

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO. 59/89

17-12-91

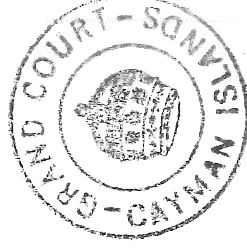
Mr. Andrew Jones for the Plaintiffs
Ms. Cherry Bridges for the Defendants

GUARDIAN BANK

ORDERS

Keith High (the first defendant) was a director and shareholder of Guardian Bank and Trust (Cayman) Ltd. (the first plaintiff) and a director of Cayman Corporate Services Ltd. (the second plaintiff). He was employed by the first plaintiff until 16th February, 1989. Fiduciary Trust (Cayman) Ltd. (the second defendant) was incorporated on the 13th December, 1988 by or on behalf of the first defendant and another. The day-to-day running of the second defendant is in the hands of the first defendant. In very basic terms the plaintiffs claim that the first defendant, in breach of contract and/or fiduciary duty, neglected his duties to the plaintiffs and failed to devote his energies to the discharge of his duties to them and instead devoted his energies to setting up the second defendant company. They also claim that he solicited customers from the plaintiffs and, indeed, a number of customers moved their business from the plaintiffs to the second defendant. It is further alleged that the first defendant made use of materials obtained in the course of his business with the plaintiffs. In short that he used his position with the plaintiffs and the knowledge and information he thereby gained to further his and the second defendant's ends.

Attached to this summons of the plaintiffs for specific discovery is a schedule indicating five classes of documents sought to be inspected by the plaintiffs. They are:

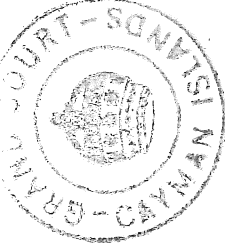


- (1) All documentation comprising or relating to the application by or on behalf of Fiduciary Trust (Cayman) Limited for a license to carry on trust business.
- (2) All invoices rendered by Fiduciary Trust (Cayman) Limited to the companies specified in Schedule A of the Re-Amended Statement of Claim, together with all covering letters sent with such invoices and all accounting records supporting the amounts specified in such invoices.
- (3) All time sheets maintained by Mr. Keith High for the period of one year after he commenced working full time for Fiduciary Trust (Cayman) Limited.
- (4) The audited financial statements and any management accounts of Fiduciary Trust (Cayman) Limited for the period from the commencement of its business to date.
- (5) All files relating to the companies specified in Schedule A to the Re-Amended Statement of Claim.
- (6) Alternatively, all correspondence, file notes and memoranda contained in the files relating to each of the companies specified in Schedule A to the Re-Amended Statement of Claim created during the periods (a) from 1st November, 1988 to 31st May, 1989 and (b) three months either side of the date of transfer to Fiduciary Trust (Company) Limited.

The defendants accept that the plaintiffs are entitled to inspect the documents at item (1).

Items (2) goes to damages. The plaintiffs contend that they are entitled to damages on the basis of the value of a portfolio of companies and investment funds equivalent to the companies and investment funds diverted or transferred from the plaintiffs. They maintain that such value is related to the annual income diverted from those companies or funds and therefore the invoices sought under item (2) should be liable to inspection. However, I am persuaded by the defendants that the plaintiffs should not be permitted to inspect these documents unless and until liability has been proved. I defer a decision on item (2) until liability has been determined.

It may be relevant to the determination the issue of how much energy the first defendant devoted to his duties to the plaintiffs to see how much time he devoted to his work with the second defendant. I order specific discovery in respect of



item (3), the time sheets maintained by the first defendant for the period of one year after he commenced working full time for the second defendant.

Item (4) again goes to damages and is not relevant to liability, save for this. The date the second defendant actually started operating its accounts, if it overlaps with the first plaintiffs employment with the plaintiffs, could be significant. I defer a decision on item (4) until liability is determined save that I order that the plaintiffs' attorney may inspect the opening balance of the accounts for the purpose of determining the date on which the accounts were opened. That inspection is subject to the conditions which I will later outline.

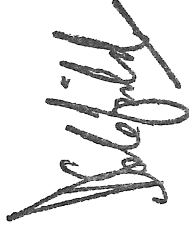
The plaintiffs argue that the information contained in the documents referred to at items (5) and (6) may be relevant to determination of the issue of whether the first plaintiff solicited business from them. Certainly some of those documents are potentially revealing if the plaintiffs allegations are true. On the other hand the defendants have an understandable reluctance to show the plaintiffs all documentation relating to a substantial number of their clients. Much of the information contained in those documents is none of the plaintiffs' business and it irrelevant to these proceedings. Clearly item (5) is too broadly worded. So is item (6) but during the course of argument on this summons the plaintiffs' attorney did indicate that he would give an undertaking not to divulge to the plaintiffs the contents of such documents as listed under item (6) without agreement of the defendants or order of the Court, if he were permitted to inspect them. That, I consider, is the solution to the issue.

I make an order as prayed in the summons filed 20th November 1991 in relation to items (1) and (3) of the schedule. I make an order in relation to the documents on the opening of the

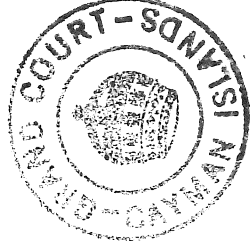
financial statements and management accounts of the second defendant and as to item (6) of the schedule, that within ~~21~~ ²⁵ days the documents may be inspected by the plaintiffs' attorney and copies of such documents are to be furnished to him if agreed by both parties to be relevant to liability in the trial. In the event of disagreement relevance is to be determined by the Court. This is, of course, on the attorney's undertaking not to divulge to his clients, without consent or order, the contents of any such document.

As already indicated. I defer a decision on the documents in item (2) and the balance of the documents in item (4) pending determination of liability.

The costs of this application will be costs in the cause.



D. Schofield



Dated this 17th day of December, 1991