

to the Court to prevent disclosure of confidential information resulting in the case being greatly delayed. For Mr. Boccaletti to say that the proceedings are now costing a lot of money lies ill in his mouth.

Although these proceedings were commenced by Mr. Bonotto, Mr. Boccaletti is also in the position of a plaintiff as he seeks a declaration of the ownership of the condominium he occupies. It is presently owned by Elbo Ltd. which is under his control. What else has Mr. Boccaletti done? Mr. Boccaletti commenced proceedings in Italy in 1996 number 5354 of 1996 before a judge called Dr. Federica Pirgoli and that judge on 24th July 1997 having seen the documents in this case (documents and pleadings) decided that as the same, or substantially the same relief was being sought in Italy as in the Cayman Islands he stayed those proceedings.

Those proceedings were then brought as a tactical issue to embarrass Mr. Bonotto in the presentation of this claim and so I find.

He has now sought to recast the original proceedings in Italy to make them look different in order to persuade me and the Italian judge that it is a wholly new cause of action. It is nothing of the sort. It is to determine whether monies passed between Mr. Boccaletti and Mr. Bonotto and

whether he has repaid them and like matters, all of them involving the Cayman Cause. Miss. Bridges' interesting and able submission is that as he also seeks in the action "biological damages" i.e. damages to his psychological health and a claim to recover as damages being the difference between the recoverable costs in the Cayman Islands and those which might be recovered in England e.g. indemnity costs. I should not restrain her clients "new" proceedings in Italy. Our regime on costs is about to change, but I must decide this case on the existing law.

If the law in Italy is that Mr. Boccaletti could sue in Italy to recover damages for the difference between recovered costs and indemnity costs (as I am told it is) and he wins the Cayman action, then he may, if he wishes to, take such proceedings in Italy and, at an appropriate time enforce the judgment against Mr. Bonotto who has assets in that country. Similarly, he may sue Mr. Bonotto for "biological damages" if his doctors say that he is unwell because of wholly illegitimate proceedings having been taken against him in the Cayman Islands which failed. But those events have not yet happened. Whether he will suffer such losses is a matter of speculation. It will depend on whether he succeeds in the

Cayman proceedings or not.



I have now to go on to decide, before deciding whether to grant the relief sought, whether the Cayman Islands is the natural forum for this Cause. Plainly there are competing fora which might have been chosen. What is in favour of Italy is that both Mr. Bonotto and Mr. Boccaletti are Italian nationals who used to be life-long friends, they did a great deal of business together in Italy. If money changed hands in Padua, as is alleged, then that took place in Italy. I am not persuaded that to decide that issue of fact I would need to hear evidence of Italian law.

What happened is a matter of fact to be determined by a Cayman Court: The parties are Italian speakers and some of them, including witnesses, would have to travel to the Cayman Islands from Italy. Mr. and Mrs. Boccaletti are long time residents of the Cayman Islands. What is in favour of Cayman is that Elbo, the owner of the condominium is a Cayman Islands company, SETC the 3rd defendant (Swiss Bank) is a Cayman Islands company, Sphinz Corporation is a Cayman Islands company and Mr. and Mrs. Boccaletti are long time residents of the Cayman Islands and are counter-claimants.

On any view, the clear natural forum is the Cayman Islands. Mr. Boccaletti must have been so advised when proceedings were commenced against him and he counter-claimed. There was never an

I have now to go on to decide, before deciding whether to grant the relief sought, whether the Cayman Islands is the natural forum for this Cause. Plainly there are competing fora which might have been chosen. What is in favour of Italy is that both Mr. Bonotto and Mr. Boccaletti are Italian nationals who used to be life-long friends, they did a great deal of business together in Italy. If money changed hands in Padua, as is alleged, then that took place in Italy. I am not persuaded that to decide that issue of fact I would need to hear evidence of Italian law.

