

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 161 OF 2005

BETWEEN:

RODNEY ALAN HANSEN

Plaintiff

AND:

DAVID GEORGE OLSON

First Defendant

TONYMA LIMITED

Second Defendant

Appearances:

Mr. Kyle Broadhurst of Broadhurst Barristers
for the Plaintiff

Mr. Stuart Diamond of Diamond Law
for David Olson, the First Defendant

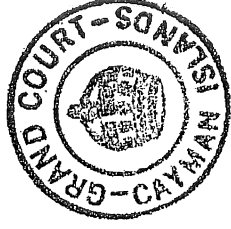
Mr. Paul Keeble of Hampson & Company
for Tonyma, the Second Defendant

Before:

Hon. Justice Henderson

Heard:

September 13, 2010



JUDGMENT

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9 1. On April 15, 2010 the Plaintiff Rodney Alan Hansen (“Mr. Hansen”) obtained a judgment from Pusey, J. of this Court against the Defendant David George Olson (“Mr. Olson”) in the amount of U.S. \$400,000 plus interest. No part of the judgment has been paid. Mr. Olson now says he is without funds to satisfy the judgment debt. Mr. Hansen will be seeking from this Court a determination that a piece of real property in the name of the intervenor, Tonyma Limited (“Tonyma”), is owed beneficially by Mr. Olson and is therefore available to satisfy the judgment. To assist in that hearing, Mr. Hansen is asking for Discovery of Documents and an order permitting the examination of witnesses. I have already granted to the Plaintiff an order for the examination debtor. Finally, the present application requests a Mareva injunction freezing the net sale proceeds of the subject property, which Tonyma has contracted to sell (with Mr. Hansen’s consent) to a third party.

24
25 2. In 2002, Msrs. Hansen and Olson agreed to purchase an aircraft together for their joint use. The aircraft was owned by a Texas

1 company named Zephyr Aviation II LLC, the shares of which were
2 wholly owned by Mr. Olson. A value of U.S. \$800,000 was agreed
3 upon and Mr. Hansen paid U.S. \$400,000 to the vendor company. It
4 was agreed that ownership of the aircraft would be registered in the
5 joint names of the parties. That never happened. In 2004 title to the
6 aircraft was transferred to Mr. Olson personally but the contemplated
7 transfer into the joint names of Hansen and Olson did not occur. The
8 detailed narrative is set out in the written judgment of Pusey, J. but is
9 unimportant for present purposes. The various justifications for the
10 failure to transfer an ownership share to Mr. Hansen which were
11 advanced by Mr. Olson at trial were rejected.

12
13 3. Mr. Hansen says that at some point in the past (he does not say
14 when) Mr. Olson told him “that he had organized his affairs so as to
15 make himself ‘judgment proof’ and that he had used his wife [Anna
16 Sterling] to protect his assets”. When he commenced this action in
17 April, 2005 Mr. Hansen was therefore concerned to insure that there
18 would be assets available to satisfy a judgment in his favour. He
19 applied to this Court in August, 2005 for a Mareva injunction.

20
21 4. In opposition to the injunction application, Mr. Olson swore an
22 affidavit (dated September 1st, 2005) which was clearly designed to

1 reassure Mr. Hansen (and, ultimately, the Court) that any judgment
2 against him could be satisfied. Mr. Olson said he maintains a
3 residence here and has “no plans to leave the Cayman Islands for
4 good.” He said that he and his wife, Anna Sterling, were re-building
5 “our” home in Grand Cayman and were in the process of adding an
6 addition on some adjacent property. He said that “we” have recently
7 purchased seven acres of development land and have loaned “start-up
8 venture capital” for the opening of a store in Bodden Town. He
9 swore that he had no “current plans” to remove assets from the
10 Cayman Islands.

