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

CAUSE # 230 of 1989

IN THE MATTER OF CAYMAN CAPITAL TRUST COMPANY

and

IN THE MATTER OF THE COMPANIES LAW, CAP 22

and

IN THE MATTER OF THE PETITION OF THE ACTING INSPECTOR OF BANKS  
FOR THE COMPULSORY WINDING UP OF THE ABOVENAMED COMPANY

For Mr. Milford A. Campbell: Sir Fred A. Phillips Q.C.  
and Ms. Sheridan Brooks  
For the liquidator: Mr. Sean McCann

HARRE C.J.

RULING

This record is compiled from the notes of an oral ruling which I delivered on 15th March 1994.

The liquidator indicated that he had no funds to deal with the application based on paragraph 2 and 3 of the summons of Mr. Milford A. Campbell dated 20th October 1993. Those paragraphs read as follows -

- "2. that the misfeasance claim brought against Mr. Milford A. Campbell in this matter be struck out on the basis that it is scandalous, frivolous or vexatious or alternatively that it is an abuse of the process of this Honourable Court, in that it discloses no reasonable cause of action, in accordance with Rule 41 (1) of the Grand Court (Civil Procedure) Rules;
- 3. that the costs of this Application, and the costs in this matter generally, be awarded to Mr. Milford A. Campbell."

Accordingly, the liquidator neither consented to nor resisted the application.

The question then arose as to what was the appropriate order. The liquidator undertook to file notice of discontinuance of the misfeasance proceedings against Mr. Campbell forthwith. To hear the other side in full and make an order on the basis of hearing one side only would have involved not only additional expense but a finding one way or the other as to whether those proceedings were scandalous, frivolous, vexatious or an abuse of process. That is of more than academic interest in that Mr. Campbell wishes to have an enquiry as to damages based on the plaintiff's undertaking which was given in the usual form at the time of the granting of the Mareva injunction. Mr. Campbell's counsel acknowledged that the filing of notice of discontinuance and the striking out of the misfeasance summons would have the same result of bringing the misfeasance proceedings to an end.

He also referred to a failure to file a notice to defend as being a basis for a default judgment, which would be final as to the striking out of the misfeasance summons but interlocutory as to the assessment of damages. But that is not the situation here. This is a chambers summons, supported and responded to by affidavit, which has already been dealt with in part on the issue of the discharge of the injunction. It was at the behest of Mr. Campbell's counsel that the whole matter was not dealt with at the same time. That is confirmed in counsel's affidavit dated 11th March 1994. Now the liquidator finds himself without funds and cannot do more at present.

The liquidator's attorney properly refrained from filing a notice of discontinuance before the hearing, at which he indicated his client's predicament. My view as to the proper course in relation to paragraph 2 of Mr. Campbell's summons was that it should be adjourned sine die on the liquidator's undertaking, which he had already given, to file notice of discontinuance of the misfeasance summons forthwith.

That left several issues to be dealt with. The first was Mr. Campbell's application for an enquiry as to damages. The misfeasance summons had not been dealt with on the merits. The injunction was

discharged because of subsequent delays in bringing the misfeasance summons on. I was not referred to any authority with regard to the ordering of an enquiry as to damages but I made my own reference to the White Book, 1991 edition, p. 504, note 29/1/14 and to the case there referred to, which I found useful. The note in the White Book reads as follows -

"An inquiry as to damages will not be ordered until either the plaintiff has failed on the merits at trial or it was established before the trial that the injunction ought not to have been granted in the first instance (Ushers Brewery Ltd. P.S. King & Co. (Finance) Ltd. [1972] 1 Ch. 148 [1971] 2 All E.R. 468).

It was not appropriate to make an order for an enquiry as to damages following the hearing, not least because the liquidator was not in a position to deal with it. Mr. Campbell was, however, given liberty to apply for such an enquiry. It would be quite wrong, in my view, for the liquidator to be without funds to address, on such an application, the issue of whether any damages at all ought to be paid and I express the view strongly to Government that defending proceedings as to damages should be regarded as "basic costs of liquidating CCTC". The same, in my view, should apply to any order for costs made against the liquidator in the proceedings so far. I confess myself in some residual doubt, in view of the history of these proceedings, and in particular of what I am about to say on an allegation of contempt which was made, as to what the appropriate order for costs should be. I will rule separately on that, the purpose of what I say today being to deal with as many issues as possible with expedition in order to minimise these very costs.

I then dealt with the affidavit sworn by Sir Fred Phillips which was therein described as "relative to certain contempt proceedings". I shared the surprise expressed on behalf of the liquidator over this document. It is a freestanding affidavit and there was no motion relating to any contempt before the court. It appears to be an invitation to the court to act of its own motion. The matter of which complaint was made is the liquidators report dated 25th January 1994 to the creditors of Cayman Capital Trust Company of which the

Court received a copy. In it comments were made about Mr. Milford Campbell and the litigation involving him. I was informed by his counsel that Mr. Campbell wished to write his own rebuttal but was advised that this would compound the alleged contempt. If that were so, I had difficulty in understanding why the same objection should not be made to the arguments on the merits in the affidavit sworn by his counsel.

In my view the liquidator, in addressing his duty to keep the creditors informed of the progress of the liquidation, has given his account of the pending litigation to persons who have a genuine interest in it. There was, in my view, no likelihood that pending litigation could thereby be prejudiced. I found no contempt of court in the liquidator's report to the creditors.

I have to say that there were a number of matters in counsel's affidavit which caused me concern. In the first place, passages which purport to be direct quotations from the report, or elsewhere, were not.

Secondly, I refer to paragraph 20. I do not interpret the liquidator's report to which reference is there made in the way I was invited to do and found it surprising that any attorney should state on oath that his client holds no responsibility for the very matters which are an issue in litigation. Moreover, I found no basis in the second paragraph on page 8 of the report for the allegations made in paragraph 19 of the affidavit.

Of most concern to the Court were paragraphs 16 and 17 of the affidavit. The second sentence of paragraph 17 is misleading. It reads as follows -

"As an officer of this Court, I would only once more refer to the Solicitor General's letter to Mr. Orren Merren dated 24th September, 1991 informing him why no criminal charges could conceivably be preferred against Mr. Campbell viz., that the available evidence absolved him from any blame."

The letter did not say that at all. I will read the body of it in full -

"Further to your conversation with out Mr. Archie on 25th September 1991, I wish to confirm the Crown's present position in relation to this matter.

Having reviewed the available evidence we have concluded that it would not be appropriate to prefer any charges against your client, Mr. Milford Campbell. However, he was a director of Cayman Capital Trust Company and there are matters concerning the operation of that Company and his involvement with it both as Director/Shareholder and as a client which we wish to have clarified.

Accordingly we consider it proper to accept his offer of co-operation which has been extended through yourself, and to have the police interview Mr. Campbell with a view to obtaining a witness statement.

Should he travel to the Cayman Islands for that purpose or any other, I am authorised hereby to give formal undertaking on behalf of the Attorney General, that no criminal charges will be brought against him in connection with Cayman Capital Trust Corporation."

The affidavit is an unfortunate document. I leave it at that, save to the extent of saying that I found it lays no basis on which I would for one moment have considered granting the relief for which it asks - which is the grant of leave to have the liquidator committed for contempt of court. In those circumstances the fact that the liquidator was not in a position to deal with the allegations at the hearing was immaterial.



G. E. Harre  
Chief Justice

15th April 1994.