

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Securities and Exchange Commission,	:	
	:	
Plaintiff,	:	Case No. 2:08-cv-667
	:	
v.	:	Judge Edmund A. Sargus, Jr.
	:	
One Equity Corporation, et al.	:	Magistrate Judge Mark R. Abel
	:	
Defendants.	:	

**ORDER ON MOTION BY COURT APPOINTED RECEIVER,
FREDERICK L. RANSIER, FOR ORDER
AUTHORIZING AND APPROVING COMPROMISE**

This matter is before the Court on the Motion by Court Appointed Receiver, Frederick L. Ransier, for Order Authorizing and Approving Compromise (Doc. No. 170). For the reasons that follow, the motion is granted.

On July 17, 2008, this Court entered an Order Appointing Frederick L. Ransier as Receiver for One Equity Corporation, Triangle Equities Group, Inc., Dafcan Finance, Inc., and Victory Management Group, Inc. (Doc. No. 14). Subsequently, this Court approved the preliminary report of Court Appointed Receiver (Doc. No. 39), and appointed Frederick L. Ransier as Receiver of Marshal-Light Trading Partners, Inc. and Resource Property Management. This Court further charged Frederick L. Ransier, in his role as Receiver, to take control of the companies and its assets and to facilitate a claims process for creditors of the receivership entities.

On February 26, 2009, the Receiver filed a Motion for Turnover of Certain Shares of China Sunergy Co. Ltd. ("C-SUN") (Doc. No. 73) registered in the name of Marshal-Light Trading Partners, Inc. ("Marshal-Light"). This Court took evidence and heard legal arguments

on the Motion for Turnover on April 21, 2009. This Court also took evidence and heard legal arguments on a Motion of Court Appointed Receiver for Order of Civil Contempt against the C-SUN parties (Doc. No. 86). The C-SUN parties had filed an action in the United States District Court, Southern District of New York, seeking an order compelling JPMorgan Chase Bank to return the C-SUN ADR's registered in the name of Marshal-Light.¹ On September 30, 2009, this Court entered an Opinion and Order granting the Motion of Court Appointed Receiver for Turnover of Stock Shares in China Sunergy Co. Ltd. (Doc. No. 100).

On March 9, 2010, the United States Internal Revenue Service ("IRS") submitted a proof of claim for taxes for One Equity Corporation, Triangle Equities Group, Inc., Dafcan Finance, Inc, and Marshal-Light Trading Partners, Inc. to the Receiver. Both before and after the IRS filed its claim, the Receiver reported to the Court that he had communicated with the IRS his difficulty in filing accurate tax returns because the records and information the Receiver needed to complete tax returns for the receivership entities either were missing or contained conflicting data.

At a status conference held on November 2, 2010, the Receiver and the C-SUN parties, through counsel, informed this Court that they had reached a compromise agreement. The Receiver further informed this Court that he had reached an agreement with the Internal Revenue Service regarding the claims filed as related to the receivership entities. On November 3, 2010, the Court entered an order which directed the receiver to file a Motion and Notice to Compromise setting forth the proposed terms of the compromise agreement and which

¹ The C-SUN ADR's have also been generally referred to as "shares" or "ADS's" within this receivership proceeding. The following detail the registered certificates in the name of Marshal-Light:

<u>Certificate No.</u>	<u>ADS'S</u>	<u>Dated</u>
JPMR004	5,000,000	July 9, 2008
JPMR005	1,600,000	July 9, 2008
JPMR006	1,000,000	July 9, 2008

established a deadline for the filing of any objections to the proposed compromise agreement (Doc. 165). On November 4, 2010, the Receiver filed a Motion by Court Appointed Receiver, Frederick L. Ransier, for Order Authorizing and Approving Compromise. In that motion, the Receiver stated that the negotiations between the Receiver and the IRS resulted in the following proposed terms of compromise as between them, subject to this Court's approval:

1. The IRS is willing to conclude the IRS' involvement in this receivership, including any requests or demands for the filing of additional tax returns, either pre- or post-receivership. That is, no further demands will be made of the Receiver to file additional returns. In return, the Receiver and the IRS have agreed, subject to Court approval of this compromise, that the Receiver shall pay an agreed upon or established amount relative to the proof of claim filed by the IRS. The IRS provided amounts to the Receiver for unpaid taxes, penalty amounts and interest calculated at the present rate of interest under the IRS Code. The IRS, subject to this Court's approval, has agreed to accept a total balance due on its claim as related to One Equity Corporation for outstanding assessed taxes, penalties, and interest due as of December 1, 2010, in the amount of \$320,107.12. The IRS, subject to Court approval, has agreed to accept a total balance due on its claim as related to Triangle Equities Group, Inc. for outstanding assessed taxes, penalties, and interest due as of December 1, 2010, in the amount of \$48,245.77. The IRS has agreed that Dafcan Finance, Inc., Victory Resource Capital Management, and Marshal-Light Trading Partners, Inc. have no outstanding assessed liabilities.

