

IN THE GRAND COURT ON THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN.

CAUSE NO. 69 OF 1987

23-11-88

BETWEEN:

IAN PAGET-BROWN

PLAINTIFF

AND:

SCENIC LTD.

DEFENDANT

Mr. P. Lamontague Q.C., and Mr. G. Ritchie  
for the plaintiff.

Mr. A. Turner for the defendant.

REASONS FOR ORDER

On 28th October, 1988, I refused Ian Paget Brown (the plaintiff) prayers in an amended summons filed 13th October, 1988:

"That the defendant, Scenic Ltd. by its directors, officers, servants, agents, attorneys, or otherwise howsoever be restrained and injunction be granted restraining it until final judgment herein.

(1) from continuing further in anyway to prosecute the legal proceedings issued by the Defendant against the plaintiff in the Superior Court of the State of California for the County of Los Angeles, United States of America (cause No. C493792) and

(2) from making any further or other claim whatsoever outside the jurisdiction of the Courts of the Cayman Islands against the plaintiff and

(3) from assigning, ceding or transferring any alleged cause of action and/or claim against the plaintiff, wheresoever situate and/or exercisable except in the Cayman Islands, to anyone whatsoever, including the plaintiff, limiting the generality of the alleged foregoing, the alleged

cause of action or claim on which the above legal proceedings are based, to any physical person, entity, group, partnership or company."

I granted the defendant its prayer in an amended summons as follows:-

"That this Honourable Court grants a stay in the present proceedings between the parties until Case No. C493792 between the parties in the Superior Court of the State of California for the County of Los Angeles, U.S.A. has been finally determined".

These are my reasons for so doing.

The defendant is a Caymanian Company, the beneficial owner of which is an Italian national called Dr. Anna Bertelli. Dr. Bertelli purchased an alfalfa ranch in California from a Bahamian Company, Cal-Fruit International Inc. Ltd. The ranch was purchased in the name of a Panamanian Company Scenic GmbH of which company Dr. Bertelli was the beneficial owner. The ranch was to be transferred to the defendant company and the plaintiff, an attorney-at-law in these Islands, formed the defendant company for that purpose and became its president.

The defendant subsequently filed an action in California, United States of America, against Cal-Fruit International Inc. Ltd., the plaintiff and others claiming damages for conspiracy to defraud and breach of California Securities Laws. The suit was dismissed as against the plaintiff without prejudice to the defendant's right to reinstitute proceedings against him. The action succeeded against Cal-Fruit International Inc. Ltd., and other of the defendants and damages were awarded against them in October 1983. An appeal against that decision failed.

On 10th April, 1984 the defendant filed a fresh complaint against the plaintiff in California claiming damages for conspiracy to defraud and violation of California Securities Laws. A further complaint was later added alleging a breach of

fiduciary duty by the plaintiff. The plaintiff filed a defence to that action and a cross-complaint claiming damages for breach of contract, fraud and deceit and for services rendered, as well as for declaratory relief.

On the 18th March 1987 the plaintiff filed the present action in this Court seeking claiming:--

- (1) Damages in the sum of CI \$9567.07 (US \$11,480.95) in respect of breach of settlement agreement.
- (2) Damages in the sum of CI \$2408.98 (US \$2890.90) in respect to professional services and expenses incurred in connection with the re-instatement of the defendant in the Register of Companies of the Cayman Islands
- (3) A declaration that the plaintiff's actions in connection with his fiduciary duties and other legal obligations as attorney in incorporating the defendant and in connection with his acting as a director and officer of the defendant were carried out honestly and reasonably, and that having regard to all the circumstances, including those connected with his appointment, he ought fairly to be excused from liability if any.
- (4) An injunction to restrain the defendant by its directors, officers, servants, agents, attorneys or otherwise howsoever from further prosecuting or taking any further step including assigned by its action in the case commenced by the defendant against the plaintiff in the Superior Court of the State of California for the County of Los Angeles Case No. C493792.
- (5) An injunction to restrain the defendant by its directors, officers, servants, agents, attorneys or otherwise howsoever from instituting or prosecuting any proceedings against the plaintiff save in the Grand Court of the Cayman Islands.
- (6) Payment of the costs incurred by the plaintiff in and in respect to the above mentioned action in the Superior Court of the State of California or such thereof as this Honourable court may think fit.
- (7) Such further relief that may be just and equitable.
- (8) Costs.

There appears to have been somewhat of a race to set the two suits down for hearing in California and in Cayman respectively. The plaintiff obtained dates in the Grand Court in early December. The defendant managed to obtain an earlier date for the California suit and hearing was to commence on 2nd November 1988. Hence the urgency of these applications and the necessity for a speedy decision, even without reasons being given therefor contemporaneously.

