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Inside Story: Dealing with the bankruptcy of a Dutch national heritage

This month's Inside Story is brought to you by Bas Ebels (bebels@udink.nl), Udink & De Jong Advocaten (<http://www.udink.nl/>), The Hague, The Netherlands.

Those of you who attended the INSOL International congress in The Hague in May of this year, probably saw (or even walked) the Pier of Scheveningen, a landmark pier on The Hague's beach, just like the Pier of Brighton, England. Since the beginning of this year the Pier has been declared bankrupt and Marc Udink of my firm Udink & De Jong Advocaten has been appointed by the District Court of The Hague as liquidator.



It turns out that dealing with the bankruptcy of such a national heritage is much more than representing the interests of the joint creditors. Both other private and public (both city and State) matters come into play in such a bankruptcy.

In January 2013 the District Courts of The Hague and Amsterdam declared the limited liability companies De Scheveningsche Pier Exploitatie B.V. and De Scheveningsche Pier Vastgoed B.V. bankrupt. Both companies operated the Pier of Scheveningen. One company (Vastgoed) operated the real estate of the Pier, the other (Exploitatie) operated a large restaurant, a casino and a theme park located at the Pier.

The Pier of Scheveningen is a Dutch national heritage that everyone in Holland knows and, at least once in their lives, has visited. The original (wooden) pier was built in 1901 and was located right next to the Kurhaus in Scheveningen. After a fire destroyed the pier in WWII, it was demolished by the Germans who were afraid it could possibly function as a landing stage for an allied invasion. In the late 1950s the Pier was rebuilt, a hundred meters more to the north, at its current location.

In 1961 a new pier with three separate islands was opened. In 1965 a fourth island was (illegally, as it now - 50 years later - turns out) towed and secured to the Pier on which a theme park (20,000 miles under sea) was located.

In 1991 the Van der Valk family, famous for their hotel chain, bought the Pier for allegedly 1 Dutch guilder. From a legal standpoint, the Van der Valk family bought an annually renewable federal permit to operate the Pier, since the Pier is located on State ground. In the late 1990s the Van der Valk family built a second layer on the Pier, and demanded (and received) a right of superficies for 50 years to secure their investment.

Besides the restaurant, casino and theme park operated by the Van der Valk family, there were (and still are) many other entrepreneurs located at the Pier. There's a bungee jump center, a pancake restaurant and many shops, from souvenirs to lingerie to Italian ice cream.

Unfortunately, it turned out that the Van der Valk family were never able to make a return on their investment and they eventually filed for bankruptcy in December 2012. It is noteworthy that the Van

der Valk family had offered to sell the Pier to the city of The Hague a few days earlier for € 1, which the city denied.

Immediately after the bankruptcy notice, the public opinion started to turn towards to the Van der Valk family and blaming them for the bankruptcy. Because the Pier is known throughout The Netherlands and people have the feeling they all own the Pier, people questioned (the use of) the bankruptcy and just expected the Van der Valk family to solve the (financial) problems of the Pier. Remarkably, the city of The Hague initially joined in on this public tendency to call upon the Van der Valk family. This, of course, is an incorrect and unjustified point of view. Just as any company, these companies have the right to file for bankruptcy when they are making losses. The fact that they were operating a national heritage doesn't make any difference, or should not make a difference.

So the first thing Marc Udink did was to 'declare' that the Pier was a national heritage and telling the national media that it should be preserved for the greater good. Blaming the Van der Valk family would not save the Pier. He called upon everybody local and national, public and private, to join him in saving the Pier.

This immense public concern for (the future of) the Pier also led Marc Udink to his next step: announcing that the Pier would be auctioned publicly. This way the public could get involved in the process of selling the Pier, which process would be fully transparent for the people to follow. By selling it this way, the people would be given the opportunity to see what happens with 'their' Pier.

Immediately after the bankruptcy and even more after the announcement of a public auction, many interested parties contacted us or the media to buy the Pier. These are local, national and international parties or joint ventures but also crowd funding and (other) citizens' initiatives. All the potential buyers will soon get access to a data room and will receive a bid book for the auction.

After these first matters of public opinion, we as liquidators were confronted with a whole lot of different practical problems.

For starters, there are a lot of lessee entrepreneurs located at the Pier, who all rent their properties from a bankrupt estate and find themselves confronted with a bankrupt landlord that is not able to provide them with the same quiet enjoyment under the lease as a normal landlord can and would do.

As a result of the bankruptcy, the assets and means have to be redistributed according to the Dutch Insolvency laws, which means that there is not always enough for the liquidator to provide the lessees with normal cleaning services, security services and maintenance services. This, of course, annoys the lessees, since they still have to pay their rent to the liquidator.

Besides leasing issues, there was also much (local and state) red tape. For the same reasons as above, the liquidator cannot always comply with City and/or fire department regulations. It seems that local and state authorities often forget that the Pier is bankrupt and has no means to comply with their regulations. In order to proactively solve these problems the liquidator tries to keep an open and frequent consultation with the city of The Hague, which seems to work, although not all bureaucracy can be overcome.

Another problem occurred when the public utility provider for gas announced that they would terminate the gas supply, because of the bankruptcy. This, of course, would have had a great impact on the lessees at the Pier. Eventually the liquidator went to court and got the court to decide in preliminary relief proceedings that the announced termination had to be stopped and that the gas supply had to be continued. The judgment was published since there wasn't any case law regarding this specific subject.

The next problem occurred immediately after the previous. As it turns out, one of the Pier islands contains asbestos. As there are no means for normal maintenance, there are absolutely no means for the removal of the island or the asbestos. Besides the health issues that come with asbestos, it obviously devaluates the Pier.

Because the Pier is located on government ground, we're currently discussing this matter with the State department for public real estate (Rijksvastgoed en ontwikkelingsbedrijf), to look at the

opportunities to sell the Pier without this island and thus raise the value of the Pier and the proceeds of the sale. As it now seems, the State department will not cooperate. This latest problem has currently postponed the auction of the Pier until late summer 2013.

The postponement will however not be a cancellation of the auction. In the meantime, we've managed to get a demolition inventory as well as an asbestos removal inventory for free. We've also had an architect develop a vision of the opportunities of the future Pier. These opportunities range from a giant mall to a theme park or a resort for beach houses to a high tech Pier.

With these opportunities and the immense interest by possible buyers, the future of the Pier remains uncertain, but certainly looks a lot brighter than it did on New Years Eve.

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