



1 IN CHAMBERS

2
3 IN THE GRAND COURT OF THE CAYMAN ISLANDS

4
5 CAUSE NO. 104 OF 1995

6
7
8 BETWEEN: IN THE MATTER OF OMNI SECURITIES LTD
9 (IN LIQUIDATION) PLAINTIFF

10
11 AND: DELOITTE & TOUCHE (A FIRM) ET AL DEFENDANTS
12
13

14
15 CAUSE NO. 62 OF 1996

16
17 BETWEEN: OMNI SECURITIES LTD. (IN LIQUIDATION) PLAINTIFF
18
19

20 AND: (1) DANIEL J. SCHWAB
21 (2) SYDNEY J. COLEMAN
22 (3) PAGET-BROWN & COMPANY LIMITED
23 DEFENDANTS
24
25

26 Appearances:

27
28 Cause 62/96:
29 1st defendant unrepresented.
30 Roger Nelson of Nelson & Co. for the 2nd and 3rd defendants.
31

32 Cause 104/94:
33 Geoffrey Vos QC instructed by Graham Ritchie of Charles Adams, Ritchie & Duckworth
34 for the 8th defendant.
35 Nilgel Clifford of Hunter & Hunter for the 1st, 7th, 9th & 10th defendants.
36

37 RULING AS TO CONSOLIDATION OF THE ACTIONS
38
39

40 I have reviewed the arguments in this matter since they were taken in October
41 of last year on two different occasions.
42

1 On each occasion I formed the view that the causes were not yet at the stage
2 where it could safely be decided to consolidate them.

3
4 There are obvious areas of potential overlap between the claims involving the
5 directors with those involving the auditors. The real issue, however, is
6 whether the directors should be required to participate in a trial in which the
7 bulk of the enquiry will be directed to the auditors duties and responsibilities.

8
9 I have seen the defence of all except the 8th defendant in Cause 104 of 1995
10 and of Mr. Coleman, the second defendant in Cause 62 of 1996. As yet no
11 defence has been filed by the 8th defendant in Cause 104/95. The 8th
12 defendant has until 27th March 1998 by agreement of the plaintiff to file in
13 that Cause. Nor has any defence been filed by the defendant Schwab in Cause
14 62 of 1996. I was recently made to understand that the claim against him has
15 been settled or discontinued. Nonetheless, as regards other possible defences
16 and replies the pleadings have not yet been closed.

17
18 Against that background I consider that there is still a real possibility of one
19 party or the other being prejudiced by having to participate in a purely formal
20 way during weeks of trial on issues which do not go to that party's liability or
21 defence.

22
23 For the same reasons I am as yet unable to assess to what extent, if at all, there
24 are to be "common questions of law or fact bearing sufficient importance in
25 proportion to the rest of the action to render it desirable that the whole of the

1 matters should be disposed of at the same time.” That is the test laid down in
2 Payne v British Time Recorder Co. [1921] 2 K.B. 1,16 and approved in Daws
3 v The Daily Sketch [1960] 1 W.L.R. 126 and in Lewis v The Daily Telegraph
4 [1964] 2 Q.B. 601 by the Court of Appeal.

5

6 In that state of uncertainty, I conclude that the appropriate order to make now
7 is to stand the summons over until the pleadings have been closed and until
8 after the decision in the pending application of the defendants (of all except
9 the 8th) to strike out the claim in Cause 104 of 1995.

10

11 At that later stage, all the indications are that there will likely be consent
12 between the parties as to whether these Causes should be consolidated.
13 Failing agreement there will be liberty to the plaintiff to restore the
14 summonses.

15

16 Costs of this application should be reserved until final resolution of the issue
17 and I so order.

18

19

20

21

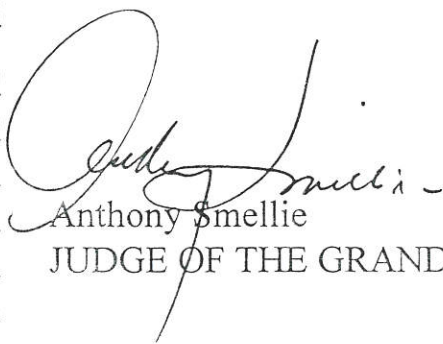
22

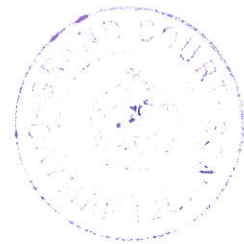
23

24

25

26


Anthony Smellie
JUDGE OF THE GRAND COURT



Dated this 16th day of March 1998