

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS

2 CIVIL DIVISION

3 CAUSE NO: G 0222 OF 2018

4
5 BETWEEN:

6 DAVID MUÑOZ

7 PLAINTIFF

8 AND:

9 DELTEC INTERNATIONAL GROUP

10 FIRST DEFENDANT

11 AND:

12 INTERNATIONAL FINANCIAL SERVICES GROUP

13 SECOND DEFENDANT

14 AND:

15 HOLD AND OPT INVESTMENTS LIMITED

16 THIRD DEFENDANT

17 AND:

18 MERCURIO LIMITED

19 FOURTH DEFENDANT

20
21 IN CHAMBERS

22
23 **Appearances:**

Ms. Natasha Partos of Campbells for the
24 Plaintiff

25 **Before:**

The Hon. Justice Cheryll Richards Q.C.

26 **Heard:**

27 8th January 2019

28 HEADNOTE

29 *Civil Division – Grand Court Rules – GCR O.11 – Leave to serve outside the*
30 *jurisdiction.*

REASONS FOR DECISION

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1. This is an *ex parte* application made by the Plaintiff pursuant to GCR O.11 for leave to serve the Third and Fourth Defendants outside the jurisdiction. The application is made by summons filed on the 22nd November 2018.

2. On the 16th November 2018, the Plaintiff filed a writ of summons against the four Defendants. The First and Second Defendants, Deltec International Group and International Financial Services Group are exempt companies registered in the Cayman Islands. The Third and Fourth Defendants, Hold and Opt Investments Limited and Mercurio Limited are companies which are registered in the Bahamas.

3. The Plaintiff's claim arises from the termination of his employment by the First Defendant on the 31st July 2018, breach of an oral employment agreement made 18th July 2018 by the Second Defendant and the alleged wrongful issue of a loan default notice by the Third and Fourth Defendants on the said 31st July 2018.

4. The *ex parte* application is supported by the Second Affidavit of the Plaintiff dated 4th January 2019¹. The Plaintiff details therein the basis for his belief that he has a real issue to be tried before the Grand Court.



¹ Plaintiff undertakes to file same.

1 5. The Plaintiff states that there is a close connection among all four Defendants, as the
2 beneficial owner of the Third Defendant, Mr. Jean Chalopin is the Chairman and 45%
3 shareholder of the First Defendant and is also the largest shareholder of the Second
4 Defendant. The beneficial owner of the Fourth Defendant, Mr. Gustavo Vollner is also
5 the second-largest shareholder of the First Defendant and a large shareholder of the
6 Second Defendant. Mr. Chalopin was the principal of the First, Second and Third
7 Defendants, the agent of the Fourth Defendant and the person with whom the Plaintiff
8 communicated in respect of the relevant agreements.

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10 6. The Plaintiff commenced employment with the First Defendant as its CEO on the 4th
11 September 2012. The entity is in the business of private banking with an office in the
12 Bahamas. His employment agreement stated that the governing law was the law of the
13 Cayman Islands. The agreement was extended by an addendum dated 1st April 2016
14 which extended the term of employment until it was terminated by either party.

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16 7. The Plaintiff asserts that as part of his employment arrangements, he was offered, and
17 later received, a loan from the Third and Fourth Defendants of US\$1million
18 (\$500,000.00 from each entity), in order to purchase shares in the First Defendant. This,
19 the Plaintiff states in his statement of claim filed 19th December 2018, was as an
20 inducement for him to accept employment with the First Defendant and was also to
21 compensate him for foregoing restricted shares with his previous employer.



1 8. A loan agreement was entered into on the 15th May 2014 and comprised a Security
2 Agreement and a Secured Loan Agreement. Both agreements which are attached to the
3 Second Affidavit of the Plaintiff state that the governing law is the law of the Cayman
4 Islands.

5
6 9. The Secured Loan Agreement required the payment of interest on the loan on a quarterly
7 basis. The Plaintiff states that this was varied by oral agreement with Mr. Chalopin to
8 the effect that the interest accruing under the Loan Agreement would only become
9 payable at the end of the term of the loan. Between the date of the loan and the 31st July
10 2018, in accordance with that oral agreement, the Plaintiff did not make any payments
11 of interest on the loan and neither the Third nor Fourth Defendant requested same of
12 him.

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14 10. In July 2018 the Plaintiff had discussions with Mr. Chalopin as to the sale of his shares
15 in the First Defendant and the termination of his employment but they could not agree
16 on the value of his shares.

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18 11. The Plaintiff's employment was terminated without notice on the 31st July 2018 and on
19 the same day he received a default notice from the Third and Fourth Defendants. The
20 default notice indicated that the Defendants intended to re-register the shares held by the
21 Plaintiff in the First Defendant into the names of the Third and Fourth Defendants.

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23 12. The Plaintiff believes that this notice is invalid because he was not in breach of the Loan
24 Agreement, given the oral agreement varying same.

