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23/5/96.

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
CAUSE NO:245 of 1995

IN CHAMBERS

IN THE MATTER OF  
THE REGISTERED LAND LAW (REVISED)

BETWEEN :	HAROLD E. BROWN	PLAINTIFF
AND :	(1) GREEN THUMB NURSERY & LANDSCAPING LTD (hereinafter "Green Thumb")	FIRST DEFENDANT
	(2) RAPHAELLENA LIMITED (hereinafter "Raphaellena")	SECOND DEFENDANT
	(3) BARCLAYS BANK PLC (hereinafter "Barclays")	THIRD DEFENDANT
	(4) GODFREY DAWKINS (hereinafter "Dawkins")	FOURTH DEFENDANT
	(5) STANLEY SCOTT (hereinafter "Scott")	FIFTH DEFENDANT

ORDERS

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 1996, May 10, 13 & 16  
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APPEARANCES: Mr. Stephen Hellman for the 1st, 2nd, & 4th  
Applicants/Defendants.

Mr. Peter Broadhurst for the Respondent/Plaintiff



The Third Defendant not appearing

Mr. Oliver Watler for the 5th Defendant.

By summons dated 16th April, 1996 the 4th Defendant sought the following Orders that :-

1. This action be stayed pending the conclusion of the criminal investigation and any subsequent prosecution of the Fourth defendant arising from the allegation of fraudulent conduct by him which form the subject matter of this action.
2. There be such further or other relief as may be just.
3. There be liberty to apply.
4. The costs of this application be costs in the cause.

The plaintiff claims that he owned several plots of land in the Cayman Islands and he alleges that several of those plots of land were fraudulently transferred without his knowledge and /or consent by Dawkins. That he made this discovery on or about the 1st week of May 1995. The plaintiff thereafter reported the matter to the police and as a result Dawkins was arrested on 12th May 1995 and has been on bail ever since.

On the said 12th May 1995 Detective Superintendent David Gooding



carried out an interview with Dawkins which interview is exhibited with Mr. Hellman's affidavit as exhibit SG-H 2. In this interview Dawkins denied that he committed any fraudulent acts and that the transfers were proper and genuine.

All the defendants in the proceedings have filed their defence, there has been an exchange of documents all the interlocutory proceedings have been concluded, the pleadings have been closed and the case is set for trial on the 21st May, 1996.

I am informed by Mr. Broadhurst that this date was fixed as long ago as October 1995, that at that time he tried to obtain a trial date in January 1996 but that Counsel for the defendants did not find the January date convenient.

Mr. Hellman for the 4th Defendant Dawkins now seeks to have the Court exercise its discretion in favour of the defendant Dawkins to have the civil proceedings which is to be commenced within a matter of days stayed pending the conclusion of the criminal investigations and any subsequent prosecution of Dawkins arising from the allegations of fraudulent conduct by him which forms the subject matter of this action.

Mr. Hellman contends that there is a real risk that Dawkins will suffer prejudice in any criminal trial of this matter if the civil trial is taken first and he concedes that the onus is on the Defendant Dawkins who seeks the stay to show that it is just and



convenient that the Plaintiff's right to have his claim decided should be interfered with.

Mr. Hellman also conceded that the Court in exercising its discretion is required to balance the justice of the cause between the parties taking into account all relevant factors.

In support of his arguments Mr. Hellman cited the following authorities:-

1. Bank of Jamaica v Dextra Bank & Trust Co. Ltd, No 61/94 unreported transcript p. 5 11 25-30, C.A. Jamaica .
2. Jefferson Ltd v Bhetcha (1979) 2 A.E.R. p 1108 at p 1113 paras b-e.
3. Avalon Tours Ltd v A.G. of the Cayman Islands, Cause No 21/94 unreported, transcript p 311 21-24, G.C.

Mr. Hellman further submitted that there is a real risk that the publicity generated by the civil proceedings would prejudice potential jurors against Dawkins in any subsequent criminal trial.

Mr. Broadhurst for the Plaintiff vigorously opposes the application. He submitted that no prejudice would be caused by Dawkins disclosing his defence in that he has already done so. That in addition to that Dawkins have given a statement to the police. That the matter has



been reported to the police approximately one year now and no charges have been laid against Dawkins.

Mr. Broadhurst submitted that there is no concurrent criminal proceedings taking place, that no charge has been laid and that there was no application to stay prior to the filing of any defence so as to protect and preserve the defendants right to silence.

Mr. Broadhurst also relied on the Jefferson v Bhetcha case as well as the Avalon Tours case.

So far as the issue of publicity is concerned Mr. Broadhurst submitted that in the Cayman Islands media attention does not generally focus on civil cases.

In my view the Dextra Bank and the Bank of Jamaica case is only helpful in so far as it enunciated the principles to be applied where a defendant in a civil case is also a defendant in concurrent criminal proceedings. The Bank of Jamaica was not a defendant in any concurrent criminal proceedings with respect to the issue in question and so the Court of Appeal affirmed the decision of Harris, J. in refusing the application of the Bank of Jamaica to stay the civil proceedings until the criminal proceedings had been determined.

In the Avalon Tours case it was the plaintiffs in the civil case who were face with concurrent criminal proceedings in the summary court. However, it was not the plaintiffs who sought the order for a stay in



the civil proceedings nor did they alleged that they would be prejudice by the concurrent proceedings. It was the Attorney General a defendant in the civil proceedings who sought a stay in the civil proceedings. Schofield, J. in balancing the respective interest of the parties stayed the summary criminal proceedings and allowed the civil proceedings to proceed.

