

8-5-98

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

3
 4 **CAUSE NO. 807/97**



5
 6
 7 **BETWEEN: Weststar T.V. Ltd.**

PLAINTIFF

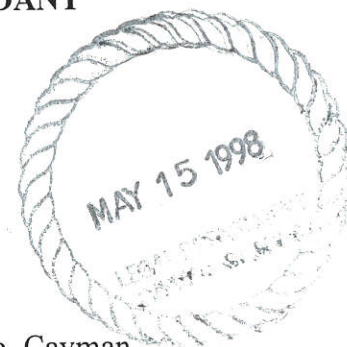
8
 9 **AND: Coronado Ray Development Ltd.**

DEFENDANT

10
 11 **For the Plaintiff - Mr. Peter Broadhurst**

12 **For the Defendant - Mr. Diarmad Murray**

13
 14 **Before Harre CJ**



15
 16 **JUDGMENT**

17
 18 Both the plaintiff and the defendant are companies incorporated in the Cayman

19 Islands, and these proceedings arise from a document which for convenience though

20 not by way of finding I will call the promissory note. It is in the following terms -

21
 22 "For value received Weststar T.V. Limited of P.O. Box 472, George
 23 Town, Grand Cayman B.W.I. (Weststar T.V.") promises, subject to
 24 the next following paragraph, to pay to Coronado Del Rey
 25 Development Ltd. of P.O. Box 190, George Town, Grand Cayman
 26 B.W.I. ("the Company"), the sum of Three Hundred Thousand United
 27 States dollars (US\$300,000.00) together with interest at the rate of ten
 28 percent (10%) per annum on 31st May, 1994.

29
 30 If prior to 31st May, 1994, Weststar T.V. issues three hundred
 31 thousand (300,000) shares of one cent (US\$0.01) each of any class
 32 at a premium of ninety-nine cents (US\$0.99) each to West Interlink,
 33 Inc. of 8217 Hogseth Court, Fair Oaks, California 95628, United
 34 States of America, this will be deemed repayment of the principal
 35 sum evidenced by this Note and all interest accrued will be deemed
 36 to have been waived by the Company."

37
 38 The document is dated 25th February 1994 and executed under the seal of Weststar

39 T.V. Ltd. ("Weststar T.V.") by one Rodney Hansen ("Hansen"), Director and Dorothy

40 Jayred, Secretary of the company. Hansen has deponed that Weststar T.V. Ltd. has

1 carried on business since its incorporation in the Cayman Islands in October 1992
2 solely as the operator of a cable television system in the Cayman Islands; and that
3 West Interlink, a business style of a Nevada Corporation took over management
4 responsibilities relating to Weststar T.V. Ltd. from a California corporation called
5 Weststar Communications Inc. ("Weststar Communications") in February 1994.

6

7 The plaintiff claims to be entitled in law to the return of the promissory note on the
8 ground that it paid over the full principal and accrued interest on 22nd July 1996, and
9 to a declaration that the indebtedness secured by the note has been fully discharged.

10

11 The defendant has applied for these apparently simple proceedings to be stayed on the
12 ground that California is the more appropriate forum to hear this dispute. An action
13 there is already in existence.

14

15 The plaintiff, Weststar T.V., was incorporated in the Cayman Islands on 24th October
16 1992, having the same directors and officers as Weststar Communications. Weststar
17 Communications, the Californian corporation, acted as the first operating and
18 administrative manager of Weststar T.V.

19

20 Weststar Cayman L.P. ("Weststar Cayman") a Californian limited partnership raised
21 funding through a private placement offering and became the holder of 60% of the
22 shares in Weststar T.V., the other 40% being held by a company called V.M. Ltd.

23

1 It is the defendant's case that in late 1993 and early 1994, Gary and Mary Beth
2 Chumley ("the Chumleys"), the beneficial owners of the defendant ("Coronado")
3 were offered through their US legal adviser, Craig Stalker, the purchase of 15.77% of
4 Weststar Cayman's 60% holding in Weststar T.V. for US\$300,000 and this offer was
5 accepted on 25th February 1994, their payment of US\$334,500 being the cost of the
6 purchase of the 300,000 shares of Class A stock, paid for by Coronado to Weststar
7 T.V., and US\$34,500 paid by the Chumleys as the cost of making a "net" investment.

8

9 It is common ground that at no stage have Coronado and/or the Chumleys been issued
10 with these shares and that on 22nd July 1996, the Plaintiffs delivered the sum of
11 US\$377,719.00 by way of draft to the defendant which they claim represents the sum
12 of US\$300,000 plus 10% interest.

13

14 So the fundamental disagreement between the plaintiffs and the defendant (and the
15 Chumleys) is as to the nature and terms of their agreement. The plaintiff contends the
16 agreement evidenced by the Promissory Note was a loan with an option to deliver
17 shares in place of repayment of the sum plus 10% and that having chosen not to
18 exercise the option to deliver the shares, it has satisfied all its obligations under the
19 Promissory Note. Coronado and the Chumleys allege that Coronado has not accepted
20 the repayment of US\$377,319 and that they remain entitled to the shares.

