

ROYAL COURT
(Samedi Division)

85A.

1st May, 1997

Before: Sir Peter Crill, K.B.E., Commissioner
and Jurats Herbert and de Veulle

<u>Between:</u>	Sterritt Properties Inc.	Plaintiff
<u>And:</u>	Roker Trustees (Jersey) Limited	First Defendant
	Strachans Management Services Limited (trading as Strachans)	Second Defendant
	Richard Jepson Egglshaw	Third Defendant
	Philip de Figueiredo	Fourth Defendant
	Raymond Donner	Fifth Defendant
	Hilvick Investments Limited	Sixth Defendant
	Business Ventures Inc.	Seventh Defendant

Application by the Fifth Defendant for an Order discharging or
varying the interim orders set out in the Plaintiff's Order of Justice of
19th April, 1997.

Advocate P.C. Sinel for the Plaintiff.
Advocate J.A. Clyde-Smith for the Fifth Defendant.

JUDGMENT

5 THE COMMISSIONER: I do not propose to go into the background of this case in
any great detail; suffice it to say that there is a dispute between
Sterritt Properties Inc., the plaintiff in this action and Mr. Raymond
Donner, the Fifth Defendant, as to the ownership of 1.6 million shares
in a company known as CIC (Continental Investment Corporation) which is
incorporated under the laws of the State of Georgia in the United States
of America with its principal place of business in Dallas, Texas.

10 The break-up of those shares today is as follows: 31,000 had been
sold before proceedings were launched in Dallas by the plaintiff against
a number of defendants, including Mr. Donner, for approximately \$150,000
of which \$50,000 has been paid to Mr. Donner and the balance used to
15 discharge fees due to Strachans Management Services Ltd and/or Roker
Trustees (Jersey) Ltd. 60,000 of the disputed shares were transferred
to Mr. Donner by Trustees controlled by Strachans who had been holding
them at that time or at any rate in October, 1995, and these had been
sold by Mr. Donner before the proceedings were launched in Dallas by the
plaintiff. There was a further transfer of 400,000 shares again prior

to the proceedings and lodged in Vancouver; these have been enjoined by the plaintiff and since 10th March, 1997, have been held in the registry of the Court in Dallas. The remaining 1,109,000 shares were held by Strachans pursuant to an Order of this Court of 24th September, 1996. Roker Trustees (Jersey) Ltd had applied for directions under Article 47(3) of the Trusts (Jersey) Law, 1984, the plaintiff had intervened and the Court - and I read from the Act of that date:

"...without adjudicating on the merits of the Intervenor's application but with the consent of Roker, ordered that Roker, Strachans Management Services Limited, Hilvick Investment Limited and Business Ventures Inc. (it is unnecessary for the Court to trace the exact relationship of those parties, it is not relevant to the present application) and their respective officers and employees shall retain within their possession and control in certificate form in the name of Business Ventures Inc. until further order of this Court all the Continental Investment Corporation shares to which they have title or otherwise control".

That Order was complied with and the position therefore was that shortly after that date Strachans or their Trustee nominees or a company controlled by them held the shares.

It is clear from the affidavit of Mr. Richard Sterritt the Chief Executive Office of the plaintiff, which referred to those shares (that is to say those held by Strachans: it could not have referred to any others because they had already been sold, as I have just mentioned) that he believed that they were being traded contrary to the Order of the Royal Court, because the plaintiff was in possession of a report suggesting that there had been an unusual activity in those shares.

One must remember, as was pointed out to us by Mr. Clyde-Smith, that the enjoined shares - if I may call them that - were not the only shares available to people for trading, if they could have been traded. There was a considerable number of other shares in CIC which were bought and sold by traders and investors in the normal course of proceedings.

On 19th April, 1997, the plaintiff through its Advocate, Mr. Sinel, presented an Order of Justice to the Deputy Bailiff which contained a number of draconian and far-reaching orders and they were directed, not only against Mr. Raymond Donner but also against Roker Trustees (Jersey) Ltd, Strachans Management Services Ltd, Richard Jepson Egglshaw, Philip de Figueiredo, Hilvick Investments Ltd and Business Ventures Inc., all of whom were connected in a way which it is not necessary to set out with Strachans. Each defendant was ordered not to dispose of or deal with or diminish the value of any shares in the common stock of Continental Investment Corporation or deal with or diminish the value of any such shares whether inside or outside the Island of Jersey and whether jointly owned or not. It is not necessary to go into the injunctions against the First, Second, Third and Fourth Defendants whereby they were not allowed to deal with or dispose of or diminish the value of any of their assets up to the value of \$3,000,000. The Fifth Defendant, Mr. Donner, was ordered not to remove from the Island of Jersey or in any way dispose of or deal with or diminish the value of any of his assets which are in the Island of Jersey whether in his own name or not and whether solely or jointly owned up to the value of

5 \$3,500,000 and secondly not in any way to dispose of or deal with or diminish the value of any of his assets whether they are in or outside the Island of Jersey whether in his own name or not and whether solely or jointly owned up to the same value. There was also a restriction and some qualifications as regards the total and incumbent value of the assets in the Island of Jersey, etc.

