

12-12-06

1 IN CHAMBERS
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS

4 CAUSE NO: 306 OF 2006 &
5 CAUSE NO: 447 OF 2006

7 IN THE MATTER OF THE CONFIDENTIAL RELATIONSHIPS
8 (PRESERVATION) LAW (1995 REVISION)

10 AND IN THE MATTER OF MERRILL LYNCH BANK AND TRUST
11 COMPANY (CAYMAN) LIMITED AND FIDUCIARY SERVICES
12 LIMITED AND PROCEEDINGS BEFORE THE GRAND COURT OF
13 THE CAYMAN ISLANDS, CAUSE NO: 555 OF 2005

15 AND IN THE MATTER OF MERRILL LYNCH INTERNATIONAL
16 BANK LIMITED AND PROCEEDINGS BEFORE THE HIGH COURT
17 OF JUSTICE OF ENGLAND AND WALES, CHANCERY DIVISION, IN
18 CLAIM NOS. HC05C03744 AND HC05C03745

20 BEFORE: The Honourable Madam Justice Levers

22 Appearance:
23 Mr. Jeremy Walton for TMSF
24 Mr. Duncan Henderson for Mr. Demirel and Mrs. Demirel
25 Mr. Martin Livingston for Merrill Lynch Bank & Trust Co. (Cayman) Ltd.,
26 Fiduciary Services Limited and Merrill Lynch International Bank

28 Heard: 31st October & 2nd November 2006

30

JUDGMENT



31
32
33 Levers, J.
34

1 This is an application for directions under Section 4 of the Confidential
2 Relationship (Preservation) Law (1995 Revision), pursuant to a notice
3 served in accordance with Order 24, rule 5(4) of the Grand Court Rules.

4

5 The application has been brought by Merrill Lynch Bank and Trust
6 Company (Cayman) Limited ("MLBTC"), as trustee of the Dolphin Trust
7 and the Mana Trust, Fiduciary Services Limited, as a sole director of Kaffe
8 Limited, Barla Finance Ltd, Cunur Cash Ltd, and Medro Ltd (the
9 "Companies") and Merrill Lynch International Bank Limited of London
10 ("MLIB"). All those companies are the Applicants.

11

12 The express beneficiary or settlor with a life interest of the Trusts is Yahya
13 Murat Demirel, a Turkish national. His partner (now wife) Ayse Nur
14 Esenler is an express beneficiary to the Trust. Neither of them have any
15 issue but the default beneficiaries are the issue of either the settlor or Ayse
16 Nur Esenler.

17

18 Initially there was a trust called the Demirel Trust settled in 1997 for which
19 MLBTC was also trustee. This however was revoked on the 28 June 1999.

1 Kaffee Ltd was incorporated on the 17 June 1999, to hold the assets of the
2 Demirel Trust.

3
4 Both Dolphin and the Mana Trusts were established on 28 June 1999. Upon
5 revocation of the Demirel Trust, the shares in Kaffee Ltd were then held by a
6 nominee affiliate in favour of MLBTC, as trustee of the Mana Trust. Three
7 further companies were incorporated to hold the assets of the trust. The
8 Companies currently hold assets in accounts totaling approximately US\$23
9 million.

10
11 **Background to the present Application**

12
13 By Writ of Summons dated the 1 December 2005, a Statement of Claim
14 under Cause No. 555 of 2005 ("the Cayman Proceedings") was filed against
15 MLBTC and the Companies upon the application of Tasarruf Mevduati
16 Sigorta Fonu ("TMSF"), a Turkish regulatory authority ostensibly acting as
17 a bank assignee.

18
19 In that case a Disclosure Order and Injunction were made against MLBTC
20 and the Companies and a sum of approximately \$30 million dollars has been

1 frozen. Ancillary proceedings have been brought by TMSF in the Chancery
2 Division of the High Court of Justice of England and Wales against the
3 Settlor, and separately against the Companies, Cartier & Company (English
4 solicitors for the Settlor) and MLIB (the "UK Proceedings"). A Freezing
5 Order against the Settlor and a Disclosure Order were granted on the 6th and
6 16th September in the UK Proceedings.

