

defendant is determined to hide his assets from his creditors. That in the present circumstances of the case an order ought to be granted that permits the plaintiff acting by his Attorneys Maples and Calder to inspect and take copies of the books and records removed from the Defendants home by the Cayman police with respect to the extradition proceedings now pending in the Magistrate's Court against the Defendant for his extradition to Switzerland to face his creditors.....

I agree that this is not a type of order for discovery that a Court would make in normal circumstances but these are not normal circumstances. We have a situation in which the defendant claims he has no assets. He is indebted to his creditors for millions of dollars, he has been made bankrupt, he left Switzerland on 10th August 1993 rather than face his creditors. Before his bankruptcy on 5th November 1993 he was presumably a successful businessman and owned or had interest in various companies some of which hold real estate in the Cayman Islands. He is now resisting with great vigor attempts to have him extradited to Switzerland to face his creditors. It is therefore of critical importance that some means be found to discover and determine the true position as to his assets. If he has no assets at present as claimed how were those assets disposed of and to whom, what were the circumstances of such disposal. The answers to these questions are of paramount importance and should be determined speedily and with a minimum of delay."

The inspection and taking of copies took place. In the light of what was found, a new action, No. 266/96 was begun by Laager against Peter and Barbara Kruger. Barbara is Peter's wife and the action was for declarations that Laager was entitled to enforce the judgment debt against assets described in detail in schedules to the endorsement to the writ. The thrust of the claim is that to the extent that transfers were made to Barbara Kruger and/or other nominees it was with intent to defraud creditors and that the structure and ownership of assets through companies is a sham devised by Peter Kruger to defraud his creditors.

All this is in aid of enforcement of the judgment obtained in Cause No. 77/96. A Mareva Injunction was obtained ex-parte in Cause 266/96, to which an amended version of the schedules to the writ was attached.

The plaintiff now applies, in Cause No. 77/96 for leave to use information obtained in discovery in that action (that is to say the matters set out in the schedules to the Mareva injunction obtained in No. 266) for the purposes of an application intended to be made in a proceeding (Case No. 94-22487) pending in the Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida between Andre Laager as plaintiff and Peter Kruger as defendant for the purposes of enforcing in that jurisdiction an ex parte order made by this court in the related action (Cause No. 266 of 1996) pending between Andre Laager as plaintiff and Peter and Barbara Kruger as defendants.

The application was opposed on the ground that it was improper to use the information obtained for the purposes of Cause No. 77/96 in order to pursue the later action, No. 266, and that the later action was in consequence liable to be struck out as an abuse of the process of the court. It is well established that a party who obtains discovery may use the documents disclosed to him only for the proper purposes of conducting his own case and there is an implied undertaking by him not to use them for any collateral or ulterior purpose. Any misuse of the documents may be restrained by injunction or punished as a contempt. An action

based on a misused document will, ordinarily, be dismissed as an abuse of the process of the court. However, the implied undertaking not to use documents disclosed on discovery for any collateral or ulterior purpose may, in exceptional circumstances and on the application of the party obtaining discovery, be relaxed or modified by the court. See note 24/1/3 at page 432 of the 1995 issue of the Supreme Court Practice.

Mr. Jones who conducted the argument before Williams J has indicated to me, and of course I accept what he says, that Williams J was well aware of the purpose for which discovery was being sought. Indeed that is quite clear from the way he expressed himself in his judgment. I was equally well aware when I granted the Mareva Injunction in Cause 266/96 that it was in aid of enforcement of the judgment in Cause No. 77 against assets which were in reality those of the defendant in that action. It did not occur to me then that this was a collateral or ulterior purpose and now that the point has been raised I find no reason to think that it was. In any event, I believe that if an application to relax or modify the implied undertaking had been made it was inconceivable that it would not have been granted.

All that the plaintiff in both actions seeks to do is use the Order obtained in Cause No. 266/96 in support of an application to a Circuit Court in Florida that it be recognized and enforced in the State of Florida. There is no need for the affidavit filed in support of the application for the Cayman Order to be

produced as it is not a new action. It is an application for enforcement of an order already obtained in Cayman.

There is in my judgment no element of oppression in this and for this and the other reasons which I have set out in this ruling I make the order in terms of the Plaintiff's summons dated 3rd June in Cause No. 77/96.



Dated 6th June 1996

G.E. Harre

Chief Justice

