

CIRCULATE

4.10.2002

IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN



Cause No. 173/02



Before: The Hon Mr. Justice Sanderson

BETWEEN: Richard Friend  
AND: Condoco Grand Cayman Resorts Ltd.

Plaintiff  
Defendant

Cause No: 184/02

BETWEEN: Richard Friend  
AND: (1) Michael Ryan (trading as MRG International)  
(2) I.R.R. Ltd.  
(3) Hotelco Ltd.  
(4) Condoco Grand Cayman Resorts Ltd.  
(5) Villasco Grand Cayman Resorts Ltd.

Plaintiff

Defendants

Cause No: 185/02

BETWEEN: Trafalgar Investment & Trading Co.  
AND: Condoco Grand Cayman Resort Ltd.

Plaintiff  
Defendant

Cause No: 222/02

BETWEEN: Trafalgar Investment & Trading Co.  
AND: Michael Ryan

Plaintiff  
Defendant

Appearances:

Mr. Peter Broadhurst & Mr. Kyle Broadhurst for the Plaintiff  
Mr. Ramon Alberga, QC & Mr. Nick Joseph for the Defendant

Heard on 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> October 2002

JUDGMENT

1 CHAMBERS COMMENCED ON FRIDAY,  
2 OCTOBER 4TH, 2002 AT 2:34 P.M.



3  
4 THE COURT: The defendants apply for a  
5 stay of proceeding in four actions on the basis  
6 of forum non-conveniens and/or alibi lis  
7 pendens.

8 The plaintiff, Richard Friend, signed two  
9 engagement agreements for 1998 and 1999.  
10 Pursuant to those agreements he was to work for  
11 Michael Ryan in 1998, and for Michael Ryan and  
12 IRR Limited in 1999. The agreements do not say  
13 what he was to do; that is, what duties he  
14 would perform.

15 Clause 1 of the 1998 agreement says:

16 "Richard E. Friend ('REF')  
17 agrees to work full time for (or  
18 for the benefit of) MRG  
19 International ('MRG'), based out  
20 of Miami, Florida, from May 1,  
21 1998 through April 30, 1999, for  
22 \$1.00 per year (subject to  
23 extension upon mutually  
24 agreeable terms). All out of  
25 pocket expenses are to be

1 reimbursed to REF not less  
2 frequently than monthly. REF's  
3 position is to report directly  
4 to Michael Ryan."

5 Clause 1 of the 1999 agreement says:

6 "Richard E. Friend ('REF')  
7 agrees to work full time for (or  
8 for the benefit of) MRG  
9 International and IRR Limited  
10 (respectively, and jointly and  
11 severally, 'MRG'), based out of  
12 Miami, Florida, in connection  
13 with its Grand Cayman and Costa  
14 Rican projects (and any other  
15 projects undertaken by MRG, from  
16 May 1, 1999 through April 30,  
17 2000, for \$1.00 per year, plus  
18 bonuses plus 1% of condo and  
19 villa sales) as mutually agreed  
20 and warranted under the  
21 circumstances (which term shall  
22 be subject to extension from  
23 year to year upon mutually  
24 agreeable terms). All out of  
25 pocket expenses incurred by REF



1           agreements for the purchase and sale of  
2           property have been signed by other companies  
3           controlled by Mr. Ryan, and as well, they have  
4           been signed by Mr. Friend. As I understand it,  
5           those agreements have not been completed.  
6           Mr. Friend apparently worked for Mr. Ryan for  
7           approximately three years. During that period  
8           of time he was paid approximately \$38,000 in  
9           cash directly and reimbursed approximately  
10          \$70,000 for out-of-pocket expenses. He also  
11          invested approximately \$265,000 of his money in  
12          the Ritz Carlton project, because Mr. Ryan was  
13          running out of funds.

14                 Mr. Friend began to complain about not  
15          being paid and attempted to negotiate a  
16          settlement with Mr. Ryan. In late  
17          February 2002, Mr. Friend's lawyers wrote a  
18          demand letter requesting resolution of this  
19          matter and a response by March 1st, or else  
20          proceedings would be initiated in the Cayman  
21          Islands against Mr. Ryan and his companies.  
22          There was no immediate response from Mr. Ryan.  
23          Instead, he instructed Florida attorneys to  
24          commence proceedings in Miami against  
25          Mr. Friend. This was done on March 1st.

1           In the Florida proceedings, Mr. Ryan  
2           alleged for the first time that the 1998 and  
3           1999 agreements were void because Mr. Friend  
4           had been hired as a lawyer or in-house counsel  
5           and that he was not entitled to practice law in  
6           the state of Florida because he had been  
7           suspended by the Florida State Bar for theft.  
8           In the Florida proceedings, Mr. Ryan sought an  
9           accounting and a declaration that he was not  
10          obliged to pay any money under the contracts  
11          because they were void. He also alleged breach  
12          of contract and legal malpractice.

