

16.6.2000



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IN CHAMBERS
IN THE GRAND COURT OF THE CAYMAN ISLANDS
CAUSE 316 OF 1999

BETWEEN: MOHAMMAD ALI QAYYUM

PLAINTIFF

AND: HEXAGON TRUST COMPANY CI (LTD.)
(AS TRUSTEE OF THE HEXAGON WELFARE TRUST).

DEFENDANT

Before: Mr. Justice Anthony Smellie Chief Justice

Appearances:
Mr. William Helfrecht of Ian Boxall & Co. for the plaintiff
Mr. Steven Barrie of C.S. Gill & Co. for the defendant

RULING

This is the ruling upon the trial of preliminary issues relating to whether the plaintiff has arguable legal or equitable grounds for claims he has brought against the defendant. These are claims for costs, expenses and remuneration associated with the recovery of the fund which now constitutes the settlement upon the trusts of the Hexagon Welfare Trusts. It is agreed that but for the efforts of the plaintiff and others named, the recovery would not have been achieved.

1 I do not accept as valid the circumscribed definition of the equitable remedy of restitution
2 being advanced by the defendant.

3 Nor do I accept that the issues must be addressed strictly in terms of how the questions
4 are framed to be answered in terms of the preliminary issues.

5 I am not now prepared to accept that at this stage - prior to trial and prior to the
6 determination of any quantum which may be justified after trial, - I should be required to
7 categorise the claims which are maintainable in terms of costs and expenses or
8 remuneration incurred or earned.

9 Following are the specific findings which I consider to be appropriate now:

10 I do not regard ground (1); ie: an argument based upon an express or implied term in the
11 trust deed, to be arguable.

12 I regard ground (2) as arguable.

13 I do not regard ground (3) as arguable.

14 I regard ground (4) as arguable settled upon the Hexagon Welfare Trust - the fact that the
15 trust funds are now settled upon the trust should not preclude this in light of the views
16 expressed by the Court of Appeal upon Mr. Malik's appeal upon the question of timing.

17 (5) I regard an argument by analogy with the maritime law of salvage to be very unlikely
18 to succeed but given the seamless nature of the equitable jurisdiction and principles of
19 restitution; I will not preclude it now.

20 (6) I regard as arguable a claim based upon the principles of quantum meruit.

21 As to Part B of the order for trial of the preliminary issues:

22 I do not regard any of the claims which I have found to be arguable to be precluded on
23 the ground that the terms by which the proceedings referred to in paragraph 1 of the

1 Originating Summons were compromised contain no provision for such costs and
2 expenses and for remuneration claims from the Hexagon Welfare Trust.

3 I reserve my findings on the nature of the specific claims which each claimant named in
4 the schedule can bring until written reasons are given.

5

6 As to costs

7 The costs of the preliminary issues to be the plaintiff's to be taxed if not agreed.

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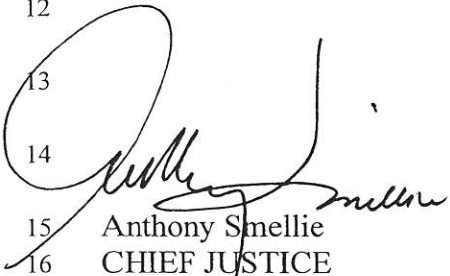
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Anthony Smellie
CHIEF JUSTICE

DATED THIS THIE 14TH DAY OF JUNE 2000.