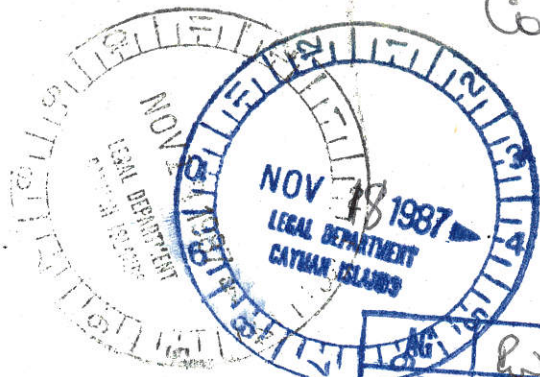


IN THE GRAND COURT OF THE CAYMAN ISLANDS  
 HOLDEN AT GEORGE TOWN, GRAND CAYMAN,  
 BEFORE THE HON. MR. KIPLING DOUGLAS  
 CAUSE NO. 189/87



Conf  
 16.11.87

BETWEEN: FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

AND: JOHN MOLINARO

AND: KIMBERLEIGH LAVONNE FERM

AND: FIRST CAYMAN BANK LTD.

AND: FIRST CAYMAN TRUST CO. LTD.

AND: CAYMAN NATIONAL BANK

AND: INCO BANK

AND: FINSBURY BANK & TRUST CO.

AG	PJC
LD	
SCC	Muller
CC1	
CC2	SAB
CC3	JR
CC4	SA
LE	W
PS	SE
DEFENDANTS	
For Action To	SCC
NFA Put Away	

Mr. A. Jones of Maples and Calder Attorneys-at-Law for the Plaintiff

Mr. J. Furniss of Ritch & Conolly Attorneys-at-Law for the 1st Defendant

Mr. C. Quinn of Bruce Campbell & Co. Attorneys-at-Law for the 2nd Defendant

Mr. M. Alberga of Macdonald Myers & Alberga Attorneys-at-Law for the 3rd, 4th and 7th Defendants

Mr. J. Jenkins of Truman Bodden & Co. Attorneys-at-Law for the 5th Defendant

Miss S. Bridges of W.S. Walker & Co. Attorneys-at-Law for the 6th Defendant

Mr. A. Smellie, Senior Crown Counsel for the Attorney General

REASONS FOR ORDER

By summons dated 11 August 1987 the Plaintiff corporation is applying for an order that the Defendant Banks, and each of them forthwith make and serve on the Plaintiff, lists of all the documents in their respective possession, custody or control relating to the 1st and, or 2nd Defendants and/or any of the scheduled persons, and/or relating to any assets beneficially owned by the 1st and/or 2nd Defendants and/or any of the scheduled persons. The summons also contains a list of the documents which the Plaintiff wishes to have disclosed.

The Plaintiff, Federal Savings and Loan Insurance Corporation (FSLIC) an instrument of the United States Government and based in the State of California, is presently engaged in a lawsuit in that State against John Molinaro, the First named Defendant in these local proceedings. The last five named Defendants are all banks based in the Cayman Islands.



This application is an off-shoot of the California action. The facts on which Mr. Jones, the Plaintiff's Cayman Attorney, based his arguments are contained in the affidavits, two of which were sworn to by Mark S. Lee, the Attorney representing FSLIC in California. The fourth affidavit is that of George T. Aradi, Special Agent of the U.S. Federal Bureau of Investigation (F.B.I.).

On September 2, 1986 FSLIC was appointed as receivers of the property and assets of an insolvent savings and loan association named Ramona Savings and Loan Association ("Ramona"). FSLIC was assigned as receivers for Ramona for any claims Ramona might have against its former directors, officers, control persons or other individuals.

An investigation conducted by FSLIC and another government agency determined that Ramona was rendered insolvent because of the malfeasance of former directors and others of Romano, and especially because of the conduct of its former officer and sole shareholder John L. Molinaro ("Molinaro"). The investigation determined that Molinaro and others had engaged in a complex service of schemes to wrongfully divert to themselves the assets of Ramona.

As a result of applications by FSLIC to the United States District Court, Central District, California, Molinaro's assets were frozen. The court granted FSLIC a summary judgement in the amount of \$2,000,000.00 as to one of his claims on March 30, 1987. The remainder of the case against Molinaro and the other defendants is currently pending in the United States District Court.