10 There was a further interim injunction, headed 'Sequestration of Shares and Assets' and it is in the following terms:

15 *"The defendants or each of them must within twenty-four hours of service of these presents or notice of same if sooner or such other period as may be agreed in writing with the plaintiff deliver to the Viscount all certificates in respect of any shares in Continental Investment Corporation which are in their possession, custody, or power, or are under their control and the whole of any proceeds of sale of any such shares as have at any time been in their possession, custody, power, or control. Where any defendant alleges that the*
20 *proceeds of the disposal of such shares have been disposed of then such defendants shall specify the amount of such proceeds on oath to the plaintiff's Advocate and deliver money or monies worth equivalent to such proceeds of disposal to the Viscount's office".*

25 Strachans' complied with that Order and the necessary shares were transferred on the following day into the possession of the Viscount, who gave a receipt for them.

30 The Fifth Defendant, Mr. Donner, did not comply with the Order in the paragraph I have read. Instead he went to the Court to ask for further time and this was granted until 25th April, 1997. Mr. Clyde-Smith has said in the course of the hearing that at the hearing which granted the extension of time the Court informed him that his client
35 would either have to obey the Order or issue a summons to have the injunctions set aside. In the event, one day before the extended time limit was due to expire, the summons to strike out the offending injunctions was issued by Mr. Clyde-Smith. It would have been possible, had the Court been able to do so, to have sat within the time limit, but
40 due to the Court's work-load and the availability of judges, it proved impossible.

45 The Court earlier today found - contrary to the allegation in a representation brought at the beginning of this hearing - that Mr. Donner's contempt, if such it was, was only a very technical contempt and was not such as should carry any sanction and therefore the Court allowed the matter to proceed on its merits today.

50 The third requirement in the Order of Justice was that each defendant must inform the plaintiff in writing at once of all his assets whether inside or outside the Island of Jersey, whether in his name or not, and whether solely or jointly owned giving the value, location, and details of all such assets. (The defendants may be entitled to refuse
55 to provide some or all of this information on the grounds that it may incriminate them). The information given by each defendant had been confirmed in an affidavit which had been served on the plaintiff's advocate within seven days after the Order had been served on the

defendant. There were exceptions, of course, to allow for living expenses.

5 The Order of Justice then asked the Royal Court to undertake a large number of activities such as an enquiry into the amount of the proceeds of the sale of the 60,000 shares which I have just mentioned; ordering Mr. Donner to repay to Sterritt Properties Inc., the amount found, on the taking of the said enquiry, to be interest and so on. A large number of reliefs were being sought. The fact is that today at 10 this hearing Mr. Sinel has abandoned the claim in respect of the shares in CIC held by the Viscount; abandoned in the sense that he is not seeking any further order because they are with the Viscount and are therefore secure in respect of meeting any judgment that may be given in his client's favour and would be available to them in due course, should 15 they succeed in the Dallas Court.

Mr. Sinel has therefore confined himself to a claim with regard to the sale of the shares by Mr. Donner. The Court has found it difficult to understand the full effect of the argument but we think it is suggested that the shares were sold with the connivance or through the 20 conspiracy of Strachans - who were not trusted by the plaintiff, and therefore no previous information was sought from them - before the Order of Justice was obtained last month. The plaintiff is seeking an Order that Mr. Donner pay to the Viscount the sum of \$400,000 representing the sale of the 60,000 shares plus \$50,000 to cover 25 interest plus \$50,000 to cover expenses. In other words a total of \$500,000. That is a considerably reduced amount from the orders that were being sought earlier when it was thought that perhaps Mr. Donner had already sold some of the shares - which we now know not to be the case - that is to say the shares which had been held under the control 30 of Strachans as from a date in September, 1996.

It is not necessary for the Court to go into whether there was a justifiable belief that there might have been a sale of those shares; 35 there certainly seemed to have been an increase in trading in them. There is a dispute between the parties as to the extent of that trading, but no effort would seem to have been made between September and April to ascertain from Mr. Clyde-Smith whether his client would object to those shares being transferred to the viscount, as indeed they were on 40 20th April as a result of the Order of the Deputy Bailiff of 19th April.

It is clear to us that, when one is considering a mandatory injunction, it is only in exceptional circumstances that such an order 45 should be made and if authority is needed for that statement then it is to be found in relation to Mareva injunctions in Rosseel NV -v- Oriental Commercial Shipping (UK) Ltd & Ors [1990] 1 WLR 1387. I read from the headnote to that Judgment:

50 *"Where it is sought to enforce a judgment or arbitration award in support of a foreign jurisdiction the English court should, save in exceptional circumstances, refrain from making orders which extend beyond its own territorial jurisdiction".*

And I read from the judgment of Lord Donaldson MR:

55 *"Where this court is concerned to determine rights then it will, in an appropriate case, and certainly should, enforce its*

5 own judgment by exercising what would be described as a long arm jurisdiction. But, where it is merely being asked under a convention or an Act of Parliament to enforce in support of another jurisdiction, whether in arbitration or litigation, it seems to me that, save in an exceptional case, it should stop short of making orders which extend beyond its own territorial jurisdiction".

