

ORIGINAL

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO. 217 OF 2001

IN THE MATTER OF THE COMPANIES LAW (2001 Second Revision)

AND IN THE MATTER OF TAIT INTERNATIONAL LIMITED
(In Liquidation)

Proceedings in Chambers had and taken before
The HONOURABLE MR. JUSTICE GRAHAM on the 18th
day of April 2002, at George Town, Grand Cayman.

APPEARANCES:

Mr. A. Foster & Mr. S. Andrew of Walkers for the Liquidators

Mr. N. Clifford and Mr. J. Walton of Hunter & Hunter for the
Petitioner

1 CHAMBERS COMMENCED ON THURSDAY,

2 APRIL 18th, 2002 AT 8:51 A.M.

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THE COURT: Mrs. Myren, the case is called
5 cause number 217/01 in the matter of the
6 Companies Law, and in the matter of Tait
7 International Limited.

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The representation is Mr. Andrew for the
liquidators. Present is the senior partner of
Walkers in the litigation department, and
similarly Mr. Walton and his senior partner,
Mr. Clifford, is also present.

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Gentlemen, I have you here today -- and I
spoke to Mr. Foster on the telephone -- I asked
him to communicate what I said to Mr. Clifford.
My concern is that the ruling that I made looks
as if it is per incuriam. I am not going to go
into any kind of ^{recrimination} ~~incrimination~~ today, but I
will make one comment which is recriminatory.

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I would have expected that when the Kellock
judgment was published -- particularly as I was
sick at the time and off work -- that would it
have been referred to me after the events so
that I could look at any order that I had made.
Now I make that comment, and it is a considered

1 comment. I would have expected that, because
2 if you look at what the learned acting judge
3 has said in his judgment -- which I may say I
4 only read three days ago, as it was not drawn
5 to my attention because I was off work -- but
6 in any event, it is not for me to do that, it
7 is for the parties to bring matters before me.
8 If I had been at work and I had read that
9 judgment, I would have recalled the parties
10 instantly. As it is now drawn to my attention,
11 I now do so. I will tell you the order I
12 propose to make so that any representations can
13 be made to me as to why I shouldn't make it.

14 The order I propose to make is to revoke
15 the order that I made, and to order that the
16 status quo ante be restored, and that the
17 matter be listed as soon as possible before the
18 learned acting judge for whatever order he sees
19 fit to make in his discretion.

20 Now, does anybody wish to argue against
21 that proposed order? Mr. Andrew.

22 MR. ANDREW: My Lord, can I tell Your
23 Lordship what was done by the official
24 liquidators upon receipt of Mr. Justice
25 Kellock's judgment? Your Lordship knows that

1 it was received by the parties after we had
2 been in front of Your Lordship.

3 THE COURT: Yes, of course.

4 MR. ANDREW: The decision that was taken
5 was to deal with Mr. Justice Kellock's judgment
6 by way of a full report to the court responding
7 to the point that Mr. Justice Kellock had
8 raised.

9 THE COURT: Yes.

10 MR. ANDREW: That report is in draft form.
11 It's before me now, My Lord. I've got it with
12 me.

13 THE COURT: It is in the form which it can
14 be put before the bench, even though it has the
15 caveat "this is a draft".

16 MR. ANDREW: It is a draft, My Lord. What
17 I would propose to do, because it is quite a
18 lengthy report, is to finish it and have it
19 before Your Lordship later -- or certainly have
20 it before the court later today.

21 THE COURT: I think I would prefer to have
22 it before Judge Kellock. When do you think it
23 can be ready?

24 MR. ANDREW: My Lord, it can be finalised
25 today.

1 THE COURT: That's absolutely fine.

2 MR. ANDREW: Yes.

3 THE COURT: Yes. Well that's a happy
4 confluence of events, isn't it?

5 MR. ANDREW: Well, My Lord --

6 THE COURT: I don't want to get into an
7 investigation here. That is not my role at
8 all. It is simply -- I am extremely unhappy
9 about the order that I have made, and feel that
10 it shouldn't be looked at, that I should revoke
11 it, and permit the judge who expressed
12 strictures to deal with it, as he happens to be
13 here.

