

Collas Crill successfully defends non-executive directors of Carlyle Capital in US \$2 billion claim

September 2017

10 years on from the onset of one of the worst financial crises since the 1930s, the Royal Court of Guernsey has handed down judgment in respect of one of its highest profile casualties.

Collas Crill's dispute resolution team has successfully defended the independent non-executive directors of Carlyle Capital Corporation Limited (in liquidation) against a claim brought by its liquidators for nearly US \$2 billion against its directors, investment manager and sponsors.

Carlyle Capital was a Guernsey registered fund that invested primarily in high-quality residential mortgage-backed securities (RMBS) which were guaranteed by the US agencies of Fannie Mae and Freddie Mac and thereby implicitly by the US Government.

Unfortunately, the severe crisis that engulfed the world's financial markets in 2007 and 2008 resulted in Carlyle Capital being placed into liquidation in March 2008. The liquidators later commenced proceedings in the Royal Court (and courts in the USA) against its directors, its investment manager and Carlyle Group entities seeking to lay the blame of the fund's demise at their door.

The principal premise of the liquidators was that the directors knew or ought to have known that the collapse of Carlyle Capital was unavoidable and imminent as early as the end of July 2007 and should therefore have pursued an alternate business strategy which included selling off swathes of its RMBS assets.

The liquidators claimed that since the directors failed to take the steps the liquidators alleged were necessary, the directors breached their duties to the company and ought to be liable for the alleged losses, which by trial were nearing US \$2 billion.

This is the first time a Guernsey Court has been required to provide guidance in respect of the duties of directors and numerous other related issues.

After a six month trial during which the Court heard 14 factual witnesses and 16 expert witnesses, and considered 107 double sided files of evidence, Lieutenant Bailiff Hazel Marshall QC's judgment of over 500 pages vindicated the actions of the defendants, finding they had acted honestly, loyally and with reasonable skill and care and that the liquidators had not shown that their postulated alternate strategy would have saved Carlyle Capital. All of the liquidators' claims advanced at trial were dismissed.

The Collas Crill team was led by corporate disputes partner, Advocate Gareth Bell, of counsel David O'Hanlon and senior associate Nin Ritchie.

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