

Judgment delivered 27th April, 1988.

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IN THE ROYAL COURT OF THE ISLAND OF JERSEY

BETWEEN DEEPAK MOHHANDAS DALAMAL PLAINTIFFS
LACHU MOHANDAS DALAMAL
SURESH HIRANAND RAMNANI
AND RHONE COMPANY LIMITED DEFENDANT
AND CITIBANK (CHANNEL ISLANDS) LIMITED PARTY CITED

Advocate R. J. Michel for Plaintiffs
Advocate S. A. Meiklejohn for Defendant
Advocate A. Binnington for Party Cited

Before Commissioner Ralph Vibert, O.B.E.

PRELIMINARY

On the 12th April, 1988 the parties agreed that the Party Cited had no interest in the proceedings and Advocate Binnington withdrew.

Counsel for the Defendant sought an adjournment on the ground that he had not had time to prepare and cited *A. C. Gallie Limited - v - W. H. Davies and T. O. P. Walker (J.J. 1986/)*. After argument the hearing was adjourned until 20th April, 1988.

Prior to the resumed hearing, Counsel agreed that the case be heard by myself, sitting without Jurats.

"In the words of the Summons, the Plaintiffs seek
"leave to utilise the documents obtained on Discovery
"in the present proceedings in support of an
"application in proceedings pending in the Supreme
"Court of Bermuda under the following citation:-

"In the Supreme Court of Bermuda
"Civil Jurisdiction
"1987 : No. 62

"In the matter of Rhone Company Limited
"And in the matter of the Companies Act 1981
"And in the matter of the Petition of T. H. Ramnani

THE PARTIES

The parties concerned in the Bermudan proceedings, and in the Jersey proceedings, are:-

1. The Company Rhone Company Limited registered in Bermuda ("the Bermudan Company").
2. Another Company of the same name, Rhone Company Limited, registered in Jersey ("the Jersey Company").
3. T. H. Ramnani, the Petitioner in the Bermudan proceedings ("the Bermudan Petitioner").
4. D. M. Dalamal, L. M. Dalamal and S. H. Ramnani, the Plaintiffs in the Jersey proceedings, including this Summons ("the Jersey Plaintiffs").

All the persons above named are brothers or cousins and all have an interest in a family business owned by the Bermudan Company. All the 11,997 Shares in that Company, save three held by nominees, are held by the International Trust Company of Bermuda Limited, but the beneficial interest is owned, as to 80%, by the Jersey Plaintiffs and, as to 20%, by the Bermudan Petitioner.

LEGAL PROCEEDINGS

The following proceedings have been instituted or are contemplated.

- (a) An action instituted on the 31st March, 1987 by the Bermudan Petitioner, alleging that the Jersey Plaintiffs, who hold Powers of Attorney from the Bermudan Company, abused their position to his prejudice and that of the Bermudan Company. An Order of the Supreme Court of Bermuda was given on the 1st April, 1987, restraining the Jersey Plaintiffs from exercising their Powers of Attorney until further order. A defence has been entered and the Jersey Plaintiffs intend to apply for reinstatement of the Powers of Attorney. The issues raised have not yet been tried.
- (b) An action instituted on the 27th October, 1987 in Jersey by the Jersey Plaintiffs against the Jersey Company alleging that -
 - (i) the Bermudan Company owned a 30% interest in a Nigerian Company, Daltex Textiles Mills Limited ("Daltex"), and that Daltex was managed by the Bermudan Petitioner;
 - (ii) the Jersey Company was formed by the Bermudan Petitioner; and
 - (iii) dividends due to the Bermudan Company have been sent to the Jersey Company at the instigation of the Bermudan Petitioner and in fraud of the Bermudan Company, which has suffered financial difficulty as the result of the loss of these dividends.

In this Jersey action, in which the Jersey Company did not appear, there was sought and obtained an order that the Party Cited (the Bank holding the account of the Jersey Company) inform the Jersey Plaintiffs of balances held to the credit of the Jersey Company, and allowed sight, and copies to be made, of correspondence, cheques, and statements relative to the account of the Jersey Company. The main purpose of these proceedings, it is said, was to seek and recover monies said to belong to the Bermudan Company.