14 MR. CLIFFORD: My Lord, could I make an
15 observation about that?

16 THE COURT: Yes.

17 MR. CLIFFORD: Of course we must do
18 whatever Your Lordship decides is best in the
19 final analysis, but I'm not sure that, with
20 great respect, referring it back to an acting
21 judge is the right matter. I have some
22 concerns in these more complex ongoing
23 liquidation matters. We are not just going to
24 have one or two hearings, it's going to go on
25 for a year or two, and there is going to be a

1 lot of toing and froing on different aspects.
2 There should be some --

3 THE COURT: I understand the general
4 principle behind your submission, but this is a
5 special case. I am not saying in any sense a
6 precedent, it is simply the best way I can
7 think of, as I say having discussed it with my
8 brethren, as to how this matter can properly be
9 dealt with.

10 MR. CLIFFORD: Your Lordship probably is
11 aware that it only came in front of Mr. Justice
12 Kellock -- and we were very grateful that he
13 was here and able to take it, because Your
14 Lordship was ill --

15 THE COURT: Well I understand that.

16 MR. CLIFFORD: -- and the matter had been
17 before both, as I understand from Mr. Walton,
18 Mr. Justice Sanderson and yourself on different
19 occasions, and you were the two judges who were
20 really seized of the matter --

21 THE COURT: Well, that's not quite right.

22 MR. CLIFFORD: -- and really what
23 happened, as I understand it, when it came in
24 front of Mr. Justice Kellock, of course he knew
25 nothing of the background to the matter at

1 all --

2 THE COURT: Of course he knows a great
3 deal about it now, because his judgment
4 indicates that he does --

5 MR. CLIFFORD: Well yes but I think --

6 THE COURT: You can argue with him about
7 that.

8 MR. CLIFFORD: I'm only trying to make a
9 suggestion as to case management.

10 THE COURT: Well I understand that.

11 MR. CLIFFORD: But I don't know what's in
12 the draft report. I haven't seen the
13 liquidators' report.

14 THE COURT: Nor have I.

15 MR. CLIFFORD: I'm sure they will be
16 dealing with a number of points.

17 THE COURT: Well I dare say they will.

18 MR. CLIFFORD: I also just say this, My
19 Lord, the point Mr. Walton makes -- and he can
20 amplify if necessary -- I think it's fair to
21 say that the judgment, when it came out after
22 the hearing of Your Lordship, came as a
23 surprise in the sense that maybe as a result of
24 further thought on the part of Mr. Justice
25 Kellock, it went a lot further than any point

1 that had come out during the hearing. So
2 that's why --

3 THE COURT: A fortiori is the correct
4 course to refer it back to him.

5 MR. CLIFFORD: My Lord --

6 THE COURT: A fortiori.

7 MR. CLIFFORD: If Your Lordship says so.
8 I have some problems about case management in
9 these longer cases.

10 THE COURT: Well I understand that. No
11 one is more keen on case management than I
12 am --

13 MR. CLIFFORD: I know.

14 THE COURT: -- but sometimes there are
15 exceptions to the general rule.

16 MR. CLIFFORD: I just think it's very
17 difficult for a visiting judge to suddenly be
18 thrown into an ongoing complex liquidation
19 matter.

20 THE COURT: It is, but he has vast
21 experience of company litigation as a former
22 leading silk in Canada, and partner in one of
23 the biggest firms in Toronto, so he's not
24 exactly a baby in these matters --

25 MR. CLIFFORD: I'm sure not.

1 THE COURT: -- as indeed I expect the
2 judgment will make it only too plain, but I
3 want to say no more about that.

4 MR. CLIFFORD: That's all I wanted to say.

5 THE COURT: It's a very proper comment,
6 Mr. Clifford, but in the circumstances -- I am
7 going to hear from Mr. Walton of course -- but
8 at the moment I am still adhering to what I had
9 decided to do on a preliminary basis.
10 Mr. Walton, do you want to make any comment?

11 MR. WALTON: My Lord, I would simply have
12 said along similar lines to that said by
13 Mr. Clifford, which is simply that this matter
14 was a matter dealt with in the interlocutory
15 stages by Your Lordship. It was the trial.
16 The petition itself was heard by Mr. Justice
17 Sanderson, and indeed, he heard a contested
18 hearing for the appointment of --

19 COURT REPORTER: Sorry, I'm not hearing
20 you.

21 MR. WALTON: Mr. Justice Sanderson had
22 heard a contested inter-parties hearing earlier
23 in the year. He was the judge who was
24 particularly familiar with all the facts of the
25 case.