11
12 5. Mr. Olson acknowledged receipt of the U.S. \$400,000 payment from
13 Mr. Hansen and blamed the lack of a transfer of partial ownership to
14 the latter upon difficulties in the registration process. Much of the
15 affidavit, by design, portrayed Mr. Olson as a man of means. He said
16 that the aircraft was for private and personal use and was not a
17 commercial venture. He expressed concern about having the
18 registration of the aircraft in his personal name because of the
19 potential liability that could attract.

20
21 6. He said (at paragraph 54) that Mr. Hansen is “indeed a co-owner” of
22 the aircraft although not registered as such and (at paragraph 55) that

1 he was ready, willing and able to register Mr. Hansen's interest as
2 soon as sufficient documentation was prepared. He said that the
3 operating expenses for the aircraft for the previous two-and a-half
4 years had been billed to "my" American Express card. In paragraph
5 63, he assured the reader that "I am not in a position to dissipate [Mr.
6 Hansen's] interest in the aeroplane, or to sell the aeroplane without
7 his consent or approval."

8

9 7. The injunction application was not heard until February, 2006. Prior
10 to the hearing, Mr. Olson swore his third affidavit which contained
11 more assurances designed to avoid the issuance of an injunction. He
12 said that the aircraft was being repaired at a facility in Florida and
13 that he had paid "many hundreds of thousands of dollars for the
14 repairs", only part of which had been covered by insurance. He said
15 he was not intending to sell the aeroplane but, "even if I wanted to
16 sell it, I could not sell it, because half is owned by Mr. Hansen." He
17 repeated that he lives in the Cayman Islands and intends to carrying
18 on doing so. He said that he and his wife had instructed an architect
19 to expand their house in order to accommodate "guests and domestic
20 staff." He ended his affidavit with the assertion that he is "a man of
21 considerable financial standing" and observed that he could not have

1 paid for the aeroplane's repairs if the truth were otherwise. In the
2 result, the Court declined to grant a Mareva injunction.

3

4 8. By November, 2006 Mr. Olson and Ms. Sterling were making plans
5 to leave the Cayman Islands permanently. Mr. Hansen feared that
6 they were also planning to liquidate their assets here. A second
7 application for a Mareva injunction was launched.

8

9 9. On this second application, Mr. Scott Wilson, then an attorney-at-law
10 practicing in the Cayman Islands, appeared for Mr. Olson. He
11 requested an adjournment. The request was refused and Levers, J.
12 indicated that she was prepared to grant a Mareva injunction. Mr.
13 Wilson then suggested that the matter be adjourned instead and
14 offered to consent to the registration of a restriction on the house in
15 which Mr. Olson was living.

16

17 10. That offer was accepted and the restriction was registered. Mr.
18 Wilson, in his affidavit evidence sworn March 26, 2009, refers to it
19 as a "temporary" restriction but it was recorded by the Registrar of
20 Land Titles as a restriction "until further order of the Court".

21

1 11. In fact, ownership of the house and land was registered in the name
2 of Tonyma and Anna Sterling is the sole registered owner of the
3 shares in that company. Mr. Wilson was not aware of this. He says
4 now in his affidavit evidence that he “at no time had instructions
5 from nor the consent of the directors [sic] or shareholders [sic] of
6 Tonyma Limited to consent to the restriction being imposed”. At the
7 time of the application, Mr. Wilson believed that the residence was
8 owned by his client, Mr. Olson.

9
10 12. Thus assured that he had security for the judgment he hoped to
11 obtain, Mr. Hansen proceeded with his action. The Court ordered
12 Mr. Olson to make disclosure of his assets in the Cayman Islands.
13 By this time, Mr. Olson was living permanently in Spain.

14
15 13. In his affidavit of May 30th, 2007 Mr. Olson swore that he has no
16 assets in the Cayman Islands except a motorcycle valued at \$8,000.
17 At the same time, he described himself elsewhere in the affidavit as
18 “clearly wealthy” and reminded the Court that he had paid all of the
19 insurance and expenses relating to the aeroplane. He said that there
20 was “no fundamental change regarding the plane” and that it was
21 situate at a maintenance facility in Florida. He acknowledged that he
22 would like to sell the aircraft but asserted that “without an order from

1 this Honourable Court or the U.S. Court I know that I cannot do that
2 without the Plaintiff's consent.”

