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

THE 19TH JANUARY, 1989

CAUSE # 26 OF 1987

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 3A
OF THE CONFIDENTIAL RELATIONSHIPS (PRESERVATION) LAW 1976
(AS AMENDED)

Mr. J. Goudie Q.C and Mr. Hochauser and Miss Bridges for
Applicants (Jens Thune and Kristian Roll)

Miss S. Brooks for the Attorney General

Mr. M. Alberga for Defendants in C/397/86 (Guinness Mahon)

(No appearance by or on behalf of members of Reksten family)

COLLETT C.J.

RULING

The sole significant difference between the present 3A application and some ten others which have preceded it since July 1987, for permission to use the information disclosed pursuant to the Order of Hull J. dated 24th June 1987 otherwise than in the proceedings mentioned in that Order relates to the capacity in which the applicant trustees wish to use that information if leave is now granted them. They are the trustees of the bankrupt estate of the late Hilmar Reksten and it is in this capacity, of course, that they now are before this Court as Plaintiffs in Cause #397 of 1986 and in this same capacity that the information has been disclosed to them by the Guinness Mahon Defendants in that action. Co-incidentally, however, they are also trustees of the closely related but separate bankrupt estate of Hilmar's adopted son, Johan, and it is in that other capacity that they now seek leave to use the disclosed information in New York, firstly to take further depositions from a Mr. Sherman and

a Mr. Lunde and, secondly, to elicit discovery of documents from the Manufacturers and Traders Bank Inc., a New York bank.

It has been pointed out and it is not contested that if the two sets of trustees were different persona, the present application would of necessity had to have had two stages - first an application by the Hilmar's trustees for permission to disclose to the Johan Trustees and secondly an application by the latter, also under S. 3A of the Confidential Relationships (Preservation) Law for permission to use that same information in the proceedings which are pending or contemplated in New York. Procedurally the fortuitors coincidence of identity has enabled these steps to be telescoped. I see no insuperable difficulty about that as a matter of procedure.

However, it has also emerged that, if the substantive rights of third parties and the public interest in their preservation so far as confidentiality is concerned are to be properly protected, the Applicants in their capacity as trustees of the Johan estate should not be placed in a position to obtain leave to use the disclosed information by reason of the fortuitors procedural advantage they enjoy in circumstances in which, if they did not enjoy it, they would not have been entitled to obtain that leave. That involves a consideration by the Court of whether a refusal of the permission now sought would operate as a denial of the rights of the trustees of the Johan estate as such to enforce a just claim against him and/or third parties in the Johan bankruptcy proceedings, irrespective of the previous decision of HULL J. in favour of disclosure of the information in the first place to the Applicants in their capacity as trustees of the Hilmar estate.

I have, therefore, carefully considered the circumstances disclosed in the evidence provided by Mr. Bercov's affidavit in support of this application which is unchallenged. On the basis of this evidence I find that there is a strong prima facie case that the trustees of the estate of Johan Reksten do have a just claim against him and against various other

companies, anstalts and trusts worldwide set up by him and related members of his family with a view to concealing assets lawfully vested in the trustees in their capacity as such. Enforcement of that claim would be clearly impeded if I were to deny the applicants the use of the disclosed information in the contemplated New York proceedings.

This removes the principal objection to the leave now sought. It remains to deal with its form and scope.

A suggestion was put forward by counsel representing the Guinness Mahon Defendants that because the bulk of the disclosed documents is voluminous and in all probability only a small proportion will be ever needed for use in deposing Messrs. Sherman and Lunde in New York, the scope of the leave to be given should be limited not only to the specific purposes mentioned in the summons but also to specific documents or classes of these documents only. At first sight such a limitation appears reasonable but, on further consideration, the difficulties it would impose in the conduct of a meaningful cross-examination in practice rules it out of court. Then again, a suggestion emanating from Crown counsel that in seeking discovery from the New York branch, the use of the disclosed documents should be limited to references to one specific company only is on examination seen as likely only to put an artificial fetter upon the necessary process of the paper-chase of assets in which the trustees were engaged without preserving any meaningful right of innocent third parties to confidentiality. I also bear in mind that before any such discovery is ordered, the New York court, will need to be satisfied of its legality and propriety in the circumstances. This is a further safeguard.

Bearing all these considerations in mind I am minded to accede to the application made by the summons of 23rd December, 1988 in the terms of that summons. It is ordered accordingly and it is further ordered that the Trustees shall use their best endeavours to obtain in the New York proceedings appropriate orders protecting the confidentiality of all documents used

therein by reason of this order from disclosure to third parties
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other than professional advisers.

As to costs, all previous applications for permission to use have resulted in the costs of all parties being reserved to that of C/397/86. There is, however, force in the submission that this is not appropriate here where the Applicants are substantially interested in a different capacity to that of a party to that action. The matters are, however, closely related.

It is ordered that the Applicants shall bear their own costs of today. The costs of the Guinness Mahon Defendants and of the Attorney General only are reserved to those of C/397/86.

Undertakings to be included in the order on the part of the Applicants to serve Guinness Mahon's Defendants attorneys with copies of all testimony elicited from Messrs. Sherman and Lunde and from the Bank.

Dated the 19th January, 1989.

Chief Justice