2. In summary, the IRS has agreed to resolve any past or future claims against the receivership estate and to conclude its involvement in this case, including any requests for demands for the Receiver to file additional tax returns on behalf of the receivership entities, upon receipt of the agreed or established amounts of its claim(s) and the entry of a final order approving the terms of this proposed settlement. This offer is a time-sensitive offer.

The motion further stated the Receiver and the C-SUN parties, after extensive negotiations, also reached a proposed compromise agreement, subject to this Court's approval, concerning the C-SUN ADS's. The terms of the proposed settlement as between the Receiver and the C-SUN parties, subject to approval by this Court, are as follows:

1. The C-SUN parties shall pay to the receivership estate \$4.8 million, plus the C-SUN parties will assume the obligation related to the proof of claim filed by JPMorgan Chase Bank, the transfer agent for the C-SUN ADS's, and shall be responsible to negotiate with and satisfy any and all costs, fees, maintenance, transfer, or other costs, related to the transfer of the C-SUN ADS's from the receivership.²

2. The C-SUN parties shall pay the \$4.8 million in three (3) installments: 1) \$1.6 million to be paid upon the entry of an order approving the compromise and a certified copy of said order being delivered to counsel for the C-SUN parties;³ 2) \$1.6 million to be paid within fourteen (14) days after the initial payment is made; and 3) \$1.6 million to be paid on or before December 31, 2010.

3. The C-SUN parties agreed to cooperate with the Receiver in the process related to the Motion. The C-SUN parties agreed that the first payment of \$1.6 million shall be used by the Receiver to pay the IRS agreed amount for its claim as explained above. The Receiver shall retain all moneys received from the C-SUN parties and, apart from the payments to the IRS as described above, shall make no distribution of any of the funds received from the C-SUN parties until the ADS's are re-titled in the names of the C-SUN parties.

4. Upon the \$4.8 million amount clearing the Receiver's accounts, the Receiver shall cooperate with the C-SUN parties to get the ADS's transferred back into their names. In particular, the Receiver shall execute all documents required by JP Morgan Chase Bank to ensure that the ADS's are re-titled in the names of the C-SUN parties. The C-SUN parties shall withdraw their claims against the receivership, and the parties shall grant and enter into mutual releases as to all claims as against the other. The Receiver shall withdraw or dismiss the motions related to the C-SUN parties.⁴

Also on November 4, 2010, the Receiver filed a Certificate of Service confirming service by regular, United States mail of the Motion and Notice to Compromise and Proposed Order upon

² JPMorgan Chase Bank filed a claim with the Receiver for \$304,000.00 for certain fees, costs, and expenses that continue to accrue.

³ The C-SUN parties represented to the Receiver and to this Court that they will be required to present a certified order pursuant to certain financial requirements of the Chinese government for said payments to be made. The C-SUN parties shall make the initial payment as soon as the requirements of the Chinese government are met.

⁴ On March 15, 2010, the Receiver filed a Second Motion for Contempt (Doc. No. 111); on August 25, 2010, the Receiver filed a Motion to Employ Credit Suisse Securities (USA) LLC (Credit Suisse) to Execute Sale of China Sunergy Co. Ltd. Restricted American Depositary Shares (Doc. 131); on November 1, 2010, the Receiver filed a Motion to Strike Declarations Filed by the C-SUN parties (Doc. 162).

the master service list and those interested parties and creditors listed on the Certificate of Service for the Motion (Doc. No. 169). Claimants Alan G. Smith, Carl Amari, and Robert Schwartz filed objections (Docs. 174, 175).

