

ROYAL COURT  
(Samedi Division)

198A.

23rd October, 1997

Before: F. C. Hamon Esq. Deputy Bailiff  
and Jurats B. Myles and P.J. de Veulle

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

Application by the Defendants for a stay of the Jersey proceedings  
on the ground that Dallas and not Jersey is the *forum conveniens*.

Advocate J. D. Melia for the Plaintiff  
Advocate M.M.G.Voisin for the First,  
Second, Third and Fourth Defendants  
Advocate T. J. Le Cocq for the Fifth,  
Sixth and Seventh Defendants

**JUDGMENT**

**THE DEPUTY BAILIFF:** This is an application by the defendants to this action for a stay of these proceedings on the grounds of *forum non conveniens*. The proceedings concern 1.6 million shares of common stock in a company called Continental Investments Corporation which is a corporation organized under the laws of the State of Georgia, United States of America to which the plaintiff asserts ownership. There is an allegation that fraudulently and in breach of trust the Fifth Defendant sold part of the shares and retained the remainder of the shares. The Plaintiff seeks delivery up of these shares. The bulk of the shares are in Dallas, Texas and other share certificates are held in Jersey by the Viscount following an order of this Court. We have an affidavit from Mark H. Richmond, a lawyer practising in Dallas, Texas. He is lead

counsel for the applicant (the Fifth Defendant in this action) in the 191st Judicial District Court of Dallas County, Texas. Mr. Richmond deposed at length to the effect that in Dallas all the proceedings have been issued and all issues have been joined regarding the ownership of the disputed stock. The claims in Dallas are clearly complex and they include fraud, conversion, declaration of the parties' rights, compliance with Federal Securities Law and breaches of contract. The registrar of the Dallas Court holds 400,000 shares of the CIC stock. There is also an agreement between the parties precluding the transfer assignment or exchange of the CIC stock in the name of Business Ventures Inc., the seventh Defendant in Jersey and that stock is currently subject to an injunction in this jurisdiction. The issues in the Dallas proceedings dovetail with those in Jersey, with a certain exception. These are in effect mirror proceedings in that the Dallas proceedings seek to determine the ownership of the CIC stock issued to Business Ventures Inc. The Dallas proceedings apparently also address other loss and damage associated with the injunction in the CIC stock and with the attendant costs. Mr. Donner and his daughter have already given evidence. The parties have exchanged relevant non-privileged documents and prepared logs of privileged documents. As far as we can understand there is also some form of mediation dispute proceedings running at the same time in Texas. A discovery dispute is pending on appeal before the Supreme Court on an application for a writ of mandamus. All the parties have filed answers and submitted to the jurisdiction of the Dallas Court. According to the affidavit of Mr. Richmond, Texas law will control the application and interpretation of the contracts giving rise to the conversion by issuance to Business Ventures Inc. of the CIC stock. The promissory notes were made and delivered in Texas and contain clauses that they be construed under the laws of Texas, by the applicable rules of the exchanges under which that stock was traded.

Mr. Richmond makes six points in relation to the situs of the deal relating to the stock.

1. All negotiations between the parties concerned in the stock were held in Dallas, Texas.
2. The monetary consideration for the transfer of the CIC stock flowed into and out of Dallas banks and for the most part were paid in Dallas, Texas;
3. The plaintiff and CIC's principal place of business are in Dallas, Texas;
4. The transfer agent for the stock is situated in Dallas, Texas;
5. The individuals in dispute are Mr. Sterritt and his son and Mr. Donner. All lived in Dallas at the relevant time.
6. A Dallas attorney drew up all the documents evidencing and establishing the transfer of the CIC stock to Business Ventures Inc.

At this point it becomes very clear that the law of Texas must be the most convenient law and we have a situation in Jersey where by leave of the Court no pleadings have yet been filed to the Order of Justice. All that we have had is a series of interlocutory applications.

The law in this jurisdiction is based on the case of "In the matter of the representation of Allied Irish Banks (C.I.) Limited" 1987/88 JLR 157 where the Court said at page 171:-

*“(a) The basic principle is that a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice.”*

As Miss Melia wished to rest on the wisdom of the Court and as the Court has not the slightest doubt but that Texan law is the more appropriate forum for this action we are minded to grant a stay. We should perhaps point out two matters. Neither the First Defendant nor the Fourth defendant are parties in the Dallas proceedings but no allegation according to Mr. Voisin is made specifically against them in the Order of Justice served on 21st April. The other point that Miss Melia made was that the relief is not precisely identical but if a stay is granted then when the Texan proceedings are concluded this will still allow a mopping up exercise in Jersey on these extraneous matters if the Plaintiff should succeed in Texas.

On that basis we grant a stay on the grounds of *forum non conveniens* and we make an order for costs of an incidental to this hearing to the clients of Advocate Le Cocq and Advocate Voisin.

## Authorities

In re the Representation of AIB (C.I.) Ltd. (1987-88) JLR 157.