

IN THE SUPREME COURT OF BELIZE, A.D. 2010

CLAIM NO. 814 of 2010

AB

CLAIMANT

AND

CD LIMITED

RESPONDENT

Hearings

2010
30th November
13th December

Mrs. Ashanti Arthurs-Martin for the Claimant.
No appearance for the respondent.

LEGALL J.

RULING

1. This is an application by the claimant for the respondent to supply information to the claimant in relation to a third party – Bettex Security Corporation, a Belizean company incorporated in Belize. It

is believed that the respondent is an agent of Bettex, who innocently got mixed up in alleged fraud and wrong doings by Bettex in relation to assets, monies and property of a Brazilian company called Petroforte Brasileiro de Petroforte Ltd. (Petroforte). Petroforte began legal proceedings against several business entities in Brazil and the information, according to the claimant, is required for the purposes of those proceedings.

2. The applicant is administrator in the estate of Petroforte which was the largest gasoline and ethanol distributor in Brazil. Associated with Petroforte was a Brazilian, Natalino Da Silva who died on 12th November 2008 and who was the beneficial owner of about 300 petrol stations in Brazil; and these stations were placed under the Petroforte estate which is administered by the claimant. It is believed that the Petroforte business appeared to have realized about 1 billion in gross revenue per annum.
3. It is also believed that certain Brazilian companies, including a company called Agro Industrial appears to have fraudulently deprived the Petroforte estate of valuable assets. The applicant commenced proceedings in Brazil on the basis that the companies, including Agro Industrial, have been involved in fraudulent activities in order to defraud the Petroforte estate. The company Agro Industrial is owned by two British Virgin Islands Companies, namely, All Sugar International Inc and Real Sugar Corporation. The beneficial owner of All Sugar and Real Sugar, is the said Belizean registered company, Bettex. The respondent is a company incorporated in Belize who is

the registered agent, and registered office in Belize, for Bettex. It is believed that the respondent is an innocent participant in the commission of frauds by Bettex against the Petroforte estate.

4. The applicant for purposes of the legal proceedings in Brazil believes that Bettex is likely to be implicated in the fraud against the Petroforte estate, and that the respondent, though innocent of any facilitation or involvement in the alleged wrongdoings or fraud, is likely to have information which would allow the applicant to identify the beneficial owners of Bettex, to trace and recover monies to which the creditors of the Petroforte Estate are entitled, and would have information which would identify other wrongdoings. The applicant believes that the respondent has a duty to assist by providing the above information.

5. The applicant in order to obtain the information required, makes also the following application:

“The applicant urgently seeks orders, without notice to the respondent sealing the record for this application and restricting the respondent from communicating the content and nature of these proceedings and this application to any one save other parties to the application and/or their attorneys at law (“the non-disclosure) who shall, as to each of them, also be similarly enjoined by the terms of this non-disclosure order. The applicant also seeks without notice a Norwich Pharmacal/Bankers Trust

disclosure order. The applicant seeks these without notice orders urgently

6. A draft of the orders sought were supplied to the court. I have not been able to find any local statutory basis for the orders sought. But there is a common law basis for the application, for disclosure of the information by a third party, namely, the House of Lords decision in *Norwich Pharmacal Co. and others v. Customs and Excise Commissioners 1974 AC 133* where Lord Reid states the basis for the application as follows:

“My noble and learned friends, Lord Cross of Chelsea and Lord Kibrandon, have dealt with the authorities. They are not very satisfactory, not always easy to reconcile and in the end inconclusive. On the whole I think they favour the appellants, and I am particularly impressed by the views expressed by Lord Romilly M.R. and Lord Hatherley L.C. in *Upmann v. Elkan (1871) L.R. 12 Eq. 140; 7 Ch. App. 130*. They seem to me to point to a very reasonable principle that if through no fault of his own a person gets mixed up in the tortuous acts of others so as to facilitate their wrongdoing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers. I do not think that it matters whether he became so mixed up by voluntary action on his part or because it was his duty to do what he did. It may be that if this causes him expense the person seeking the information ought to reimburse

him. But justice requires that he should cooperate in righting the wrong if he unwittingly facilitated its perpetration.

I am the more inclined to reach this result because it is clear that if the person mixed up in the affair has to any extent incurred any liability to the person wronged, he must make full disclosure even though the person wronged has no intention of proceeding against him.”

7. In *Mercantile Group v. Aiyela* 1993 3 WLR 1116 at 1121 the Court of Appeal said:

“There is no dispute that the court was entitled to grant a post-judgment Mareva against Mr. Aiyela. The question is whether, ancillary to that order, it can order discovery from a person against whom there is no substantive cause of action. The power to order disclosure is derived from section 37(1) of the Supreme Court Act 1981. The exercise of this power against third parties was discussed by the House of Lords in *Norwich Pharmacal Co. v. Customs and Excise Commissioner* 1974 A.C. 133. The effect of this decision, as expounded in later cases, is that jurisdiction to order disclosure against a third party exists when two conditions are satisfied. First, the third party must have become mixed up in the transaction concerning which discovery is required. Secondly, the order for discovery must not offend against the “mere witness” rule, which prevents a party from obtaining discovery against a person who “will in due

course be compellable to give that information either by oral testimony as a witness or a subpoena ducecs tecum.”

8. This court is not bound by the above decisions of the House of Lords and the UK Court of Appeal. These decisions are persuasive authorities. Since the decisions are not binding; do they give the Supreme Court in Belize jurisdiction to make the orders mentioned therein? In *Ref Inge Christeneen and others v. International Corporate Services Ltd. No. 468 of 2005*, Conteh CJ held that the Belize Supreme Court had jurisdiction to grant such disclosure orders and granted same. This is a precedent in Belize which, it seems, I should follow. I must remember Lord Halsbury’s views on following another first instance decision. Lord Halsbury writes:

“There is no statute or common law rule by which one court is bound to abide by the decision of another court of co-ordinate jurisdiction. Where, however, a judge of first instance after consideration has come to a definite decision on a matter arising out of a complicated and difficult enactment, the opinion has been expressed that a second judge of first instance of co-ordinate jurisdiction should follow that decision; and the modern practice is that a judge of first instance will as a matter of judicial comity usually follow the decision of another judge of first instance unless he is convinced that that judgment was wrong. Where there are conflicting decisions of courts of co-ordinate jurisdiction the later decision is to be preferred if reached after full consideration

of earlier decision.” See Halsbury Laws of England 4th Edition Vol. 26, paragraph 580. See also *Vincent v. Smith 1930 1 Ch. 88 at p. 99.*

9. Moreover, it seems to me that the equitable jurisdiction of the Supreme Court ought to come to the aid of an applicant who, by a prima facie case or arguable case, satisfies the court of equity that a fraud or wrongdoing may have been committed against its property by a third party, by ordering the disclosure of information against any person or company who has wholly innocently become mixed up in the fraud or wrongdoing by such third party, if it is reasonably believed that the person or company has relevant information in relation to the fraud or wrong doing. The exercise of this equitable jurisdiction which is inherent in the Supreme Court of Belize is to enable justice and fairness to be done.

10. But there is, in my view, need for legislation to put this jurisdiction on a statutory basis, authorizing the court to grant such disclosure orders sought in this application. On the basis of the decision of Conteh CJ in Ref. *Inge* and the persuasive authority of Norwich Pharmacal Company above; and in the exercise of the inherent equitable jurisdiction of the Supreme Court, I grant the orders claimed.

Oswell Legall
JUDGE OF THE SUPREME COURT
13th December, 2010

