



S. I. 01

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. PCCL 3 of 2000

**IN THE MATTER OF AN APPLICATION BY THE ATTORNEY GENERAL
PURSUANT TO PROCEEDS OF CRIMINAL CONDUCT LAW (199 REVISION)**

AND

IN THE MATTER OF LEWIS DENTON ROWE (DEFENDANT)

BETWEEN: LEWIS DENTON ROWE

APPLICANT

AND:

(1). ATTORNEY GENERAL OF THE CAYMAN ISLANDS

(2). L. DANIEL SCOTT

RESPONDENTS

Counsel for Lewis Denton Rowe:

Alister Walters

Counsel for L. Daniel Scott:

Elliott Simpson

Counsel for the Attorney General of the Cayman Islands:

**Andrew Mitchell, Q.C. and
Duncan Nicol**

**REASONS FOR JUDGMENT
OF THE
HONOURABLE MR. JUSTICE SANDERSON**

1. This is an application by Lewis Rowe for an order that Daniel Scott be removed as the Receiver of his assets and that Simon Whicker and Theo Bullmore of KPMG, jointly and severally be appointed as the Receiver of his assets in place of Daniel Scott.

2. Mr. Rowe has raised five grounds in support of his application. I believe one ground has merit; namely, that there is a conflict of interest or potential conflict of interest in the particular circumstances of this case, for Mr. Scott to act as Receiver of Mr. Rowe's personal assets and for Mr. Scott's partner at the accounting firm of Ernst & Young, Mr. James Cleaver, to act as the Receiver of Zephyr International Ltd., a company in which Mr. Rowe is a 50% shareholder and the Managing Director.

3. Mr. Rowe has been charged with money laundering in an alleged scheme involving approximately \$200,000,000.00 U.S. Zephyr is now in receivership to deal with the many claims that have been advanced by investors who have allegedly been the subject of this fraudulent scheme. Henderson, A.J. appointed Mr. Scott as liquidator for the purpose of preserving Mr. Scott's assets for a potential confiscation order that might be made by this Court, if Mr. Rowe is found guilty.

4. Mr. Scott is, pursuant to the Order appointing him Receiver, required to investigate, determine and preserve the assets of Mr. Rowe. In the course of that exercise he will likely gain information that could be useful to the Crown in the criminal proceedings against him. He objects to any such information being gained by Mr. Scott because he fears that it will be made available to Mr. Cleaver (or other staff members of Ernst & Young) who is the Receiver for Zephyr and in turn passed on to the Crown. Mr. Rowe points out that in the past, that some members of the Ernst & Young staff have worked on both Receiverships as well as Mr. Scott and Mr. Cleaver retaining, for some time, the same legal counsel to advise them.

5. The Order of Henderson, A.J. provided:

"subject to any further order of the Court, any disclosure made or information given in compliance with this order shall only be used for the purpose of these proceedings or in the event that the Defendant is convicted for the purposes of any confiscation hearing that may take place and thereafter in the event that a confiscation order is made for the purpose of enforcement of that order including any receivership

proceedings. There shall be no disclosure of any material disclosed in compliance with this order to any co-defendant in the criminal proceedings. Nothing in this paragraph shall make inadmissible any disclosure made by the Defendant in any proceedings for perjury to which any such disclosure made may relate".

This paragraph illustrates the importance that information obtained by Mr. Scott be kept confidential with respect to the Prosecution's case.

6. Mr. Rowe also says that there are competing interests between Mr. Scott and Mr. Cleaver. For example, that Mr. Rowe, through Mr. Scott, has made certain claims to a Lexus automobile as his personal property and that Zephyr, through Mr. Cleaver also has a claim to ownership of this automobile. This claim is as yet unresolved and is being investigated.

7. The main reason advanced before Mr. Justice Henderson and before me for having Mr. Scott appointed as Receiver of Mr. Rowe's assets was that it would be more economical to do so. To me, that admits of the problem; namely, that he will be able to obtain certain information from his partner and common staff resulting a less costly Receivership.

8. Mr. Mitchell, in a most able submission, indicated that there would be no need to have a new Receiver appointed because Mr. Scott would not disclose anything improperly to Mr. Cleaver and if he was unsure of whether or not some information should be disclosed he could seek the directions of the Court. Without in any way questioning Mr. Scott's integrity, I do not think that it is appropriate to leave that decision to Mr. Scott in these circumstances.

9. The main reason advanced for appointing Mr. Scott and for maintaining his appointment is that it would reduce the time spent on the Receivership. As I have indicated that illustrates the fact that there is likely an exchange of information and whether or not that exchange is proper should not in these circumstances be determined by Mr. Scott. Secondly, the cost of the Receivership is being borne, at least so far by Mr. Rowe. If he is paying the cost then it is not a good ground for the Attorney General to object to the appointment of some other Receiver on the basis of cost savings.

Those cost savings would have been enjoyed by Mr. Rowe but he feels it is far more important to avoid a potential conflict than to preserve any potential saving.

10. It was agreed by Mr. Mitchell, who appeared on behalf of the Attorney General, that Mr. Rowe was entitled to protection against self-incrimination but he argued that in real terms, there was no risk of self incrimination. I am not satisfied that is correct.

11. As authority for the Court's jurisdiction to remove a Receiver, Mr. Walters referred to the decision of Murphy, J. in *Allied Investment Fund Limited and Others v. Johnson and Jenkinson* (1999) CILR 237, which dealt with the removal of a liquidator. Murphy, J. concluded in part that, the discretion of the Court to remove a liquidator is broad and that he should be removed where there is an apparent conflict of interest.

12. I agree that these principles should apply equally to the Application for the removal of a Receiver. Accordingly, the Application is granted. If the parties are unable to agree on costs, the matter may be spoken to.

DATED: January 5, 2001.

DG Sanders