10 I read from letter C at p.1389:

15 "It seems to me that, apart from the very exceptional case, the proper attitude of the English courts - and, I may add, courts in other jurisdictions - (and I interpolate that includes us) is to confine themselves to their own territorial area, save in cases in which they are the court or tribunal which determines the rights of the parties. So long as they are merely being used as enforcement agencies they should stick to their own last".

20 The point that is being made by Mr. Clyde-Smith is that the proceedings in Dallas were launched against Mr. Donner and other parties. Dallas is the proper forum, it is the place where the contracts were performed. It is the place where, if any fraud took place as alleged by the plaintiff against them by Mr. Donner, it was there that that fraud - if such it was - was perpetrated and it is appropriate that the disputes between the parties should be dealt with there. It is the proper law of the contract.

30 Although the plaintiff company in its application to the Deputy Bailiff for the order I have mentioned gave the usual undertakings as to damages and costs the Deputy Bailiff reinforced that undertaking by requiring them to pay £20,000 to the Viscount within a stipulated time. There is still 10 days to go before - if we were not to lift the injunctions as we have been asked to do - that money has to be paid up.

35 It is not necessary for us to go into the facts of this case in more detail. We have been given a certain amount of substantive evidence by Mr. Clyde-Smith in the way of documents and so on and Mr. Sinel likewise but it seems to us unnecessary to go further than we have.

40 There is one further case which I just wish to refer to and that is Union of Communication Workers -v- Le Maistre (30th November, 1992) Jersey Unreported. On p.5 of that judgment is to be found a reference to a mandatory injunction requiring money to be paid in as opposed to a prohibitory injunction.

45 "From what we have heard it is clear to us that a mandatory injunction is a very unusual form of injunction to be granted on an interlocutory application. Although neither the learned Attorney nor Mr. Olsen knew of any such injunctions having been obtained before this Court, we can recall two or possibly three in recent years and they are Thomas et uxor -v- Blampied (18th July, 1991) Jersey Unreported; Eves & The Glendale Hotel Ltd -v- Tourism Committee (11th December, 1991) Jersey Unreported; and Le Nosh -v- Sterling & Ors (30th April, 1990) Jersey Unreported. (The judgment refers to these cases in general

5 terms then carries on).... It seems to us that we have a
judicial discretion, but this discretion will be exercised to
withhold an injunction more readily if it is mandatory than if
it is prohibitory. And it seems to us, from what we have
heard, that we must have a very high degree of assurance that
at the trial it will appear quite clear to the court that the
injunction was rightly granted".

10 This Court is unable to say, under all the circumstances, that it
is satisfied that the mandatory injunction was rightly granted; nor is
it satisfied that the learned Deputy Bailiff was in full possession of
the facts which ought to have been drawn to his attention and not just
left with him in a pile of documents; for example the filing by the
15 plaintiff company - which has been explained by Mr. Sinel - but
nevertheless the filing with the US Securities Exchange Commission which
makes it clear that they do not appear to lay claim to the 1.6 million
shares, to mention just one matter.

20 Taking everything into consideration, we are also not satisfied
that it would be appropriate to maintain the Mareva injunction as Mr.
Clyde-Smith has said. There appear to be no assets anywhere belonging
to his client. I should just say this: Mr. Sinel has suggested that the
special circumstances which would entitle us to maintain the
25 injunctions, in particular the mandatory injunction, is the fact that
Mr. Donner has three United States passports; that he has been involved
in some currency contraventions in Zimbabwe; that he has been declared
bankrupt in South Africa (Mr. Clyde-Smith pointed out that that was in
1994); he appears, according to Mr. Sinel, to have been involved in some
30 kind of rand sale for dollars and a re-sale of a dubious nature. But we
would require a good deal more than that, in our opinion, for us to be
abundantly satisfied that, should the plaintiff succeed, the judgment
would be nugatory. Under the circumstances we discharge the injunctions
in accordance with the summons.

35 There will be an order for taxed costs.

Authorities

Walters -v- Bingham [1985-86] JLR 439.

Union of Communication Workers -v- Le Maistre (30th November 1992)
Jersey Unreported (1992) JLR N.8.

Nos. 12 & 13 Britannia Place Ltd (1989) JLR 34.

Sweet & Maxwell's Commercial Litigation: Mareva - Practice and
Procedure: pp.271-272.

Ninemia Corporation -v- Trave [1983] 1 WLR 1412.

Rosseel NV -v- Oriental Commercial Shipping & Ors [1990] 1 WLR 1387.