3

4 14. The aircraft was sold to a third party shortly afterwards (seventh
5 affidavit of Rodney Hansen, paragraph 10). Mr. Olson did not
6 account to Mr. Hansen for any of the sale proceeds or obtain his
7 consent to the sale.

8

9 15. In March, 2009 Mr. Olson brought on an application to dismiss these
10 proceedings and to remove the restriction on title on the house
11 (which was unsuccessful). During this hearing, no disclosure was
12 made of the fact that the aircraft had been sold. The following month
13 Mr. Hansen was told of the sale.

14

15 16. In his judgment, Pusey, J. found that Mr. Olson “completely
16 ignored” Mr. Hansen’s interest in the aircraft and treated it “as his
17 own” (at page 14)

18

19 17. Mr. Olson’s ninth affidavit, sworn in Spain on August 25th, 2010,
20 paints a rather different picture of his financial circumstances. He
21 says that his worldwide income is now below €10,000 euros per year.

22 He works part-time as a welder. He denies that he has any assets and

1 lists a number of significant debts which he has been unable to pay.
2 He says that he has not filed a tax return anywhere since 2006 since
3 his earnings are below the statutory minimum. He says that he has
4 never had a bank account in the Cayman Islands.
5

6 18. As I indicated earlier, legal ownership of the Olson residence was
7 registered in the name of Tonyma and the shares of that company are
8 registered in the name of Anna Sterling. The residence is under
9 contract for sale but the net sale proceeds are to remain in trust
10 awaiting the Court's determination of whether Mr. Olson owned
11 beneficially all or part of that asset. If he did, then he has an
12 entitlement to all or part (as the case may be) of the net sale proceeds
13 and they are in turn available to satisfy Mr. Hansen's judgment.
14

15 19. Anna Sterling is the sole director of Tonyma. She has set out its
16 history in her first affidavit, sworn July 6, 2010. She says that by the
17 1990's she had, through trading in securities, built up a modest
18 amount of capital. She became interested in investing offshore and
19 was introduced to Mr. Lewis Rowe of Zephyr International Limited,
20 a Cayman Islands investment consultancy business.

21

1 20. Over several years, Zephyr International set up four companies in
2 Nevis which Ms. Sterling used to manage her investments. Mr.
3 Rowe was the director of these companies and handled all of the
4 banking at her direction. Zephyr International was the registered
5 owner of the shares in these entities although Anna Sterling was the
6 beneficial owner.
7

8 21. When Ms. Sterling decided to buy a residence in the Cayman Islands
9 she instructed Mr. Rowe and Zephyr International to do so in the
10 name of one of her Nevis companies, Onyma Limited. However, a
11 Nevis corporation cannot own real estate in the Cayman Islands so,
12 upon Mr. Rowe's suggestion, a new company named Tonyma was
13 incorporated for the purpose.
14

15 22. Although Ms. Sterling was not the registered shareholder of any of
16 her Nevis companies, she says that she instructed Mr. Rowe that she
17 was to be the sole shareholder of Tonyma and that she "assumed"
18 that these instructions had been followed. In fact, it was Mr. Olson
19 who became the sole shareholder of Tonyma upon its incorporation.
20 Ms. Sterling signed the transfer of land on behalf of Tonyma as its
21 sole director.
22

1 23. In September, 2000, Ms. Sterling asked Mr. Rowe to confirm that the
2 share ownership of Tonyma was registered in her name. After
3 checking, Mr. Rowe offered “profound apologies” to Ms. Sterling
4 and said that because of a “clerical error” the share ownership was
5 actually recorded in Mr. Olson’s name. This situation was rectified
6 by a transfer of the shares from Mr. Olson to Ms. Sterling in
7 November, 2000 for natural love and affection.

8
9 24. Mr. Hansen’s case is that Mr. Olson was and is the beneficial owner
10 of Tonyma and that the registration of the shares in his wife’s name
11 was part of an overall plan to make himself judgment proof.