1 Mr. Justice Kellock, with respect, made a
2 number of observations in his judgment which
3 was simply already, by that stage, overtaken by
4 events, and events which would have been within
5 the knowledge of certainly Mr. Justice
6 Sanderson, and almost certainly Your Lordship,
7 if Your Lordship had heard the matter.

8 So in that respect, it makes a great deal
9 of sense for the question of the propriety of
10 the fees for the provisional liquidators to be
11 determined by the judge that appointed them --
12 both on the ex parte basis, and after an
13 inter-parties hearing. Mr. Justice Sanderson
14 is the appropriate judge to hear that
15 application in my submission.

16 THE COURT: Yes.

17 MR. WALTON: My Lord, I would also add
18 that in relation to the liquidators' approach
19 to the judgment of Mr. Justice Kellock, I did
20 discuss it with Mr. Andrew briefly after the
21 judgment was received, and I agreed that the
22 approach taken by the official liquidators was
23 the proper one. One cannot appeal against the
24 judgment by itself, the order being for an
25 adjournment was also not appealable -- there

1 being a point in the appeal, the appropriate
2 matter -- the appropriate way of dealing with
3 the matter, My Lord, I submit would be, and
4 remains, for it to be dealt with by way of a
5 report to the court. The observations made by
6 Mr. Justice Kellock are strictly dicta, and
7 they can be answered by a report. It does not
8 require any order that was subsequently made to
9 be revoked, in my submission.

10 THE COURT: Yes well thank you very much
11 indeed.

12 MR. ANDREW: My Lord, may I add to the
13 comments of Mr. Clifford and Mr. Walton, a
14 concern which comes really from my client, the
15 official liquidators, and that is to add to
16 something Mr. Clifford said -- the practical
17 difficulty which they have faced in trying to
18 get the fee application listed at all, and in
19 particular, having it listed before the judge
20 whom they considered to be the liquidation
21 judge, which was Mr. Justice Sanderson, who had
22 heard the winding up petition itself --
23 although it was decided by consent -- My Lord,
24 but on each case when they have tried to list
25 the matter, they have tried to list it before

1 in the first place Mr. Justice Sanderson, and
2 in the second place before another judge of the
3 Grand Court who was available, and it is for
4 that reason that Your Lordship had this matter
5 before him last year --

6 THE COURT: Yes.

7 MR. ANDREW: -- but having said that,
8 once it was before Your Lordship, and Your
9 Lordship was seized of the matter, and once
10 Your Lordship had finally decided it, in my
11 respectful submission, it doesn't then follow
12 that Your Lordship's decision is affected by
13 the comments of Mr. Justice Kellock --

14 THE COURT: Not ex-hypothesi, no.

15 MR. ANDREW: -- made upon an application
16 or made upon an occasion when he simply
17 adjourned the matter. So, My Lord, once one
18 accepts the principle that the case is before a
19 certain judge of the Grand Court, and that
20 judge has exercised his discretion in what we
21 respectfully say is a proper manner, upon the
22 proper materials, having taken the correct
23 approach, having applied the law correctly, it
24 would, in my respectful submission, be wrong,
25 in fact, to take into account the views of

1 another Grand Court judge on an occasion when
2 the matter wasn't fully dealt with, but the
3 matter was simply dealt with by way of an
4 adjournment.

5 THE COURT: Thank you.

6 MR. ANDREW: If I may add to that, the
7 point that the fees, having been authorised,
8 have now been paid. So the official
9 liquidators will have been paid their fees, and
10 the same in respect of the Walkers' element of
11 that, and so one is trying to undo something
12 that has already been executed.

13 THE COURT: Well thank you very much
14 indeed. The date of my order was the -- is
15 there something else you wish to add?

16 MR. FOSTER: Yes, My Lord, if I may.

17 THE COURT: Of course.

18 MR. FOSTER: I don't wish to prolong
19 matters --

20 THE COURT: No, not at all.

21 MR. FOSTER: -- but could I say firstly,
22 My Lord, that following Your Lordship's kind
23 explanation on the telephone of why Your
24 Lordship wanted us to appear before you today,
25 I did discuss this in great depth with

1 Mr. Seamus, Mr. Seamus Andrew.

2 THE COURT: Yes. I hope it didn't spoil
3 his holiday.

4 MR. FOSTER: I was entirely satisfied that
5 nothing improper had been done on this
6 occasion.

7 THE COURT: I was very careful. I have
8 been very careful this morning to avoid making
9 any comment.

10 MR. FOSTER: I appreciate that, My Lord.

11 THE COURT: The only comment that I have
12 made, and I repeat, I would have expected that
13 judgment to be referred to me --

