



Jurisdictional Issues in International Receiverships

Drew McManigle
The McManigle Co.¹
Houston
MacCo@ix.netcom.com

In July 1995, a Texas-based reorganization firm was appointed Receiver over two British Virgin Islands ("BVI") corporations, World Manufacturing Limited ("World") and Manufacturera del Bravo Ltd. ("Bravo") by courts in both the United States and the Virgin Islands.² World and Bravo were manufacturing and trading companies headquartered in El Paso, Texas on the U.S./Mexican border. The appointments were made after Banco Mexicano, S.A., the fourth largest bank in Mexico, obtained judgments against World and Bravo for over \$22 million each. This highly unusual dual appointment provided the standing necessary to investigate the financial affairs and assets of the judgment debtors both in the United States and worldwide.

Background

In 1994, Banco Mexicano filed a collection suit in the U.S. against four Mexican corporations (the "Mexican Cos."), three Texas corporations (the "Texas Cos."), World, Bravo and certain principals. Originally, this group of businesses was formed to manufacture audio components in Mexico for international export. The BVI corporations held the manufacturing contracts and also served as the marketing arms of the group. The Mexican companies shared manufacturing and investment responsibilities while the Texas Cos. acted in concert as the domestic manufacturing division, landlord and as management consultants to the group. Together, these companies shared common ownership, principals, legal counsel, registered agents and accountants.

During the early 1990's, Banco Mexicano had made export loans to the BVI and Mexican Cos. By 1992, the manufacturing contracts had soured, as had the loans. In 1993, several of these companies had reached settlement agreements with their principal contract partners and had, in substantive respects, ceased manufacturing operations. These contract settlements provided for a combination of lump sum cash payments and the contribution of certain equipment used by the group of companies in the manufacturing process to World and Bravo. Unfortunately for Banco Mexicano, very little of the settlement monies were paid to the bank.

Reprinted with permission from "Cracking the Code", ABI's weekly newsletter on the World Wide Web. Visit ABI World at <http://www.abiworld.org>.

¹The McManigle Company is a Houston, Texas based business reorganization and management consulting company. MacCo. provides cost effective and responsive crisis management and business restructuring services. MacCo.'s phone and fax numbers are: (713) 667-0403 and (713) 667-7601

²Charles A. Beckham, Jr. Esq., a Partner in the El Paso, Texas firm of Kemp, Smith, Duncan & Hammond, P.C. served as lead counsel to the Receiver and contributed to this article.

Banco Mexicano's collection suit alleged, among other issues, fraud and conspiracy to commit fraud in obtaining the loans.

By 1995, the Texas court's file was voluminous and filled with thick motions, discovery and briefs filed by both the plaintiffs and defendants. The efforts of World and Bravo to avoid appearing in the suit and thereby submitting to the Texas court's jurisdiction were nothing short of Machiavellian. Discovery was acrimonious and prolonged. Finally, the Texas court entered judgments against World and Bravo in the amount of \$22 million. The judgments also found these companies had conspired to commit fraud and had committed fraud. Subsequently, Banco Mexicano sought appointment of a Receiver over World and Bravo.

Once the firm was appointed by the Texas court as Receiver, international jurisdiction and venue immediately became issues as the Receiver began to review the numerous transactions which occurred in the U.S., Mexico, the BVI, Germany, Switzerland and Spain.

British Virgin Island Jurisdiction

Based upon the Texas court's judgments, an Application to Appoint Receiver was filed by Banco Mexicano in the BVI. After a hearing in August 1995, the BVI court appointed the firm Interim Receiver under BVI statute (hereafter, collectively the "Orders") and drafted the Order to provide the Receiver with maximum authority. The Receiver displaced the authority of the existing shareholders of the BVI companies. In fact and essence, this allowed the Receiver to wield power as Receiver and as Director of the companies.

The firm now had standing domestically (via the Texas Order appointing Receiver) and internationally. These appointments also resolved the jurisdictional issues. In the U.S., the Texas Court's Order established jurisdiction. The BVI Order extended the Receiver's powers to be recognized in all foreign jurisdictions. In most instances, the Orders and the placement of the Receiver as company director facilitated intelligence gathering, document review and asset recovery.

One of the most important pursuits was to pierce the BVI corporate confidentiality laws and obtain the BVI Co.'s original corporate books and records. The review of these documents allowed the Receiver to unravel the pattern of corporate manipulation and fraudulent transfer.

During this case, the Receiver has engaged more than seven law firms in as many countries. To date, the efforts of the Receiver and his professionals have resulted in the successful discovery and recovery of numerous assets. Additionally, the Receiver still has pending a number of fraudulent transfer recovery cases in the U.S.

International Litigation

Of note was the fraudulent transfer litigation filed in the Cayman Islands, British West Indies (the "Cayman litigation"). The Cayman litigation sought to overturn the transfer of bearer shares representing the majority ownership of one of the Texas Cos. The company had maintained possession of hard assets with significant value. Allegedly, this company's ownership had been

transferred to a Cayman corporation prior to the commencement of the Receivership. Prior to this transfer, the Texas company had been a wholly-owned subsidiary of World. The dynamics of asset preservation and the time sensitivity of this litigation were crucial. To assure a high probability of success in the Cayman litigation, the Receiver, his U.S. and Caribbean counsel were required to mesh the common and statutory laws in three separate jurisdictions. This required each to act in concert with one another to timely complete the legal and factual analysis underlying the suit. A unique twist was the requirement that the Receiver obtain an order from the BVI Court prior to initiating litigation in a foreign jurisdiction. BVI case law was inconclusive concerning the Receiver's authority on this issue. The old saying, "better safe than sorry" was applicable in this situation. At trial in Grand Cayman, the Receiver obtained a Final Judgement voiding the transfer and returning the shares of the Texas Cos. to World. Thereafter, the assets of the company were successfully sold by the Receiver for cash.

Conclusion

The primary objective in Receiverships is to protect and recover assets. In complex international cases, this goal must be combined with an aggressive commitment to act with decisiveness. These types of challenging cases, whether domestic or international in scope, require the timely, creative exploitation and balancing of all available legal and investigative resources.