21

22 Proceedings have been commenced in the Superior Court of the State of California by
23 the Chumleys and Coronado seeking, among other things, specific performance of

1 what they claim to be the share agreement. The claim was brought against several
2 defendants, including Weststar T.V., the plaintiffs in the Cayman action.

3

4 To resolve the point before me it is necessary to consider the true nature of the
5 Cayman and California proceedings and the relationship between them.

6

7 There has been much affidavit evidence about these, and the transaction which led to
8 them. Much time was spend on the position of Coronado and the Chumleys in
9 relation to the California action. The first amended complaint in which all are
10 plaintiffs, was for specific performance, security fraud, legal malpractice and breach
11 of fiduciary duty. The jurisdiction of the Superior Court over Weststar T.V. was
12 contested. On 21st January 1997 the court granted, without prejudice, a motion to
13 quash service of the summons on the ground of lack of personal jurisdiction over
14 Weststar T.V.

15

16 I accept the affidavit evidence of Mr. John F. Mounier Jr. that in California orders
17 without prejudice allow the affected party to seek relief, file a new amendment or seek
18 a different decision because subsequent events have confirmed it. On 28th January
19 1998 the Sacramento Superior Court granted leave to file a Second Amended
20 Complaint. That leave was given on the following ground -

21

22 "The proposed second amended complaint appears to state
23 facts sufficient to constitute a cause of action against Weststar
24 T.V. and clarifies Weststar T.V.'s relationship to the other
25 defendants."

26

1 So Weststar T.V. is back in the California proceedings, having been brought back in
2 following that determination that there is a cause of action against it in California. It
3 does not lie well in its mouth to cite its absence from those proceedings from January
4 1997 by reason of an attempt to extricate itself from them which ultimately failed.
5 There is evidence that during the absence of Weststar T.V. the California action has
6 been continuing since it began in October of 1996 and considerable work has been
7 done and expense incurred. That is a factor which favours California.

8

9 I now consider the promissory note. The parties to it are two Cayman Island
10 Companies, it was drawn and payable in the Cayman Islands in Cayman Islands
11 currency and drafted by a Cayman Islands attorney. There is conflicting evidence
12 about what occurred on the day on which it was prepared, but not in that regard.
13 There is likely to be an issue as to the legal effect of the document under Cayman
14 Islands Law. That is a factor favouring the Cayman Islands as a forum. But it is
15 inevitable that pleading and argument on that issue will bring in also the very matters
16 which are already before the Court in California. This is not a simple action on the
17 note. To the extent that it becomes significant - and it appears to have played no great
18 part so far in the California proceedings - expert evidence as to the law of the Cayman
19 Islands can be given. Another factor which I take into account in assessing the place
20 of the note in the context of this dispute is that payment of principal and interest was
21 only tendered on 22nd July 1996 - over two years after the date of payment set out in
22 the document. The Cayman writ seeking a declaration and return of the note was
23 dated 1st December 1997.

24

1 There is then the question of availability of witnesses to be considered. There is
2 nothing in the evidence to indicate any reason why witnesses from the Cayman
3 Islands would be unwilling to testify in California with regard to the preparation of
4 the promissory note and its exchange for funds. On the other hand, it is self evident
5 that Coronado would have great difficulty in eliciting evidence from third parties
6 outside these Islands in the Cayman proceedings with regard to what it alleges to have
7 been the true nature of the transaction between the parties. I regard that consideration
8 as more important than the mere counting of heads, which in any event does not lead
9 to a conclusion other than that evidentiary convenience favours California as a forum.

10

11 I conclude with a reference to the Articles of Association of Weststar T.V. and the
12 arguments as to where its "management and control" lay. There is an agreement
13 between Weststar T.V. Ltd., Weststar Communication (significantly described as "the
14 Founders") and VM Ltd. ("The investors"). The agreement is dated 11th January
15 1993. I was taken interestingly to matters of company law and the relationship
16 between this agreement and the Articles. I do not have to find for present purposes
17 what that is. "Management and control" is a concept with many facets in company
18 law. As in all cases, some powers lie with the directors, some with the shareholders.
19 But as I said at the outset of this judgment, the evidence which I have indicates that
20 West Interlink took over management responsibilities from Weststar Communications
21 in February 1994. Just what the Chumleys and/or Coronado would have been getting
22 as consideration for the investment of \$300,000 by virtue of an issue of 300,000
23 shares by Weststar T.V. to "West Interlink Inc. of 8217 Hogseth Court, Fair Oaks,
24 California" as deemed repayment of that sum and on what authority that share issue

1 could be made by the company seems to be an issue inextricably entwined with the
2 proceedings in California, where fraud is among the allegations made.

3

4 For those reasons I have concluded that this case can more suitably be tried in
5 California for the interests of all parties and the ends of justice, including the
6 advantages of efficiency, expedition and economy; and accordingly I order that this
7 action, No. 807/97 be stayed.

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13

14 8th May 1998

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G..E. Harre
Chief Justice