12
13 25. Mr. Olson says that Ms. Sterling earned and paid for the capital
14 injected into Tonyma and has always been the beneficial owner (and,
15 indeed, the registered owner since 2000) of its shares. Tonyma’s
16 case is that its shares have always been owned beneficially by Anna
17 Sterling. The shares were mistakenly registered in the name of Mr.
18 Olson for a relatively short period of time well before he became
19 involved with Mr. Hansen and the latter’s purchase of a 50% interest
20 in the aeroplane.

21

1 26. Mr. Hansen already has a judgment against Mr. Olson. The relief he
2 seeks now is discovery and an injunction freezing the net sale
3 proceeds on the ground that there is a good arguable case that Mr.
4 Olson is the true beneficial owner of that money. This is the so
5 called *Chabra* jurisdiction, which is available against a non-cause-of-
6 action Defendant where a freezing order ancillary and incidental to
7 the effective enforcement of a judgment is justified because the non-
8 cause-of-action Defendant has become mixed up in an attempt by the
9 judgment debtor to make himself judgment proof and the assets or
10 their proceeds are not readily identifiable in his hands. I have
11 canvassed the law in this area recently in my judgment in *Ahmad*
12 *Hamad Algozaibi and Brothers Company v. Saad Investments*
13 *Company Limited et al* 17.11.09 (unreported), cause no. 359 of 2009.
14 There is a helpful summary of the jurisdiction in Commercial
15 Injunctions, 5th edition by Stephen Gee at page 369 ff.:

16 ‘In *SCF v. Masri* the question was whether it was
17 right in principle for the court to grant or continue
18 Mareva relief in respect of assets which were in the
19 name of and claimed by a third party, in that case
20 the wife of the defendant to the substantive
21 claim. The husband had used a cheque to complete
22 a substantial exchange transaction. The cheque was
23 drawn on a bank account in the name of his wife and
24 had been pre-signed in blank by his wife in her maiden
25 name. An injunction had been granted in respect of
26 bank accounts in the wife’s name and she applied to
27 have it discharged. She raised a preliminary point to
28 the effect that when there is an issue as to whether or

1 not particular assets truly belong to the defendant to
2 the substantive claim or to the third party, the court
3 should always discharge or vary the Mareva relief to
4 enable the third party to deal with the assets. The
5 Court of Appeal rejected the contention and summarized
6 the applicable principles as follows:
7

- 8 ‘(i) Where a plaintiff invites the court to include
9 within the scope of a Mareva injunction assets
10 which appear on their face to belong to a third
11 party, the court should not accede to the invitation
12 without good reason for supposing that the assets
13 are in truth the assets of the defendants.
14
- 15 (ii) Where the defendant asserts that the assets belong
16 to a third party, the court is not obliged to accept
17 that assertion without inquiry, but may do so
18 depending on the circumstances. The same applies
19 where it is the third party who makes the assertion,
20 on an application to intervene.
21

22 (iii) In deciding whether to accept the assertion of a
23 defendant or a third party, without further inquiry,
24 the court will be guided by what is just and
25 convenient, not only between the plaintiff and the
26 defendant, but also between the plaintiff, the
27 defendant and the third party.
28

29 (iv) Where the court decides not to accept the assertion
30 without further inquiry, it may order an issue to be
31 tried between the plaintiff and the third party in
32 advance of the main action, or it may order that the
33 issue await the outcome of the main action, again
34 depending in each case on what is just and
35 convenient.
36

37 (3) Application of the jurisdiction against non-parties

38 (i) *The claimant must show ‘good reason to suppose’ as*
39 *against the non-party that the assets of or held by the non-*
40 *party would be susceptible to a procedure which would lead to*
41 *satisfaction of a judgment; the width of the injunction against*

1 *the non-party depends upon what it is that there is 'good*
2 *reason to suppose'*
3

