

IN THE CHANCERY DIVISION

FINANCIAL CONDUCT AUTHORITY

-v-

CAPITAL ALTERNATIVES & OTHERS

NOTE OF HEARING 16-17 July 2013

Coram: Mr Justice Roth

Defendants

1. I was able to ascertain that the specific defendants in this case were as follows:

D1: Capital Alternatives Ltd

D2: Capital Secretarial Ltd

D3: Capital Organisation Ltd

D4: Capital Administration Services Ltd

D5: MH Trustees Ltd

D6: Marcia Dominique Hargous

D7: Renwick Robert Haddow

D8: Richard Henstock

D9: African Land Ltd

D10: Robert John McKendrick

D11: Alan Howard Meadowcraft

D12: Regency Capital Ltd

D13: Reforestation Projects Ltd

D14: Mark Andrew Ayres

D15: Mark David Gibbs

D16: The personal representatives/estate of David William Waygood (deceased)

Representation:

2. The FCA was represented by Mr Vineall QC and Mr Temple.
3. D1-8 were represented by Mr Sweeting QC and Mr Mansell, instructed by Candey LLP.
4. D9-11 were represented by Mr Green QC and Mr Luckhurst, instructed by Beachcrofts LLP
5. D12 was represented in person by Mr Collins of Regency Capital
6. No one was in attendance on behalf of D 13-16. However, Mr Ayres had requested an adjournment as he was on holiday and Mr Gibbs had confirmed receipt of the application.

The Applications:

7. The FCA have brought civil proceedings against these defendants alleging that the Capital Carbon Credit scheme, African Land scheme and other Capital Alternative schemes (not specified in Court) are in fact “collective investment schemes” and were accordingly not authorised or exempt from FSA/FCA regulation (s.235 FSMA 2000).
8. Further, it is also alleged that misleading statements have been made in relation to these schemes contrary to s.397 FSMA 2000.
9. The FCA is ultimately seeking the restitution of the monies paid into these schemes back to investors.
10. This hearing specifically concerned FCA application for freezing injunctions against each of the defendants pursuant to s.380 FSMA 2000.
11. The FCA position was that they wanted to “hold the ring” so that the schemes would no longer be promoted, no new investment would be accepted and no payments would be made to existing investors. It was not the FCA desire to impinge on African Land continuing to cultivate land or to prevent Reforestation Projects (CCC) from continuing to secure accreditation.
12. The preliminary issue to be resolved in this case is whether these schemes were in fact “collective investment schemes”. An expedited trial of this preliminary issue will take place in late September/early October with a 5-7 day time estimate. No date has yet been set by the Court. However, directions were made for this hearing.

13. In relation to D1-8 following a compromise being reached the application for a freezing injunction was not pursued by the FCA. The final terms of this compromise were not detailed in open Court, however, from references made this would appear to include:
- a. Not promoting the African Land and Reforestation Projects (CCC) schemes;
 - b. Not to utilise assets other than in the course of business;
 - c. Not to pay existing investors or switch them to other investments;
 - d. Not to accept new investors for either the African Land or Reforestation Projects (CCC) scheme.
 - e. In relation to the individuals: not to dispose of any assets in excess of £20,000 without providing 7 days notice to the FCA.
14. In relation to D9, African Land, a compromise agreement was reached. The terms of this agreement were not read out in open Court; however, reference was made to African Land being able to continue making payments to investors. With the exception of this difference, the provisions of the undertaking are likely to be the same as for D1-8.
15. In relation to D10, Robert McKendrick, the defence would not agree to any form of compromise and an application for a full freezing order was pursued by the FCA. It was denied during the course of submissions that there had been any dishonesty on the part of Mr McKendrick in misleading investors. The application for a freezing injunction was granted on the basis that the dubious financial arrangements when coupled with “apparent dishonesty” created a risk of the money being placed outside the reach of investors. Accordingly, Mr McKendrick’s assets have been frozen worldwide. However, he is allowed living expenses of £32,000 per month (it appears he has a number of buy to let mortgages) and to pay for legal fees from the frozen funds.
16. In relation to D11, Howard Meadowcraft, it was not clear from what was said in open court as to whether a compromise agreement had been reached as per those above. Given an application for a freezing order was not pursued, this is likely to be the case.
17. In relation to D12, Regency Capital, a compromise agreement was reached with the FC A in which they undertook:
- a. not to promote African Land or Reforestation Projects (CCC);
 - b. Not to make any arrangements for a person to invest in these schemes; and

- c. Not to make any arrangements for payments to investors, not to transfer investments in CCC/AL to other investments and not to discharge any investors.

