

CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO. 205/94



LEGAL DEPARTMENT
CAYMAN ISLANDS GOVERNMENT
SEP 22 1994
FILE -
COUNSEL - *Du*

IN THE MATTER OF THE CONFIDENTIAL RELATIONSHIPS (PRESERVATIONS) LAW
(THE LAW) 1976 (as amended)

AND

IN THE MATTER OF AN APPLICATION BY INTERNATIONAL UNDERWRITING MANAGERS
(CAYMAN) LTD (I.U.M.) AND DAVID M.L. ROBERTS FOR DIRECTIONS UNDER
SECTION 3(A) OF THE LAW

Mr. Roger Nelson for the applicants

Mr. William Helfrecht and Mr. Samuel Jackson of the Attorney-General's
Chambers (as amici curiae)

Mr. Neil Timms (by invitation of the court) on behalf of the
Liquidators of American Emerald Insurance Company Ltd (In
Liquidation).

BEFORE SMELLIE J

RULING

The applicants bring this application for directions pursuant to
section 3A of the Law in response to interrogatories and inspection
demands (demands for discovery of documentary evidence) which have
been issued to them in the context of proceedings in San Francisco,
California in which they are named as defendants.

Section 3A mandates that any person required to give into evidence
confidential information (as defined in the Law) must first obtain

directions in that regard from this court.

The plaintiff in the California proceedings, Aguillar and Sebastinelli, a professional law corporation, is described as the "propounding party" seeking the interrogatories and discovery.

Mr. Nelson states on the applicants behalf, that they come to this court in a neutral position. His clients have been advised, and, as a matter of Cayman law it appears correctly so, that the information sought from them by way of the interrogatories and discovery demands, is confidential information belonging to their principals and to clients of their principals.

Those principals are American Emerald insurance Company Ltd (in liquidation) "AEICL") and D.H. Consultants Ltd ("D.H."). Both principals are Cayman Islands companies and were, at relevant times, managed by I.U.M. which carries on the business of Insurance Companies Management in these Islands.

AEICL and, by inference, D.H. along with the respondents and others are joined as defendants to the California proceedings.

D.H. is specifically referred to in the interrogatories and discovery demands although in that regard a cryptic reference to "D.L. Associates Ltd" appears in the complaint itself filed by the plaintiff. It is inferred that the reference to D.L. Associates Ltd in the complaint is intended to be a reference to D.H.

Prior to its going into voluntary liquidation AEICL, although incorporated and licensed in the Cayman Islands, carried on business in California where the plaintiff, Aguillar and Sebastinelli, provided AEICL with professional legal services.

The purported cause of action against AEICL and D.H. in the Californian proceedings, is stated in general terms, for legal fees which Aguillar and Sebastinelli claim are owed to them by those

companies. It appears that the cause of action against the respondents respectively as the professional managers of AEICL and D.H. is brought notwithstanding that there appears to be no personal liability on their part for either entity.

The applicants have been advised, nonetheless, that they are obliged to respond to the demands for interrogatories and discovery. Hence this application to this court for directions.

In considering what directions to give this court has been invited to examine the background to the Californian proceedings and to form a view of the plaintiff's immediate objective in those proceedings in taking the cause of action it has embarked upon.

As a matter of judicial comity this court is obliged to acknowledge the primary jurisdiction of the Californian court in respect of those proceedings. They are properly instituted before that court and no question of *forum non conveniens* has arisen. As the matter stands the final merits of the action will fall to be determined in the Californian proceedings.

Nonetheless section 2A (6) (a) of the Law requires that in considering what order to make under that section a Judge shall have regard to, among other things --

"whether such order would operate as a denial of the rights of any person in the enforcement of a just claim."

It has been submitted, and I agree, that this court is thereby enjoined to consider the repercussions, of any directions it might give, upon the proceedings which the evidence sought is intended to advance and to seek to ensure that a just cause of action is not improperly defeated or frustrated by directions which would deny access to relevant evidence.

Those imperatives must also, of course, be considered in the context

of any public policy concerns which arise and as addressed by the Attorney-General and also with due regard to the legal or beneficial interests of innocent third parties which may be affected by the directions to be given.

With those considerations at the fore, it is axiomatic that for present purposes an examination of the background and likely merits or shortcomings of the main cause of action, in this case the Californian proceedings, is required. This is an approach which this court has taken in many matters in the past.

