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ROYAL COURT

23rd November, 1990

183.

Before the Judicial Greffier

In the matter of the Representation of Midland Bank Trust Corporation (Jersey) Limited in relation to the enforcement of the Judgment against E.D. & F. Man (Sugar) Limited -v- Yani Haryanto, obtained pursuant to the Judgments (Reciprocal Enforcement)(Jersey) Law, 1960.

Application by the Representor for costs, Advocate A.J. Olsen for the Representor, Midland Bank Trust Corporation (Jersey) Limited.

Advocate J.G. White for E.D. & F. Man (Sugar) Limited (hereinafter referred to as "Man")

Advocate M.H. Clapham for Yani Haryanto (hereinafter referred to as "Mr. Haryanto")

On the 8th June, 1990 the Representor presented a Representation to the Royal Court arising out of the attempts of Man to enforce, against a bank account with the Representor in the joint names of Man's solicitors and Mr. Haryanto's former solicitors, a Judgment registered by the Judicial Greffier under the Judgments (Reciprocal Enforcement)(Jersey) Law 1960. There is no doubt that the Representor was under considerable pressure from Man's lawyers and from the Viscount's Department and that it was this pressure which led to the Representation being made. I am satisfied that the making of the Representation was reasonable.

It is clear from the correspondence that Man's lawyers were not unhappy in relation to the making of the Representation as they thought that it might enable them to speedily enforce the Judgment which had been registered.

On the 8th June, 1990 the Court ordered that the money should not be paid away until further order of the Court.

Although Advocate Clapham argued at the hearing that the Representation ought never to have been brought, it also appears to me that for some time the existence of the Representation with the Order mentioned in the previous paragraph was convenient to his clients inasmuch that whilst they continued the Judgment could not be enforced and it was unnecessary for his clients to seek a stay of execution of the original registration.

After the various parties to the Representation had been served the Representation came before the Court again on 27th July, 1990. Soon after that, in early August 1990, the Royal Court heard an application by Mr. Haryanto to set aside the registration and refused so to do.

Advocate White argued that after the date in early August on which the Royal Court refused to set aside the registration, the Representor ought to have known, by reason of the inclusion in the Judgment of Commissioner Hamon of a statement obiter dicta to the effect that the monies in the joint accounts belonged to Haryanto, that the monies could be safely paid over to the Viscount.

However, two difficulties remained at that point from the point of view of the Representor in addition to any doubts which may have remained. Those difficulties were:-

- (a) firstly, the fact that the Court order that monies be not paid over remained and that Mr. Haryanto would certainly oppose any variation to that order; and
- (b) the fact that provision had not been made for the payment of the Representor's costs.

The Representor clearly also wished to have the comfort of a Court Judgment as opposed to a statement obiter dicta in the Judgment on the application to set aside the registration. In all the circumstances of the case I find that the Representor acted reasonably in continuing with the Representation.

From that point onwards there were a number of adjournments and various negotiations in relation to these. Man was clearly still trying to obtain enforcement of the Judgment and Mr. Haryanto was still trying to prevent this without needing to obtain a stay of execution of the Judgment.

Finally, on 5th October 1990, the Court directed the Representor to treat the funds in joint accounts numbered 31124001 and 31124002 maintained by the Representor as funds belonging to Mr. Haryanto and referred the matter of the costs of the Representation to me for my determination.

There are various difficulties in this case. One of the difficulties is that if any order for costs is made against Mr. Haryanto in favour of the Representor then the Representor will only be able to enforce those costs from the monies in the accounts. The effect of such enforcement will be to reduce the amount which Man will be able to obtain from the accounts and if, as Advocate White alleges, Man will be unable to satisfy its English Judgment worldwide, then this will reduce the amount of the satisfaction of the Judgment. Another difficulty is that although, at the moment, the English Judgment stands and the registration stands, both are subject to appeal to the Courts of Appeal of the different jurisdictions. It is for that reason that Advocate Clapham urged me to delay making a decision as to who should pay the costs until those proceedings had been completed.

However, if I were to do this then, upon any decision of the Court of Appeal of Jersey to refuse the appeal against the Royal Court's decision not to set aside the registration, Man would immediately proceed to enforce the Judgment against the whole of the monies and any subsequent Judgment against Haryanto would come too late.

I am satisfied that the Representation was reasonably brought and reasonably sustained and that the Representor's costs should be paid. I take the view that this case is analagous to that of a trustee who holds money and who wishes to seek the comfort of a Court Order. It is clear that Messrs. Symons and Symons and Messrs. Chance held the monies as trustees for their respective clients with the ultimate beneficial ownership resting with Mr. Haryanto. The Representor held the money for the benefit of these trustees and found itself in a position analagous to that of a trustee.

Therefore, I am satisfied that the costs of the Representor ought to be paid out of the monies in the bank accounts. To decide otherwise would be to place the Representor or any other bank in a similar position in a totally impossible position. I take the view that the appropriate Order is one for reasonable costs and I shall now define that further. By reasonable costs I mean costs to be taxed, not on the normal party and party basis or taxed costs basis but, on the basis of a reasonable amount for all costs reasonably incurred with any doubts as to whether the amount is reasonable or the costs reasonably incurred being determined in favour of the paying party, which in this case will be Mr. Haryanto from the bank accounts. That Order will also include the costs of the Representor in relation to the hearing of this application.

Both Advocates White and Clapham urged on me that I did not have the power to make an Order for payment out of the relevant bank accounts. However, it is clear that the Royal Court has referred the matter of the costs of the Representation to me for my determination. In my view, and this was conceded by Advocate White, the Royal Court had the power to order that such costs be paid out of the bank accounts. It is clear to me that the intention of the Royal Court was to devolve to me the decision in relation to the matter of costs and I take the view that in so doing the Royal Court also devolved to me all powers that it had in relation to ordering the payment of costs out of the bank accounts. Furthermore, although I do not have to decide this point, it may well be that the Judicial Greffier has an inherent right in relation to summonses and applications before him to order that the payment be made out of trust funds or analagous funds.

As the Royal Court has decided that Mr. Haryanto is the effective beneficial owner of the bank accounts, I had to consider as to whether any injustice would be done to him in relation to this Order. I find no such injustice, firstly, because it is unlikely to affect his overall position and secondly, because he has been found to be liable by both English and Jersey Courts. The fact that those decisions are currently subject to appeal cannot alter the fact that the Courts of both jurisdictions have so found. Equally I had to consider whether any injustice is caused to Man. It is clear that it was Man's insistence on attempting to enforce the Judgments before the appeal procedures had been completed and without adequate proof being afforded to the Representor of the beneficial ownership of the accounts, which caused the Representation to be made. It is also clear as I have already said, that Man were not unhappy to see the Representation being made. I therefore find that this Order causes no injustice to Man.

Finally, the matter of the costs of Man and Mr. Haryanto in relation to this application and in relation to the Representation remain outstanding. I take the view that the outstanding matters of costs ought to be left over until after the decision of the Court of Appeal in Jersey and accordingly I adjourn them sine die.

Judicial Greffier