

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

3
4 CAUSE NO. 319 OF 2005
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8 BETWEEN:
9 SEGOES SERVICES, LTD.

10 Plaintiff

11 AND:

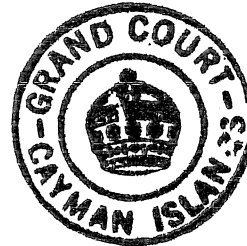
- 12 1) CAMILA UEOKA
13 2) PAMELA KAWESKE
14 3) HIGHLAND CONSULTING LIMITED

15 Defendants
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18 Appearances: Mr. Alastair Walters and Mr. Guy Manning of Campbells for
19 the Respondent
20 Mr. Anthony Akiwumi and Mr. Richard Annette of Stuarts for
21 the Applicant
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24 Before: Hon. Justice Henderson

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27 Heard: September 7, 2006
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30 JUDGEMENT
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33 The second defendant, Pamela Kaweske, was granted leave to appeal against an order
34 granting summary judgment to the plaintiff on this fraudulent preference claim. I granted
35 leave because I considered the defendant to have some prospect of succeeding on the first
36 ground – the question of proof of insolvency. I have now received and considered
37 written submissions from the plaintiff and the second defendant on the question of what,
38 if any, conditions should be included in my order. The plaintiff requests that leave should
39 be granted on condition that the second defendant pays into court the sum of

1 US \$940,402.66 cents within fourteen days. That sum comprises:

2 (a) the whole amount of the judgment debt (US \$865,402.66);

3 (b) the sum of US \$50,000 towards the plaintiffs' costs awarded in the
4 order granting summary judgment; and

5
6 (c) the sum of US \$25,000 as security for the plaintiffs' costs on the
7 appeal.
8

9 The second defendant is not a resident of the Cayman Islands at the present time. She
10 concedes that she has assets in the approximate amount of US \$1,115,000, which include
11 a condominium property in the Cayman Islands appraised (on a forced sale basis) at US
12 \$388,000. She therefore has sufficient assets from which the conditions requested could
13 be satisfied, but insufficient assets within the jurisdiction to satisfy the judgment obtained
14 by the plaintiff and the probable costs of the appeal.
15

16 The plaintiff says its request is justified in light of the second defendant's failure to
17 comply with a Mareva Injunction granted by this court. The second defendant takes the
18 position that the Mareva Injunction has never been served upon her.
19

20 The Mareva Injunction (in paragraph 6 (b)) contained an order for substituted service; it
21 was served on Woodward Terry & Company, the second defendant's then attorneys of
22 record, in accordance with that order. An affidavit of service has been filed.
23

24 The Mareva Injunction was obtained on the basis of an affidavit of Kenneth Kryss, which
25 was served on Woodward Terry at the same time as the injunction itself. The second
26 defendant swore an affidavit in response; her affidavit was dated August 30th, 2005 and

1 was filed in these proceedings on September 30th, 2005. In that affidavit, she quotes at
2 great length from the affidavit of Mr. Kryz and responds to his affidavit on a paragraph
3 by paragraph basis. She also refers repeatedly in her affidavit to the granting of the
4 Mareva Injunction and the consequent restraint upon her assets. She said she would
5 apply for a review of the injunction with a view to having it set aside.

6

7 In light of this evidence, the argument that the injunction has not been served upon the
8 second defendant is wholly without merit.

9

10 The plaintiff argues that the second defendant is in breach of the Mareva Injunction and
11 has no intention of complying fully with it. In her own affidavit material, the second
12 defendant disclosed that she has sought advice from a United States attorney as to the
13 enforceability of the Mareva Injunction there and has been advised that it would be
14 difficult, and perhaps impossible, to enforce it.

15

16 The second defendant took approximately thirteen months to make disclosure of her
17 assets in compliance with the Mareva Injunction. This was done on September 5th, 2006.
18 Other evidence before me shows that in the recent past she has held significantly greater
19 assets which are wholly unaccounted for in her disclosure affidavit.

20

21 In her first affidavit (sworn August 30th, 2005), she said she owned:

22

(a) securities worth in excess of US \$1.5 million dollars;

23

(b) assets with a value in excess of US \$1,000,000.00 managed for her by
24 AALL Trust and Banking Corporation Ltd.;

1
2 (c) property she owned jointly with either her husband or son at
3 42 Carla Way, Broomfield, Colorado, United States;

4 (d) a bank account at HSBC Canada;

5 (e) an annual income of US \$100,000.
6

7 The asset disclosure affidavit contains no explanation as to where these assets have gone.

8 In addition, documentation before me suggests she has been earning income in the form

9 of management fees and property rentals but the asset disclosure affidavit contains no

10 details of these. The second defendant has not disclosed what happened to the alleged

11 preference payment of US \$830,390.66 received from the plaintiff and the subject of the

12 summary judgment. She does not disclose what happened to certain payments of

13 approximately US \$700,000 transferred from an account in her name with the plaintiff to

14 an account in her name at HSBC (Canada) Inc. in April, 2005.
15

16 Where the second defendant does make disclosure of bank accounts, she gives only the

17 name of the bank and the supposed credit balance; she does not specify at which branch

18 of the bank the account is held and does not provide account names or numbers. She has

19 disclosed the ownership of some valuable jewelry and rare coins but does not provide any

20 details of individual items, their value, or the location in which they are held.
21

22 She does not disclose the ownership of any securities at all. I accept the plaintiff's

23 observation that this is improbable. She said previously that she owns securities with a

24 value in excess of US \$1.5 million dollars, she ran an investment advisory business, and

1 has said she has been investing successfully in medical companies since she was twenty-
2 five years old.

3

4 I am satisfied that the second defendant can afford to pay into court the value of the
5 judgment under appeal and the amounts requested by the plaintiff as security for its costs.

6 I am satisfied the Mareva Injunction has been served upon her and she has failed to
7 comply with it fully or on a timely basis. I am satisfied the plaintiff has reasonable
8 grounds for its apprehension that, after an unsuccessful appeal, the full amount of the
9 second defendant's judgment debt and costs will not be paid.

10

11 In these relatively unusual circumstances, I find that the plaintiff is entitled to the
12 conditions it has requested. The second defendant has said she will consent to an order
13 that the condominium in the Cayman Islands be sold and the money paid into court.

14 Assuming that this sale will generate the sum of US \$358,900 (the anticipated forced sale
15 price less realtor and attorney's fees), the unsecured amount of the judgment debt will
16 then amount to US \$506,502.66. I order that leave to appeal is granted to the second
17 defendant on condition that she pay into court or otherwise secure that sum, plus the sum
18 of US \$75,000 as security for costs, within fourteen days.

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20 Dated this 18th day of September, 2006

21

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Henderson, J.

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Henderson, J.

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Judge of the Grand Court

