

1 IN CHAMBERS

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3 IN THE GRAND COURT OF THE CAYMAN ISLANDS

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5 CAUSE NO. 751/97

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13 **IN THE MATTER OF THE CONFIDENTIAL RELATIONSHIPS**  
14 **(PRESERVATION) LAW (1995 REVISION)**

15

16

17 **AND IN THE MATTER OF AN APPLICATION BY**

18 **(1) RAYMOND KALLEY, AS TRUSTEE OF THE**  
19 **EB TRUST AND PB TRUST**

20 **(2) EGIL BRAATHEN**

21 **(3) PAULINE BRAATHEN**

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25 Appearances:

26 Jacqueline Wilson for the Attorney-General.

27 Diarmad Murray for the applicants.

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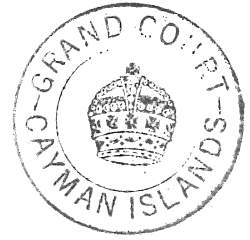
30 RULING

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32 It is as thoroughly settled as any proposition of law can be that no court will  
33 allow itself to be made the instrument of enforcing obligations alleged to  
34 arise out of a transaction which is illegal: Scott v Brown [1892] 2 Q.B. 724.

35 The principle behind the rule of law is clear: *ex turpi causa non oritur actio*.

36



1 The present application is admitted to be one by which the applicants seek  
2 the leave of this Court to use in evidence, information which they have  
3 obtained in the Cayman Islands by means of a breach (albeit unwittingly) on  
4 the part of a respondent bank (“FCB”) of the Confidential Relationships  
5 (Preservation) Law (“the CR(P)L”). The breach was committed by FCB by  
6 the handing over of the information to the applicants’ lawyers without the  
7 defendants’ (“the principals’) consent and without an order of the Court.  
8 The applicants in those circumstances nonetheless seek the leave of this  
9 Court to be able to use the information in evidence in proceedings in Florida.

10  
11 The applicability to such a situation of the settled principles cited above  
12 could hardly be more plain. And, to my mind, it is irrelevant that the  
13 applicants came by the information perhaps without being themselves  
14 participes criminis to the offence of unlawful disclosure. They have the  
15 information, in the hands of their attorneys, without the consent of the  
16 principals and without authorisation by the court. It therefore remains  
17 illegally possessed while in their hands whether or not they were party to the  
18 original breach by FCB which resulted in its disclosure.

19  
20 And, in that regard, it seems to me the applicant must - while they hold and  
21 seek to use that information - come perilously close to a breach of the law  
22 themselves.

23  
24 Section 5(3) of the CR(P)L reads:

1 “Whoever, being in possession of confidential  
2 information, clandestinely *or without the consent*  
3 *of the principal*, makes use thereof for benefit of  
4 himself or another, is guilty of an offence and  
5 liable on summary conviction to the penalty  
6 prescribed in subsection (2) ....” (emphasis  
7 supplied).  
8

9 It is at least arguable therefore that by using the information in the present  
10 manner of supporting this, their application for leave, the applicants act in  
11 breach of that provision.

12  
13 If so, that only compounds the abuse of seeking to obtain the sanction of the  
14 court of the breach and its authorisation of the further trammelling of the  
15 principal’s rights proposed by the further disclosure in the Florida  
16 proceedings.

17  
18 To my mind there can be only one direction given in these proceedings: the  
19 documentation containing the information must be immediately returned to  
20 First Cayman Bank as the fiduciaries on behalf of the principals who do not  
21 consent. No copies of that information are to be retained by anyone,  
22 including the legal advisers of the applicants. Unwitting though it was, I am  
23 satisfied that the last paragraph of the letter (ie: that of 10th September 1997  
24 from W.S. Walker & Co. to FCB) conveying the order of this court to FCB  
25 may well have induced the breach as that order directs disclosure to the  
26 plaintiffs by others who are not<sup>←</sup> named as parties to the order. The order was  
27 to have been brought to FCB’s attention for no other purpose but to notify  
28 them of its other injunctive provisions. If the breach was induced by FCB’s

1 misinterpretation of the order one must be moved to observe that the matter  
2 would have been better handled by bringing to FCB's attention the aspect of  
3 the order relevant to it.. That does not, of course, excuse FCB who should  
4 have closely read and strictly complied with the terms of the order. Those  
5 terms do not authorise disclosure of any confidential information by FCB,  
6 let alone the provision by FCB of the many pages of confidential  
7 documentation which it did provide to the applicant's attorneys.

8

9 As copies of the documentation have been provided to parties and to the  
10 court, I direct that the court file be kept closed until further order or direction  
11 of the court, and that all copies of the documents in the possession of  
12 counsel or of the parties be submitted to the Clerk of the Court for safe-  
13 keeping on the court file in the same manner. Any other copies made from  
14 the documents disclosed are to be destroyed.

15

16 I give these directions instead of one for the immediate destruction of all  
17 copies as I regard the copies on the court file as a matter now of the record  
18 of the court and in respect of which disposal must occur in accordance with  
19 the rules of process.

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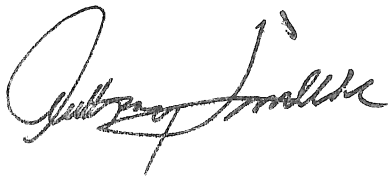
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Anthony Smellie  
JUDGE OF THE GRAND COURT



Dated this 24th day of November 1997