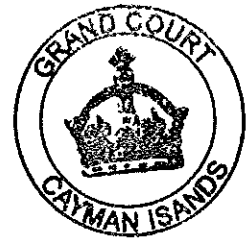


**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**



CAUSE NO. FSD0055 OF 2012

**The Hon Mr Justice Cresswell
In Chambers, 25 April 2012**

BETWEEN:

ASIA PACIFIC ON-LINE LIMITED

PLAINTIFF

AND

**(1) MARCUS A. WATSON
(2) JAY J. NOTINGER
(3) HENDERSON CONSTRUCTION CO., INC.
(4) GEORGE M. BERBERIS
(5) DIANE R. ANTASEK
(6) JEFFERY P. MINOR
(7) CDC CORPORATION**

DEFENDANTS

APPEARANCES: Mr. David Herbert of Harney Westwood & Riegels for the Plaintiff

RULING

I give my reasons briefly because of the acute pressure as to time.

I have carefully considered the materials before the Court, including the four affidavits and the skeleton argument (to which I specifically refer) and the oral submissions by Mr. David Herbert ("Mr. Herbert").

On the materials before me and broadly for the reasons set out in the skeleton argument as developed orally by Mr. Herbert, I grant leave to serve out of the jurisdiction against the first, third, fifth and sixth Defendants and I also grant an anti-anti suit injunction against the first, third, fifth, sixth and seventh Defendants.

The anti-anti suit injunction restrains the first, third, fifth, sixth and seventh Defendants from applying to the Atlanta Bankruptcy Court for prohibitory and mandatory orders which the Plaintiff says will impair the right of the Plaintiff, a Cayman Islands' Company, to pursue its

originating summons against and in respect of the seventh Defendant, also a Cayman Islands' Company.

As to anti-anti suit injunctions, Gee on "Commercial Injunctions", Fifth Edition at page 427 states:

There has also grown up the use of "anti-anti-suit" injunctions which are granted by a court (Court A) because of the threat that an application for an "anti-suit" injunction will be made to another court (Court B) to restrain a party from continuing with ongoing proceedings in Court A. The justification is to protect the jurisdiction of Court A in the ongoing proceedings. An account is given of this in the Laker Airways litigation by Lord Goff in Airbus Industrie GIE v Patel [1999] 1 A.C. 119 at 136.

"Where the "anti-anti-suit" injunction is sought in proceedings brought in England for the protection of those proceedings from interference by a foreign court, the application is for a provisional measure enabling the English court to go on hearing and determining the underlying claim. The purpose of the injunction is to protect the integrity of the administration of justice by the English court in the proceedings pending before it;....."

In *Reserve Management Company Inc. v Branch Banking Trust Company and Others*, 19 April 2010, Mr. Justice Jones said at paragraph 7 of his Judgment:

"This Court's jurisdiction to grant an anti-suit injunction is well established. It is a discretionary remedy which will be granted only when the "ends of justice require it". An injunction may be granted to restrain foreign proceedings which are or will be vexatious or oppressive or where the foreign proceedings are or will be an illegitimate interference with the process of the Cayman Islands courts."

In *Turner v Grovit* [2002] 1WLR 107 (HL), Lord Hobhouse explained at page 117 and following that:

"When an English court makes a restraining order, it is making an order which is addressed only to a party which is before it. The order is not directed against the foreign court... The making of a restraining order does not depend upon denying, or pre-empting, the jurisdiction of the foreign court... Restraining orders come into the picture at an earlier stage and involve not a decision upon the jurisdiction of the foreign court but an assessment of the conduct of the relevant party in invoking that jurisdiction... the typical situation in which a restraining order is made is one where the foreign court has or is willing to assume jurisdiction; if this were not so, no restraining order would be necessary and none should be granted."

The Plaintiff's case is that the first, third, fifth, sixth and seventh Defendants seek to prevent the Plaintiff from ever having adjudicated before the Grand Court, a Court of competent jurisdiction, matters over which the domestic forum was first seized and is best placed to adjudicate. The Plaintiff says that this is vexatious, oppressive and an abuse of the process.

I draw attention to my recent Ruling in the matter of *Trident Microsystems (Far East) Limited* dated 20 April 2012. In that case, I referred to a protocol between the Delaware Bankruptcy Court and the Grand Court. I said:

“The Protocol provides a framework for the co-operation between multiple jurisdictions and seeks to eliminate, wherever possible, duplication of effort and promote judicial economy and co-operation. To this end, on 25 January, I approved the terms of the protocol and the Hon. Christopher S. Sontchi did the same in the Delaware Bankruptcy Court. A copy of the protocol as approved is at Appendix 1 to this Ruling. This Court will continue to work in co-operation and co-ordination with courts in other jurisdictions when appropriate to ensure the fair and efficient management of international insolvency proceedings in the interests of all creditors and other interested persons, including the debtor.”

I have, of course, not heard the Defendants (this being an *ex parte* application). But I express the hope that a means can be found whereby, at minimum cost and expense, the Atlanta Bankruptcy Court and this Court can work in co-operation with each other.

I order accordingly.

Dated this 27 day of April 2012

Cresswell J

The Honourable Mr. Justice Cresswell
Judge of the Grand Court

PS: On 27 April the Plaintiff applied to discharge the anti-anti-suit injunction granted above, following the Order of the Atlanta Bankruptcy Court of 26 April. I have discharged the anti-anti-suit injunction. I repeat the hope expressed in the final sentence of the Ruling that an appropriate Protocol can be arrived at between the two Courts.

Cresswell J

