

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN
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27/03/09
Cause No. 161/05

8 BETWEEN: RODNEY HANSEN
9

PLAINTIFF

10 AND: DAVID G. OLSON
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DEFENDANT

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14 Coram: The Hon. Mr. Justice Foster
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16 Appearances: Mr. Kyle Broadhurst of Broadhurst Barristers for the Plaintiff
17 Mr. Stuart Diamond of Diamond Law Associates for the Defendant
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21 Heard on 26th and 27th March 2009
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25 RULING
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29 1. These proceedings were commenced on 6th April 2005 and served on the
30 Defendant in the Cayman Islands on 10th May 2005, almost four years ago. The
31 matter is now set down for trial for five days on 27th April 2009, in exactly one
32 month's time. The Defendant filed yesterday an application that the proceedings
33 be dismissed on the basis that there is "no subject matter jurisdiction over the
34 Plaintiff's cause of action" and/or alternatively on the basis that the Cayman
35 Islands is forum non conveniens and that the trial be vacated. The Defendant also
36 sought leave to re-amend his defence and counter-claim in terms of a final draft
37 submitted at the resumed hearing of this matter today, 27th March 2009, with

1 further amendment of the draft submitted at the hearing yesterday 26th March
2 2009. The Defendant also seeks removal of a restriction placed over 3 parcels of
3 real property in North Side imposed by this Court in April 2007, two years ago.
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5 2. In summary these proceedings concern a dispute between the Plaintiff and the
6 Defendant over an agreement for the acquisition by the Plaintiff of a 50% interest
7 in a Piper Cheyenne III aircraft and also about subsequent damage to that aircraft
8 allegedly as a result of its use after Hurricane Ivan in 2004. In view of the
9 proximity of the trial date I heard the Defendant's application yesterday
10 afternoon.
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12 3. There have been several interlocutory applications over the course of the
13 proceedings, including an unsuccessful application by the Defendant to strike out
14 the claim. Both parties have also amended their pleadings but at no time until
15 filing his summons yesterday has the Defendant contended that this Court has no
16 jurisdiction over him or the subject matter of the Plaintiff's claim and at no time
17 until yesterday has he contended that this is not the appropriate and convenient
18 forum for trial of this dispute.
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20 4. Since these proceedings commenced the Defendant has also instigated 2 actions
21 against the Plaintiff in Florida courts relating to substantially the same issues.
22 The first action is in his own name as plaintiff in the Southern District of Florida.
23 That action was subsequently stayed by that court in light of the proceedings

1 already under way in this Court. The Defendant then brought the second Florida
2 action in the Middle District of Florida in name of his company, again relating to
3 substantially the same issue, but that too was stayed by that Florida court pending
4 the proceedings in this Court. More recently the Defendant has applied again to
5 each of the courts in the Southern District of Florida and in the Middle District of
6 Florida to have those respective stays of the proceedings lifted but was
7 unsuccessful in each case. Accordingly two different courts in Florida have
8 stayed the proceedings initiated or procured by the Defendant in each of them
9 relating to the same dispute and have separately since each declined to lift those
10 stays on the basis that the dispute is already being litigated in this Court.
11 Although I have not seen the rulings of the Florida courts, it seems reasonable to
12 assume that in light of their decisions the Florida courts accepted that this Court
13 has jurisdiction to try the dispute and is the appropriate and convenient forum in
14 which to do so.

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16 5. The Defendant has in summary two principal explanations for the extreme
17 lateness of his applications. Firstly, he contends that it was only in his recent
18 amended statement of claim, served in September 2008, that the Plaintiff admitted
19 for the first time that the aircraft concerned was not actually owned at the relevant
20 time by the Defendant personally but by a Texan corporation and that it therefore
21 became apparent, so the Defendant contends, that the Plaintiff is suing the wrong
22 party. Secondly, the Defendant contends that the parties had agreed to mediate
23 their dispute in Florida and in light of that he took no steps in the present

1 proceedings to challenge the jurisdiction of this Court or the appropriateness of
2 this forum. He argues that it has only recently become clear to him that the
3 Plaintiff was not in fact intending to mediate but was proceeding with this action
4 and accordingly he has only now made his applications.

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6 6. Having reviewed the documentation and heard counsel's submissions, I do not
7 consider that there is any substantive merit in either of these purported
8 explanations. Whether or not the aircraft at the relevant time was owned by the
9 Defendant personally or by a corporation which was under his control is not
10 material in the circumstances. It is clear that the Defendant was able to procure
11 the sale and/or transfer of the aircraft to another party, including ultimately to
12 himself and/or to another company under his control. He was the person who has
13 at all material times had de facto control of the aircraft and the ability to sell
14 and/or transfer legal or beneficial ownership of it. I cannot see that it can be said
15 that he is obviously the wrong defendant in the circumstances and on analysis the
16 re-amendment of the Plaintiff's statement of claim on which the Defendant relies
17 is not relevant in this context.

