

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

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4 CAUSE NO: 227 OF 2004

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6
7 BETWEEN:

- 8
9 (1) **CONDOCO GRAND CAYMAN RESORT LTD.**
10 (2) **VILLASCO GRAND CAYMAN LIMITED**

11 **Plaintiffs**

12
13
14 AND

- 15
16 (1) **BROADHURST DACOSTA (A FIRM)**
17 (2) **REDWOOD HOTEL INVESTMENT CORP.**
18 **(FORMERLY KNOWN AS NANO INC.,**
19 **FORMERLY KNOWN AS MICRO INDUSTRIES**
20 **INC.)**
21 (3) **CAYMAN NET LTD.**
22 (4) **KYC NEWS, INC.**

23 **Defendants**

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26 **Appearances:** **Mr. Jeremy Walton of Appleby Spurling Hunter**
27 **for the Plaintiffs/Applicants**
28 **Mr. Sean McCann of Campbells for the**
29 **first and second Defendants/Respondents**

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31 **Before:** **Hon. Justice Henderson**

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34 **Heard:** **May 31, 2004 & June 21, 2004**



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37 **JUDGMENT**

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40 The plaintiffs and applicants, Condoco Grand Cayman Resort Ltd. and Villasco Grand
41 Cayman Limited, seek an order restraining the first and second defendants from using or
42 disclosing certain confidential information, an order that they deliver up or destroy all
43 documents containing such confidential information, and an order compelling them to

1 disclose the source of it. My decision was delayed pending resolution of a dispute over
2 the plaintiffs' attempt to serve the fourth defendant out of the jurisdiction, and by the
3 circumstances of Hurricane Ivan. The action against the third defendant has been settled.
4 Leave to serve the fourth defendant outside the jurisdiction has been refused.

5
6 The plaintiffs are involved in the construction, marketing and sale of condominiums and
7 villas in a development project known as the Residences at the Ritz-Carlton on Grand
8 Cayman. The second defendant, Redwood Hotel Investment Corp., agreed to purchase
9 from the first plaintiff four condominium units. The first defendant, Broadhurst DaCosta,
10 is a law firm practicing in the Cayman Islands. It represented the second defendant at all
11 material times.

12
13 The first plaintiff was also in negotiations with Exclusive Resorts for the sale of four
14 condominiums and sixteen villas to it. Exclusive Resorts intended to earn rental income
15 from these units. The second defendant also intended to rent its units. By letter dated
16 April 20th, 2004, Peter Broadhurst of the first defendant wrote to the first plaintiff
17 expressing his client's concern that the proposed sale to Exclusive Resorts would conflict
18 with obligations owed to his client under a certain rental pool agreement. The letter
19 included this sentence:

20 “we understand that there are negotiations taking place with
21 an entity known as Exclusive Resorts for the sale of four furnished
22 condominiums and another sixteen villas to be constructed.”

23
24 A copy of the letter was sent to the vice president and general manager of the

1 Ritz-Carlton Hotel Company, Jean Cohen.

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3 On April 22nd, 2004 an article appeared on the internet website of the fourth defendant
4 which divulged the same information. The following day, the third defendant printed a
5 newspaper article containing the same information and quoting the opinion of Mr.
6 Broadhurst to the effect that the proposed sale to Exclusive Resorts “could create direct
7 competition with the rental pool units, something to which previous PIP unit purchasers
8 might object...” Mr. Broadhurst’s client, the second defendant, was a PIP unit purchaser.

9

10 Mr. Broadhurst wrote the letter on the express instructions of his client. He swears in his
11 affidavit that his opinion quoted in the newspaper “is based on information which is
12 within the public arena...” He does not say if the information was in the public arena as
13 at April 20th, when he wrote the letter.

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15 The Statement of Claim alleges a conspiracy to breach confidence using unlawful means,
16 a conspiracy to interfere with the economic interests of the plaintiffs, and breach of
17 confidence. It alleges that the information was confidential and that the first and second
18 defendants came into possession of it in circumstances which imposed upon them a duty
19 of confidence. Thus, it is argued, they are under a continuing duty to refrain from using
20 or disclosing the information and must disclose their sources to the plaintiffs.

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22 As I said in my ruling of January 17, 2005, there is a good arguable case that the
23 information in question was confidential. It concerned a private negotiation between two

1 parties, each of whom has sworn that they intended that the information would remain
2 private. It may have been leaked by an employee of one of the plaintiffs or, for that
3 matter, by an employee of Exclusive Resorts.

4
5 It is not enough that the information be shown to be confidential. The plaintiffs, on the
6 present application, must also establish a good arguable case that the information was
7 communicated to the first and second defendants “in circumstances importing an
8 obligation of confidence”: *Coco v. A.N. Clark (Engineers) Ltd. [1969] RPC 41*, at
9 page 47. There is no evidence at all showing how, why, or in what circumstances the
10 information was communicated to them.

11
12 Jean Cohen of the Ritz-Carlton, who was not an employee of either plaintiff at the time,
13 was contacted on April 21st, 2004 by Alan Markoff and asked about the proposed
14 purchase by Exclusive Resorts. Mr. Markoff was a journalist seeking information on
15 behalf of the third defendant. Ms. Cohen said, in answer to Mr. Markoff’s questions,
16 that:

17 “I had heard [Exclusive Resorts] had expressed an interest
18 about three weeks earlier... in so doing I was not confirming
19 anything, I was merely acknowledging the existence of an
20 unattributed and unconfirmed rumour. ...I said that I had no
21 knowledge of the details of any ongoing deal between them,
22 or whether any deal had been completed...”

23 Ms. Cohen also said it was clear to her that Mr. Markoff was aware of and had
24 information concerning the negotiations between Exclusive Resorts and the plaintiffs.

25
26 Melissa Perkins, Director of Marketing for the plaintiffs, told Mr. Markoff on

1 April 21st, 2004 that “it was not a finalized deal and should not be reported as such.”

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3 This scant body of evidence does not amount to a good arguable case that either of the
4 defendants received the information in circumstances importing an obligation of
5 confidence. The most reasonable inference is that rumours were circulating about the
6 negotiations for some three weeks prior to the letter written by Mr. Broadhurst. He may
7 have heard those rumours and passed them on to his client, who then instructed him to
8 write the letter. Alternatively, his client may have heard the rumours and brought them to
9 Mr. Broadhurst’s attention. Neither version of events would impose any duty of
10 confidentiality upon Mr. Broadhurst or his client. When he wrote his letter of April 20th,
11 Mr. Broadhurst was advancing the interests of his own client and communicating the
12 confidential information only to those who were already aware of it – the plaintiffs and a
13 related entity.

14

15 Mr. Broadhurst expressed his opinion to the fourth defendant on the difficulty which a
16 sale to Exclusive Resorts might cause. There is no evidence he provided any factual
17 information to that newspaper. By April 22nd, the date upon which he provided his
18 opinion, the rumours had already been posted on the fourth defendant’s website.

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20 The plaintiffs have not been able to establish that they have a good arguable case that the

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confidential information was communicated in circumstances imposing a duty of confidentiality upon these two defendants. For these reasons, the application is dismissed.

Dated this 7th day of June, 2005

Henderson, J.

Henderson, J.
Judge of the Grand Court

