

1 IN CHAMBERS
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS

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4 CAUSE NO: 161 OF 2005

5
6 BETWEEN:

7 RODNEY ALAN HANSEN

8 Plaintiff

9
10 AND:

11 DAVID GEORGE OLSON

12 Defendant

13
14 BEFORE: The Honourable Madam Justice Levers

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16 APPEARANCES:

17 Counsel for the Plaintiff: Mr. Kyle Broadhurst of Broadhurst Barristers

18 Counsel for the Defendant: Mr. Shaun McCann of Campells

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20 HEARD: 11th May, 2006

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JUDGMENT

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25 Levers, J.



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28 This is an application by the Defendant seeking summary judgment on the
29 ground that the Plaintiff's claim has no prospect of success under Order 14,
30 Rule 12 (1) of the Grand Court Rules.

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32 The background to this application and the principles governing it can be
33 succinctly understood in the words of Ackner LJ dicta in *Banque De Paris*

1 *et des Pays – Bas (Suisse) SA v de Narary* [1984] Lloyds Report 21 and 23,

2 he says:

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4 “It is of course trite law that order 14 proceedings
5 are not decided by weighting two affidavits. It is
6 also trite that the mere assertion in an affidavit of a
7 given situation which is to be the basis of a [claim]
8 does not, ipso facto, provide leave to [prosecute a
9 claim]; the court must look at the whole situation
10 and ask itself whether the Plaintiff has satisfied the
11 court that there is a fair and reasonable probability
12 of the Plaintiff having a real or bona fide [claim].”
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14 In this case, the agreement is an oral agreement between the Plaintiff and
15 Defendant, whereby it was agreed that in consideration for the sum of
16 US\$400,000, the Defendant would sell the Plaintiff 50% shares in the
17 aircraft.

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19 The allegation is that the Defendant did not preform and the Plaintiff
20 therefore, sues now for breach. However, the Defendant on the other hand
21 alleges that he was always ready and willing to complete and that he has part
22 performed and that it was the Plaintiff’s failure to provide him information
23 that has caused the delay. He denies that there is in fact a breach.

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1 The court initially was of the view this was an ideal case for the matter to be
2 dealt with at this stage and the matter not to go to trial; however a careful
3 reading of the affidavits and the correspondence attached thereto, leaves the
4 Court to believe that if this contract is wholly by word of mouth, its contents
5 are a matter of evidence normally should be submitted to a judge sitting as a
6 jury.

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8 It must be found as a fact exactly what it was that the parties said, as for
9 example, whether the registration was a pre-requirement, whether delivery
10 was sufficient, and of course it involves the law of a foreign jurisdiction.

11 There may be no effective dispute as to what was said but still a fundamental
12 disagreement as to what it meant and it would appear to me that in the
13 circumstances of this case, whilst on the face of it, the Defendant has a good
14 arguable application for this order, because of the nature of the contract, the
15 matter should go to trial. Costs in the cause.

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17 Dated this 23rd day of May, 2006

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Judge of the Grand Court