The law governing these applications has recently been in a state of development. I think that the present position can be succinctly stated thus. That in relation to an application by a defendant to stay proceedings in the Cayman Islands on the ground that another forum is more appropriate the Court must decide which is the natural forum. The natural forum is that with which the action has the most real and substantial connection (see Spiliada Maritime Corp. v. Consulex Ltd., The Spiliada [1986] 3 All ER 843, 856). In connection with a party's application to restrain the other party from proceedings filed in a foreign jurisdiction the court must not only be satisfied that the Cayman Court is the natural forum but must be further satisfied that the pursuit of the foreign proceedings would be vexatious or oppressive (see SNI Aerospatiale v. Lee Kui Jak and others [1987] 3 All E.R. 510, 522).

So in these applications to succeed the plaintiff had to satisfy me on two things. First that Cayman was the natural forum for this action. Second that for the defendant to be allowed to proceed in California would be vexatious and oppressive to him. The defendant had to satisfy me on the one matter only; that California was the natural forum for this action. In the event the plaintiff failed to satisfy me on either head, and the defendant succeeded in satisfying me that California was the natural forum.

I should add that I bore in mind that since such an injunction as applied for by the plaintiff indirectly affects a foreign court I should exercise caution before deciding in his

favour (see The Spiliada (Supra) p. 519).

Furthermore:

"Where the plaintiff in the foreign action is not plaintiff, but defendant, in the English action, the case against interference in even stronger, for the person to be stayed has not himself initiated two proceedings. He has one and has been compelled to appear in another over which he has, as defendant, no control" (see Scrutton L.J. in Cohen v. Rothfield [1919] 1KB 410, 414 which case was cited with approval in SNI Aerospaziale (Supra)).  
(For "English in this quotation read "Cayman").

I could not ignore the fact that the plaintiff has unsuccessfully applied to the California Court to have proceedings there stayed on the grounds of forum non conveniens.

The defendant's senior counsel argued that Cayman is the natural forum for this suit. The plaintiff is a resident of Cayman and the defendant in a Cayman company. On the face of it the plaintiff did nothing in California, and everything he did was done within the framework of our Companies Law. That the action concerns that professional conduct of a Cayman attorney and his conduct should be judged by Cayman ethical standards and adjudicated upon in Cayman. That his two witnesses reside in Cayman and one of them certainly would refuse to go to California to testify.

At first blush those arguments are very enticing. However that is to look at the plaintiff's side only and not to look at the cause of caution itself. Whilst the defendant company is indeed registered in Cayman, the beneficial owner of it is an Italian with no connection whatsoever with Cayman. The alleged conspiracy concerned the purchase of a farm in California and most of the actors in that alleged conspiracy reside in California or at least have connections there. The defendant's witnesses are in, California. The first, successful, action was in the courts of California and the plaintiff's counsel had to

concede that if he had made this application in those proceedings it would have been bound to fail. Whilst there is a cause of action relating to the plaintiff's alleged breach of fiduciary duty there were also allegations of contravention of California State Securities Laws.

I was referred to our own authority of Touche Koss and Company v. Bank Intercontinental (CI Civil Appeal 7 of 1986) However the relationship between the action to the foreign court, in that case a Florida court, was tenuous and by no means as great as the relationship between the action in this case and California.

Having regard to all factors relevant in this case, and not ignoring factors relating to expense to the plaintiff and availability of witnesses I still concluded that the action has the most real and substantial connection with California.

That decision basically concluded both applications, but out of deference to the arguments placed before me I would also add that the plaintiff did not satisfy me that to allow the California proceedings to continue would be vexations or oppressive. I had substantial affidavit evidence before me, much of which went to the merits of the action. Unless I could be satisfied that there was simply no possible foundation for the action I would be unable to hold the action to be vexations or oppressive on that ground. In view of the findings in the earlier action in California, both in the court of first instance and on appeal, it would be very difficult to make that finding even though the plaintiff was not represented in those actions.

Affidavit evidence was before me that the defendant's attorney appears to have set himself against the plaintiff and it seems that he may have manipulated the administrative machinery in the California Court to obtain an early hearing date. Manipulating administrative machinery is one thing. Manipulation of the Court to obtain a decision is another. I cannot hold, particularly on the evidence before me, that the plaintiff will

not get a fair hearing in California.

It did not escape me that the plaintiff was prepared to give substantial undertakings should his application succeed, whereas the defendant gave none, although counsel did address me on the difficulty he had had in obtaining instructions from a distance. However, the nature of the undertakings could not overcome all the disadvantages to the defendant if the plaintiff was allowed to proceed in Cayman and the defendant was prevented from proceeding in California.

As it was, after clear and careful argument by counsel for both parties, for which I was most grateful, I dismissed the plaintiff's applications and granted the defendant the stay he sought.



D. Schofield

Judge

Dated this 23<sup>rd</sup> November, 1988