7

8 MLIB, as a service provider to the Companies, is an applicant in this
9 instance by virtue of potentially maintaining information in the UK relating
10 to the Trusts, Companies and/or Settlor, which may have arisen in or may
11 have been brought into the Cayman Islands.

12

13 In both the Cayman and UK Proceedings, TMSF has confirmed that
14 MLBTC has become innocently mixed up in the Settlor's alleged
15 wrongdoing and merely holds information that is likely to enable TMSF to
16 place funds, or hold property against which the judgments obtained against
17 the Settlor might be enforced.

18

19 **The Parties to the Application**

20

1 In response to the Cayman and the UK Orders, MLBTC, Fiduciary Services
2 Limited (on behalf of each of the Companies) and MLIB have filed an
3 application for directions under Section 4 of the Confidential Relationships
4 (Preservation) Law (1995 Revision). This was done in Cause No. 584 of
5 2005.

6

7 As a result of the settlor (Mr. Demirel) making application to be joined and
8 advising the Court that he intends to file an application to discharge, the
9 Court adjourned that first application under Section 4 by these Applicants to
10 a later date, until after the hearing of the Settlor's discharge application.
11 Regrettably, that promised application and the Section 4 application have
12 gone little further than when the Court was initially advised that it was
13 intended.

14

15 Subsequently, MLBTC on behalf of itself and the Companies made an
16 application for directions under section 48 of the Trust Law (2001 Revision),
17 under Cause No. 110 of 2006 in March 2006.

18

19 On the 21 June 2006, the Settlor provided certain information, as requested
20 by the Court, and was ordered to be joined as a Defendant to the Cayman

1 Proceedings. Other applications and orders were made too, but for purposes
2 of this application, the joinder of the Defendant was the most relevant order.

3

4 On the 28 June 2006, a case management conference was held and at that
5 conference it was brought to the attention of the judge that the Applicants
6 might wish to bring a Section 4 application in relation to documents listed as
7 confidential upon discovery. The judge directed that if Counsel had
8 researched the point and thought it was sufficiently important they should
9 bring that application within 21 days. As no consent was forthcoming, the
10 Applicants filed an Originating Summons to bring a Section 4 application
11 before the Court. No consent was forthcoming till, I believe, a day or two,
12 prior to the listed date for hearing of this matter.

13

14 It was the Settlor's decision to give consent to all the documents, save and
15 except for two which I shall describe in detail below. In the circumstances,
16 this Court is left with having to rule only on two documents for this
17 application. A further two documents were also submitted in the absence of
18 Mr. Walton and I also need to rule on those.

19

20 **The parties to the proceedings and to this application**

1

2 As stated previously, the Applicants were represented by Maples and Calder,
3 who took a neutral role in this particular application, and set out the matters
4 before the Court for its directions. Mr. Henderson of Walkers represented
5 Mr. Demirel the settlor and the discretionary beneficiary Mrs. Demirel. Mr.
6 Walton represented TMSF, the plaintiff in the Cayman and UK Proceedings.
7 It was Mr. Walton who applied to be heard and the Court ruled that he could
8 be heard. Mr. Walton's submissions, in part, were based on the fact that
9 there has, in any event, been undue delay in bringing these proceedings and
10 that the bringing of the Section 4 application was unnecessary. He did not
11 dwell on delay but stressed the importance of the Court ruling on the
12 question of the identity of the Relevant Principal in proceedings of this
13 nature. He said, although consent had been given, to grapple with this issue
14 was not purely academic, as the question of Relevant Principal is a live issue
15 in these cases.

