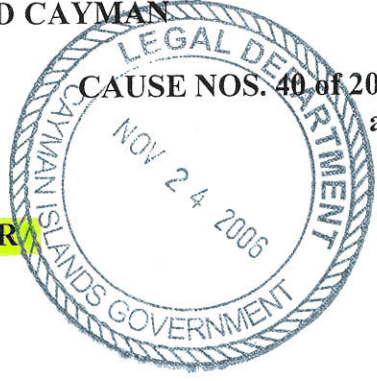


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1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN

3
4 CAUSE NOS. 40 of 2006, 181 of 2006
5 and 193 of 2006
6



7
8 BETWEEN: PATRICIA MILLER Plaintiff
9

10
11 AND: ALDO GIANNE Defendant
12

13
14
15
16 BETWEEN: PATRICIA MILLER Plaintiff
17

18
19 AND: CONDOCO GRAND CAYMAN RESORT LTD. Defendant
20
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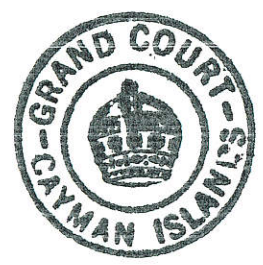
24 IN THE MATTER OF THE CONFIDENTIAL RELATIONSHIPS
25 (PRESERVATION) LAW (1995 REVISION)
26

27 AND IN THE MATTER OF PROCEEDINGS BETWEEN PATRICIA MILLER
28 AND ALDO GIANNE (CAUSE NO. 40 OF 2006)
29
30
31

32 Appearances: Mr. Tom Lowe instructed by Alex Horsbrugh-Porter of Ritch
33 & Conolly for Patricia Miller the Plaintiff/Applicant
34 Mr. Steven Hall-Jones instructed by Diamond Law Associates
35 for Aldo Gianne and Redwood Hotel Investment Corp.
36 Mr. Jeremy Walton of Appleby Hunter Bailhache for Condoco
37 Grand Cayman Resort Ltd.
38

39
40 Before: Hon. Justice Henderson

41
42
43 Heard: November 8, 2006
44
45
46



JUDGMENT

1
2

3 May a Norwich Pharmacal order be made to assist a foreign plaintiff who has a claim or
4 potential claim in a foreign court? That and other aspects of the Norwich Pharmacal
5 jurisdiction are at issue on this application.

6

7 The plaintiff, Patricia Miller, entered into a stipulated (or consent) judgment to settle a
8 matrimonial proceeding in the Family Court of California. Her husband, Aldo Gianne,
9 said that he was out of work, had only a limited earning capacity, and owned no assets
10 beyond those already disclosed in the California proceeding. In effect, he was bankrupt.
11 On the basis of this warranty and representation, Ms. Miller gave up her right to spousal
12 support.

13

14 Within days of the stipulated judgment, Ms. Miller had reason to believe her husband was
15 not telling the truth. She discovered that Redwood Hotel Investment Corporation, a
16 company whose sole director is Mr. Gianne, is the owner of four condominium units in
17 the Ritz Carlton development on Grand Cayman Island. Ms. Miller says these units have
18 an aggregate value in excess of U.S. \$23 million.

19

20 Ms. Miller commenced an action in the Superior Court of California against Mr. Gianne
21 and another, parallel, action here (cause no. 40 of 2006). In a separate proceeding
22 (cause no. 181 of 2006), Ms. Miller applied to this court for a Norwich Pharmacal order
23 requiring the vendor of the condominium units, Condoco Grand Cayman Resort Ltd., to
24 disclose the agreements of sale and purchase and other related documents, with a view to

1 showing that Mr. Gianne was the beneficial owner of the units. The application was
2 heard *ex parte* and granted.

3
4 Shortly after the Norwich Pharmacal order was obtained, the action in the Superior Court
5 of California was dismissed on the ground that the Family Court of California had
6 exclusive jurisdiction in the cause.

7
8 On June 21, 2006 Condoco applied to this court for an order under the *Confidential*
9 *Relationships (Preservation) Law* (“CR(P)L”) permitting it to make the Norwich
10 Pharmacal disclosure. This two-stage procedure is a feature of the unique confidentiality
11 regime prevailing in the Cayman Islands. Unlike the earlier application, this was an *inter*
12 *partes* hearing. Mr. Gianne was represented by counsel who submitted affidavit evidence
13 and a skeleton argument in support of her oral submissions. She attacked the Norwich
14 Pharmacal order, arguing that it should be set aside because the action in the Superior
15 Court of California was no longer extant. She argued that the Family Court of California
16 has exclusive jurisdiction in the matter and that any action brought in the Cayman Islands
17 would be brought without jurisdiction. Her Skeleton Brief says (in paragraph 11): “it is
18 obvious that this application was brought by Patricia Miller in aid of her foreign
19 proceedings.”

