

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : In a Proceeding Under
 : Section 304 of the
 : Bankruptcy Code
Petition of GORDON I. MACRAE and :
JAMES CLEAVER, as Joint Provisional : Case No. 04-10362 (RDD)
Liquidators of Parmalat Capital Finance :
Limited, *et al*, : (Jointly Administered)
 :
Debtors in a Foreign Proceeding. :
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TWENTY-SIXTH CONTINUED TEMPORARY RESTRAINING ORDER

Upon the application of Gordon I. MacRae and James Cleaver (the “Petitioners”), as Joint Official Liquidators of Parmalat Capital Finance Limited, a limited liability company organized and incorporated under the laws of the Cayman Islands (“Parmalat Capital”), and the Joint Official Liquidators of Dairy Holdings Limited, a limited liability company organized and incorporated under the laws of the Cayman Islands (“Dairy Holdings”) and Food Holdings Limited, a limited liability company organized and incorporated under the laws of the Cayman Islands (“Food Holdings,” and together with Parmalat Capital and Dairy Holdings, the “Companies”), for a Preliminary Injunction pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure, Rule 65 of the Federal Rules of Civil Procedure and sections 304(b) and 105 of title 11 of the United States Code (the “Bankruptcy Code”), and the Court having considered and reviewed: (i) the summons for each of the Companies, each dated January 21, 2004, (ii) the Companies’ section 304 petitions filed to commence these ancillary

proceedings, each dated January 20, 2004 (collectively, the “Petitions”), (iii) the Declaration of Guy Locke, dated January 20, 2004, (iv) the Orders of the Grand Court of the Cayman Islands, each dated December 24, 2003, appointing the Petitioners as the Joint Provisional Liquidators of the Companies and annexed to their respective Petitions, and (v) the Affidavit of Gregory M. Petrick and the Memorandum of Points and Authorities submitted by the Petitioners in support of their application, both dated January 20, 2004 ((i) through (v) collectively referred to herein as the “Supporting Papers”), and the Court having considered and reviewed the Objection to the Commencement of Section 304 Proceedings and to the Preliminary Injunctive Relief Sought by Gordon I. MacRae and James Cleaver, the Temporary Joint Provisional Liquidators of Parmalat Capital Finance Limited, Food Holdings Limited and Dairy Holdings Limited and the exhibits thereto (the “Objection”) filed on January 28, 2004 by Parmalat Finanziaria S.p.A. and its affiliates and subsidiaries (collectively, “Parmalat”) under the direction of the Extraordinary Administrator, Mr. Enrico Bondi, and no other objections to the Petitioners’ application having been filed, and based on the record of this hearing on December 14, 2006 and based on the foregoing, the Court finds and concludes as follows:

1. On January 22, 2004 this Court entered the Order to Show Cause With Temporary Restraining Order and for Preliminary Injunction, which contained a temporary restraining order (“TRO”) granted as of January 21, 2004 at 3:30 p.m. (EST) and scheduled a hearing for January 29, 2004 at 2:30 p.m. (EST) on the Petitioners’ application for Preliminary Injunction Order.

2. On January 28, 2004, Parmalat filed the Objection, which objects to the commencement and basis of the 304 proceedings and the Petitioners' application for a Preliminary Injunction.

3. On January 30, 2004, this Court entered the Continued Temporary Restraining Order, which continued the TRO to March 2, 2004 at 5:00 p.m. (New York time). On or about January 16, 2004, Parmalat filed an application in the Grand Court of the Cayman Islands (the "Grand Court") seeking to dismiss the Cayman Islands winding up proceeding of Parmalat Capital or replace the Petitioners as Joint Provisional Liquidators. From February 16 to 20, 2004, the Grand Court considered affidavits and submissions in connection with Parmalat's application. On February 24, 2004, the Grand Court orally denied Parmalat's application and stated that a written decision would follow. In its oral decision, the Grand Court ordered the JPLs, among other things, to provide Mr. Bondi with the fullest cooperation permitted by Cayman law and provide Mr. Bondi's Cayman attorneys with three (3) days notice of any future application for relief in the Caymans or elsewhere. On March 1, 2004, the Grand Court issued its written decision.

4. On August 26, 2008, this Court entered the Twenty-Fifth Continued Temporary Restraining Order (the "Twenty-Fifth TRO"), which continued the TRO to midnight (New York time) on December 16, 2008.