What happened is a matter of fact to be determined by a Cayman Court: The parties are Italian speakers and some of them, including witnesses, would have to travel to the Cayman Islands from Italy. Mr. and Mrs. Boccaletti are long time residents of the Cayman Islands. What is in favour of Cayman is that Elbo, the owner of the condominium is a Cayman Islands company, SBTC the 3rd defendant (Swiss Bank) is a Cayman Islands company, Sphinz Corporation is a Cayman Islands company and Mr. and Mrs. Boccaletti are long time residents of the Cayman Islands and are counter-claimants.

On any view, the clear natural forum is the Cayman Islands. Mr. Boccaletti must have been so advised when proceedings were commenced against him and he counter-claimed. There was never an

application by Mr. Boccaletti to suggest that a more convenient forum would be Italy. The natural forum for the resolution of the Cause is here and will depend on the credibility of the witnesses, documentary evidence together with evidence as to the behaviour of parties. How the condominium was treated, how it was let and what happened to the letting monies. All those factors are matters which are best judged here. Therefore, I conclude that the natural forum for the resolution of this long and bitter dispute is the Cayman Islands. Mr. Boccaletti gives the Court the strong impression that he does not want the matter decided and is doing what he can in Italy to prevent or hamper such proceedings. I regard the Italian action as a device by Mr. Boccaletti if possible to delay or embarrass Mr. Bonotto in relation to the present proceedings in the Cayman Islands.

I now have to decide whether the conduct of Mr. Boccaletti in bringing fresh proceedings in the context of virtually identical proceedings already stayed in Italy, has been vexatious and oppressive? This conduct I find to be vexatious and oppressive for those reasons and for other reasons as well. Most bitter disputes have taken place as to the discovery of embarrassing documents, which if they saw the light of day, could cause criminal proceedings against Bonotto for failing to pay taxes in Italy.

This Court has strictly enjoined public production of those documents and will proceed on the basis that if such documents are referred to, the Court is likely to go into closed session and is unlikely to give leave for them to lose the protection already given. This court does not enforce the revenue laws of any other state. There is no application before me as to financial crime in Italy. There is no application brought under the Mutual Legal Assistance Treaty to disclose them to the Italian authorities. If the proceedings continue in Italy, Mr. Bonotto will be forced to defend them without documents because the documents will remain the subject of an injunction. Mr. Boccaletti's *volte-face* is that he will allow them to be disclosed — he has maintained a contrary position throughout until today in a tactical manoeuvre to attempt to defeat the application now being made.

Aerospaciale was the leading case cited. It is a Privy Council decision binding on me. The law says in **Aerospaciale** that “as a general rule the decision to restrain foreign proceedings should not be undertaken save in exceptional circumstances. Such an order should not be made if the Cayman Islands is not the natural form and where it is unjust to deprive the person enjoined of a juridical advantage”. If in Italy there is anything in his claims for “biological damages” and lost costs, then he can pursue them at an appropriate time. Therefore he is not deprived of

any juridical advantage. The Italian proceedings are in their infancy and are likely to last many years. It would be unjust for the plaintiff to have to litigate substantially the same matters in Italy. Balancing the advantages and disadvantages I come down firmly on the side of Mr. Bonotto. If I did not make that order Mr. Bonotto would be put at a continuing disadvantage by Mr. Boccaletti's attempts to litigate the Cayman Cause in other proceedings.

Accordingly, in the light of the authorities and the test in *Aerospaciale* and re-statement of it in **Paget-Brown v. Scenic**, a decision of Schofield J. 1988/89 CILR at page 11 and the decision of our own Court of Appeal in **Insurco International Ltd.** per Mr. Justice Kerr at 1994/95 CILR page 2, having applied all those tests recommending me to act with caution and reminding myself that the injunction is directed against the party concerned and not the Italian Court. The order I shall make is against Mr. Boccaletti in personam and is not made in vain due to his residence here. He therefore fulfills the criteria for an effective order to be made. Mr. Boccaletti is not deprived of any juridical advantage for the reasons already indicated. Accordingly I order that Mr. Boccaletti be restrained from pursuing the present proceedings in Italy.

I order him to pay the costs of this application.



The Hon. Mr. Justice Graham
Judge of the Grand Court

15th July 1999

