

THE HIGH COURT

1983 No. 5120P

BETWEEN:

GOLDEN VALE CO-OPERATIVE CREAMERIES LTD.

Plaintiff

and

FRANCIS J. BARRETT, BREFFNI J. BYRNE,
 DENIS P. CREMIN, JAMES R. GALLAGHER,
 HARFORD M. ROBB AND ADRIAN BURKE
 practising under the style and title of
 ARTHUR ANDERSEN AND COMPANY

Defendants

Judgment delivered by the President of the High Court on the
6th day of June, 1986

This is an application brought on behalf of the Plaintiffs
 for:-

An order compelling the Defendants to forthwith make discovery
 upon oath of a report prepared by them for Foir Teoranta and/or
 the Industrial Development Authority in relation to the
 financial position of Castlemahon Co-operative Poultry Products Ltd.

The application is grounded on the affidavit of John J. Power,
 member of the firm of Maurice A. Power and Son, Solicitors for the
 Plaintiffs herein in which he avers at Paragraph 3 thereof that:-

"Subsequent to the completion of discovery and after the date
 had been fixed for the hearing of this trial for the 17th day
 of June 1986 I became aware of the fact that the Defendants had
 subsequent to the preparation by them of a report for the
 Plaintiffs in relation to the financial affairs of the Company
 called Castlemahon Products Ltd. being engaged by Foir
 Teoranta and/or the Industrial Development Authority to carry

out a similar exercise on behalf of these entities.

I say and believe the said reports are highly relevant to the issues to which fault will be determined in these proceedings and that they ought to have been discovered as part of the Defendants general discoveries. They were not, in fact, so discovered."

He further avers that he on the 27th day of May 1986 caused a telex message to be sent to the Defendant solicitors in which he sought confirmation from them that they would furnish a copy of the reports in question and that on the following day he received a reply from the Defendants solicitors in which they contend that the report did not come within the ambit of the work undertaken by their clients which is the subject matter of the instant proceedings.

Order 31 Rule 12(1) of the Rules of the Superior Courts provides that:-

"any party, may, without filing any affidavit, apply to the Court for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power relating to any matter in question therein".

It was not contested that the report referred to in in Mr. Power's affidavit was in fact prepared by the Defendants but it is submitted by Mr. Fitzsimons, who appears on behalf of the Defendants, that such report was made approximately one year after the matters complained of by the Plaintiffs, that it was not made in pursuance of an agreement similar to that made with the Plaintiffs and that consequently it is of

no relevance to any of the questions to be determined in this matter.

I have read the exhaustive pleadings, notices of particulars and replies thereto in this matter and while not presuming to detail all the questions in issue between the parties in this case, the questions to be determined in this case include:-

- (a) The determination of the terms of the contract entered into between the parties with regard to the nature of the investigation of the affairs of Castlemahon Poultry Products Ltd. to be carried out by the Defendants;
- (b) The determination of the extent of the investigation agreed to be carried out by the Defendants;
- (c) The determination of the purpose for which the result of the said investigations were to be utilised by the Plaintiffs;
- (d) The determination of the question whether the Plaintiffs relied on the result of such investigations and the extent of such reliance; and
- (e) The determination of the issue whether the Defendants were negligent and in breach of contract in carrying out such investigation and in preparing their report thereon.

Mr. McCracken who appears for the Plaintiff herein submitted that the report prepared by the Defendants into the affairs of Castlemahon Poultry Products Ltd. for Foir Teoranta and/or the Industrial Development Authority was relevant to the questions in issue in these proceedings in that it could provide evidence that the report prepared by the Defendants for the Plaintiffs was negligently prepared.

It is well settled that:-

"any document which, it is reasonable to suppose, 'contains information which may enable the party applying for discovery either to advance his own case or to damage that of his adversary, if it is a document which may fairly lead him to a train of enquiry which may have either of these two consequences' must be disclosed (Campagnie Financiere du Pacifique .v. Peruvian Guano Co. (1882) 11 Queen's Bench Division at Page 65, Brett L.J.)".

It seems to me that it is not unreasonable to suppose that any report made by the Defendants into the affairs of Castlemahon Poultry Products Ltd. is a document which might fairly lead the Plaintiffs to a train of enquiry which might have either of these two consequences namely, to enable the Plaintiffs to advance their own case or to damage that of the Defendants and should be discovered.

Consequently, I will make the order sought by the Plaintiffs herein.

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