Claimant Alan G. Smith objects to approval of the proposed compromise agreement on the grounds that it will, in effect, elevate the C-SUN parties' claims ahead of all other claimants; that the Receiver has offered no reason for the time-sensitive nature of the proposed agreement with the IRS; and that paying out the C-SUN parties ahead of other interested parties, in the absence of a distribution plan establishing priorities is neither fair nor reasonable. Mr. Smith also argues that the C-Sun shares may be increasing in value, and that their return to the C-SUN parties may therefore deprive other claimants of additional distribution amounts they would otherwise receive.

Claimants Carl Amari and Robert Schwartz object on the grounds that, given the inherent lack of transparency in estate administration, they are unable to determine whether the proposed settlement is in their best interests, and that allowing the C-SUN parties to regain ownership of their shares would improperly elevate their claims over those of other claimants. Mr. Amari and Mr. Schwartz also oppose approval of the compromise agreement because they believe the equities give them a priority over the C-SUN parties, given that Mr. Amari and Mr. Schwartz have been actively litigating for years to obtain compensation for the losses they sustained as victims of fraud by the receivership entities, whereas the C-SUN parties were defrauded well after Mr. Amari and Mr. Schwartz initiated their lawsuits against certain of the receivership entities and the C-SUN parties should therefore have been on notice had they done their due diligence.

On November 23, 2010, the Court held a hearing on the Receiver's motion. At that hearing, the Receiver testified that he has used his best efforts to investigate the tax return filings and tax identification numbers used by the various receivership entities. The Receiver further testified that, notwithstanding his best efforts, he has found those records to be in disarray, incapable of reconciliation, and, in certain cases, in conflict with each other. The Receiver stated that he has communicated with the Internal Revenue Service ("IRS") regarding these issues. Given the state of the receivership tax records and obligations, the Receiver has represented to the Court that he believes the settlement with the IRS is in the best interest of the receivership estate for two reasons: (1) payment of the claims in accordance with the proposed agreement would obviate the need for the Receiver to hire additional professionals at the cost of the receivership estate to organize, investigate, and calculate tax related information; and (2) payment made as described within the proposed compromise would avoid or reduce potential litigation pertaining to tax liabilities.

With respect to the proposed agreement as between the Receiver and the C-SUN parties, the Receiver testified that the issues involving the C-SUN shares have been the subject of complex and extended litigation throughout this receivership proceeding. According to the Receiver, were the ADRs to become an asset of the receivership in the absence of a settlement, C-SUN's claim against the receivership would represent approximately fifty percent of all claims. The Receiver's testimony indicated that this would mean that C-SUN would recover half of any future payouts made by the Receiver to the pool of unsecured creditors and that C-SUN would therefore recover half of any future payouts made by the Receiver to the pool of unsecured creditors. The Receiver also expressed his concern about the decreasing value of the C-SUN shares, which, he testified, had dropped from approximately \$7.00 per ADS at the time

the Receiver seized the shares to approximately \$4.00 per ADS at this time. The Receiver stated that, in his view, the proposed settlement would provide a reasonable and known recovery for the receivership estate and would offer finality with respect to the largest disputed asset in the receivership. The Receiver further testified that the compromise agreement would potentially save the receivership estate between approximately \$250,000 and \$300,000 in broker costs and fees associated with the sale of the C-SUN shares. Finally, the Receiver testified that the proposed compromise settlement would add value to the amounts ultimately payable to the other creditors because of C-SUN's agreement to forego any claim against the receivership.

This Court has carefully considered the Receiver's motion, the objections filed by Mr. Amari, Mr. Schwartz, and Mr. Smith, the testimony presented at the hearing on the Receiver's motion, and the arguments advanced by counsel for the Receiver and counsel for Mr. Amari and Mr. Schwartz.⁵ In light of the foregoing, the Court concludes that the settlement terms, as presented to the Court and set forth above, will yield the inflow of significant funds into the receivership estate, and will result in the release or withdrawal of a significant claim by the C-SUN parties against the receivership estate. In addition, the compromise agreement set forth above establishes the tax liability owed to the IRS and releases the Receiver from any further obligation to file additional tax returns on behalf of the receivership estate. Moreover, C-SUN's agreement, under the terms of the compromise settlement, to give up any claim against the receivership increases the pool of receivership assets available for distribution.