16

17 **The Section 4 Application**

18

1 Mr. Livingston on behalf of the Applicants argues that the Section 4
2 application was important and that it is not flawed as alleged by counsel for
3 TMSF. He makes the following points:

4

- 5 (1) That the statutory obligation under section 2 of the Confidential
6 Relationships (Preservation) Law, concerning any property which the
7 recipient thereof is not otherwise in the normal course of business
8 authorized by the principal to divulge, is confidential information, as
9 defined under the Act.
- 10 (2) He says that if one looks at the Act carefully, the Applicants being
11 trustee owe a greater obligation of confidentiality to the persons for
12 whom they are trustees.
- 13 (3) The question of consent from each of the principals, he readily admits
14 would have obviated the necessity for such an application. However,
15 he says that the common law obligations especially in circumstances
16 where trustees are involved, is not so straightforward and that their
17 duties extend beyond mere statutory obligations.
- 18 (4) He says more importantly under Cayman law, the trustees have a
19 common law duty of confidentiality and that that duty extends to take
20 in the interest of third parties. He relies on the case of *in Re*
21 *Confidential Relationships (Preservation) Law Application* [1987]
22 CILR 386, at 388, where the Court held that in order to meet the
23 definition of "confidential information" under the Law for the
24 purposes of what is now a Section 4 application, the information must
25 "relate to third persons".
- 26 (5) He says that the information covered by the common law duty extends
27 beyond that provided by the principal or client, and includes
28 information arising out of the relationship itself that relates to the
29 client or the client would have an interest in protecting.

1 (6) He also says that a trustee must owe a duty of confidentiality to the
2 beneficiaries, especially where the settlor has not reserved rights or
3 powers under the trust to himself.
4

5 The Dolphin and Mana Trusts are still in existence. As such, he says, the
6 trustee MLBTC owes both a duty of care and a fiduciary duty to the express
7 beneficiaries thereof, and he says to ignore that duty would be a breach. The
8 position he submits is best summarized by Smellie J. in *In the Matter of H*
9 [1996] CILR, at 242, he held that:

10
11 “Of significance also is the true nature of the
12 ownership of the information sought to be
13 extracted by the grand jury’s subpoena. The
14 information is about the assets which are vested in
15 the trustee to be held on trust for the beneficiaries.
16 The trustee therefore owes fiduciary obligations to
17 the beneficiaries not to divulge that information
18 except in accordance with the Cayman law, which
19 governs the trust...Among the beneficiaries are
20 persons (and the deed also contemplates possible
21 remoter beneficiaries) who are in no sense the
22 subject of the grand jury investigations and for
23 those purposes must be regarded as innocent third
24 parties. These are all factors not to be overlooked
25 when considering what directions it is appropriate
26 to give pursuant to this application...I would feel
27 obliged to arrive at the same conclusion generally
28 in the interests of justice which require the rights
29 of the beneficiaries to be recognized so long as the
30 trust is one deemed to be valid under Cayman law.
31 I need not go into what the potential repercussions
32 of unwarranted disclosure may be for the

1 beneficiaries: Suffice to say that they remain
2 beneficially entitled to that information and may
3 rely on its remaining confidential.”
4

5 Mr. Livingston submits therefore that as Mrs. Demirel is also an express
6 beneficiary to whom the Applicants owe a fiduciary duty and who would
7 also have an interest in the protection of the information, the Applicants
8 would need to ensure that such duties were met prior to considering
9 disclosure of that information.

10
11 The context of disclosure in this case warrants analysis. He submits that in
12 the Cayman and English Proceedings, TMSF is disputing the rationale of the
13 Applicants in listing those documents within their possession, control or
14 power as confidential in part three of the schedule on their list. See list
15 attached.

16
17 He also relies on Smellie CJ's judgment in *In the Matter of H* (supra) at page
18 244:

19
20 “It will be contrary to public policy and an
21 unwarranted negation of the applicant's duty of
22 confidentiality owes as trustees to direct that he
23 should give into evidence confidential information
24 in criminal proceedings which as a matter of

1 Cayman law may yet come to be regarded as
2 misconceived.”
3

4 Finally, he submits that the Applicants had to consider more than just the
5 narrow interpretation of the statutory definition of “confidential
6 information” and “principal” under the law. That seeking consent from a
7 third party/beneficiary is only one factor to address and that the fact that the
8 Applicants owing a fiduciary duty is enough to seek the courts direction if
9 not under Section 4 of the law then under section 48 of the Trust Law.

