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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 122/83

BETWEEN: George G. Davis - PLAINTIFF
AND: The Bank of Nova Scotia - DEFENDANT

REASONS FOR DECISION

It is not possible in the time available to write a detailed judgment. It may, however, be of assistance if I set out a brief outline of the consideration which influenced my decision.

Law: The Law I kept in mind was, primarily, the following:

(a) As to the principles governing the grant of an interlocutory injunction, the case of American Cyanamid Co v. Ethicon Ltd., 1975 A.C. 396 and the general principles set out in the U.K. Rules of the Supreme Court 029/1/11.

(b) As to general principles governing the banker and customer relationship, Tournier v. National Provincial and Union Bank of England Ltd., 1923 All E.R., 550; X, Y and Z v an American Bank, F.T. Commercial Law Reports 4th February, 1983 (including the typescript of the judgment) and the Confidential Relationships (Preservation) Law 1979, as amended. Despite section 5 of the Confidential Relationships (Preservation) Law (Amendment) Law 1979 (No. 26 of 1979), I am satisfied that the Common Law principles set out in Tournier's case apply in these Islands. There is an implied contract not to disclose the confidential affairs of the customer except in the exceptional circumstances expounded in Tournier's case. In fact, in this case there was an express contract to that effect.

Factors governing the decision:

(1) The defendant bank in this case is under no compulsion to give information pursuant to the order of the Governor in Council under section 3 (2) (b) (iii) of the Confidential Relationships (Preservation) Law. In this respect it differs

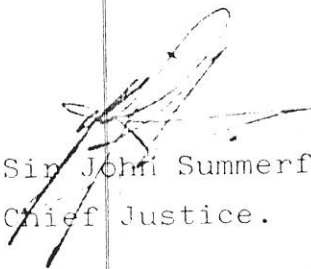
from the X,Y and Z case. It has a discretion, no doubt under advice, to determine whether any of the exceptions in Tournier's case apply and whether the public interest justified disclosure. It would take that decision at its peril in the knowledge of the consequences if disclosure would be in breach of its contractual relationship with its client.

(2) This Court was not in possession of sufficient information to determine whether any of the exceptions applied and whether disclosure would thus constitute a breach of the implied contract.

(3) It must be presumed that the decision of the Governor in Council under section 3 (2)(b)(iii) was not lightly reached, but taken in good faith after due enquiry and deliberation. In view of the terms of that section it is clear that the enquiry could not relate to fiscal irregularities as suggested in the plaintiff's affidavit. They would not be an offence under the laws of these Islands. This Court should not frustrate the actions of the Governor in Council in the exercise of his discretion under that provision - and certainly not on the information before the Court. It would be against public policy to impede a bona fide enquiry into a serious offence.

(4) The relief sought is an equitable one and should not be invoked as a means of impeding a bona fide enquiry into an offence or shield anyone from the consequences of illegal actions.

(5) In any event I considered that damages would provide an adequate remedy (American Cyanamid case) if disclosure turned out to be improper; and the bank was one of substance which could meet any damages awarded. The prospective damages recited in the affidavit of the plaintiff were far too remote to be taken into account. The information, if disclosed, would be disclosed initially to a Cayman Islands police office only. Its further disclosure would be governed by the Confidential Relationships (Preservation) Law, no doubt after careful deliberation, if at all, with the public interest in mind.


Sir John Summerfield
Chief Justice.