

Liberty

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

CAUSE NO: 341 of 2006

6 BETWEEN:

7 JEROME GIPPETTI

Plaintiff

10 AND:

11 CAYMAN NATIONAL BANK

Defendant

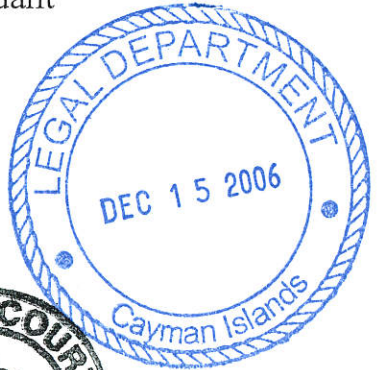
14 Before: The Honourable Madam Justice Levers

16 Appearance:

17 Mr. J. Chapman for the plaintiff

18 Mr. P. Boni for the defendant

20 Heard: 21<sup>st</sup> November 2006



22 JUDGMENT

25 Levers, J.

27 By way of Summons the applicant/plaintiff in this matter asks for the  
28 following orders:

- 30 1. To disclose to the Plaintiff forthwith or within such period as the
- 31 Court may think fit whether or not the records requested in the

1 schedules attached to the Statement of Claim herein remain in the  
2 custody or control of the Defendant;

3 2. Insofar as any record(s) are identified as still existing, that the  
4 Defendant do inform the Plaintiff's attorneys within 5 business days  
5 or within such period as the Court may think fit of the Defendant's  
6 charge(s) for producing such records to the Plaintiff; and that the  
7 Defendant;

8 3. Do deliver up to the attorneys for the Plaintiff any of the requested  
9 records identified by the Defendant as still existing under paragraph 1  
10 above for which the Plaintiff has paid the charge(s) specified under  
11 paragraph 2 above within 7 days or within such period as the Court  
12 may think fit of such payment being made by the Plaintiff to the  
13 Defendant;

14 4. And for an Order for damages for their wrongful detention and  
15 interest thereon to be assessed and the costs of this application to be  
16 taxed and paid by the Defendant to the Plaintiff.

17

18 Background

19

1 A Writ of Summons and Statement of Claim were filed in this matter in  
2 August of 2006. The Plaintiff was to provide certain information to the IRS  
3 and having contested the application he now wishes to cooperate with the  
4 request and has asked the Cayman National Bank to provide him with  
5 certain account information for the years 1999 and 2000. The contract with  
6 the bank has terminated and the accounts have been closed. The bank's  
7 position is set out in a letter dated 14<sup>th</sup> August 2006 and paragraphs 1, 2 and  
8 3 of the letter succinctly set out the reasons why the Bank does not feel that  
9 the applicant is entitled to the documents.

10

11 (1) There is no duty, whether in contract or otherwise, which would  
12 require the Bank to produce the vast number of documents set out in  
13 the three schedules to your earlier letter even if Mr. Gippetti were still  
14 a customer of the Bank. We are sure you will appreciate that the  
15 categories and extent of documentation sought go far beyond those,  
16 which a customer might reasonably expect its bank to produce. If you  
17 have authority to support the proposition that the Bank must produce  
18 such documentation we would welcome the opportunity to consider it.

19 (2) Mr. Gippetti terminated his relationship with the Bank many years  
20 ago. Quite apart from the objection set out at (1) above, please note

1 that there is now no contractual relationship between Mr. Gippetti and  
2 the Bank. A bank may choose to maintain records for a certain period  
3 in order to protect its own position but it owes its customer no duty to  
4 do so. Further, we note that many if not all of the documents sought  
5 are more than six years old.

6 (3) The Bank has advised you of its duty of confidentiality and you say  
7 you are confused by the reference to the Confidential Relationships  
8 (Preservation) Law. Let us try to clear up any confusion. You refer to  
9 the fact that it is the Principal who seeks disclosure here so that  
10 confidentiality rules do not apply. We disagree. The Bank is aware  
11 that the Internal Revenue Service of the United States has demanded  
12 that Mr. Gippetti produce certain documents. Perhaps you are not  
13 aware of the fact that the documents sought now by Mr. Gippetti  
14 match those requested by him in a letter dated August 16<sup>th</sup> 2004. In  
15 that letter Mr. Gippetti advised the Bank that the request was made  
16 'pursuant to an Internal Revenue Service Summons. It is impossible  
17 to draw any other inference from the renewed request but that Mr.  
18 Gippetti is asking the Bank to produce evidence in connection with  
19 the IRS summons. If consent were freely given, and subject to the  
20 Bank being under a duty to disclose that documents (which, as a result