10
11 Mr. Henderson on behalf of the settlor submits that the law on Relevant
12 Principal is not settled and that it is a matter for the trustees as arbitrators of
13 the documents to make certain decisions. They alone must decide to submit
14 what is relevant and what is irrelevant and that under the common law
15 principles these documents are confidential and should be protected. He
16 supports Mr. Livingston and says that it is proper to seek the Courts
17 directions and relies on the dicta in *Re ABC Ltd [1984-85]* CILR. He further
18 submits that it is not the settlor’s decision to disclose this information in the
19 normal course of his business, but it is the trustees.

20

1 Mr. Walton on behalf of TMSF submits strenuously that the law is designed
2 to protect third party confidentiality and that:

- 3 (1) It is not intended to cut across the fundamental and unchallengeable
4 principle that for the parties themselves confidentiality is no bar to
5 disclosure of relevant documents. He says, the Settlor cannot both
6 participate in the action and then prevent disclosure on the basis of
7 confidentiality;
- 8 (2) That by the joinder on his own application to this action, it must be
9 implied that he has given his consent to the relevant disclosure of
10 documents; (See Order 24, rule 5 (3))
- 11 (3) That the settlor Mr. Demirel has himself disclosed some of these
12 documents voluntarily on his application to be joined;
- 13 (4) That Relevant Principal as defined under the law is, indeed, the settlor
14 Mr. Demirel as he is the author of the letter of wishes and it was he
15 that imparted the confidential information to the trustees;
- 16 (5) That Ms. Esenler as a discretionary beneficiary under the Trust is not
17 a Relevant Principal. She did not engage in a business transaction
18 and nor did she impart any confidential information. That none of
19 the listed documents belong to her;
- 20 (6) He submits that denial of disclosure by the court would operate as a
21 denial of the right of TMSF in the enforcement of a just claim. He
22 relies on section 4(6) (a) of the Law;
- 23 (7) He finally submits that the Court should order disclosure forthwith.
24

25 I am of the view that the Trustees must make a section 4 application if there
26 is no consent from the settlor. However, even if there is consent from the
27 settlor, but there is a Beneficiary/Beneficiaries to whom they owe a fiduciary

1 duty then application should be made for directions under section 48 of the
2 Trust Law.

3

4 At this stage a brief description of the documents may prove useful:

5 (1) Items 1 to 2 consist of banking documents including account
6 statements and portfolio summaries relating to the settlor's own
7 account;

8 (2) Items 3 to 5 consists of accounts statements and portfolio summaries
9 relating to the Merrill Lynch Companies accounts;

10 (3) Item 6 consist of records of bank transfers into the Merrill Lynch
11 Companies Account;

12 (4) Item 7 consist of medical records relating to Ms. Esenler.
13

14 Before I go into the law and analyse the particular sections that involve this
15 application, it was my understanding, having listened to Mr. Walton's
16 submission that he was questioning the propriety of the Applicants bringing
17 this application before the Court. He spent a considerable amount of time
18 discussing the question of the need for such an application. It now
19 transpires, as a result of Mr. Livingston on behalf of the Applicants
20 submitting written submissions on this point that Mr. Walton indicates in
21 writing that he does not make any criticism of the propriety or bona fides of
22 the applicant's decision to make this application, nor indeed is TMSF

1 seeking a cost order against the Applicants. It comes as somewhat of a
2 surprise to this Court especially in view of the submissions made during the
3 hearing. It therefore leaves me now to answer the limited issues of:

4

5 (1) Whether two documents in the applicant's possession and Items 6 and
6 7 of Part III Mr. Demirel lists of documents should be disclosed (the
7 Settlor having consented to all others) namely the four documents
8 previously referred to:

9 (2) For that purpose identity of the Relevant Principal.
10

11 Section 4 of the Confidential Relationships (Preservation) Law reads:
12

13 (1) Whenever a person intends or is required to
14 give evidence in, or in connection with, any
15 proceeding being tried, inquired into or
16 determined by any court, tribunal or other
17 authority (whether within or without the
18 Islands) any confidential information within the
19 meaning of this Law, he shall before so doing
20 apply for directions and any adjournment
21 necessary for that purpose may be granted.