The affidavit of George T. Aradi sworn to on 30 July 1987 discloses that on 9 July 1987 acting in his capacity as a special Agent of the U.S. Federal Bureau of Investigation he arrested Molinaro on a charge of attempting to obtain a passport in a false name. He was searched and among the items found on his person were numerous business cards from the Cayman Banks and a notebook containing voluminous written notes, concerning Molinaro establishing a false identity, numerous names and telephone numbers of bank officials, attorneys, and others in the Cayman Islands and elsewhere. There were also references to a recent trip to these Islands under a false name in late June 1987 and to opening of bank accounts and obtaining safety deposit boxes at various banks in these Islands. The notebook also revealed the transfer of funds to and from bank accounts in the Cayman Islands, plans for sending cash, gold or silver certificates back into the United States through Canada from accounts in the Cayman Islands. The banks identified in this notebook are now named as the 3rd, 4th, 5th, 6th, and 7th Defendants in this application.

The action in the Cayman Islands was commenced on 3rd August 1987 after an Ex-Parte application which came before the Learned Chief Justice and an order for a Mareva Injunction freezing Molinaro's assets in the Cayman Islands. Molinaro was served on 10 August at the Prison in San Francisco where he is currently held. Subsequently another Ex-Party app-



lication was made to the Court in the Turks and Caicos Island resulting in a Mareva Injunction and a order for Discovery. Now a similar order for Discovery is being sought in this Court, one which will include the names of the 'Scheduled Persons' found on a list belonging to Molinaro, and believed to be names he may have used in his various dealings.

Mr. Jones for the Plaintiff relies on three grounds in seeking the order for discovery. Firstly that it is necessary to identify the other defendants. Secondly it is necessary to ascertain the whereabouts of funds, the subject matter of this application, and thirdly it is necessary in aid of the Mareva Injunction. Mr. Jones was of the opinion that an order for discovery will ensure that the Mareva Injunction is properly exercised.

This application is being made prior to the filing of the Statement of Claim by the Plaintiff. It is not an uncommon practice but the granting of such an order should not be made to permit the applicant to obtain evidence. For this reason the first ground relied on, to identify other defendants seems reasonable for without knowing just whether defendants are it would be impossible to formulate a proper statement of claim. It is however the fear that the application at this time is made in order to obtain evidence that led Mr. Furniss for the 1st Defendant to term the application a fishing expedition. In re State of Norway's Application 3 W.L.R. 452 there was a request that the witness be examined. The Court declined. One of the reasons being that the terms of the request were so wide that they were designed to elicit information which might lead to the obtaining of evidence rather than to establish allegations of fact which had been raised bona fide with adequate particulars and as such the request amounted to an impermissible "fishing expedition".

Mr. Jones for the applicant pre-empted any such allegation by attempting to distinguish re State Norway (ibid) from this matter. He submitted that in this case there is clearly a prima facie case of fraud and referred to the contents of the notebook found on Molinaro. He said that the companies named therein are all Business Organisations, which are merely sets of documents put together to appear to be companies. They are not registered but can be used to establish bank accounts. Photostat extracts from Molinaro's diary are exhibited and annexed to Mark Lee's Second affidavit. Item 8 of Page 11 of this exhibit names the 7th Defendant Finsbury Bank, and at page 19, item 3 there is a note which reads, "Consider bouncing \$ on-shore then off-shore again - CASH" Item 5 reads "Might be better to leave funds scattered i.e. in BTO's (obviously Business Trust Organisations) in Mutual Funds in Kim's (2nd Defendant) name in Caymans". Item 6 reads, "Should expunge me from BTO of King as agent - need another name for Rhienshold, John Cook etc..." and at item 18 we see one of the most interesting notations of all "Criss Cross Cayman Banks, wire 1st Cayman \$ to Cayman National BTO ak...."



The names of the other Defendant Banks appear at various pages. Item 9 of page 57 reads "Consider storing gold in 1st Cayman storage box."

As I have already indicated this application is being made prior to the delivery of a Statement of Claim. It is accepted that discovery of documents at such a time should only be made in very exceptional circumstances. This was enunciated in Speyside Estate and Trust Co. Ltd. v. Wraymond Freeman (Blenders) Ltd. (In Liquidation). Chancery Division (1950) 96.

