

The story of Rock Financial Services (“RFS”) was indeed brief and spectacular, but by no means are the implications of the results achieved by the parties in any way scandalous. Neither, as has been suggested, does the liquidation of the company bring the Gibraltar Financial Services Commission (the “GFSC”) into disrepute.

It is a very common shortcoming of young companies to overlook the cash flow necessities of running the company from day to day, despite having a strong asset-backed position. It is not the business of the GFSC to test the *mens rea* of directors, to see whether they have any intention to defraud their creditors – no one foresaw, for example, that Robert Maxwell was stealing millions from the pension funds of his companies. To make the GFSC the scapegoats of the liquidation is therefore as intolerable as seeking to attribute some form of blame to the parties who entered the Disclaimer Agreement in 2006.

RFS began their brief lifespan as an execution only brokerage company based in Gibraltar, incorporated in September 1998. In 2003 it began to suffer problems, which were described by these two of their directors as minor cash flow problems. It would later surface that these problems were actually quite serious and went to right to the very core of the manner in which the company was being run.

Let us begin by acquainting ourselves with the characters involved.

RFS was set up by, Michael Whitting, Stephen Putnam, Anthony Whitting and William Connelly-Carew. The first two colourful characters left Gibraltar as soon as trouble was afoot – never to set foot in the jurisdiction again. The latter two directors were the directors who made the reports to the FSC in May 2003 regarding RFS’ insolvency.

We then have the Eidi parties. Mr Eidi was experiencing difficulties in receiving repayments from RFS of amounts due in respect of investments made on behalf of clients with RFS. After protracted negotiations which he conducted through his attorney William Seikaly, he decided to lend RFS US \$1.2M and then a further US \$500,000 bringing the title account balance with RFS to \$5.5M if the original account balances of £3.8M are taken into account. These loans were secured against shares in a Swiss stock trading entity, Perun Holdings AG (“Perun”). These parties have also been made the scapegoat for any perceived shortcomings in the liquidation procedure.

The liquidation of RFS was handled in Gibraltar by PricewaterHouse Coopers (“**PWC**”), principally in the person of Edgar Lavarello, with Louis Falero also involved, though in the throes of retirement.

Last to appear on the scene, we have Niall Goodsir-Cullen and Christopher Johnson who are the joint liquidators of Global Fixed Income Limited (“**GFI**”), a Cayman company which issued bonds to raise funds for the purchase of the Perun shares.

The dispute that arose was over those 540 Perun shares, whose value is not yet ascertained. The shares are bearer shares and were held in escrow by Mr Fabian Picardo, lawyer for the Eidi Parties in Gibraltar for a number of years – the Eidi parties having voluntarily brought the bearer shares within the physical jurisdiction of the Gibraltar Supreme Court. The Eidi parties believed that the shares belong to them, as they were given to them as security for the loans advanced. They produced evidence to the Joint Liquidators and to the Supreme Court *inter alia* in the form of a letter of intent signed by Michael Whitting and Stephen Putnam, stating that this was the intention of RFS. It should also be stated at this point that the Eidi Parties represent 17 of RFS’ clients, and together with Rasutis Vytenis (another party to the Disclaimer Agreement) represent more than half of the creditors of the Company.

Christopher Johnson and Niall Goodsir-Cullen alleged that the 540 Perun shares should be delivered to Mr Johnson, as liquidator of GFI, given that they advanced the monies for the shares to be purchased through the bonds which GFI issued.

It was this matter which went to the Supreme Court in 2006, for the Court to sanction the Disclaimer Agreement (the “**Agreement**”) between the liquidator, the creditors, and the Eidi Parties. PWC as liquidators for RFS had entered into an Agreement under which the liquidators agreed to disclaim any legal and beneficial title to the Perun Shares in consideration of the Eidi Parties agreeing to forgo their current claims in the bankruptcy and to undertake to repay the Liquidators a percentage of the profits made by the Perun Shares.

The result sought to be achieved by the Agreement is a move to try and minimise the losses suffered by the Creditors of Rock Financial Services. The result can clearly be seen to have beneficial consequences for the creditors of RFS, as through directing the parties as to the ownership of the shares, the parties may be able to obtain some of the underlying profits obtainable through the shares. The Eidi parties have, to date, spent more than \$1.3M in legal fees, trying to obtain some settlement in this matter – an expense which has not been shared with the other creditors.

An appeal that had been lodged by Goodsir-Cullen and Johnson against the Order of Mr Justice Dudley has now been withdrawn.

It is normal that when losses of this nature are suffered by investors in a company, the investors seek to point fingers at different entities. The finger can indeed be pointed at incompetent directors, overstressing their resources, whilst simultaneously attempting to give the appearance of excessive assets.

In this case, the Eidi parties had been very careful to ensure that their dealings with the directors of RFS were entirely proper. Moreover, in the liquidation which the Eidi parties brought about by their petition, they dealt with the Joint Liquidators in a manner designed to ensure that the latter were able to ascertain, and, if deemed appropriate, enforce what rights, if any, the general creditors of RFS might have in the Perun shares – which were the only tangible asset of RFS.

The Eidi parties could easily have acted more sharply and taken their Perun shares to Switzerland to enforce their rights there. Their decision to bring the securities to Gibraltar, within the reach of the Joint Liquidators and under the jurisdiction of the Supreme Court showed both the Eidi parties' good faith, and their confidence in their claim to the said shares, which the Court unequivocally recognised.

The Eidi Parties were represented by Partners, Fabian Picardo, John Restano and Ian Felice. They were assisted by Richard Buttigieg, Maurice Turnock and Gemma Arias.