22 (2) Application for directions under subsection (1)
23 shall be made to, and be heard and determined
24 by, a Judge of the Grand Court sitting alone and
25 in camera. At least seven days' notice of any
26 such application shall be given to the Attorney
27 General and, if the Judge so orders, to any
28 person in the Islands who is a party to the
29 proceedings in question. The Attorney General

1 may appear as *amicus curiae* at the hearing of
2 any such application and any party on whom
3 notice has been served as aforesaid shall be
4 entitled to be heard thereon, either personally or
5 by counsel.

6 (3) Upon hearing an application under subsection
7 (2), a Judge shall direct-

- 8 (a) that the evidence be given;
- 9 (b) that the evidence shall not be given; or
- 10 (c) that the evidence be given subject to
11 conditions which he may specify
12 whereby the confidentiality of the
13 information is safeguarded.

14 (4) In order to safeguard the confidentiality of a
15 statement, answer or testimony ordered to be
16 given under subsection (3) (c), a Judge may
17 order-

- 18 (a) divulgence of the statement, answer or
19 testimony to be restricted to certain
20 named persons;
- 21 (b) evidence to be taken in camera, and
- 22 (c) reference to the names, addresses and
23 descriptions of any particular persons to
24 be by alphabetical letters, numbers or
25 symbols representing such persons the
26 key to which shall be restricted to
27 persons named by him.

28 (5) Every person receiving confidential information
29 by operation of subsection (2) is as fully bound
30 by this Law as if such information had been
31 entrusted to him in confidence by a principal.

1 (6) In considering what order to make under this
2 section, a Judge shall have regard to-

3 (a) whether such order would operate as a
4 denial of the rights of any person in the
5 enforcement of a just claim;

6 (b) any offer of compensation or indemnity
7 made to any person desiring to enforce
8 a claim by any person having an
9 interest in the preservation of secrecy
10 under this Law; and

11 (c) in any criminal case, the requirements
12 of the interests of justice.

13 (7) In this section, unless the context otherwise
14 requires-

15 "court" bears the meaning ascribed to
16 it in section 2 of the Evidence Law;

17 "given in evidence" and its cognates
18 means make a statement, answer an
19 interrogatory or testify during or for
20 the purposes of any proceedings; and

21 "proceeding" means any court
22 proceeding, civil or criminal and
23 includes a preliminary or
24 interlocutory matter leading to or
25 arising out of a proceedings.
26

27 In this context it is important to look at the definition section. Section (2)

28 defines:

29

1 (1) "business of a professional nature" includes the relationship
2 between a professional person and a principal, however the
3 latter may be described;

4 (2) "confidential information" includes information concerning
5 any property which the recipient thereof is not, otherwise than
6 in the normal course of business, authorized by the principal to
7 divulge;

8 (3) "Normal course of business" means the ordinary and necessary
9 routine involved in the efficient carrying out of the instructions
10 of a principal including compliance with such laws and legal
11 process as arises out of and in connection therewith and the
12 routine exchange of information between licensees; and

13 (4) "principal" means a person who has imparted to another
14 confidential information in the course of the transaction of
15 business of a professional nature.
16

17 Mr. Walton submits that the sixth defendant Mr. Demirel is holding on to an
18 untenable argument. He says that it is entirely artificial to say that the bank
19 is the Relevant Principal when it comes to bank documents. He submits that
20 it must be Mr. Demirel who is the Settlor because neither the bank nor the
21 discretionary beneficiaries have imparted any information to set up the
22 relationship. Two cases that are of some importance in this context. *In the*
23 *matter of H*, (supra), Justice Smellie (as he was then) held, that the applicant
24 had, upon his appointment of trustee, received confidential information in
25 the course of business of a professional nature within the meaning of s.2 of
26 the Confidential Relationships (Preservation) Law (1995 Revision). He had

1 properly applied under section 4 for the Court's direction. There had been
2 no consent to disclosure from the trust companies holding the assets, nor any
3 valid consent from H (Snr) who was under threat of a sanction from the US
4 courts.

