

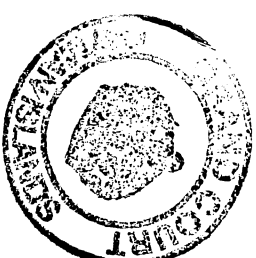
Chambers

24/15/99

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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 735/97



BETWEEN: Barbara Brandner and Birgit Brandner
(as administratrices of the estate of Josef Brandner)

Appellants

AND: Herbert Peinter, Eleonore Brander, Coast Hill
Development International Co. Ltd, the Leon
Waterman Ltd.

AND: George Town Building Limited

Respondents

For the plaintiffs: Mr. Ward Sykes of Collins, Broadhurst & Furniss
For the defendants: Mr. Jeremy Walton of Ritch & Conolly
Before Graham J.

RULING

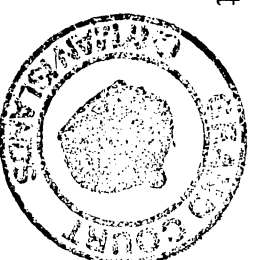
Hearing -
30th July 1998

This case critically depends on the events of 7th April 1994. Nikolaus Brandner, then a young man of 24, entered into an agreement, whether he did so on that day, or the agreement was backdated is not certain. Having looked at the typing of the address in Attersee and so on, which was plainly done by a German typewriter and notarised in that jurisdiction on that day, 7th April 1994. About that, I can be certain.

What happened then? The text reads:-

“I Nikolaus Brandner,... declare herewith irrevocably my voluntary wish and decision to transfer title of all my shares in Leon Waterman Ltd., respectively in George Town Building Ltd., to Mr. Herbert Peinter/Coast Hill D.I. Co., Gr. Cayman. I Nikolaus Brandner, acknowledge to have received adequate payment in full in exchange of all of the above mentioned shares, that we have agreed upon in mutual consent. Mr. Herbert Peinter/Coast Hill D.I. Co., Ltd., confirms to be liable for all payments that have to be made for all repair and renovation work on the George Town Building held by George Town Building Ltd., and has indemnified Mr. Nikolaus Brandner in any regards concerning the George Town Building or the Holding Company George Town Building Ltd., Gr. Cayman.”

Mr. Sykes for the plaintiff complains that the amount of consideration is not expressed in the agreement to transfer shares. It is in fact an agreement to sell what Nikolaus had to sell, that is an equitable interest in the shares left to him in his father's estate.



Mr. Herbert Peinter may well have believed himself to be executor of this estate. The offer was made to Nikolaus Brandner as a businessman, which he found to be acceptable. It is obvious that the Austrian taxman was a live player in the contemplation of these persons. The moot question of the liability for Austrian estate duty is not for me to speculate upon. It is quite understandable why Nikolaus did not want the amount

he had acquired from his father's estate to be publicly stated or evidenced in writing. What he does say, which is all I have to look at is that he acknowledged "adequate payment in full".

That document is the key to this case. If it could be set aside on the grounds of undue influence by Painter, of which Nikolaus Brandner was the victim, or on the grounds of fraud, or an assertion that he was not mentally competent, then this case would have a foundation in fact and in law if those matters were properly pleaded in the Statement of Claim.

Searching through the pleadings, all I can say of the plaintiffs is that whilst they are "prepared to wound they are not prepared to kill".

Tangential allegations are not sufficient to set up a case and the only case available, that of undue influence, fraud or of "want of capacity" by Painter or deliberate exploitation of the perceived lack of mental capacity by Nikolaus is the only way in which this agreement can be impugned in law.

This action was commenced by Barbara and Birgit as administratrices of the estate of Josef Brandner on 21st October 1997. The Court is bound to observe that had such evidence as to fraud, undue influence or want of

capacity existed, it would have found its way into specific allegations in the pleadings.

It will be plain from my remarks that no such allegations have been made. I repeat that the plaintiffs are prepared to “wound but not to kill”.

I use that figure of speech to demonstrate the paucity of the pleadings in failing to allege the critical issue. If such allegations had been made, it would have been quite wrong to strike out these pleadings and I would not have done so.

If as a result of my decision today, a fresh set of pleadings are delivered containing allegations of the type adumbrated, there will no doubt be a most searching request for Further and Better Particulars. If those could not properly be answered, then those pleadings would suffer the same fate that these are going to suffer. I say that to strike a note of warning that serious allegations are not to be made unless there is evidence to support them. The more serious the allegation the higher the standard of proof will be – Vide Re. H. Minors – per Lord Nichols of Birkenhead.

Nikolaus Brandner died at a tragically young age and cannot give evidence as to these matters. Mr. Peinter cannot help the plaintiffs at this state but of course Dr. Reinhalt Peinter and Dr. Karl Neuhoﬀer are, I

assume, still alive, and may or not be able to assist the plaintiffs. It is not for me to play detective, but it seems obvious that there is at least some scope for more diligent enquiries as to the events culminating in what transpired on the 7th April 1994.

I therefore make the following order: I am driven to strike out paragraphs 13 to 18 inclusive of the Statement of Claim. The critical issue as to the matter arising from the Moon Bay Condominium is a discrete issue and is plainly an issue to be tried. Paragraphs 39-44 remain together with the prayers dependent on those paragraphs.

Security for costs application

The sum of CI\$10,000 be paid into Court within 28 days or action stayed.

Costs of this matter

To be taxed if not agreed and to be paid forthwith thereafter.

Leave to appeal

Denied

Direction

If in fact your intention to appeal, I direct you that there be an agreed note of Judgment within 14 days (**NOTE:** This did not take place and the notes were submitted to me only in May 1999).



H.G.D. Graham
Judge of the Grand Court

24th May 1999