1 of both (1) and (2) above, it is not) there might be a duty to disclose  
2 but consent is not freely given where the request is made under  
3 foreign court sanction (see Re ABC Limited [1984] CILR 130). The  
4 Bank is aware that this information is sought to satisfy the Internal  
5 Revenue Service. The fact that Mr. Gippetti has chosen to renew his  
6 request through you does not alter the fact that, as far as the Bank is  
7 aware, Mr. Gippetti's request that the Bank produce information in  
8 connection with foreign proceedings is not voluntarily and freely  
9 given.

10

11 As will be seen from that letter the Bank feels that it is unreasonable to  
12 ask for all these documents but more than that they rely mainly on the  
13 Confidential Relations (Preservation) Law. There is in fact no other  
14 defence raised in that letter and for purposes of this application, this  
15 Court must be governed by the contents of that letter, as no defence has  
16 yet been filed.

17

18 It is the Court's duty to look at this matter and decide whether in fact the  
19 contract having been terminated, it is unreasonable to expect the bank to  
20 provide the applicant with details of these documents. This application is

1 tantamount to an application for summary judgment. It is really a  
2 question of asking for the factual situation at the Bank. Whether they  
3 have the documents or not and if they have the documents, can they be  
4 produced, if the Court orders them to be produced. Do they then come  
5 within the meaning of confidential information?

6  
7 Mr. Boni for the Bank relies on *In the Matter of ABC Limited*, Chief  
8 Justice Summerfield's judgment, (1984) CILR at page 130. In that case  
9 the bank applied to the court for a direction (a) as to whether or not the  
10 applicant can disclose confidential information to a foreign governmental  
11 agency and (b) also for a further declaration that a consent directive  
12 signed by anyone, pursuant to an order, or directive of a foreign court, or  
13 tribunal, which can impose a penal sanction for disobedience of the  
14 compelling order or directive is not a consent sufficient to negative the  
15 application of the Confidential Relationship (Preservation) Law, as  
16 amended. In other words, that the consent was not free and voluntary.

17  
18 As I have stated in that case there was a consent directive,(in other words  
19 the consent was signed as a result of a penal sanction hanging over the  
20 principal's head). In this case what is being asked for is information to

1 be released to the principal in question and it just so happens that the  
2 principal has informed the bank as to what he intends to do with it. There  
3 is no question of a consent directive being signed under a court order.

4 The applicant in this case contested the requirement to disclose to the IRS  
5 but having litigated he went no further but he took a conscious decision  
6 to cooperate with the request. Further more he has instructed his own  
7 attorneys to commence litigation in order to enable him to provide this  
8 information to the relevant authority and he has advised the bank that he  
9 wants to do so. Does this therefore come under the definition of  
10 confidential information, as envisaged in the Confidential Relationship  
11 (Preservation) Law? The definition of confidential information under  
12 that Law is that it, 'includes information concerning any property which  
13 the recipient thereof is not, otherwise than in the normal course of  
14 business, authorized by the principal to divulge'.

15  
16 This request is made between 2 contracting parties and the Bank will not  
17 be open to any liability if it hands over this information (of course the  
18 Bank can only hand over what it has).

1 Mr. Chapman submits that this does not come within the definition of  
2 confidential information because, here is the principal himself requesting  
3 the bank to divulge the information to himself. He is the source of the  
4 information. It is on his instructions that the bank works and the  
5 information is his so that there are no third parties involved in this  
6 application. I agree with Mr. Chapman therefore that this is not  
7 confidential information as envisaged by the Confidential Relationship  
8 (Preservation) Law (1995 Revision) and in those circumstances I make  
9 the orders and grant relief sought in paragraphs 1, 2 and 3 of the  
10 Summons. As to paragraph 4, I adjourn that sine die. Costs to the  
11 plaintiff to be taxed if not agreed.

12  
13 Dated this 6<sup>th</sup> day of December 2006

14 

15  
16 Judge of the Grand Court

