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IN CHAMBERS
IN THE GRAND COURT OF THE CAYMAN ISLANDS
CAUSE: 670 OF 2002

Civil

BETWEEN: **VELOX INTERNATIONAL INVESTMENTS** PLAINTIFF
AND: JORGE PEIRANO FACIO DEFENDANT

Date: 8.1.2004

Before: Hon. Anthony Smellie
Chief Justice



Appearances: Mr. Alistair Walters of Campbells for the plaintiff.
Mr. Michael Terziano of Charles Adams Ritchie & Duckworth the defendant.

RULING

The plaintiff Velox International Investments (“VII”) is a Cayman Islands company which was put into liquidation in August 2002. VII was part of a group of companies called the “Peirano Group” – including a number of entities incorporated in the Cayman Islands and a number of other entities in South America in particular. The defendant was, on the plaintiff’s case - and this has not been disputed - at all material times, a director and the sole shareholder of VII. VII had a number of financial dealings with Trade and Commerce Bank, a licensed Cayman Islands bank and another Peirano Group entity; (“the bank”). The bank is also now in liquidation and the liquidators of VII and the bank are the same. The transactions between the two entities included unrecovered loans made by the bank to VII in excess of United States dollars 130 million.

This is an application for summary judgment against the defendant in respect of a debt of some 48.3 million United States dollars claimed from him by VII.

Prima facie, the evidence presented in support of the application for summary judgment is of the strongest and clearest kind. It is in the form of the Independent Auditors' Report on the financial affairs of VII, which lists the amount of 48.3 million United States dollars as a debt due to the plaintiff from the defendant.

The Auditors' Report was prepared with what must be assumed to be the knowledge of the defendant, as he was a member of the board of directors of VII which commissioned the audit. Moreover, the Report itself was addressed to the directors of VII.

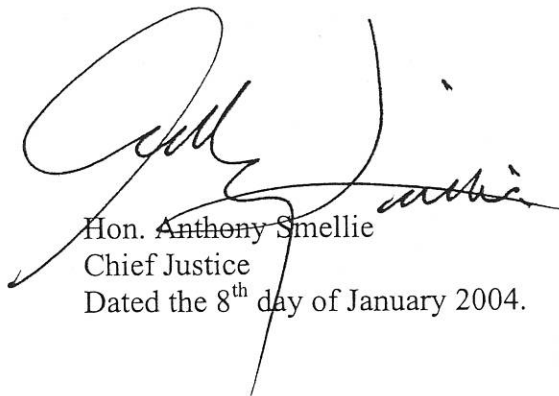
As the sole shareholder of VII, it is inconceivable that the defendant, with notice of the Audited Report showing this very large debt as due from him, and objecting to it, would not have then disputed the debt.

He did not dispute the debt. On the contrary, with his knowledge, the Report was presented to the Cayman Islands Monetary Authority ("CIMA") in the context of addressing CIMA's concern as regulator of the bank, about the debts then due from VII to the bank. CIMA, among other things, would have been concerned to assure itself that the bank's assets were recoverable and it was in that context that the defendant offered his personal guarantees on behalf of VII, to underwrite its debt due to the bank. Thus, accepting a responsibility to make good those obligations of VII, then not yet in liquidation and represented as having certain assets. Those assets were shown in the financial statements as including the receivables due from him – the very subject of the present claim.

See In re Frederick 1990 -91 CILR Note 6.

The application for summary judgment must succeed and I so order.

Costs will follow the event.



Hon. Anthony Smellie
Chief Justice
Dated the 8th day of January 2004.