5

6 It was against public policy, he said, to allow the disclosure of the
7 information whilst the legal challenge to the validity of the trust was
8 pending. To do so would be in breach of the applicant's duty to the
9 beneficiaries if the trust were declared valid. At page 241, in the body of
10 the judgment, he said that:

11

12 "The subject-matter of this application being trust
13 property (which term includes "all documents and
14 things evidencing or relating thereto" under s.2 of
15 the Law), another arguable view is that the
16 applicant, as trustee, is his own principal. Even if
17 this latter view is the true nature of the relationship
18 between the applicant as trustee and the assets of
19 the trust, I may not overlook the meaning of the
20 statute. That meaning places the applicant in the
21 position of a person to whom confidential
22 information has been imparted by others (the trust
23 companies and the settlor) during the transaction
24 of business of a professional nature, *i.e.* the
25 succession to trusteeship. The situation comes
26 squarely within s.2 of the Law and thus requires
27 that the applicant be regarded as a recipient of
28 confidential information for the purposes of the

1 Law. And trustees have in the past been regarded
2 as requiring directions from this court under the
3 Law before they might divulge in evidence
4 information in respect of their trusts—see *In re*
5 *Confidential Relationships (Preservation) Law*, s.
6 3A (5).”
7

8 As I read that section his finding is that the settlor of the trust and not the
9 trustee is the Relevant Principal. The beneficiary is not regarded as a
10 relevant principle. In the *Attorney General v Bank of Nova Scotia* [1985]
11 CILR, Summerfield CJ said:

12
13 “Even if it did not constitute a valid “consent” for
14 the purpose of section 3 (2) (b) (i), the consent
15 directive to be signed by Mr. Y would not be
16 proper authority for the disclosure of X Ltd’s
17 accounts, since he was not and never had been a
18 “relevant principal” within the terms of that sub-
19 section but only a signatory of its bank account.
20 Until X Ltd. was struck off the register, the
21 “relevant principal” in relation to its accounts was
22 the company itself acting through its directors or
23 officers to authorize disclosure. Since the
24 company was now defunct, there was no “relevant
25 principal” empowered to authorize disclosure and
26 disclosure could therefore be effected only by one
27 of the other process recognized by Confidential
28 Relationships (Preservation) Law.”
29

1 Mr. Walton submits that the bank could not be the Relevant Principal and
2 that it does not depend on ownership but it depends on who imparts the
3 confidential information.

4

5 Section 4 (1) of the Law makes it quite clear that any person who is required
6 to give in evidence or indeed intends to give evidence in connection with
7 any proceedings being tried, shall before so doing (divulging confidential
8 information) apply for direction. In other words, it is a mandatory
9 requirement, before divulging confidential information, save and except in
10 certain exceptional circumstances which are listed in section 3 (2) of this
11 Law. One of those exceptions is when a professional person is acting in the
12 normal course of business or with the consent expressed or implied of the
13 Relevant Principal.

14

15 In this case, the Settlor has given consent to all the documents being
16 divulged, save and except for two documents on which the Court must rule.

17

18 The definition section of this Law states that "a principal" means a person
19 who has imparted to another confidential information in the course of the
20 transaction of business of a professional nature. In the present application

