

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
BEFORE THE HON. THE CHIEF JUSTICE

CAUSE # 107 OF 1992

In the Matter of H of H Limited

and

In the Matter of the Companies
Law, Cap.22

Mr. Stubbs Q.C. with Mr. Alberga Q.C.,
and Mr. Rhin for the applicant
Ms C. Bridges for the respondent

MALONE C.J.

RULING

Objection was taken by Miss Bridges to the admission of an affidavit sworn to by a Mr. Bullmore who is an accountant. The objection in brief is that:

1. the applicant had time in which to serve the affidavit in compliance with the times fixed on the 13th April;
2. the applicant served the affidavit out of time; and
3. its late service will not permit of a reply.

It is not in question that the affidavit was served out of time as it was served on the 4th May at 5 p.m. and the directions provided for service not later than the 24th April. It is, however, also not in question that when the directions were given on the 13th April the magnitude of this case was not appreciated. It was not known by either Miss Bridges or Mr. Stubbs that there had been an extensive restructuring of the H of H group. Miss Bridges became aware of the restructuring on the 15th April without knowing the details of it and it was not until the 22nd April that Mr. Stubbs became aware of it. Then it was that Bruce Campbell & Co. were served with the Mulligan Memorandum on restructuring. A second Mulligan memorandum arrived on Sunday

the 26th April. I venture to think, that if on the 13th April the restructuring had then become known, the directions given on that day would have allowed for greater time for the service of affidavits. If I may say so, I think it remarkable that the affidavit in question which, I understand, expresses the opinion of an expert as to the effect of the restructuring on the value of the H of H group was served as early as the 4th May. It is the more remarkable when one bears in mind that in addition to the Mulligan memoranda there was other material in the form of lengthy affidavits that had to be considered.

To my mind the restructuring of the H of H group and the fact that it was not made known even to counsel for the applicant until the 15th April are features of high importance in this matter. I agree with Mr. Stubbs that to shut out evidence which is pertinent in these proceedings to those matters must be unfair. Accordingly I rule that the affidavit be admitted.

Date 6th May 1992.

Denis P. Malone

Sir Denis Malone.