

11. 2. 2000

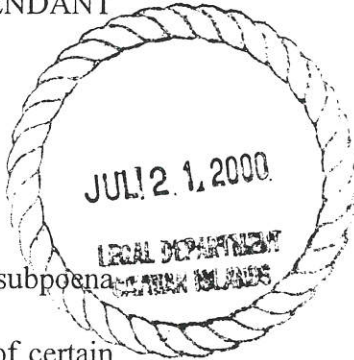


1 IN CHAMBERS
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4 IN THE GRAND COURT OF THE CAYMAN ISLANDS
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6 CAUSE 478 OF 1999
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10 BETWEEN: PUBLISHERS REPRESENTATIVES LTD PLAINTIFF
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14 AND: UBS (CAYMAN ISLANDS) LTD. DEFENDANT
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18 RULING
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21 I have before me a written application by the defendant for the issuance of a subpoena
22 duces tecum to the Commissioner of Police requiring the production at Court of certain
23 documents.

24 The application is in an appropriate form of praecipe and identifies the documents
25 required with sufficient particularity to meet the standards of the Rules. See GCR O. 32,
26 Rule 7 and O. 38 Rule 14.

27 These are documents which the correspondence reveals have already been produced by
28 the police for inspection to the attorneys who act for the plaintiff. There is neither express
29 consent, nor objection now to the production by the police. The documents are witness
30 statements (and/or drafts) exhibits to them and notes and recordings of interviews with
31 the witnesses and statements or notes or recordings of interviews. Among those
32 interviews are those of a defendant in a criminal case which has already been tried and to
33 which all the evidential material related.

1 There is correspondence with the Solicitor General on behalf of the Crown and there is
2 no suggestion from him of a claim of public interest immunity; which is not surprising
3 given the earlier disclosure to the plaintiff's attorneys.

4 I am satisfied that the documents particularised may well be relevant or material to the
5 conduct of the litigation in this Cause.

6 That is the test which it is advised by at least one leading text (Phipson on Evidence 14th
7 Ed. Para 8-02 et seq.) should be applied when deciding on the issuance of a subpoena
8 duces tecum notwithstanding the rather more restrictive views expressed in R. v
9 Cheltenham Justices, ex p. Secretary of State for Trade [1977] 1 WLR 95. This is that
10 as documents of the kind here (witness statements; previous statements by way of
11 interview) can only be used for the purpose of discrediting the witness in cross-
12 examination, they were therefore not to be evidence in the trial and that their production
13 could not be compelled. That restrictive view entirely overlooks the consideration –
14 plainly pertinent in a case such as the present – that the fact that the documents
15 themselves may or may not become direct evidence of their contents does not mean that
16 they have no potential evidential significance. In this case that evidential potential is
17 shown, for instance, in the documents which are likely to contain reports from the present
18 defendant (its employees at the time) to the police of the fraudulent conduct of the
19 defendant to the criminal trial of a kind similar to that which the plaintiff now claims the
20 defendant negligently or fraudulently condoned to the plaintiffs detriment.

21 I am not to be deterred by the fact that the production will be required for a date prior to
22 the hearing set for the trial of the preliminary issues for which the evidence will be
23 required.

1 On the authority of Khanaa v Lovell White Durrant [1995] 1WLR (2) I might properly
2 direct the listing officer to set a date for the production, prior to that hearing, when the
3 parties may inspect the documents and determine for themselves how they might be used
4 for the hearing or subsequent trial.

5 There are many good reasons for this early production, not least the fact that unnecessary
6 delay and expense which would otherwise attend the trial will be averted by the parties
7 having time to consider which of the documents should be adduced and for what
8 purposes and how, if at all, they are to be responded to.

9 I grant the application for the subpoena duces tecum in the terms of the praecipe and
10 direct that the listing officer notifies a date for the production.

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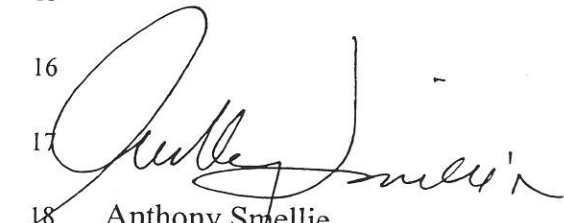
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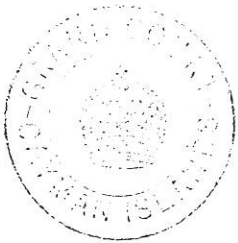
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Anthony Smellie
CHIEF JUSTICE



DATED THIS THE 11TH DAY OF FEBRAURY 2000.