1 this Court is concerned with these words. There is no doubt that the
2 information being sought in this matter is confidential information that was
3 imparted by a person in the course of business. Dependent on the
4 relationship between the parties in doing business will be the identification
5 of the Relevant Principal. I agree with Mr. Walton that the meaning of the
6 words in a statute must be given effect. The word "impart" cannot be
7 substituted by the words "relating to". In other words, the Relevant
8 Principal is one who has the knowledge and who is in a position to give that
9 knowledge to the bank. Suffice to say that if the trustees, for example, or the
10 bank then relinquishes its position and gives that knowledge to some third
11 party then the bank in certain circumstances could be construed as the
12 Relevant Principal. In this case, it is clear that all the parties considered Mr.
13 Demirel the relevant principal, and requested his consent in disclosing the
14 documents, which as I stated previously was given. But that leaves the
15 question of whether the discretionary beneficiary Mrs. Demirel can be
16 considered a Relevant Principal. It is my view, that she cannot be a
17 Relevant Principal. I take on board the submissions of Mr. Henderson who
18 says that the law is not settled as far as the question of a beneficiary is
19 concerned. However, in the circumstances of this case, it appears to me it
20 would be departing from the meaning of this statute if one was to hold that a

1 beneficiary who did not set up the trust, who did not have initial knowledge,
2 who cannot give instructions to the trustees can be said to be a Relevant
3 Principal. It is my view that where there is a settlor and a beneficiary, it
4 must be the settlor who is the Relevant Principal.

5
6 On the facts of this case, Mr. Henderson also argues that as the bank
7 produces the document, it can be that the bank is the Relevant Principal and
8 as the bank distributes the information in the normal course of business it
9 can be said to be the Relevant Principal. I disagree. The law if interpreted
10 properly leads one to the conclusion that the source of the initial information
11 is the relevant principal, i.e the settlor of a trust. To state that because a
12 bank reproduces the information that is given to it based on either
13 instructions or knowledge it can be said to be a Relevant Principal is with
14 respect not a sound submission.

15
16 The court when exercising its discretion as to whether it should divulge this
17 information may take several factors into account. The interest of the
18 beneficiary is one of the factors, although they are not relevant principles.
19 Public policy is another factor. But for purposes of deciding who the
20 Relevant Principals are, these are not factors to be taken into account. In

1 applying the general principals and the exceptions, the fact that a vehicle has
2 been empowered to hold an asset cannot turn that into a relevant principal.

3 The Court finds therefore as follows:

4

5 (1) That the application under Section 4 has been properly brought,
6 because the trustees are in a position of owing a fiduciary duty;

7 (2) In the circumstances they are duty bound to bring an application of
8 this nature prior to disclosing the information;

9 (3) That the Relevant Principal in this matter must be Mr. Demirel
10 who has given his consent to the majority of the documents being
11 released, save and except for two. The court has already ordered
12 disclosure of those documents;

13 (4) The Applicants are parties to the action and in those circumstance
14 the court has jurisdiction to order disclosure and the court also has
15 jurisdiction to give directions as to the divulging of the confidential
16 information in the hands of the Applicants. Indeed under Order
17 24, rule 5(3) the consent is implied and it is only if it is someone
18 other than the relevant principal on whom the document is served
19 that a section 4 application is required;

1 (5) I now turn to Items 6 and 7 of Part III Cause No. 447. I order
2 disclosure of the item 6 documents. Any third parties accounts or
3 names must be redacted. I hold that the correspondence and
4 medical records relating to Ayesnur Eslenler Demirel, as I see it,
5 are irrelevant to these proceedings and do not order disclosure of
6 those;

7 (6) I also order disclosure of the client profile of the International
8 Banking Group, and the Contact Report Private Banking Group in
9 relation to the Applicant's list of documents;

10 (7) The disclosed information is not to be used for any purpose, save
11 and except, the Cayman and the English proceedings;

12 (8) Plaintiff is released from its undertaking not to use the documents
13 disclosed in these proceedings for any collateral or other purpose.

14 For purposes of the English Proceedings, I declare that the Second
15 to Fifth Defendants have complied with their disclosure obligations
16 in the proceedings by virtue of directions given by the Court under
17 the Confidential Relationships (Preservation) Law;

18 (9) The first application by Merrill Lynch is discharged.
19

1 On the question of costs, I would wish to have all parties address me or
2 submit written submissions. The matter was not canvassed during the
3 course of the application; I therefore will not make any order at this stage.

4

5 Dated this 12th day of December 2006

6



7

8 Judge of the Grand Court