20
21 After considering these arguments I granted an order under the CR(P)L and a further
22 order releasing Ms. Miller from her implied undertaking not to use the documents for a
23 purpose other than for the proceedings in which they were disclosed. In effect, I

1 conducted an *inter partes* review of the Norwich Pharmacal *ex parte* order. By
2 implication, the Norwich Pharmacal order was reaffirmed.

3
4 Condoco then made the requested disclosure. The evidence provided considerable
5 justification for Ms. Miller's suspicions. In both affidavits and correspondence, Mr.
6 Gianne referred repeatedly to his own, personal ownership of the units. For example, in
7 his affidavit of January 23, 2002 at paragraph 20, Mr. Gianne said with regard to one of
8 the units: "as this was going to be my own residential unit, I had what I had considered to
9 be the best architectural firm I could find."

10
11 Cause no. 40 of 2006 in the Grand Court of the Cayman Islands was not framed properly.
12 The claim advanced was a claim for damages; there was no allegation of a tracing or
13 proprietary claim. As a consequence, Mr. Gianne applied to Harrison, J. (Ag.) of this
14 court and obtained an order dismissing the action. Harrison, J. (Ag.) held that the Family
15 Court of California is the *forum conveniens* for the trial of a damages claim.

16
17 Thus, both actions commenced so far by Ms. Miller have been dismissed. That is not to
18 say, however, that she is without a remedy or was lacking one when she applied for
19 Norwich Pharmacal relief. She could choose to initiate a proprietary and tracing claim
20 in this court. She might also apply for an order in California setting aside the stipulated
21 judgment on the ground it was obtained by fraud and deliberate misrepresentation. She
22 may well decide to do both. Either of these prospective actions provide a grounding for
23 granting her the equitable relief she requested.

1

2 Mr. Gianne now seeks to attack the Norwich Pharmacal order again; he says it should be
3 “discharged” because it should never have been made.

4

5 A number of objections are taken to the procedure by which the Norwich Pharmacal
6 order was obtained.

7

8 Mr. Hall-Jones argues that the application should have been on notice to Redwood and to
9 Mr. Gianne. In the Cayman Islands, because of the two-step process to which I have
10 referred earlier, those who have a privacy interest in the requested information will have
11 an opportunity to oppose the release of the information at the CR(P)L hearing. Mr.
12 Gianne’s submission fails to account for the attack he mounted on the order on that
13 occasion. As he seems to have appreciated at the time, a party seeking to set aside a
14 Norwich Pharmacal order should make that application at the earliest reasonable
15 opportunity. It is at least questionable whether he should be permitted to advance what is
16 essentially the same argument now, for a second time, on this application.

17

18 Moreover, the Norwich Pharmacal order was fully complied with (after the CR(P)L order
19 was made) and is now spent. What would be the practical effect of discharging it? Mr.
20 Gianne seeks a variety of consequential relief, including an order that “no use shall be
21 made of” any of the evidence concerning ownership of the four condominium units. I
22 have concerns about the viability of seeking to stuff the genie back in the bottle at this
23 point, including concerns about the effect on Condoco's position if I now reverse my

1 earlier CR(P)L decision. However, because the issue is of some importance, I will
2 proceed to address Mr. Gianne's argument on its merits.

3
4 It is said that Norwich Pharmacal relief should not be granted where there is an already
5 existing action. This does not accord with the authorities. In a number of instances,
6 including *Bankers Trust Co. v. Shapira and others* [1980] 3 All ER 353 (CA); *C*
7 *Corporation v. P and eight others* 1994-95 CILR 189, the relief was granted although
8 there was an action afoot already.

9
10 Mr. Gianne says that it was not necessary to grant the relief at all because Ms. Miller was
11 already able to bring proceedings against him and, in particular, to plead her case.

12 Norwich Pharmacal relief (or Bankers Trust relief, which may be a more apt description
13 of the relief needed here) is not confined to those plaintiffs or potential plaintiffs who
14 need the information in order to plead, as appears readily from such modern authorities as
15 *Axa Equity & Law Life Assurance Society & others v. National Westminster Bank &*
16 *others* [1998] CLC 1177 (CA); *Aoot Kalmneft v. Denton Wilde* [2002] 1 Lloyds Rep
17 417; *Carlton Film Distributors v. VCI* [2003] FSR 47 (Ch D).

