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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

Cause 430 of 1992

In Chambers

BETWEEN MAYER DIAMOND INTERIM RECEIVER/MANAGER OF
 160088 CANADA INC ET AL

AND SOCOA INTERNATIONAL LIMITED

For Plaintiff: Mr. J. P. Telfer and Mr. M. Parkinson
For Respondent: Mr. A. Turner

HARRE C. J. RULING

I granted an adjournment of paragraph 3 of the plaintiff's summons dated 2nd March 1994 in order to enable the respondent's attorney to take instructions on an affidavit by the plaintiff, supported by voluminous exhibits, which had only been served upon him on 25th April. Instructions are, he says, needed from a certain Mr. Garcia, who claims to be sole director of the respondent, Socoa International Ltd., and transferee of the ordinary shares of that company formerly owned by members of the Pinat family. The plaintiff claims that these same shares are transferred to him by order of the Quebec Supreme Court.

I was taken through this affidavit evidence in some detail on behalf of both parties. In opposition to the application for the adjournment it was argued that the purpose of the affidavit was to file documents to clarify the situation as already known and in particular to indicate what documents arising from Canadian proceedings in which Socoa, a Cayman company, was never a party had been sent to Socoa.

On behalf of Socoa, it was acknowledged that its attorneys had received copies of several judgments but that there were other issues, including points arising from transcripts of parts of the proceedings in Canada, which could not properly be dealt with without specific instructions, and possibly a further affidavit. It was on the basis

of my acceptance of that that I granted the application for the adjournment, on terms to be established at the resumed hearing this afternoon.

The adjournment point was argued without prejudice to the respondent's cross-summons for a general stay of the proceedings until Standal's Patents Ltd. pay costs due to the defendant under orders of this court in causes Nos. 16 and 18 of 1988. However, the present plaintiff is not Standal's Patents Ltd. although it was on the motion of that company that he was appointed. He is a receiver and manager appointed by a Canadian Court in respect of the numbered Canadian Companies named in this suit. Standal's Patents Ltd. will rank *pari passu* with other creditors of the companies in respect of sums which he recovers. That is, in my view, far removed from the case of a person, as in Bettinson v. Bettinson (1965) Ch 165, who is subject to the solutary general rule that the court will not entertain an application by a person who is in contempt of court until he has purged himself of that contempt. Of course the power of a court to order a stay extends to a greater variety of circumstances than that. It is a discretionary jurisdiction to interfere where such a fundamental interruption of the right of a party to take his case to trial on the basis of the substantive merits is justified.

From the nineteenth century cases cited on behalf of the respondent, I refer only to the following passage from the speech of Lord Herschell in M'Cabe v Bank of Ireland (1889) 14 App Cas at p 415 -

"The only question remaining is whether the order was right in so far as it stayed the proceedings in the second action until the costs in the first action had been paid. Now, my Lords, I find that it was laid down in a recent case in the Court of Appeal, Martin v. Earl Beauchamp (1883), 25 Ch D 12 that "the rule is established that where a plaintiff having failed in one action commences a second action for the same matter the second action must be stayed until the costs of the first action have been paid;" and even although the actions were not between precisely the same parties or persons suing in the same capacity, the case was held to be within the rule inasmuch as the plaintiff there was "suing substantially by virtue of the same alleged title." It cannot be denied that in the present case the parties are the same, and that the plaintiff is "suing substantially by virtue of the same alleged title;".

In my view the present plaintiff is not suing "substantially by the same alleged title" as Standal's Patents Ltd. at all. He is a court appointed receiver whose position should be independently recognised and respected. The orders of the Grand court are indeed also to be respected and complied with, but imposing a sanction on this receiver is not an appropriate way of achieving this. I decline therefore to impose the orders sought in paragraphs 1 and 2 of the respondent's summons.

As to security for the respondents' costs in the present matter, I take account again of the fact that the plaintiff is an officer of the Canadian Court and has, through his attorney, given a personal undertaking to pay. The unhappy history relating to payment by Standal's Patents Ltd. is not to be laid at his door. There are assets under his control in the form of preferred shares in Socoa International Ltd. in this jurisdiction, though in the event of his failing in this action I would not set much store upon their value. All in all, however, I consider that justice is best served by declining to order the receiver to give security for costs in this matter. His undertaking, as an officer of the Canadian Court, suffices.

Against that background the respondent does not resist the orders sought in paragraphs 1 and 2 of the plaintiff's summons, which were as follows -

- "1. That Mr. Mayer Diamond (of 345 Victoria Avenue, Suite 400, WestMount, Quebec, Canada) having previously been recognised by order of this Court dated 1st December 1992 as the Interim Receiver/Manager of 160088 Canada Inc., 151095 Canada Inc. and 152931 Canada Inc., be now recognised as the Receiver/manager of 160088 Canada Inc., 151095 Canada Inc. and 152931 Canada Inc. pursuant to the Order of the Superior Court of the Province of Quebec dated 22nd December 1993. That Mr. Mayer Diamond do have all the powers conferred upon him by the final judgment of the Honourable Mr. Justice Roland Tremblay J.S.C. in the Quebec Superior Court of the Province of Quebec in Cause No. 500-05-000930-907 dated 22nd December 1993, a copy of which Judgment is exhibited to the Affidavit of John Parr Telfer sworn on 22nd February 1994."
- 2.

I make those orders. Paragraph 3 of the plaintiff's summons is

adjourned for hearing with an estimated time of 2 1/2 days, commencing 17th May. Costs of summons reserved to the adjourned hearing. The defendant's summons for a stay and security for costs is dismissed. Leave to appeal granted in respect of dismissal of the application for security for costs. Costs of summons in the cause.



G. E. Harre
Chief Justice

3rd May, 1994.