14 MR. FOSTER: I appreciate that, My Lord.
15 I didn't want to go into that --

16 THE COURT: -- but beyond that, I am not
17 going to make any comment.

18 MR. FOSTER: However, My Lord, I would
19 wish, if I may, to endorse wholly what
20 Mr. Clifford has said. This is a matter that
21 Your Lordship originally dealt with on the 1st
22 of November, and it was the understanding --
23 and I understand that Your Lordship confirmed
24 that understanding -- that the matter had been
25 adjourned by Your Lordship simply to ascertain

1 whether there was any share holder objection to
2 the costs. It's unfortunate that the matter
3 was relisted in front of -- on the adjourned
4 hearing -- in front of Mr. Justice Kellock
5 while Your Lordship was unfortunately ill.
6 Mr. Justice Kellock adjourned the application
7 on the understanding that it was going to come
8 back to Your Lordship, which it duly did. And
9 in my respectful submission, My Lord, from a
10 case management point of view, it must be right
11 that Your Lordship dealt with the matter on the
12 30th of January, and that's been dealt with,
13 and it is not appropriate, in my submission, to
14 send it back now to Mr. Justice Kellock, given
15 that the matter has already been dealt with by
16 Your Lordship, who is the judge seized with the
17 matter. The matter is now academic in that
18 sense, and I respectfully submit that it is not
19 appropriate for Your Lordship to revoke or
20 purport to revoke an order that Your Lordship
21 has made in circumstances in which it was made
22 entirely properly.

23 The liquidators, as Your Lordship has
24 heard, are preparing a report dealing fully
25 with the issue that -- or issues raised by

1 Mr. Justice Kellock in his judgment, which came
2 as a great surprise to all concerned, and I
3 would urge Your Lordship now to let matters lie
4 as they stand, and let your order stand on the
5 basis that Your Lordship is the appropriate
6 judge to deal with this matter and that, as my
7 learned friend Mr. Andrew has said, comments
8 made by Mr. Kellock in a matter that he himself
9 adjourned should not impact on Your Lordship's
10 decision, and that I would urge Your Lordship
11 to allow matters to rest now as they stand.

12 THE COURT: May I have a copy of the order
13 that I made, please?

14 MR. FOSTER: That you made.

15 THE COURT: The order that I made. The
16 final order that I made.

17 MR. FOSTER: On the 24th of -- on the 30th
18 of January?

19 THE COURT: If I can just have a quick
20 look. Thank you Mr. Clifford. I will hand it
21 straight back to you. It just seems to be
22 absent from the file. Thank you very much.

23 Well this is a difficult matter. There is
24 force in what is said to me by both parties.
25 The fact of the matter is this matter had been

1 before another judge who appears to have made a
2 number of comments -- or so he tells me --
3 which have been incorporated in an order he
4 made. I appreciate he adjourned the matter,
5 but he adjourned it with a view to certain
6 concerns that he adumbrated and gave full
7 reasons for later to be taken into account.
8 Those are not before me. The question I have
9 to ask myself is would I have made the order
10 inevitably that I made had I seen that
11 judgment, and the answer to that is "no".
12 Accordingly, I made that decision per incuriam,
13 and I revoke it.

14 So the order dated the 30th of January of
15 2002 is revoked, and the status quo ante is to
16 be restored.

17 The costs of this matter are reserved.

18 I direct that the matter be listed before
19 the learned acting judge Kellock ASAP. Thank
20 you all very much. Mr. Clifford I will hand
21 you back the order.

22 MR. CLIFFORD: Thank you.

23 THE COURT: Mrs. Myren, would you prepare
24 a perfected copy of that from what just
25 happened and circulate it to the parties --

1 myself for approval -- and then to the learned
2 acting judge. Thank you very much indeed.

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(PROCEEDINGS ADJOURNED AT 9:09 A.M.)

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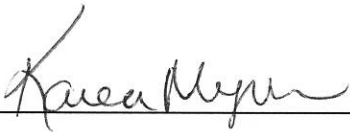
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REPORTER'S CERTIFICATE

Certified correct to the best of my skill and ability,

dated the 19th day of April 2002.



Karen Ann Myren