

27.1.86

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
BEFORE ACTING PUISNE JUDGE KIPLING DOUGLAS  
ON 22 JANUARY 1986



CAUSE NO. 482 OF 1985

BETWEEN	CONNIE L. STEWART	PLAINTIFF
AND	ASK SECURITIES, LTD. and FIELD NOMINEES, LIMITED and KEITH B. STEWART	FIRST DEFENDANT SECOND DEFENDANT THIRD DEFENDANT

RULING

Mr. Andrew Jones for applicant  
Mr. P. Lamontagne Q.C. (with him Mr. C. Quin ) for respondents

This is an application by the First and Second Defendants for an Order to discharge the Order made on 12th December 1985 unless the Plaintiff do, within 7 days, pay into court the sum of U.S.\$5. million to secure the undertaking in damage given by the plaintiff or provide security in such other form as the Court thinks fit.

The Order dated 12 December 1985 contains the general undertaking by the Plaintiff's Attorneys to abide by any order the Court may make as to any loss or damage the defendants may sustain by reason of all the orders sought herein which the plaintiff ought to pay.

This undertaking is in keeping with the established practice as enunciate in Spry's Equitable Remedies 3rd Edition 1984 P 466 which reads, inter alia, as follows:

"Where a plaintiff is outside the jurisdiction, an undertaking is generally required to be given by a person within the

jurisdiction, such as a solicitor, unless adequate security is provided...."

The Plaintiff, who resides in the state of California, U.S.A. is the estranged wife of the Third Defendant. In April 1983 they entered into a purported Marital Settlement Agreement by which she received property worth approximately U.S.\$750,000.00 in the form of two houses. Apart from the shares claimed in the stock of Gradco the subject of the injunction, these are her only known assets, all of which are outside the jurisdiction of this court. The learned Judge must have been apprised of these facts when including this undertaking as a condition precedent to the order.

Also included as a term of the order is a paragraph (7) giving the defendants liberty to apply to discharge or vary the terms of the said order.

Implicit in the discharge of this order would be the dissolution of the injunction. On what grounds can an injunction be dissolved? Halsbury Laws of England, Fourth Edition Vol. 24 at P. 612 para 1112 reads as follows:

"An injunction may only be dissolved (inter alia) if default has been made in giving security for costs."

The other grounds stated are not relevant to this application.

There is no contention here that the plaintiff has defaulted in the giving of security. In fact both the order of 12 December 1985 and the consent order of 9 January 1986 were made without the question of security arising. The only case cited which bears any relevance to this application is that of Chanel Ltd. v. F. W. Woolworth & Co. Ltd. (1981) 1 All E.R. P. 751 in which the principle was enunciated by Buckley L.J. when he said, I quote:

"They, the defendants, are seeking a rehearing on evidence which, or much of which, so far as one can tell, they could have adduced on the earlier occasion....."

"Even in interlocutory matters a party cannot fight over again a battle which has already been fought unless there has been some

"significant change of circumstances, or the party has become aware of facts which he could reasonably have known, or found out, in time for the first encounter."

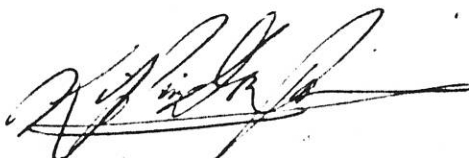
The grounds put forward by the learned Attorney for the applicant reveal no change of circumstances at all. The application is an exercise of their rights under paragraph 7 of the order which, as stated, gives them liberty to apply to discharge or vary the terms of the order.

I have already dealt with the grounds on which an injunction can be dissolved. What then is the significance of paragraph 7 and how must it be applied? Buckley L. J. in the Chanel case (supra) dealt implicitly with such a clause when he said, I quote:

"In my judgment an order or an undertaking to the court expressed to be until further order, by implication gives a right to the party bound by the order or undertaking to apply to the court to have the order or undertaking discharged or modified if good grounds for doing so are shown. Such an application is not an application to set aside or modify any contract implicit in the order or undertaking. It is an application in accordance with such contract, being an exercise of a right reserved by the contract to the party bound by the terms of the order or undertaking."

In applying this to the present issue, it is clear that paragraph 7 cannot set aside or modify the actual injunction which is implicit in the agreement by which the applicants are bound. This application not only seeks to dissolve the injunction implicit in the contract, but endeavours to do so by showing grounds which could have been adduced at the earlier hearing which resulted in the order dated 12 December 1985.

In my view for me to allow this application would be against the principles of natural justice, and accordingly it is dismissed.



Kipling Douglas  
Acting Puisne Judge.