5. At the hearing for the Sixteenth TRO, this Court was advised that the Grand Court rendered a judgment on May 12, 2006 appointing Messrs. Cleaver and MacRae Joint Official Liquidators of Parmalat Capital Finance Limited. A Notice of Appeal from the entry of the foregoing Order appointing Messrs. Cleaver and MacRae

was filed. The appeal was heard on August 1-4, 2006 and the Court of Appeals ruled subsequently and did not overturn the appointment of Messrs. Cleaver and MacRae as Joint Official Liquidators. An appeal from this order was taken to the Privy Council, and the appointment was confirmed by the Privy Council on April 9, 2008. A further extension of the Twenty-Fifth TRO is sought to allow the Joint Official Liquidators and the interested to consider whether a consensual resolution is possible.

6. On November 23, 2005, the Joint Official Liquidators of Food Holdings and Dairy Holdings brought suit against various Bank of America entities (“BOA”), Grant Thornton entities (“Grant Thornton”), and Deloitte entities (“Deloitte”) in the United States District Court for the Southern District of New York in Case No. 05 MD 1653 (LAK)(the “Food & Dairy Litigation”).

7. On November 23, 2005, the Joint Provisional Liquidators of Parmalat Capital brought suit against BOA in North Carolina state court in Case No. 3:05cv518-C (the “PCF-BOA Litigation”).

8. On December 9, 2005, the Joint Provisional Liquidators of Parmalat Capital brought suit against Grant Thornton in Illinois state court in Case No. 06 C 0047 (the “PCF-Grant Thornton Litigation”).

9. The PCF-BOA Litigation and the PCF-Grant Thornton litigation were subsequently removed to federal court in their respective original jurisdictions and transferred to the Southern District of New York (the Illinois action was transferred, pursuant to 28 U.S.C. §1404(a) to the SDNY, while the North Carolina action was transferred solely for pre-trial administration). The Food & Dairy Litigation, the PCF-BOA Litigation and the PCF-Grant Thornton Litigation were consolidated in the SDNY

under one cause number, 04 MD 1653, for pre-trial administration before Judge Kaplan (the “MDL Action”).

10. Venue is proper in this District pursuant to 28 U.S.C. § 1410.

11. The Petitioners have been appointed by the Grand Court.

12. There is an agreement among the Petitioners and Parmalat to consensually extend the TRO sixty(60) days.

NOW THEREFORE, IT IS HEREBY

ORDERED, that,

(a) all persons and entities are enjoined from (i) taking any action to obtain possession of or exercise control over property, or the proceeds of such property, of the Companies in the United States; (ii) taking any action to create, perfect or enforce any lien against the Companies or their property, or the proceeds of such property, in the United States; (iii) transferring, relinquishing or disposing of any property of the Companies, or the proceeds of such property, in the United States; (iv) commencing or continuing any action or other legal proceeding (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim, against the Companies, or any of their property, or the proceeds of such property, in the United States, and seeking discovery of any nature against the Companies in the United States; and (v) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or arbitration award against the Companies, and commencing or continuing any act or action or other legal proceeding (including, without limitation, arbitration, or any judicial or quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), or any counterclaim to create, perfect or enforce any lien, attachment, garnishment, setoff or other claim against the Companies, or any of their property, or the proceeds of such property, in the United States;

(b) creditors of the Companies that have a claim of any nature or source against any of the Companies and that are

party to any action or other legal proceeding (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever, except for these 304 cases) which is pending in the United States in which any of the Companies are or were named as a party, or as a result of which a liability of the Companies may be established, are required to place the Petitioners' United States counsel, Diamond McCarthy, LLP, 620 Eighth Avenue, 39th Floor, New York, New York 10018 (Attn: Richard I. Janvey, Esq.), the Petitioners' Cayman Islands counsel: Walkers, Walker House, PO Box 265 GT, Mary Street George Town, Grand Cayman, Cayman Islands (Attn: Guy Locke), Parmalat's United States counsel, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Marcia Goldstein, Esq. and Gary Holtzer, Esq) and Parmalat's Cayman Islands counsel Turner & Roulstone, Strathvale House, PO Box 2636 GT, Grand Cayman, Cayman Islands (Attn: Alan Turner, Esq.) on the master service list of any such action or other legal proceeding and to take such other steps as may be necessary to ensure that counsel receive (i) copies of any and all documents served by the parties to such action or other legal proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or legal proceeding, and (ii) any and all correspondence, or other documents circulated to parties named in the master service list; and

(c) all creditors of the Companies, or anyone acting on their behalf, are enjoined and restrained from taking any action and/or engaging in any efforts to collect any amounts due from any of the Companies, in the United States, including, but not limited to, sending a notice of default or notice of acceleration to any of the Companies as a result of the commencement of these ancillary proceedings under section 304 of the Bankruptcy Code or the foreign proceedings; and