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19 7. As far as mediation is concerned, firstly, the evidence is that the question of
20 possible mediation did not arise until January of this year. That cannot therefore
21 be a justification for the Defendant not having contended, before January, by
22 which time these proceedings had been going on for over 3½ years, as he now
23 seeks to do, that this Court has no jurisdiction over the Defendant or the subject

1 matter of the dispute or that it is not the convenient forum. There was a period of
2 in excess of 3 years within which he could and should have done so if he wished
3 to do so. He now seeks to do so only a month before the trial. Secondly, the email
4 correspondence between the parties' respective attorneys in Florida relating to
5 mediation is anyway far from clear that there was a definite agreement to mediate.
6 It seems to me from the evidence produced at the hearing that at most mediation
7 was being discussed as a possibility and that in the absence of a firm and binding
8 agreement that was not the justification which he claims for the Defendant not
9 continuing to progress these proceedings.

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11 8. The Defendant's summons listed various factors which it was contended pointed
12 to Florida as being the convenient and appropriate forum in which the dispute
13 should be determined. However, on closer analysis, many of these factors do not
14 appear to me to be relevant in determining the appropriate forum. For example,
15 the fact that the two pilots who flew the aircraft were certified in the United States
16 is not material in my view. Far more material is the fact that both of those pilots,
17 who may be potential witnesses, are resident in the Cayman Islands. Undoubtedly
18 there are connections with Florida; for example the aircraft was repaired in
19 Florida and witnesses who can speak to the repairs are there. However, in my
20 opinion, the connecting factors with Florida do not sufficiently outweigh the
21 connecting factors with the Cayman Islands to render this an inappropriate or
22 inconvenient forum. The aircraft was based in Cayman at the material time and it
23 was during its flights in or from the Cayman Islands that it allegedly sustained the

1 damage which is a significant element of the dispute. Furthermore, any witnesses
2 in Florida can very easily attend court here.

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4 9. Although the Defendant states that he now lives part of the time in Spain, his most
5 recent affidavit sworn only yesterday in support of his summons gives his address
6 as being in North Side, Grand Cayman and expressly states that he has held
7 permanent residence in the Cayman Islands since 1998 and has been ordinarily
8 and continuously resident in the Cayman Islands from that date. In any event, the
9 fact that he may have changed his residence, if that is the case, after having been
10 properly served in Cayman is not relevant to the exercise of this Court's
11 jurisdiction over him.

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13 10. I regret to say that I am not convinced as to the *bona fides* of the Defendant's
14 applications. There has been ample opportunity over more than 3 years to make
15 the contentions he now makes. All of his actions in these proceedings until the
16 past few days are quite contrary to and inconsistent with the position which he
17 now seeks to take. His application has the appearance of being simply a delaying
18 tactic and this Court will not allow that. In my view, in all the circumstances,
19 particularly having regard to the fact that the Defendant has already failed to
20 persuade two different courts in Florida, on two different occasions in each Court
21 to allow this dispute to be litigated in Florida, it would inappropriate, indeed quite
22 extraordinary, for this Court to now direct that these proceedings should be tried

1 by one or other of those courts in Florida after all, particularly having regard to
2 the very late stage which these proceedings have reached.

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4 11. In all the circumstances, in my discretion I refuse the Defendant's applications to
5 dismiss these proceedings. I also refuse his application to vacate the trial, the date
6 of which is in only a month away and which has been set, with the agreement of
7 both parties, for some time. I shall, however, grant the Defendant's application to
8 re-amend his defence and counter-claim in the terms of the new draft submitted
9 on his behalf this morning, which I was assured was the final draft. This re-
10 amended defence and counter-claim shall be filed and served no later than 5:00
11 pm on Monday 30th March 2009. The Plaintiff shall file and serve any re-
12 amended reply to the re-amended defence and any re-amended defence to the re-
13 amended counter-claim by no later than 5:00 pm on Monday 6th April 2009. The
14 Defendant's application for removal of the restriction over the parcels of real
15 estate in North Side shall be adjourned for hearing on a date no sooner than 27th
16 April 2009. I also order that the Defendant shall pay the Plaintiff's costs of and
17 incidental to his summons and also the costs thrown away by his re-amendment of
18 his amended defence and counter-claim in any event, such costs to be taxed if not
19 agreed.

20 12. As far as the Plaintiff's application by his summons dated 4th March 2009 for an
21 unless order with respect to the exchange of witness statements is concerned, I
22 direct that witness statements shall be exchanged by the parties no later than 5pm
23 on Monday 6th April 2009. The Defendant shall pay the Plaintiff's costs of and

1 incidental to that application, again to be taxed if not agreed. The trial shall
2 proceed on 27th April 2009 as previously determined.

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4 13. I refuse the Defendant's application for leave to appeal against the orders which I
5 have made in respect of his summons.

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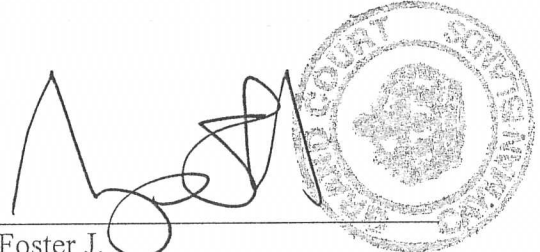
10 27th March 2009

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A handwritten signature in black ink is written over a horizontal line. To the right of the signature is a circular official seal. The seal contains a central emblem and the text "GRAND COURT STATE OF NEW SOUTH WALES" around the perimeter.

Foster J.
Judge of the Grand Court
(Acting)