As already noted the underlying cause of action is for attorney fees claimed to be owed by AEICL as a client of the plaintiff. That basic premise notwithstanding, the plaintiff's pleadings are framed in terms of at least ten separate points of claim, termed "causes of action" including breach of contract, conspiracy to defraud, intentional misrepresentation and breach of covenant of good faith and fair dealing. Together those points of claim seek to join the various defendants, said to be related to or connected with the primary defendant AEICL in one way or another, in a scheme designed to defraud the plaintiff of the sum of \$350,000.00 claimed to be owed by way of legal fees or expenses.

Given its basic underlying premise, it is, on its face, a most sophisticated and elaborate pleading.

The respondents, as defendants also in the action, have naturally enough expressed the view that it is a spurious action.

The applicant Mr. Roberts informs this court, in his affidavit in support of the application for directions, that AEICL (either in its own right or by a major shareholder) is or will be counterclaiming for damages against the plaintiff alleging, among other things, that legal advice provided by the plaintiff was negligent and caused or contributed to the financial difficulties which gave rise to AEICL's decision to go into voluntary liquidation. That liquidation is now

continuing in the Cayman Islands under supervision of this court.

Mr. Roberts is also informed that the legal fees claimed by the plaintiffs are also being disputed on the basis that they do not reflect time actually spent as claimed.

Further relevant background should be noted.

The plaintiff has already sought discovery orders in the Californian court against AEICL, in furtherance of its claim, but has failed to get those orders.

Moreover, the Californian court has ordered a general stay of those proceedings, which stay, the evidence reveals, remained in place at the time of the application to this court and, in effect, had barred the plaintiff from advancing the action against AEICL while in liquidation.

This summons for discovery against the applicants is therefore clearly a change of tact on the part of the plaintiff. The demands for interrogatories and discovery are process which the plaintiff Aguillar and Sebastinelli were able to procure and issue in the Californian proceedings without an order of the Californian court. Yet, I am informed, it is process of a kind which requires response once it has been issued and the respondents have been so advised notwithstanding the general stay placed on the proceedings by the court in California.

Against that background I came to the view that the demands for discovery and interrogatories have all the hallmarks of a fishing expedition - a patent attempt to extricate information at the pre-trial stage with only a hope that something of evidential value will emerge.

That is a view also expressed on behalf of the Attorney-General and by the counsel for the respondents, in these proceedings.

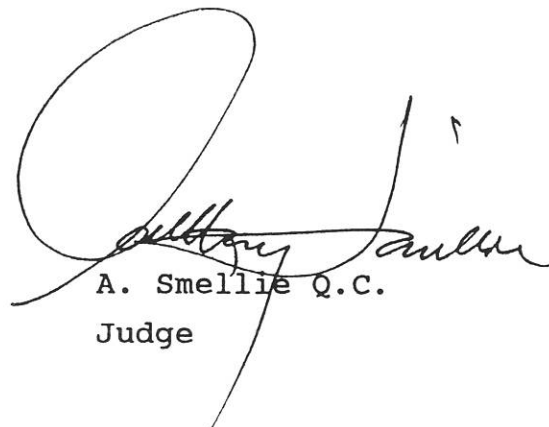
Moreover, and although only by a degree of percipiency, the criticism has also been raised that this unilateral foray by the plaintiff, launched on the face of it contrary even to the stay placed by the Californian court, ultimately serves only to embarrass and compromise AEICL in its claim in professional negligence against the plaintiffs by embroiling its Cayman officers and functionaries in time consuming and costly litigation.

I do not need finally to decide whether that might be a proper view to reach having regard to the factual background.

Suffice it to say that this court was not persuaded that the information being sought was genuinely being sought with a view entirely to the enforcement or advancement of a just claim. Not least of all this court felt compelled to note that a proper claim for legal fees, which is billable by reference to time actually spent and work done, is one which should be amenable to strict proof primarily by reference to documentation and other evidence generated by and in the custody of the plaintiff itself.

Against the background outlined and for all the foregoing reasons the decision of this court, as expressed in the directions given on 15th July 1994, is that the evidence sought, in the demand for interrogatories and discovery issued to the respondents, shall not be given.

20th September 1994



A. Smellie Q.C.
Judge