

12.6.2000



1 IN CHAMBERS
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3 IN THE GRAND COURT OF THE CAYMAN ISLANDS
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5 CAUSE 665 OF 1998
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10 BETWEEN: **HAMPSHIRE COSMETIC LABORATORIES**

11
12 AND: DOREEN GRAY

13
14 AND: CAYMAN NATIONAL BANK
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18 Appearances:
19 Mr. Diarmond Murray of Walkers for the plaintiff
20 Mr. James Chapman of Boxalls for Mrs. Gray, the first defendant
21 Mr. Phillip Boni of Truman Bodden & Co., for the second defendant
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25 **RULING**
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28 This is a novel application by the plaintiff Mrs. Doreen Gray for an order directing the
29 plaintiff to return confidential information which was discovered in these proceedings
30 and subsequently disclosed by consent for use in the English proceedings.

31 The disclosure in the English proceedings allowed onward disclosure to many other
32 parties besides the plaintiff then.

33 The plaintiff accepts that this court has no jurisdiction to order those other parties there to
34 return the information.

35 She remains primarily concerned about the information in the hands of the plaintiff, less
36 so about it being in the hands of the defendants in the English proceedings whom Mr.

37 Chapman representing her described as being "on her side".

1 The English proceedings have since been settled but without any provisions being made
2 for the return of discovery material.

3 I conclude that I may not make the order which the plaintiff seeks.

4 Mr. Murray for the plaintiff has mentioned practical difficulties in recovering the material
5 from the warehouse where it is stored with all the other discovery material in the case and
6 of identifying it and collating it from amongst the many thousands of other documents in
7 the case and then, of course the costs of returning it to Mrs.Gray in Cayman.

8 However, I consider the matter to be governed by the implied undertaking not to use
9 discovery material for any purposes except that for which it is given; ie: in this case in the
10 Cayman proceedings and in the English proceedings where it has been disclosed by an
11 order made with the consent of Mrs. Gray.

12 The plaintiff is enjoined by the undertaking implied by rules of Court and the common
13 law and is liable in contempt for any breach of it. This is a matter of trite and settled law
14 and the subject of several decisions of this court.

15 See, for instance, Codelco v Duetsch – Sudameri Kanische Bank A.G. 1999 CILR N.4
16 and Laager v Krueger 1997 CILR 311

17 There is no suggestion that the plaintiff has acted or intends to act in breach of the
18 undertaking.

19 By way of compromise of Mrs. Gray's concerns Mr. Murray on the plaintiff's behalf has
20 offered to confirm the plaintiff's understanding of its obligations to the court by giving an
21 express undertaking. He would agree to this provision being held in the consent order by
22 which the Cayman proceedings are to be dismissed now that the English proceedings
23 have been settled.

1 I intend to direct that that written undertaking be given.

2 I must specifically note that I do not accept Mr. Murray's earlier suggestion that the
3 discovered material became the property of his client because they paid for the costs
4 incurred in obtaining it.

5 The information in it remains the confidential information of the party who provided it;
6 ie: Mrs. Gray.

7 This is notwithstanding that the actual costs of reproduction would have been paid by the
8 plaintiff (and others) who obtained copies.

9 Even more important to my mind to the consideration that the implied (now to be
10 expressed) undertaking must take effect so as to operate upon the very material which has
11 been discovered and to which it relates.

12 Any suggestion of a proprietary interest in the material in favour of the party obtaining it
13 under the conditionality of the undertaking would be contrary to that principle.

14 The ownership or custody is irrelevant and the duty to the court is paramount.

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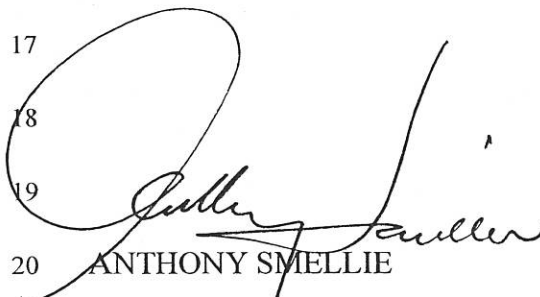
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ANTHONY SMELLIE
CHIEF JUSTICE



DATED THE 12TH DAY OF JUNE 2000.