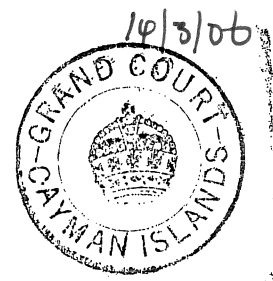


IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS



C.I.C.A. 1 OF 2006
CAUSE 478 OF 2004

BETWEEN	TASARRUF MEVDUATI SIGORTA FONU (An Entity Established Under Turkish Law)	APPELLANT/ PLAINTIFF
AND	WISTERIA BAY LIMITED UTTERTON LIMITED ABDALLAH IBRAHIM ABDALLAH AL-AYED THE REGISTRAR OF SHIPPING	RESPONDENT/ DEFENDANTS

CHAMBERS IN OPEN COURT
THE 14TH DAY OF MARCH, 2006
BEFORE CHIEF JUSTICE ANTHONY SMELLIE,
SITTING AS A SINGLE JUSTICE OF THE COURT OF APPEAL

APPEARANCES: Mr. Jeffrey Cox QC., with Mr. Jones of Campbells for the
 plaintiff

 Messrs. Hector Robinson and Mathew Morrison of Quin &
 Hampson for the 3rd defendant

 Mr. Nigel Saunders of Walkers for the 1st and 2nd defendants

RULING

1. Sitting as a single Justice of Appeal, I have before me an application by the plaintiff for leave to appeal out of time against an order of the Grand Court restraining the parties, including the plaintiff; from having any dealings with two motor vessels which are registered with the Registry of Ships of these Islands but which have been lying for more than two years at anchor in Turkish waters.

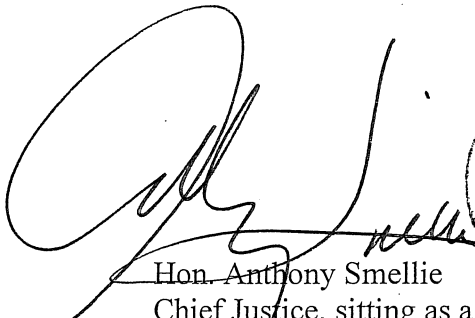
2. Insofar as this restraining Order would bind the plaintiff, it is acknowledged that it would operate extra-territorially against the plaintiff, which is a Turkish State Agency; so as to prevent it from taking any steps, including any steps which may be mandated or allowed by Turkish Law, and which would involve any dealing with the two vessels.
3. While those are unusual features of an order of restraint, the more unusual feature is that this Order sought to be appealed against is one originally made at the instance of the plaintiff aimed at the defendants and one which the plaintiff - in the realisation that as literally expressed, would bind not only the defendants but also itself - had earlier sought to have discharged. It is therefore also an order which has been maintained as the result of the defendants' opposition to its discharge.
4. All of this has transpired in circumstances where, up until the time of the application for its discharge, the only pleadings before the Court upon which the Order could have been granted were those of the plaintiff itself. These are pleadings seeking, on behalf of the plaintiff, declarations setting aside the registration of mortgages allegedly fraudulently obtained by the defendants and declaring that the plaintiff's title to the ships, once perfected, should be recognised by the Registry here. Thus, in invoking the powers which the Grand Court has to restrain dealings under section 78 of the Merchant Shipping Law, the plaintiff says that its only intention was to restrain dealings on the Register of Ships of the Cayman Islands and that the defendants seek to rely, impermissibly, upon section 78 for the wider purport of the Order, that

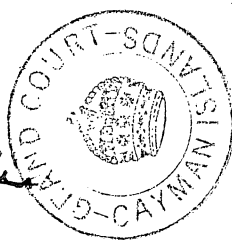
is: for restraining all dealings, including dealings with the ships by the State of Turkey, in that State.

5. This highly unusual state of affairs has given rise to several arguments for appeal identified by Mr. Cox Q.C.; as to the jurisdiction of the Grand Court to make the Order with its purported extra-territorial effect, over an agency of a foreign Sovereign State, within the territory of that State, in respect of the exercise of powers and duties under the Laws of that State.
6. In deciding to grant leave to appeal out of time, I am persuaded that the plaintiff has in its favour, a good arguable case for appeal and no real argument has been raised to show that the defendants would suffer any real prejudice by the delay; which at just over a year, is admittedly not insignificant.
7. It would in my view, be in all the parties' interest to have this question of jurisdiction to make the order and the appropriateness of doing so, settled by the Court of Appeal as soon as possible. I am told that that opportunity will arise in April 2006 when that Court will hear the plaintiff's appeal against the refusal of the Grand Court to hear its application for discharge of the injunction. This appeal against the Order as it is declared to also bind the plaintiff can be taken at the same time.
8. I was, of course, required also to consider whether the delay has been inordinately long and whether, related to that, there are plausible or acceptable reasons given for the delay.
9. Explanations given in this regard (to the effect that a earlier decision taken by the plaintiff not to appeal had to be reconsidered when Senior Counsel was

engaged), while not compelling, avoid any suggestion of abuse of the process or contumelious default. Certainly, nothing is suggested that would justify preventing an appellant from arguing a good case on appeal and one, moreover, which gives rise to points of importance which the public interest would benefit from having resolved on appeal.

10. I therefore grant the application for leave to appeal out of time.
11. The defendants say they should have their costs of this application paid by the plaintiff. While I would not go so far as to say that the defendants opposed this application unreasonably, the end of the day, if the plaintiff is successful before the Court of Appeal; it seems to me an injustice would be done by imposing upon it now, an order to bear any aspect of the defendants' costs associated with the Appeal. The basic principle is that costs should follow the event. If the defendants succeed on appeal, by reserving these costs to the Full Court, they will have their costs by order of the Court then.
12. It is appropriate that the costs be reserved pending the outcome of the appeal, then to follow the event.
13. It is so ordered.


Hon. Anthony Smellie
Chief Justice, sitting as a
Single Justice of
The Court of Appeal



14th March 2006