4 It is sufficient to show that:
5

6 (1) the defendant to the substantive claim has caused assets to
7 be held by or vested in a third party who is effectively
8 acting as a nominee for the defendant. The nominee is
9 simply holding assets which fall within the scope of 'his
10 assets,' i.e. assets owned beneficially by the defendant; or
11

12 (2) the non-party is a debtor or 'banker' or has some form of
13 liability to the defendant which is or will be enforceable.
14 The assets to be frozen are those of the non-party to
15 answer for the non-party's liability to the defendant; or
16

17 (3) although the defendant to the substantive claim has no
18 legal or equitable right to the assets in question, the
19 defendant has some right in respect of, control over, or
20 other right of access to the assets. If a defendant has set
21 up a network of trusts and companies to hold assets over
22 which he has control, and he has apparently done this to
23 make himself judgment-proof, this would be an
24 appropriate case for the granting of Mareva relief against
25 the relevant non-party. If the defendant is a shareholder
26 in a private company and were left free to deprive the
27 company of assets to which it may be entitled, this could
28 affect the value of his shareholding and so an injunction
29 can be granted against non-parties to preserve those
30 assets.
31

32 ...

33
34 (ii) *It is necessary to show that the assets will be amenable*
35 *to compulsory application in satisfaction of the judgment*
36

37 ...

38
39 (iii) *There is no requirement of an existing cause of action*
40 *against the non-party*
41

42 ...
43

1 (iv) *The court can direct an issue between the claimant and*
2 *the non-party.*"
3
4

5 27. First, I must be satisfied that there is a good reason to suppose that
6 the asset in question (the net sale proceeds) is owned beneficially in
7 whole or in part by Mr. Olson. I am satisfied that there is. The
8 evidence I have outlined above could reasonably support a finding
9 that Mr. Olson has always owned an interest, if not the entire interest,
10 in the residence and, therefore, in Tonyma. If the Judgment Creditor
11 succeeds in proving that Mr. Olson is the true beneficial owner of the
12 net sale proceeds, they will become amenable to compulsory
13 application in satisfaction of the judgment.

14
15 28. Second, I must be satisfied that there is a risk of dissipation if the
16 injunction is not granted. I am satisfied there is such a risk. Mr.
17 Olson's sale of the aeroplane, his move to Spain, and his recent claim
18 of impecuniosity are more than enough to satisfy that requirement.

19
20 29. Third, I note that Mr. Hansen (in his seventh affidavit at paragraph
21 22) has provided the usual undertaking as to damages.

22
23 30. The judgment debt, with interest, is in the approximate amount of
24 \$750,000. Mr. Hansen is entitled to a worldwide Mareva injunction

1 freezing the assets of Mr. Olson, Tonyrna Limited and Anna Sterling
2 up to that amount. He has also asked for an injunction against Duke
3 Properties Limited, a company whose shares are registered in the
4 name of Anna Sterling. There is no reliable evidence to suggest that
5 Mr. Olson is the beneficial owner of all or part of the assets of this
6 corporate entity, as distinct from the shares in it which are held in the
7 name of his wife. The request for an injunction against Duke
8 Properties Limited is refused.

9
10 31. The draft injunction contains the usual requests under "Disclosure of
11 Information" which would require the subjects of the order to inform
12 the Plaintiff in writing of all of their assets worldwide, whether
13 owned legally or beneficially. I will grant this part of the request as
14 against Mr. Olson, Tonyrna, and Anna Sterling. The request for
15 disclosure by Duke Properties Limited is dismissed. The deadline
16 for the provision of such information in affidavit form is fixed at 21
17 days. Mr. Hansen is at liberty to apply for an order for the
18 examination of Anna Sterling.

19
20 32. Mr. Olson and Anna Sterling are each permitted to spend \$750 per
21 week towards their ordinary living expenses.

22

1 33. The question of the costs of this application is reserved to the judge
2 who conducts the final hearing.

3

4 Dated this 30th day of October, 2010

5

Henderson, J.

Henderson J.

Judge of the Grand Court

8