18
19 Mr. Hall-Jones says that Condoco was a "mere witness" and therefore immune from a
20 Norwich Pharmacal order. The relief is available where the possessor of the requested
21 information is "involved" or "mixed up" in the allegedly tortious conduct of the
22 wrongdoer. I am satisfied that the vendor of these condo units was, albeit unwittingly,
23 both involved and mixed up with the impugned conduct of Mr. Gianne because of his use

1 of the Redwood corporate vehicle to acquire assets in such a way that his personal
2 ownership of them was not readily apparent. Condoco is not a mere witness to the
3 alleged wrongdoing.

4
5

6 An implicit assertion in the argument of Mr. Gianne before me is that a Norwich
7 Pharmacal order cannot and should not be made to assist a foreign plaintiff in a cause to
8 be advanced in a foreign court. Mr. Hall-Jones argues that there are already appropriate
9 mechanisms in place to enable the Cayman Islands to assist foreign courts – the *Evidence*
10 (*Proceedings in Other Jurisdictions*) (*Cayman Islands*) *Order, 1978* and the various
11 mutual legal assistance treaties to which the Cayman Islands is a party – and that it is
12 wrong in principle to exercise the equitable Norwich Pharmacal jurisdiction in
13 substitution for them.

14

15 No authority has been cited in support of this assertion. The *Evidence (Proceedings in*
16 *Other Jurisdictions) (Cayman Islands) Order, 1978* contains no provision which might
17 oust the equitable jurisdiction of this court. I was not referred to any provision of the
18 Mutual Legal Assistance Treaty with the United States intended to have such an effect.
19 Norwich Pharmacal relief is based upon the view that a person who becomes mixed up in
20 or involved in the wrongdoing of another (albeit innocently) “comes under a duty to assist
21 the person who has been wronged by giving him full information and disclosing the
22 identity of the wrongdoers.”: *Norwich Pharmacal v. Commissioners of Customs and*
23 *Excise [1974] AC133* per Lord Reid at page 175. The duty is an equitable obligation,

1 imposed because it would be wrong to deny such assistance to claimants who need the
2 information to plead, particularize and advance their claim at trial. The duty is to provide
3 “full information” because nothing less will be in the interests of justice. It is considered
4 appropriate to impose the obligation upon the possessor of the information because its
5 involvement with the alleged tortfeasor, intentional or otherwise, means it is more than a
6 mere bystander; by virtue of its involvement, it has acquired a positive duty to act. None
7 of these general principles underlying the Norwich Pharmacal jurisdiction support a need
8 to confine its scope within territorial limits. There is no reason in principle to restrict the
9 relief to plaintiffs who have commenced an action, or who will commence an action,
10 within the jurisdiction of the court asked to grant the order.

11

12 In general terms, it seems clear that Ms. Miller has a claim to be advanced in California
13 to set aside the stipulated judgment on the ground that it was obtained by fraud. She also
14 has a proprietary or tracing claim to be advanced in this jurisdiction. I do not consider
15 that the focus of her Norwich Pharmacal application was, or needed to be, cause 40 of
16 2006 in the Grand Court of the Cayman Islands. Its focus was not a particular court
17 action but a claim or cause of action: the claim that her husband had defrauded her (and,
18 in the process, the California Court) by lying about his assets. That was her claim,
19 however imperfectly it may have been described in the pleadings in cause 40 of 2006
20 here and in California.

21

22 Because cause 40 of 2006 was dismissed by Harrison, J. (Ag.) in this court, Mr. Gianne
23 has argued that the Norwich Pharmacal order and the CR(P)L order must fall “in limine.”

1 There is no merit in that submission. The two orders are not dependent upon the
2 existence or viability of any particular action; they could just as easily have been issued
3 before any action anywhere had been commenced.

4

5 I am told that paragraphs one to three and five in Mr. Gianne's summons have been dealt
6 with already. The balance of the summons is dismissed.

7

8 Ms. Miller has filed her own summons asking for a clarification of her right to use the
9 disclosed material. I grant to her an order declaring that she is relieved of her implied
10 undertaking to this extent: she is at liberty to use the disclosed material in the pursuit of
11 any claim made in this court in relation to the ownership of the five condominium units;
12 and in relation to any claim advanced in the State of California in relation to the
13 stipulated judgment there.

14

15 Ms. Miller and Condoco are each entitled to their costs of this application from Mr.
16 Gianne.

17

18 Dated this 15th day of November, 2006

19

20

Henderson, J.

21

Henderson, J.

22

Judge of the Grand Court