In considering the best interest of the receivership estate's creditors, this Court finds that the proposed compromise will avoid costly and complex litigation; will fix the amount due to the IRS; will add value to the receivership assets ultimately payable to the remaining creditors;

⁵ Counsel for the other parties elected not to make oral arguments at the hearing.

and will aid in the progress of the final administration of this receivership estate and in the Receiver's formulation of a plan of distribution for creditors. The Court therefore concludes that the Receiver has provided sound and sufficient reasons for this Court to approve the compromise agreement presented in the Receiver's motion and that the compromise agreement will benefit the creditors of this receivership estate.

Accordingly, based upon the terms negotiated and agreed to by counsel for the parties, subject to this Order, it is ORDERED that:

1. The C-SUN parties shall pay to the receivership estate \$4.8 million, plus the C-SUN parties will assume the obligation related to the proof of claim filed by JPMorgan Chase Bank, the transfer agent for the C-SUN ADS's, and shall be responsible to negotiate with and satisfy any and all costs, fees, maintenance, transfer, or other costs, related to the transfer of the C-SUN ADS's from the receivership.
2. The C-SUN parties shall pay to the Receiver \$4.8 million in three (3) installments:
 - a) \$1.6 million shall be paid upon the entry of this Order and a certified copy of this Order being delivered to counsel for the C-SUN parties. As stated above, in the findings of this Court, said payment shall be made as soon as the requirements of footnote three (3) stated above are met;
 - b) \$1.6 million shall be paid to the Receiver within fourteen (14) days after initial payment is made; and
 - c) \$1.6 million shall be paid to the Receiver on or before December 31, 2010.

The entire balance of \$4.8 million shall be paid to the Receiver on or before December 31, 2010.

3. Once the initial payment of \$1.6 million clears the Receiver's account, the Receiver shall pay to the IRS the agreed upon amount for its claim as explained above. Said claim shall be deemed satisfied in full and the Receiver shall not be required to file additional tax returns on behalf of the receivership entities. In summary, upon the clearing of the Receiver's payment to the IRS, any past or future claims of the IRS against the receivership estate are deemed concluded.
4. The C-SUN parties shall continue to cooperate with the Receiver in the implementation of this Order and said settlement.
5. The Receiver shall retain all moneys received from the C-SUN parties and, apart from the payment to the IRS as described above, shall make no distribution of any of the funds received from the C-SUN parties until the ADS's are re-titled in the names of the C-SUN parties. Upon the \$4.8 million amount clearing the Receiver's account, the Receiver shall cooperate and submit any and all appropriate documentation to JPMorgan Chase Bank to ensure the transfer, and re-titling of the ADS's from Marshal-Light back to the C-SUN parties. JPMorgan Chase Bank shall transfer/register the ADS's in the names of C-SUN parties only upon receipt of the appropriate documentation from the Receiver and the C-SUN parties' satisfaction of the JPMorgan Chase Bank claim for certain fees, costs, and expenses as stated above.
6. Upon the \$4.8 million amount clearing the Receiver's account, the Receiver shall file a withdrawal of his Second Motion for Contempt (Doc. 111); the Motion to

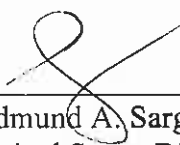
Employ (Doc. 131); and the Motion to Strike Declarations (Doc. 162). Upon the ADS's being transferred, the C-SUN parties shall withdraw their claims against the receivership estate, and the claim of JPMorgan Chase Bank shall be deemed as withdrawn. Upon the transfer of the ADS's to the C-SUN parties, it is hereby ORDERED that all claims between the receivership entities, the receivership estate, the Receiver, and the C-SUN parties are released and dismissed.

7. Upon the ADS's being transferred, the C-SUN parties shall be forever released as against any and all claims arising out of, or associated with the receivership estate as of a result of the transaction's giving rise to the pledging of the ADS's at issue in this Order.
8. The Receiver hereby is granted authority to execute any and all documents and take all required action to complete this settlement.
9. The Receiver shall serve a copy of this entered Order upon the parties listed on the master service list and all interested parties within five (5) days of the date of entry.

The Motion by Court Appointed Receiver, Frederick L. Ransier, for Order Authorizing and Approving Compromise (Doc. No. 170) is hereby **GRANTED**. The Clerk is **DIRECTED** to certify a copy of this entered Order so that the C-SUN parties may comply with the requirements set forth in footnote three (3) stated above.

IT IS SO ORDERED.

Dated: 11-30-2010



Edmund A. Sargus, Jr.
United States District Court Judge