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IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 221 OF 2005

BETWEEN:	SEGOES SERVICES, LTD. (In Liquidation)	PLAINTIFF
AND:	(1) JOHN KAWESKE (2) JAMES FONTANETTA	DEFENDANTS

AND

CAUSE NO: 319 OF 2005

BETWEEN:	SEGOES SERVICES LTD. (In Liquidation)	PLAINTIFF
AND:	(1) CAMILA UEOKA (2) PAMELA KAWESKE (3) HIGHLAND CONSULTING LTD.	DEFENDANTS

CORAM: CHIEF JUSTICE ANTHONY SMELLIE

Appearances:

Mr. James Leabeater of Campbells for the Joint Official Liquidators of the plaintiff.

Date: 23rd December 2005

RULING

This application for the amendment of an existing Mareva injunctive order presents unusual circumstances.

The existing order restrains any dealing, whether by themselves or by others, with the assets of Mr. John Kaweske and Ms. Camilla Ueoka (his wife) wherever those assets may be located.



That Order, made on 30th May 2005; is in aid of the recovery of assets which belong to the plaintiff company (now in liquidation) or which may be traceable as being the proceeds of such assets.

Mr. Kaweske was the principal and a director of the plaintiff company when it was discovered that a massive fraud had been perpetrated against its investors. Ms. Ueoka is someone to whom this Court has found that fraudulent preferential payments were made from the plaintiff by Mr. Kaweske and/or his co-director, Mr. Fontanetta. The liquidators have now discovered that there are assets in Uruguay-specifically bank accounts-being held in the name of or on behalf of Mr. Kaweske and/or Ms. Ueoka.

The liquidators seek the extension of the Mareva order, so as to cover indirectly at least one of those bank accounts, said to contain approximately USD 500,000. The second account, also believed to contain at least \$500,000 is not the subject of this application only because there is insufficient specific information available by which to identify it. Such information as is available, came to light in the following way.

The liquidators' Uruguayan lawyers, the firm of Hughes and Hughes, have identified and been in negotiation with another Uruguayan lawyer, a Dr. Fischer. He has informed them that he acts for Mr. Kaweske and Ms. Ueoka.

An affidavit sworn by Dr. Fischer, has been tendered before me exhibited to the affidavit of Dr. Porras of Hughes and Hughes.

Dr. Fischer's affidavit, in terms which can be described as remarkably forthcoming, narrates his dealings with Mr. Kaweske and Ms. Ueoka.

He prefaces his narrative in these terms at paragraph 5 of his affidavit:

“Under the understanding that they were involved in fraudulent actions, and as a consequence of the statements the liquidators have in brief made to me and two

documents handed to me, it is clear that Mr. Kaweske and Mrs. Ueoka have misled me in the representations and statements that they made to me, and thus, I wish to disclose the following information, in collaboration with the relevant judicial system”.

Thus, it seems, acting out of concern not to be complicitous in a fraud and from a sense of duty to assist, Dr. Fischer proceeds to give his narrative. I need only note at this stage that I regard Dr. Fischer’s evidence to be plausible and prima facie credible.

It raises a seriously arguable case that the only inference to be drawn is that by their conduct Mr. Kaweske and Ms. Ueoka seek to evade the process of this Court by putting assets beyond its reach.

It appears that with Dr. Fischer’s assistance Mr. Kaweske and Ms. Ueoka have set up a corporation in Uruguay - called Amestrey SA – for the sole purpose of holding a bank account into which was recently paid \$500,000 in circumstances which were manifestly in breach of the Mareva order. It is also clear that Mr. Kaweske has given instructions to Dr. Fischer and is actively seeking to bring about the removal and further dissipation of those funds. The shares in Amestrey SA are in bearer form and are in the possession of Dr. Fischer. Mr. Kaweske has demanded the delivery over of those shares but Dr. Fischer has not complied.

From Dr. Porras’ affidavit it appears that in his conversations with Dr. Fischer, the latter has expressed the further intention that, if served with an order of this Court requiring him to do so, he will instead transfer the bearer shares to Hughes and Hughes.

Mr. Krys, one of the Liquidators, has undertaken that if Dr. Fischer delivers over the bearer shares to Hughes and Hughes, he will take steps to arrange that the funds in the Amestrey SA account be paid into this Court, to await further order of this Court in relation to them.

If such a mandatory order is not made, it is, I accept, quite likely that Mr. Kaweske and/or Ms Ueoka will seek to hide this money elsewhere.

The jurisdiction of this Court to make an order in the foregoing terms is premised on the principle that this Court has an unlimited jurisdiction *in personam* over any party to the proceedings pending before it, including, in respect of their assets, where those assets are in another jurisdiction. Indeed, that was the basis upon which the original mareva order of May 2005, expressed to be applicable worldwide, was made. This is a jurisdiction explained and applied before in *Hampshire Cosmetic Laboratories Ltd. v Mutschmann* [1999] CILR 21 at per 34.