Finally, the Summons with which we are now concerned, by which the Jersey Plaintiffs seek leave to use the information obtained in proceedings (b) for the purpose of the application they propose to make for the restoration of their Powers of Attorney, lost by virtue of proceedings (a).

LEGAL PRINCIPLES

I am grateful to Counsel for their diligence in producing a number of authorities. From these the general principle is clear that information obtained in legal proceedings by one party from another, by means of a discovery process of any kind, should not be used for any purpose other than the immediate purpose for which it was obtained, unless the Court so authorises.

The Jersey Plaintiffs obtained information as to the transactions between the Bermudan Petitioner, Daltex and the Party Cited, for the purpose of tracing and recovering monies alleged to belong to the Bermudan Company. They now wish to use that information for the purpose of proceedings in Bermuda, and accordingly apply for the approval of the Court which ordered the discovery.

The decision whether an application should be granted has been likened by Lord Denning MR in *Riddick v. Thames Board Mills* (1971) 3 AER at page 687 to holding a balance between two conflicting public interests. One is "in ~~protecting~~ preventing privacy and protecting confidential information". The other is "in discovering the truth so that justice may be done between the parties". It is a matter for the judgment of the Court, on the facts of each particular case, as to which of these conflicting interests should prevail.

In the Jersey case of *Guinness v. Market & Acquisition Consultants* (27th March, 1987) the Bailiff, in a survey of the principles he considered to be applicable, included the following:-

"Before the Court will allow such information to be used in other litigation, whether within or without its jurisdiction, the Court must be satisfied that there is at least a common link between the actions."

It appears to me that the closeness of the link between the Jersey proceedings and those instituted and contemplated in Bermuda is the dominant factor in this case.

The proceedings in both jurisdictions concern one family business, the good faith or bad faith of the members of that family, and the assets of that business.

It appears clear that unless these matters are settled amicably, as one might hope of a family, they will eventually have to be decided by the Courts of Bermuda. Considerations of privacy and confidentiality are in no way sufficient in this case, in my view, to prevent this Court from allowing the Bermudan Courts such assistance as may be derived from the documents which have resulted from the Jersey Order of Discovery. Indeed the confidentiality and privacy, which it is suggested I should protect, relate in this case to bank accounts and other documents which themselves are alleged to be an integral part of a fraudulent transaction. Whether the allegations are justified is another matter, but it is clearly desirable, in my view, that every opportunity be given for justice to be done by an unobstructed examination in the appropriate Court of the evidence available.

The Plaintiffs are therefore granted leave to utilise the documents obtained on Discovery in respect of an application in proceedings pending in the Supreme Courts of Bermuda.

21st April, 1988

In the Royal Court of Jersey

In the year one thousand nine hundred and eighty-eight, the twenty-seventh day of April.

BETWEEN	Deepak Mohandas Dalamal Lachu Mohandas Dalamal Suresh Hiranand Ramnani	PLAINTIFFS
AND	Rhone Company Limited	
AND	Citibank (Channel Islands) Limited	PARTY CITED

AUTHORITIES CITED

1. Alterskye v. Scott (1948) 1 All ER 469
2. Distillers Co. v. Times Newspapers (1975) 1 All ER 41
3. Riddick v. Thames Board Mills (1971) 3 All ER 677
4. Home Office v. Harman (1982) 1 All ER 532
5. Sybron Corp. v. Barclays Bank (1984) 2 W.L.R. 1055
6. Norwich Pharmacal v. Comrs. of Customs (1973) 2 All ER 943
7. Unef-Uniao Dos Export v. TTC (Holdings) (2nd December 1986) (J.J. Unreported)
8. Guinness v. Market & Acquisition Consultants (27th March 1987) (J.J. Unreported)
9. Tournier v. Nat. Prov. & Union Bank (1923) All ER Rep. 550
10. G.H. Bass & Company v. The Royal Bank of Scotland plc (1987) J.J. Unreported.

~~Judicial Greffier.~~