The Virgin Islands Consortium

In Approving HOVENSA Sale, Judge Found No Collusion Between Parties Involved

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ST. CROIX -- U.S. Bankruptcy Judge Mary Walrath, in her HOVENSA bankruptcy proceedings approval order, said she saw no collusion between the parties involved in the sale -- ArcLight Partners, LLC, PDVSA, HESS and the Government of the Virgin Islands -- strengthening what has emerged as a strong week for Governor Kenneth Mapp, whose already battered image had taken another hit on rampant talks of complicity. Above, Governor Mapp, left, and Lieutenant Governor Osbert Potter, right, unveil a landmark operating agreement between the GVI and Limetree Bay Holdings, a subsidiary of ArcLight, that's being hailed as a deal that will commence the revival of this island's economy, and a desperately needed injection of cash -- $220 million -- in the government's coffers, if ratified by the 31st Legislature before December 31, 2015.

An attorney named Sam Alberts of Dentons US LLP, who specializes in restructuring, insolvency and bankruptcy, and was one of the attorneys representing the Official Committee of Unsecured Creditors in HOVENSA's Chapter 11 case, had alleged possible collusion between Governor Kenneth Mapp and ArcLight. And Buckeye Partners, the losing bidder in the proceedings, said that it never had a fair opportunity at the table. Judge Walrath, wanting to give the objecting parties a chance to make their case, had set a December 17 date for a new hearing, subpoenaed documents and called for Mr. Mapp to be present to testify.

But, nothing came of the matter, as the creditors, PDVSA and HESS came to an agreement, after HESS made available more money to unsatisfied creditors. The agreement brought to an end an impasse that had threatened to derail the ArcLight deal and give Buckeye and even Monarch, the latter company incessantly playing from the sidelines, a fighting chance.

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"The buyer is not an insider of the debtor," reads a subsection of the order, titled, "Good Faith of Buyer; No Collusion". It adds: "The buyer is purchasing the purchased assets in good faith, and is a good faith purchaser, within the meaning of section 363 (m) of bankruptcy code. The buyer is therefore entitled to, and granted the full rights, benefits, privileges and protections of section 363 (m) of the bankruptcy code, and the buyer has otherwise proceeded in good faith in all respects in connection with the transaction."

The governor, upon learning of the judge's order, thanked the court for approving the sale and clearly pointing out that the seller, buyer, and other parties, including the GVI, acted in good faith.

"As I have stated before, we will conduct our affairs as true professionals, respecting the interest and values of the people of the territory," Mr. Mapp said.

The order also identified ArcLight's bid as the "highest or best offer," stating that the debtor offered an auction process that gave a "full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the purchased assets."

According to the territory's leader, acting morally during the process has always been the plan.

"The government's legal team, transaction team, financial team, and I have always acted ethically, properly, and in good faith in the negotiations and proceedings leading up to the eventual creation of the operating agreement I forwarded to the Legislature yesterday," Mr Mapp said. "After reviewing all the evidence before her, the Judge concluded that there was no fraud, collusion or bad faith."

He added: "It is my hope that the Legislature will see that the operating agreement before them for consideration is in the best interest of the people of the Virgin Islands and this territory, and approve it so that we can continue on our path to economic recovery and prosperity."