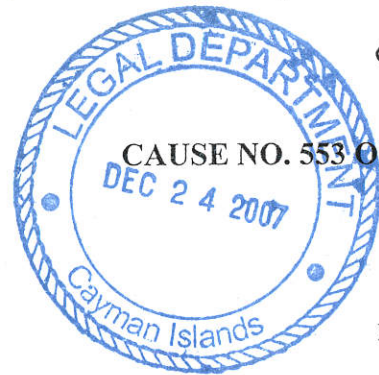


IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

Hansen 21/11/2007



Civil

BETWEEN:

- (1) **EVEN WAHR-HANSEN**
- (2) ANDERS JAHRES REDERI A/S

and

- (1) AALL TRUST & BANKING CORPORATION LTD
- (2) AALL GROUP INC

Plaintiffs

Defendants

Appearances:

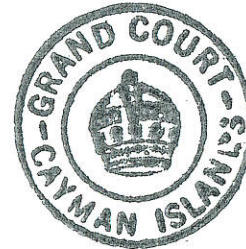
Mr. Graham F. Ritchie Q.C. and Mr. David W. Collier of Charles Adams, Ritchie and Duckworth for the Plaintiffs  
Mr. Carlos de Serpa Pimentel and Mr. Michael Loberg of Appleby for the Defendants

Before:

Hon. Justice Henderson

Heard:

November 21, 2007



**RULING**

This action commenced by writ of summons is not accompanied by a statement of claim. The Indorsement on the writ says that the Plaintiffs:

"Seek specific performance of contractual undertakings given by the Defendants by letter dated 14th February 2005 in relation to shares in Cayman National Corporation Limited ("CNC") acquired by the First Defendant in consideration for the sale to CNC of its business by agreement dated 31st December 2004, and relief consequent to the breach and threatened breach of those undertakings by the Defendants."

It seems that the reference to February 14th is in error. It should read February 11th.

The application before me is for an interlocutory injunction restraining the Defendants/Respondents from dealing in the CNC shares.

There was some debate at the hearing as to whether I must be satisfied there is a serious issue to be tried, or satisfied that the Plaintiff has a good arguable case. The distinction between these two tests is not material here, as I am satisfied the Applicant cannot meet either standard.

The narrative begins on December 24th, 2004, at which time the solicitors to the Defendant AALL Trust & Banking Corporation wrote to the Plaintiff's solicitors saying that AALL Trust had entered into an agreement with Cayman National Corporation to sell its business effective December 31st, 2004. In return for the sale of that business, AALL Trust was to receive shares in CNC.

It proposed to transfer those shares by way of dividend up to its parent company, AALL Group Inc. ("AGI"). The letter from Appleby offered an undertaking from AGI that it would be responsible for any judgment obtained afterwards against AALL Trust up to the value of the CNC shares received by AGI.

After some correspondence back and forth, Appleby wrote again on January 7th, 2005 to make an offer. They said, in part:

"In order to allay your concerns, we confirm that AALL Trust will give you seven working days advance notice of any transfer of CNC shares received by AT&B Trust in return for the sale to its parent company AGI. AGI remains, in principle, willing to give an undertaking that it will be responsible for any judgment against AT&B Trust up to the value of the CNC shares received by way of dividend."

The letter closed with this request:

"In light of our confirmation that you will be given 7 working days advance notice of the proposed transfer, we expect to receive by return your confirmation that no application to Court will be made at this stage and, in any event any application will be on reasonable notice of not less than 48 hours."

By letter dated January 10th, 2005, Charles Adams -- solicitors to the Plaintiffs -- accepted that offer. They acknowledged the undertaking given in the letter to which I have just referred, and then confirmed that no application to Court would be made and that they would provide the Defendants with reasonable notice of at least 48 hours of an application to restrain the transfer of the CNC shares to AGI. That, in my view, was an enforceable agreement but it is not the agreement relied upon on this interlocutory application.

The correspondence between the parties then turned to the question of disclosure. A number of demands were made but not met. Eventually, the Defendants tired of the exchange and wrote to Charles Adams on February 11th, 2005 to say this:

"On reflection, we foresee that any continued attempt to negotiate the terms of an AGI undertaking with the Estate at this stage would be time-consuming and expensive."

In the third paragraph of that letter, they went on to say:

"Accordingly, we confirm that the CNC shares will continue to be held by AT&B until further notice. If our client decides to revisit this issue in the future, we would hope to then agree with you a way forward. In any event, we confirm our client's agreement to give you seven working days advance notice of its intention to transfer the CNC shares received under the sale arrangements to its the parent company AGI."

The last sentence of the quoted paragraph is a reiteration of the contractual promise given earlier.

The first sentence of the quoted paragraph; that is to say, the confirmation that the CNC shares would continue to be held by AALL Trust & Banking until further notice, is the provision relied upon today.

That promise (by Appleby on behalf of AALL Trust & Banking) was not the subject of the contract entered into on January 10th, 2005. The promise was not honoured. A number of dispositions of CNC shares were made by AALL Trust and then, after the fact, Appleby wrote to Charles Adams Ritchie and Duckworth on October 29th, 2007 to advise of those transfers. These were sales on the open market conducted over the Cayman Islands Stock Exchange.

The applicant's difficulty is a simple but fatal one. I am unable to see anything in the evidence which gives contractual effect to the promise contained in the first sentence of the third paragraph of the letter dated February 11th. There is nothing in the evidence which could be viewed as consideration for that promise. No additional promise was made by this applicant in exchange for the Respondent's assurance. It was a promise made *ex gratia* and nothing more. As a consequence, whatever the standard may be, the applicant is unable to meet it and this application must be dismissed.

Dated this 21<sup>st</sup> day of November, 2007

Henderson, J.

Henderson, J.  
Judge of the Grand Court