(d) Notwithstanding the foregoing, the defendants in Food & Dairy Litigation, the PCF-BOA Litigation and the PCF-Grant Thornton Litigation shall be allowed to take discovery appropriate against the Petitioners in connection with the MDL Action and the above referenced actions; and

(e) Notwithstanding the foregoing, BOA shall be permitted to assert counterclaims and rights of setoff and recoupment, as or may be authorized in any orders of Judge Kaplan, and any successor judge to Judge Kaplan, with jurisdiction over the actions filed by the Debtor against BOA which are currently consolidated with the *In re Parmalat Securities Litigation* MDL Action, Master Docket 04 MD 1653 (LAK)); and it is further

ORDERED, that the hearing on the Court's consideration of the Petitioners' application for a preliminary injunction shall be adjourned to February 17, 2009 at 10:00AM (the "Return Date"), in Room 610 of the United States Bankruptcy Court, One Bowling Green, New York, New York; provided that, if no objection is received on or before February 5, 2009 such consideration will be on the papers and without a hearing unless the Court otherwise advises the parties; and it is further

ORDERED, that the entry of this Order will be without prejudice to any creditor or party in interest to seek relief from any and all of its terms; and it is further

ORDERED, that nothing contained in this Order will prejudice Parmalat's rights to object for preliminary injunctive relief and each of the Petitioners and Parmalat reserve all rights and arguments with respect to these proceedings under section 304 of the Bankruptcy Code and Petitioners' application for injunctive relief and Parmalat's opposition thereto; and it is further

ORDERED, that nothing contained in this Order will be construed as Parmalat's implicit or explicit agreement with any of the positions or actions taken by the JPLs in commencing these ancillary proceedings, or otherwise, in the United States or in the Cayman Islands; and it is further

ORDERED, that nothing contained in this Order restricts or impairs the rights of the JPLs to take actions in these 304 proceedings pending further hearings on notice to parties in interest; and it is further

ORDERED, that pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure, the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure be, and the same hereby are, waived; and it is further

ORDERED, that Parmalat's time to answer the Petition commencing these ancillary proceedings is extended until March 17, 2009, unless otherwise ordered by the Court, and it is further

ORDERED, that this Order shall be served:

(a) by United States mail, first-class postage prepaid, within two (2) days of entry of this Order, upon the known parties-in-interest at the time of such service; and

(b) by United States mail, first-class postage prepaid, upon additional parties at such time as they are sufficiently identified.

ORDERED, that service in accordance with this Order shall be deemed good and sufficient service and adequate notice for all purpose; and it is further

ORDERED, the TRO shall remain in effect pursuant to this Order until midnight (New York time) February 17, 2009; and it is further

ORDERED, that should the Petitioners in one or more of the above ancillary proceedings seek a preliminary injunction on the Return Date, they shall file and serve notice of motion of such intentions by January 12, 2009, with such notice attaching

a proposed form of order, a memorandum of law and appropriate documents in support of the motion; and it is further

ORDERED, all papers submitted for the purpose of opposing the entry of a Preliminary Injunction on any grounds, including the commencement and basis of these 304 proceedings, on the Return Date shall be set forth in a writing describing the basis therefor which shall be filed with the Court either (a) by filing electronically in accordance with General Order M-182 (N.B. General Order M-182 and the User's Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov, the official website for the United States Bankruptcy Court for the Southern District of New York) by registered users of the Court's electronic filing system and, by all other parties-in-interest, on a 3.5 inch disk, preferably in Portable Document Form (PDF), WordPerfect or any other Window-based word processing format, or (b) by filing a hard copy with the Clerk of the Court, One Bowling Green, New York, New York 10004, and in each instance with a hard copy delivered directly to Chambers and served on (i) Diamond McCarthy, LLP, 620 Eighth Avenue, 39th Floor, New York, New York 10018, Tel: (212) 430-5400, Fax: (212) 430-5499 (Attn: Richard I. Janvey, Esq.), attorneys for Petitioners, and (ii) on Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Tel: (212) 310-8000, Fax: (212) 310-8007 (Attn: Marcia Goldstein, Esq., and Gary Holtzer, Esq.), attorneys for Parmalat, so as to be received on or before February 5, 2009 at 12:00 p.m. (New York time); and it is further

ORDERED, that Exhibit and Witness lists related to any Preliminary Injunction hearing shall be served and filed by February 9, 2009.

Dated: New York, New York
December 15, 2008

/s/Robert D. Drain _____ |
United States Bankruptcy Judge