While injunctive orders are often prohibitory in terms, in an appropriate case, this jurisdiction extends to mandating the transfer of assets which may be located outside the jurisdiction of the Court. This includes circumstances where the assets may be located in a foreign jurisdiction in which the orders of this Court may not be recognized: *Derby & Co. Ltd. v Weldon (No. 6)* [1990] 1 WLR 1139, at 1151 per Dillon LJ reflecting upon the analogous powers in respect of the appointment of receivers over the foreign assets of English companies:

“To regard the grant of a Mareva injunction not as a matter of territorial jurisdiction to be exercised court by court throughout the various countries of the world where it may be appropriate, but as a matter of unlimited jurisdiction in personam in the English Court over persons who have properly been made parties, under English procedure to proceedings pending before the English Court; is consistent with the approach of the English Court to the appointment of receivers of the British and foreign assets of English companies. The Court has always been ready to appoint a receiver over the foreign as well as British assets of an English company, even though it has recognized that in relation to foreign assets the appointment may not prove effective without assistance from a foreign Court: In re *Mandalay, Sons & Field; Mandalay v Mandalay, Sons & Field* [1900] 1 Ch 602.

Moreover, where a foreign Court of the country where the assets are situate refuses to recognize the receiver appointed by the English Court, the English

Court will, in an appropriate case, do what it can to render the appointment effective by orders in personam against persons who are subject to the jurisdiction of the English Court; see the helpful decision of Neville J. in *In re Huinac Copper Mines Ltd.; Matheson & Co v The Company* [1910] W.N. 218”.

In *Themehelp Ltd. v West* [1996] Q.B. 84 at 103f Evans LJ in his judgment on behalf of the English Court of Appeal, also recognized the existence of the power to make injunctive orders requiring the payment into Court of whatever sums may be in dispute.

I should note that Dr. Porras’ evidence, as to Uruguayan law and procedure, shows that there would be great if not insurmountable difficulties in getting the injunctive orders of this Court recognized and enforced there. Certainly, if his evidence is accepted as I hold it should on the ex parte basis presented, it would not be possible to have an order of this Court recognized and enforced there in time to prevent further dissipation of assets.

While Dr. Fischer is himself not a party to the action before this Court, I am also satisfied that I might approximately make the order mandating him to act as required for the purposes of preserving the assets held in the names of Mr. Kaweske and/or Ms. Ueoka or on their behalf. This is, in the circumstances of this case, on the basis that Dr. Fischer is simply holding assets of defendant parties to the action before this Court as their nominee or agent – assets which the circumstances suggest probably belong beneficially to the plaintiff company or, even if beneficially to the defendant themselves; are assets which are caught by the original Mareva injunctive order. That is tantamount to a finding that there is good reason to suppose that Dr. Fischer, as a non-party, holds assets on behalf of parties which should be susceptible to procedures for their recovery for the satisfaction of indebtedness owed to the plaintiff: *SCF v Masri* [1985] 1 WLR 876.

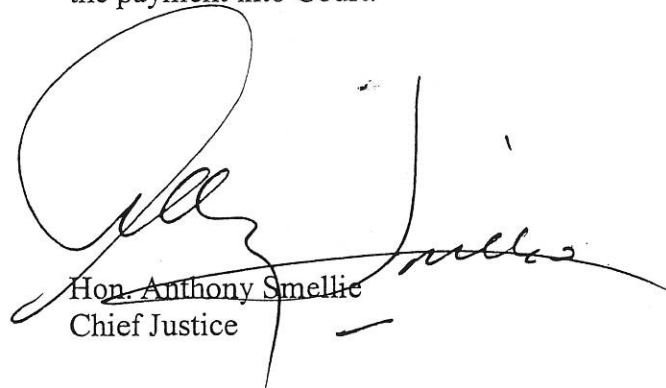
In this case, Mr. Kaweske, in his capacity as a former director of the plaintiff, is alleged to have misappropriated large sums of money from it for his own benefit and that of

others; including his wife Ms. Ueoka. By judgment of this Court given on 2nd December 2005 Ms. Ueoka was found:

- (a) to be trustee of a property purchased on behalf of Mr. Kaweske by use of the plaintiff's money;
- (b) to have wrongly received USD100,000 of the plaintiff's money; and
- (c) to be director of a company, the Third Defendant in Cause 319 of 2005 which has received 1, 495 3580 class 8 shares in Paradigm Global Fund 1 Limited and to have held those shares in trust for the plaintiff since they were the plaintiffs' property wrongfully transferred to the third defendant.

Moreover, as the vast majority of those shares had subsequently been sold and the proceeds paid to her control through the third defendant, that Ms. Ueoka holds those proceeds - well in excess of USD 1,000,000 - as constructive trustee for the plaintiff.

Having regard to the foregoing factors and principles, I grant the orders sought in respect of the shares in Amestrey S.A. and for the further steps to be taken as described above for the payment into Court.


Hon. Anthony Smellie
Chief Justice

