria for  
14 that, but the committee members will make that decision and  
15 it will be a subset. We haven't yet made that  
16 determination, but we'll do that promptly.

17 The committee does believe that this should move  
18 along as quickly as possible. I think the debtors agree  
19 with that. And to that point, there is a staging process  
20 that Mr. Rosenthal mentioned and that's accurate; that we're  
21 going to receive full information and authority to reach out  
22 to the 25 largest investors.

23 I wanted to be clear that for the remaining 25  
24 that -- that the committee's going to identify, there's no  
25 additional showing or discussion that needs to happen with

1 the debtors in order to demonstrate the need for that.  
2 We'll review the list and then, assuming if the committee  
3 does want to and believes it's appropriate and necessary to  
4 reach out to additional investors, will provide that list to  
5 the debtors and they will promptly provide those names to  
6 the advisors and the sub-committee, together with the  
7 relevant contact information. And then the authority to  
8 speak with and interact with those investors will be  
9 broadened to that group and that universe.

10 And the last point, I think, is just a clarifying  
11 point. I don't think Mr. Rosenthal intended this, but what  
12 -- what I heard him say was that with respect to the  
13 investors other than those 50, the committee would be  
14 prevented from meeting with them. And the committee will be  
15 prevented from contacting them and the committee -- nothing  
16 -- this is not intended to be a loophole here, but,  
17 obviously, the committee has statutory duties to interact  
18 with creditors. Some of these investors are creditors. The  
19 committee certainly receives inbound inquiries, as do its  
20 advisors, from this population.

21 So to the extent that creditors are reaching out  
22 to the committee, I don't think this agreement is intended  
23 to prevent the committee or its advisors from responding to  
24 inbound inquiries from this -- this population of  
25 creditor/investors.

1           And with that I think that reflects the agreement  
2           and we're pleased to have reached on.

3           THE COURT: All right. Thank you. That's very  
4           helpful.

5           Mr. Rosenthal, anything else to add on to the  
6           substance of the agreement?

7           MR. ROSENTHAL: No, Your Honor. I -- I don't have  
8           any problem with -- with any of the three qualifications.

9           THE COURT: All right.

10          All right. Well, thank you very, very much for  
11          the update and thank you very much for your efforts to  
12          resolve the problem in what I think is a fairly elegant and  
13          nuanced solution that respects the concerns that the debtors  
14          have about sensitivities in the case and respects the  
15          committee's need for sufficient information to do its job,  
16          and as is often the case with these agreements, reaches what  
17          I think is a -- a more nuanced and subtle resolution that I  
18          would have been capable of giving you as a judicial matter.

19          So I appreciate all your efforts and, again, I  
20          would say this case has been very, very well-handled. It  
21          just has had a knack for presenting really interesting  
22          challenging issues for the lawyers and the parties involved.

23          All right. I will wait to hear from the parties  
24          in terms of getting an order and just keep chambers apprised  
25          as to any -- any sensitivity in terms of turning that order

1 around and getting it entered. So we'll wait to hear from  
2 you on that front.

3 Anything else before we adjourn?

4 All right. Thank you very much.

5 MR. ROSENTHAL: Thank you, Your Honor.

6 (Whereupon these proceedings were concluded at 3:27  
7 p.m.)

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RULINGS

DESCRIPTION	PAGE	LINE
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C E R T I F I C A T I O N

I, Sherri L. Breach, CERT\*D-397, certified that the foregoing transcript is a true and accurate record of the proceedings.

**Sherri L  
Breach**

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**Date: March 11, 2013**