

18-1-84(2)

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

ON THE 16TH, 17TH AND 18TH JANUARY, 1989

CAUSE #234 OF 1988

BETWEEN            THE NUGAN HAND BANK (In liquidation)    PLAINTIFF  
AND                    PRICE WATERHOUSE & CO & 10 OTHERS            DEFENDANTS

Mr.R. Green O.C. and Mr. R. Nelson for Plaintiff  
Mr.A. Jones for Defendants

COLLETT C.J.                    RULINGS.

There are two summons for directions in this actions before me - one issued by the Plaintiff and one by the Defendants. I will deal with the Plaintiff's summons first.

Paragraph 1 asks for four separate portions of the Re-Amended Defence and Counterclaim to be struck out. These comprise contentions of law which generically rely on the proposition that the alleged fraud and other wrongdoing of Messrs. Nugan and Hand are to be imputed to the Plaintiff Company

so that, regardless of any other considerations, the Plaintiff cannot succeed in recovering damages from the Defendants even if it succeeds at the trial in proving negligence, damage and a causal connection between the two. The Court should only strike out such a contention of law pleaded in this way if satisfied that it is almost incontestably bad in law. Despite the course approved by the House of Lords in Williams v Humbert Ltd. v W & M Trade Marks (Jersey) Ltd. (1980) A.C. 368, I consider that in this case it would be right to follow the general rule also approved of in the speech of Lord Templeman at p. 435 from Letter H: there are insufficient special circumstances here to justify a departure from it.

Having said this, I have, upon a consideration of counsel's arguments on both sides and of the authorities reached a conclusion that the legal proposition on which the Defendants seek to rely in these portions of the Defence are fundamentally bad in law. In particular Belmont Finance Corporation Ltd. v Williams Furniture Ltd and others (1979) Ch. 250 and Attorney General's Reference No. 2 of 1982 (1984) 1 O.B. 624 point convincingly to this conclusion. The reliance of counsel for the Defendant on the persuasive force of the Cenco Incorporated decision of the 7th Circuit Court of Appeals in Illinois U.S.A. to the contrary cannot survive the convincing explanation of the ratio of that decision by the same court in Schact v Brown, in the light of which it is seen as applicable only to its own particular circumstances which are not the circumstances predicated by the Defendants here.

Accordingly, I accede to the strike-out application and there will be an order in terms of paragraph 1 of the Plaintiff's summons.

Paragraph 2 asks for certain interrogatories to be administered to the Defendant. The Court here has a wide discretion to be exercised judicially in the light of principles which are fully discussed in the 1988 White Book at pp 450-453. Certain interrogatories are no longer asked for by the Plaintiff. Upon the remainder I rule in the Court's discretion as follows: Interrogatory No.1 is allowed, No. 2 is refused as seeking an opinion, Nos.3 - 14 inclusive are allowed, Nos.15-26 are abandoned, Nos. 27 - 29 inclusive are allowed Nos. 30 - 37 are abandoned, Nos. 38 - 67 inclusive are allowed, Nos. 68-74 inclusive are refused as oppressive having regard to their wide ranging scope: the passage of time (10 - 13 years) and the inherent unlikelihood that Mr. Harris will be able to give any realistic reply according to his recollection of oral conversations so long ago: No. 75 is allowed. Interrogatories to be answered within 28 days.

and better particulars. As to this aspect counsel have reached agreement and it will be ordered that those particulars agreed to be supplied by the Defendant be supplied within 28 days.

Paragraph 4 of the Summons is abandoned in light of developments since it was issued. Paragraph 5 asks for setting down and this action is set down for trial accordingly before a Judge alone commencing Monday 2nd October 1989, estimated duration, 11 weeks.

I now turn to the Defendant's summons. The first paragraph asks for leave to re-amend the Defence and Counterclaim. No objection is made to the amendments sought to be made to paragraphs 2, 5 and 7.3 (16). Leave is accordingly granted to make these amendments. The amendment sought to add a new paragraph 15 and a counterclaim based on this paragraph are objected to on the ground that the Article 149 of the Plaintiff's Articles of Association as sought to be relied on are contrary to Cayman Law and void, so that this plea could not in any event succeed. I have examined the Banks and Trust Companies Regulations Law and in particular Schedule 1 to the Banks and Trust Companies Licence (Application) Regulations on which counsel for the Plaintiff relies for this legal submission and I am quite satisfied that the language cannot bear the construction of its provision for which he contends. Accordingly, the amendment for which leave is sought raises a relevant issue of law which the Defendant ought not to be prevented or shut out from developing at the trial. I therefore allow these amendments also to the Defence.

Paragraph 2 of the Defendant's summons seek an order that the parties may adduce expert evidence only if the substance of such evidence has been disclosed in advance. This is agreed to and there will be a direction accordingly, the date for such disclosure being 1st July, 1989, provided that in relation to the Defendants expert's report concerning the Singapore Books of Account a supplementary report shall be delivered to the Plaintiff on or before 1st March, 1989.

Paragraph 3 of that summons asks for further specific discovery on the part of the Plaintiff which is not objected to. There will therefore be an order in terms of this paragraph within 28 days.

Additional directions are sought in relation to notices under rule 13 of the Civil Evidence Rules as regards evidence of certain witnesses not in the Cayman Islands. By consent the time laid down in that rule is extended to 1st June, 1989.

There will be liberty to apply generally.

Mr. Green: As to costs - bulk of argument on striking out and interrogatories. I ask for costs on my summons and costs of friend's summons be costs in the cause.

Mr. Jones: No comment.

Court: Costs of Plaintiff's summons to be Plaintiff's in any event. Costs of Defendants' summons to be costs in the cause.

18th January, 1989.

G. Collett.