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IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO. D140 OF 1999

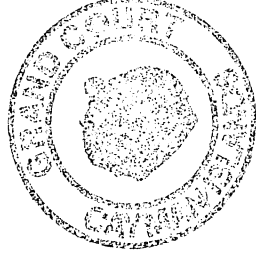
BETWEEN: OLA MAE McLAUGHLIN Petitioner

AND: DONALD EMILO McLAUGHLIN Respondent

Appearances:

For the Petitioner: Mr. Steven Roy of C.S. Gill & Co.
For the Respondent: Ms. Sheridan Brooks of Brooks & Brooks

Kellock J.



REASONS

On April 9th, 2002 I heard a application in this case for the following relief:

1. That the issue of the extent of the Respondent's present and past involvement in the business known as Reliable Transport and the company Sanya Limited be determined as a preliminary issue on a mutually convenient date to be fixed.
2. That Sanya Limited, Eldon Rankine and Don Elroy McLaughlin do produce to this court and to the parties herein the following documents relating to Sanya Limited namely:
 - i) All documents filed with the Cayman Islands Companies Registry.

- ii) The Register of Members kept pursuant to S. 40 of the Companies Law (2001 Revision).
 - iii) All the Annual Returns filed pursuant to S. 41 of the Companies Law (2001 Revision).
 - iv) The Registrar of Mortgages kept pursuant to S. 54 of the Companies Law (2001 Revision).
 - v) The List of Directors kept pursuant to S. 55 of the Companies Law (2001 Revision).
 - vi) The books of account kept pursuant to S. 59 of the Companies Law (2001 Revision).
 - vii) All minutes of all resolutions and proceedings kept pursuant to S. 73 of the Companies Law (2001 Revision).
 - viii) All documents relating to the issue and transfer of shares in the company including but not limited to share certificates, share transfer forms and sale purchase agreements.
3. That Sanya Limited, Eldon Rankine and Don Elroy McLaughlin do produce to this court and to the parties herein the following documents relating to Sanya Limited namely:
- i) All bank mandate forms in respect of al accounts now held or previously held by either Reliable Transport or Sanya Limited.
 - ii) Documents of title in relation to all assets used and owned by or previously used or owned by Reliable Transport or Sanya Limited including but not limited to all real property and motor vehicles.
 - iii) All contracts and agreements entered into between Reliable Transport or Sanya Limited and any third party.
4. Costs in the cause.

As will be seen from the style of Cause there are only two parties to this proceeding, namely the Petitioner and the Respondent.

Mr. Steven Roy appeared for the Petitioner/Applicant and Ms. Sheridan Brooks for the Respondent.

The proceeding was commenced by Petition filed November 25th, 1999. The Petition was proved on March 31st, 2000 and the ancillary matter adjourned to Chambers.

Since then there have been a number of appearances in connection with interlocutory matters.

The Petitioner alleges that the Respondent counts among his assets (or should) an interest in a bus transportation business styled "Reliable Transport". After far too much time has elapsed and far too many Chambers appearances the Petitioner has established that the bus business is in fact carried on by a company i.e. Sanya Ltd. and that "Don McLaughlin" was one of the original three shareholders of that company, owning 10 out of 100 issued shares.

“Don McLaughlin” is shown as having attended a meeting of the subscribers of Sanya Ltd. held March 13th, 1984 and a meeting of the Directors of the company held the same date.

The annual return filed in January 2000 shows that as at January 26th, 2000 the 100 issued shares were held by Eldon Rankine (as to 51) and “Don McLaughlin” as to the remaining 49.

However the Respondent insists that he has never been the beneficial owner of any shares of Sanya Ltd. He says that the “Don McLaughlin” named in Sanya’s corporate documents is the son of the Petitioner and Respondent, i.e. Don Elroy McLaughlin, who was born in 1972.

When it was pointed out that the son would have been 12 years old on March 13th, 1984 the date of the subscribers and Directors meeting mentioned above, Ms. Brooks said that the Respondent has at all times “represented” his son in the conduct of the affairs of Sanya Ltd. There is nothing in the record to support that proposition other than the Respondent’s

ipse dixit. There are certainly no documents which support the proposition advanced by Ms. Brooks.

The application which came on before me was brought in order to get to the bottom of this contention.

The summons is described as an ex parte summons but the correspondence between the Petitioner's and Respondent's counsel demonstrate that Ms. Brooks was well aware of it.

Indeed it appears that the summons was served on Ms. Brooks by mail on March 15th, 2002. In his letter to Ms. Brooks of March 15th 2002 (enclosing the summons) Mr. Roy enquired whether Ms. Brooks was prepared to consent to an order "in the terms of paragraph one of the said summons."

On March 28th, 2000 Ms. Brooks replied that –

“As we have consistently and previously informed you, our client has no interest in the company Sanya Limited so that we are unable to understand the request in your letter. Surely you

will deal with matters you feel are relevant as you deem appropriate. We would however like you to confirm whether or not it is your intention that ourselves and our client should attend as the issue of costs will have to be addressed.”

Mr. Roy thereupon advised Ms. Brooks that if she would consent to the relief sought by paragraph 1 of the summons then there was no need for her to attend the hearing of the summons.

Ms. Brooks did not respond to Mr. Roy’s letter but she did appear before me on April 9th, 2002. She allowed Mr. Roy to argue the motion for about an hour and one half. When I called on her to respond I discovered that she did not oppose the granting of the relief sought in paragraph 1 of the summons i.e. an order requiring that “the issue of the extent of the Respondent’s present and past involvement in the business known as “Reliable Transport” and the company “Sanya Limited” be determined as a preliminary issue on a mutually convenient date to be fixed.”

It therefore appears that an hour and a half of the Court’s time and counsel’s time was wasted.

I therefore indicated that I was contemplating making an award of costs against the Respondent as a result, but I invited Ms. Brooks to put before me the material which she said should have made it clear that she was not opposing Mr. Roy's application but engaged on a "watching brief" only.

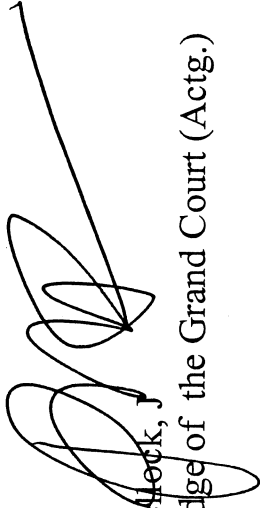
I attach to these reasons Ms. Brooks letter to me dated April 9th 2002. It is true that Ms. Brooks does not represent Rankine or the younger McLaughlin but as counsel to the Respondent she has a right to oppose any and all applications made by the Petitioner in this litigation. As counsel to the Respondent she has a real brief not a 'watching" brief in this case.

More importantly it is the Respondent alone, not Rankine or McLaughlin, who is in a position to resist the granting of the relief sought in paragraph one of the summons.

She not only misled Mr. Roy into thinking that that relief was opposed. She led me to the same conclusion and is therefore responsible for the wasted time.

This is not the way litigation should be conducted in this or any other civilized jurisdiction. When called upon by an opponent to state a party's position on any issue, counsel should do so unless there is a compelling reason for failing to do so.

Consequently I order the Respondent to pay the Petitioner his costs of April 9th, 2002 which I hereby fix at CI\$500. This amount is to be paid forthwith.


Kelleck, J.
Judge of the Grand Court (Actg.)