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1 13. The injunctive relief sought is to prevent the re-registration of the shares held by the
2 Plaintiff in the First Defendant. The alternative claim of the Plaintiff is for damages in
3 breach of the Loan Agreement if the shares have already been re-registered into the
4 names of the Third and Fourth Defendants.

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6 14. As against the Second Defendant, the details of the Plaintiff's claim are that on the 18th
7 July 2018, he entered into an oral agreement with Mr. Chalopin that the Second
8 Defendant would provide employment in London and would pay for his relocation from
9 the Bahamas to London. The Plaintiff states that he thereafter travelled to London,
10 incurring costs in so doing, and that the Second Defendant failed to honour the oral
11 agreement.

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13 15. The Plaintiff claims damages and declaratory relief against the First Defendant,
14 damages against the Second Defendant and declaratory and injunctive relief and
15 damages against the Third and Fourth Defendants.

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17 16. The First and Second Defendants were served with the writ on the 16th November 2018
18 and an acknowledgement of service with an intention to defend has been filed by
19 attorneys Maples and Calder on their behalf.

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21 17. The Plaintiff grounds this application for leave to effect service out of the jurisdiction
22 on GCR O.11, r.1(1) (c), (b) and (e).

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1 18. Firstly the Plaintiff submits that service of process out of the jurisdiction is permissible
2 because pursuant to GCR O.1 r.1(1) (c) the claim is brought against a person who has
3 been or will be duly served within or out of the jurisdiction and a person out of the
4 jurisdiction is a necessary or proper party thereto.

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6 19. I accept this submission, noting that the claims against the First, Third and Fourth
7 Defendants are inextricably linked, arising, as they do, from the employment of the
8 Plaintiff by the First Defendant, and the terms of that employment. There would be
9 common questions of fact and law for consideration at trial.² I note in addition that the
10 First Defendant has already been served within the jurisdiction.

11
12 20. Secondly, the Plaintiff submits that pursuant to GCR O.1 r.1(1) (b) an injunction is
13 sought to order the Defendants to refrain from re-registering the shares of the Plaintiff
14 in the First Defendant, which entity is a Cayman Islands company. The injunctive relief
15 sought would, if granted, require to be effected in the Cayman Islands.

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17 21. Thirdly, the Plaintiff submits that pursuant to GCR O.1 r.1(1) (e), the claim is brought
18 in respect of a breach committed within the jurisdiction of a contract made within or
19 without the jurisdiction. It is urged in this regard that the breach relates to the shares of
20 a Cayman company. I note that the shares of an exempted company are deemed to be
21 situated in the Cayman Islands³.

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² *Hutchinson Ltd. v. Cititrust* [1998] CILR 43; *Condoco v. Broadhurst DaCosta* [2004-05] CILR 236

³ *160088 Canada Incorporated, 151095 Canada Incorporated and 152931 Canada Incorporated v. Socoa International Limited* (1998) CILR 257



1 22. I accept the submissions of the Plaintiff's Counsel on these aspects.

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3 23. The Second Affidavit of the Plaintiff satisfies the requirements of GCR O.11 r.4. I am
4 satisfied on all the material provided, that at this stage there appears to be a real issue
5 which the Plaintiff may reasonably ask the Court to adjudicate upon.

6

7 24. On the issue of forum, there appears to be substantial connecting factors to the Cayman
8 Islands⁴ including that each written agreement, the subjects of the claims, evidences the
9 intention of the parties that Cayman Islands law be the governing law, and that the First
10 and Second Defendants are domiciled in the Cayman Islands.

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12 25. GCR O.11 r.4 (1) (e) provides that the Affidavit in support of the application should state
13 if service is not to be effected personally, the method or methods of service which are in
14 accordance with the laws of the country in which service is to be effected. The Second
15 Affidavit of the Plaintiff states the addresses of the Third and Fourth Defendants and his
16 belief that in accordance with the laws of the Bahamas, service may be effected by
17 delivering a copy of the Writ of Summons and Statement of Claim to the registered
18 offices of the Third and Fourth Defendants.

19

20 26. An alternative method of substituted service by e-mail⁵ was requested in the summons,
21 but there was no information in the Affidavit in support as to whether service by e-mail
22 on principal officers of a company is an acceptable method of service under Bahamian
23 laws.

⁴ *Insurco International v. Gowan Co.* 1994-5 CILR 210

⁵ Pursuant to GCR O. 65 r. 4



1 27. On the issue of time for acknowledgement of service, Counsel for the Plaintiff submitted
2 that there has been communication with Counsel for the Third and Fourth Defendants in
3 the Bahamas who is therefore already aware of the forthcoming Writ and that thus a 14-
4 day period was not unreasonable.

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6 28. In light of the foregoing I granted the application of the Plaintiff and indicated that I
7 would record a brief note of my reasons for the file.

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11 **Dated this the 8th day of January 2019**



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A handwritten signature in blue ink, appearing to read "Cheryll Richards", is written over the signature line.

Honourable Justice Cheryll Richards Q.C.
Judge of the Grand Court