Ferrostaal A.G. v. Jones and Five Others (1984) CILR 5 it was held that if the nature of the Plaintiff's case is evident in principle and there is no suspicion of a fishing expedition, but the information is required to facilitate the precise formulation of the claim, saving time and cost, an order for discovery limited to the purpose of completing a proposed statement of claim may be granted. There is however a certain aspect of this application which distinguishes it from that of Ferrostaal, and that is the allegation of fraud. In Bankers Trust Co. v. Shapira and others (1980) All E.L.R. 353 it was held that the Court was entitled for the purpose of giving effect to a defrauded plaintiff's equitable right to freeze his money, to order a bank to disclose the state of and the documents and correspondence relating to the account of a customer who was prima facie guilty of fraud, even though the bank had not incurred any personal liability for the fraud, for unless there was the fullest possible disclosure the fund could not be traced.

I find little merit in Mr. Furniss argument that this application is really a fishing expedition. Mark Lee depones that the 1st Defendant and others have engaged in a complex series of schemes to wrongfully divert to themselves the assets of Romana. The contents of the notebook not only tend to support this allegation, but could be an indication where the funds may be located.

Fears have been expressed by Mr. Furniss that any information derived from discovery may fall into the hands of the Federal Bureau of Investigation and used in evidence against Molinaro. Certainly Mr. Furniss is aware that before any disclosure can be made following an order for discovery an application must be made by the relevant banks under the Confidential Relationships (Preservation Law). That is the appropriate time and place for all submission relating to the dissemination of any disclosure. This also applies to Mr. Alberga's concern, that the use of the documents disclosed be limited to this jurisdiction.

Mr. Alberga's, who represented the third, fourth and seventh plaintiffs, first concern was that any order made ought to contain an undertaking by the Plaintiff to pay all the Banks' reasonable costs and expenses of complying with that order. He urged that should the application be successful the use of the documents be limited to this jurisdiction as the banks have no wish to be harrassed by requests to verify



documents or give evidence in other jurisdictions. This is an issue which ought to be raised at the hearing of the 3A Application which must follow should this application be successful. There is however nothing to prevent them from being embodied in an order which may result from this application. Regarding the indemnity clause it is customary for such an order, as that now being sought, to contain this type of clause.

Both Mr. Jenkins and Miss Bridges adopted Mr. Alberga's submission.

There is sufficient evidence that Molinaro has transferred funds from the United States in such a manner as to constitute a prima facie case of fraud. The Plaintiff is entitled to trace these funds in order to deliver a satisfactory Statement of Claim. This it seems would be virtually impossible without the benefit of discovery.

The Court is therefore constrained to act in accordance with the Principal enunciated in Bankers Trust Co. v. Shapira and Others (ibid) and order disclosure.

Paragraph 6 of the summons seeks an order that:-

- (1) That the 1st Defendant do forthwith make and serve on the Plaintiff an affidavit specifying whether or not he has rented a deposit box in his own name and/or the name of any of his scheduled persons.
- (2) An order that the 1st Defendant do assist the Plaintiff to open such boxes and allow the Plaintiff to inspect, list and photograph its contents.

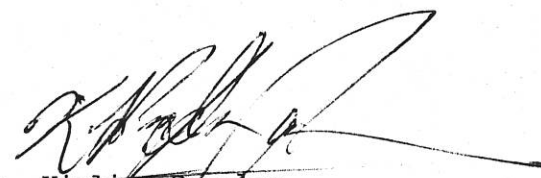
The Plaintiff seems to be in possession of certain keys to safety deposit boxes alleged to have been taken from Molinaro. It is now proposed by Mr. Jones that the Plaintiff through his attorneys be allowed, in the presence of the defendant and or his representative, to try the keys in such boxes that may be disclosed in order to see whether they fit when used in conjunction with the bank's key.

Although this Court is minded to make an order for Section (6) the order required by Paragraph 6 (2) goes beyond the limits of tracing and at this stage could only be interpreted as a fishing expedition. Accordingly this section 6 (2) will be disallowed.

Application for discovery is granted on all paragraphs excepting 5 and 6 (2).

Dated this 16th day of November 1987.



  
Hon. Kipling Douglas  
Actg. Judge