18. In relation to D13-15 (Ayres, Gibbs and Reforestation Projects Ltd) freezing injunctions were granted. The FCA relied upon the suspicious nature of the underlying schemes and the risk that money would be put outside the reach of investors. From the submissions heard in Court it appears that these freezing injunctions:

- a. Prevent the promotion of the various schemes operated by Reforestation Projects Ltd;
- b. Prevent any new monies being accepted into the schemes;
- c. Prevent any monies being paid from the scheme to investors;
- d. Allow legal expenses for Mr Ayres and Mr Gibbs to be paid from frozen funds up to a value of £25,000.
- e. Allow £2,500 per week in living expenses for both Mr Gibbs and Mr Ayres.

19. In relation to D16, Mr Waygood (deceased), his estate will not be participating in the hearing of whether or not this is a collective investment scheme, however, they agree to be bound by the findings made.

20. All of those subject to undertakings/freezing order will have to supply affidavits to the Court FCA regarding their assets within the next few weeks. There may be applications to apply or vary these orders, particularly when Mr Ayres returns from holiday.

OTHER MATTERS

21. During the course of submissions several pieces of evidence were referred to by the FCA/ defence counsel which shed some light on the enquiries which we have been making. Those of principle importance are as follows:

- a. Mr Haddow and Mr Ayres are business acquaintances of some long standing, but Mr Haddow did not play a part in Reforestation Projects Ltd.
- b. Rusalka, who own a share in African Land are registered in the British Virgin Islands. It is the company of Mr McKendrick's wife. Mr McKendrick is treated by the FCA as being the beneficial owner of this company; this was agreed by the Judge.

- c. McDougal International, who owned a share in African Land, is a company belonging to Renwick Haddow. This company's share was transferred to Rusalka recently, which the FCA only became aware of yesterday. Accordingly, McKendrick is the de facto owner of African Land.
- d. The brokerage fees paid to Capital Alternatives were in the region of 25 %, which is high and highly dubious.
- e. Josie Durham of the FCA has prepared a chart which tries to show the flow of monies, however, it cannot be said to be accurate as the monies cannot be properly traced. The FCA considers that that the whole arrangement is peculiar as monies did not go to the persons whom the investors were intending to pay. The following can apparently be seen from this schedule:
 - i. The African Land scheme received £6.6 million from Capital Alternatives and £1.48 Million from third parties. Money went to Rusalka (£809,000) and McKendrick (£354,000). McKendrick had said in his statement that monies paid to him represented a fee for finding land in Sierra Leone.
 - ii. £20 million was received by the receiving agent (Capital Secretarial) in relation to these schemes
 - iii. Payments can be seen being made to a number of individuals including £1 million to White Moon (a company run by Renwick Haddow).
 - iv. Some £8.5 million was received in relation to Capital Carbon Credits. There were some 919 investors. According to Capital Alternatives their introduction fee was 50% on this scheme.
 - v. CCC itself received only £59,000, although £570,000 was paid to a company called Citola who are dealing with accreditation for the Australian Reforestation Projects scheme. Some payments were made to Ayres (not specified) and Global Eco Projects (not specified).
 - vi. It is not apparent that Mr Gibbs received any monies

22. In the course of submissions concerning the freezing injunction against Mr McKendrick the FCA went through what they considered to be a number of false representations in the African Land brochures/letters, including:

- a. In the first brochure, that Agri-Capital was a division of Capital Alternatives. Mr McKendrick has accepted that this was not correct in his witness statement.
- b. That the projected income was wholly unreasonable and unattainable.

- c. That it was falsely represented that they were the largest farm in West Africa (the judge indicated that he would find this surprising given they only had a lease on 3,000 acres and only 1,000 acres had been cultivated).
- d. The reliance on the Savills report regarding land value was misleading (however it appears that McKendrick has provided emails suggesting that they were given permission to quote this report).
- e. No one has received a proper sub lease; therefore the whole scheme is questionable.
- f. That Agri-Capital in Sierra Leone was a wholly owned subsidiary, when in fact they were only 80% owned by African Land.
- g. There are serious grounds to doubt whether it was as attractive an investment as it purported to be.
- h. Suggestions that African land were going to float on the LSE being made to induce investors
- i. The claims that African Land had 50,000 acres of land were untrue, as they had a lease for only 3,000 acres. African Land only had options in relation to 50,000 acres. This claim also appears in letters signed by McKendrick and the judge found that this representation had been made with his approval and demonstrated "apparent" dishonesty.
- j. The land had been over priced to investors. African Land was leasing the property for one bushel of rice per acre, because that was what it was worth.
- k. African Land has shown a preparedness to lie to encourage investors to invest.

23. Mr McKendrick has asserted in his witness statement that Capital Alternatives were responsible for preparing the brochure.

24. There appear to have been legal proceedings between African Land and Capital Alternatives relating to various issues, which were settled in June 2013. The details of the settlement are not known. One of the reasons for the claim appears to have been that Capital Alternatives oversold the scheme. They sold 5,000 acres in circumstances where African Land only had a lease for 3,000 acres. It appears that Capital Alternatives and African Land stopped working together in/around February 2013.

25. There is some suggestion that Renwick Haddow has recently paid Robert McKendrick a significant sum of money which is offshore somewhere.