The leading authority on these type of proceedings is Jefferson v. Bhetcha to which I have earlier alluded. In that case one of the matters which arose for consideration was with respect to the right of silence in the criminal charge. That issue does not arise in this case because the defendant Dawkins has already filed a defence and in addition has given an interview with the police in which he denied all the alleged fraudulent conduct.

Another important factor in that case was whether there was a real, and not merely a potential, danger that the disclosure of the defence in the civil action would lead to a potential miscarriage of justice in the criminal proceedings.

In that case Megaw, L.J. at page 1113 letter g had this to say:-

"Of course, one factor to be taken into account, and it may well be a very important factor, is whether there is a real danger of the causing of injustice in the criminal proceedings. There may be cases (No doubt there are) where that discretion should be exercised. In my view it would



be wrong and undesirable to attempt to define in the abstract what are the relevant factors. By way of example, a relevant factor telling in favour of the defendant might well be the fact that the civil action, or some step in it, would be likely to obtain such publicity as might sensibly be expected to reach, and to influence, persons who would or might be jurors in criminal proceedings. It may be that, if the criminal proceedings were likely to be heard in a very short time (such as was the fact in the Wonder Heat case in The Victoria Supreme Court) it would be fair and sensibly to postpone the hearing of the civil action.....".

Mr. Hellman in his submissions did refer to the question of publicity and how that may impact on potential jurors to a criminal trial resulting in prejudice to the defendant .

It should be noted Megaw L.J. in giving that example did couple it with the criminal concurrent proceedings being heard within a short time. That is not the situation in this case, at present the defendant Dawkins has not been charged with any criminal offence with respect to this matter and there is no indication as to whether he will be charged and if so when. The issue at present is merely one of speculation, and even if he were to be charged bearing in mind the state of the criminal list in this jurisdiction it would be some considerable time before the case would come up for trial. Further no authorities have been cited to me in which there has not been



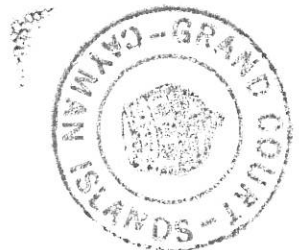
concurrent civil and <sup>criminal</sup> legal proceedings in which the Court in its discretion has stayed the civil proceedings . I do not agree with Mr. Hellman that the case of R v McGregor (1967) 2 A.E.R. at pg 267 meet that test. That case was dealing with a completely different issue as to whether on a retrial of the defendant in a previous criminal trial evidence given by the defendant at the earlier trial on oath was admissable against him at the later trial.

Although the population in the Cayman Islands is relatively small there is not much publicity given generally to civil matters. In addition~~al~~ in my judgment the longer the delay in the hearing of any criminal matter the less the prejudice even if there were eventually to be a criminal charge.

In Bhecha's case although there were concurrent civil and criminal proceedings the Court refused the application to stay the civil proceedings .

The learned author of Halsburys Vol 37 4th Edition page 325 at paragraph 437 had this to say with regard to the nature of stay of proceedings:-

"The order is made generally in the exercise of the Court's discretionary jurisdiction , and by way of summary process, that is without a trial on the substantive merits of the case, and, at any rate in the exercise of its inherent jurisdiction, an order of stay of proceedings is made very



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sparingly and only in  
exceptional circumstances".

In the same Vol & Edition of Halsbury paragraph 437 note 5 at page 326 in Lawrence v Lord Norreys (1890) 15 App. Cas 210 at 219, H.L. per Lord Hershell: "The court will exercise great care and circumspection so as not to drive the plaintiff from the judgment seat."

I do not propose to rely on the Canadian authorities cited by Mr. Broadhurst as in my view they require a higher standard than does, the English, Jamaican and Cayman authorities in that the defendant must show extra ordinary or exceptional circumstances before he can obtain a stay.

The allegation of fraudulent conduct against the defendant Dawkins relates to approximately 9 parcels of land with an approximate value of over US\$9,000,000.00. The defendant Dawkins contends that for 6 of those lots he paid the plaintiff approximately some US\$200,000.00 which in terms of the value of the land appears to be a paltry sum.

The defendant Dawkins is about 28 years old while the plaintiff is 73 years old and in failing health, had a heart attack, and a partial hearing transplant. Has suffered several strokes, has failing eye sight due to his diabetic condition as well as cataracts in both eyes and is presently in a wheel chair.

This application can properly be described as coming at the eleventh



hour. Taking all the circumstances into account I can see no real risk of prejudice to the defendant Dawkins and bearing in mind that in the exercise of my discretion the Court is required to balance justice between the parties taking into account all relevant factors. I decline to exercise my discretion in favour of the defendant Dawkins and accordingly the application for a stay of the civil proceeding set down for trial on the 21st instant is refused with costs to the plaintiff to be agreed and if not agreed taxed.

Mr. Watler for the 5th Defendant Scott had indicated to the Court that with respect to these proceedings he took a neutral position and was prepared to abide by the order of the Court. It is ordered that costs as between the 4th & 5th defendants be costs in the cause.

Dated this 16th day of May, 1996.



Lloyd G. Williams, Q.C.

Judge of the Grand Court