13           Mr. Friend commenced these proceedings on  
14          March 8th 2002 before he was served with the  
15          proceedings in Florida. The Cayman proceedings  
16          were served first. According to the decision  
17          in *Dresser UK Ltd v Falcongate Freight Ltd.*  
18          [1992] 2 All ER 450. The Cayman Islands  
19          proceedings having been served first, will be  
20          considered to be the first in time.

21           Mr. Friend then applied to the Florida  
22          court for a stay or dismissal of those  
23          proceedings on the basis of forum  
24          non-conveniens. He argued that the Cayman  
25          Islands was the most convenient forum, and

1 therefore these proceedings should go ahead and  
2 the US proceedings dismissed. I am not sure  
3 gentlemen if it was dismissed or stayed.

4 MR. ALBERGA: I know he wanted a dismissal  
5 because of forum non-conveniens --

6 THE COURT: It doesn't really matter. It  
7 was either for a dismissal or a stay.

8 This matter came before His Honour Judge  
9 Paul Siegel on July 15th, and he ordered that  
10 the claim for declaratory relief (ie., the  
11 contractual obligation question) be stayed in  
12 Florida. He further ruled however, that the  
13 most convenient forum for the remaining three  
14 matters (the accounting of the \$108,000 paid  
15 for wages and disbursements, the claim for  
16 breach of contract, and the claim for  
17 malpractice) should be dealt with by the court  
18 in Florida. Judge Siegel suggested that the  
19 Florida court should first make a determination  
20 on whether the contract had been breached or  
21 was void, and then this court should determine  
22 what amounts, if any, or obligations, if any,  
23 were owing, pursuant to the subsidiary  
24 agreements that were made pursuant to the main  
25 agreement.

1           Before determining the question of whether  
2           or not a stay should be granted, I should state  
3           some, but not necessarily all, of the obvious  
4           principles that should apply when there are  
5           concurrent proceedings in separate  
6           jurisdictions.

7           1) To the extent possible, proceedings  
8           should not continue in two jurisdictions  
9           simultaneously.

10          2) Courts should not be competing with  
11          each other over jurisdiction, or preferring  
12          their own jurisdiction over that of another  
13          competent foreign court, unless there is good  
14          reason.

15          3) Courts should, whenever possible,  
16          respect and attempt to apply the decisions and  
17          judgments of foreign courts, unless there is a  
18          good reason not to do so.

19          4) Courts should avoid, whenever possible,  
20          giving conflicting decisions.

21          5) The court, bearing in mind the cautions  
22          in paragraphs 1 to 4, should always attempt to  
23          do justice between the parties.

24          This Court and our Court of Appeal have  
25          considered the question of forum non-conveniens

1 most recently in the case of Telesystem Int.  
2 Wireless Inc. et al v CVC Opportunity Partners  
3 et al. August 2002 C.I.C.A. unreported. I  
4 have read the judgment in that case and I am  
5 mindful and accept the guidelines that it  
6 imposed in determining forum questions.

7 In this particular case, I am satisfied  
8 that the US courts will make a fair and  
9 impartial determination of the issues that are  
10 presently before it. Judge Siegel carefully  
11 reviewed and considered the evidence that was  
12 before him. Even though I might have come to a  
13 different conclusion on the question of whether  
14 the US or the Cayman Islands was the most  
15 convenient forum, on issues 2, 3 and 4, (which  
16 decided on the basis of the location of  
17 documents, witnesses, et cetera), I do not  
18 think it right to do that, unless there are  
19 compelling reasons for doing so.

20 The reasons argued by Mr. Broadhurst why  
21 these matters should be before the Cayman  
22 Islands courts, rather than the US courts are  
23 in summary as follows: (I recognise that I am  
24 not going to refer to all of the arguments but  
25 what I consider to be the major ones.).

1           1) In the US proceedings, the successful  
2 party will not normally be entitled to claim  
3 any portion of attorneys' fees as recoverable  
4 costs. Therefore, if Mr. Friend is successful  
5 in Florida, he will not be able to recover his  
6 legal fees there. In the Cayman Islands, he  
7 will, if successful, be entitled to claim all,  
8 or at least a portion, of legal fees. I do not  
9 accept Mr. Alberga's submission that they could  
10 be claimed as damages here. I do not think  
11 they fall properly under the head of damages  
12 first enunciated by the English court in  
13 (Windsor) Ltd. v Newman Industries Ltd. [1949]  
14 1 All ER 997, where the damages claimed must  
15 reasonably be in the contemplation of the  
16 parties at the time the contract was made.

17           2) The matter can be litigated here far  
18 more quickly than in the United States. It can  
19 probably be completed here within 12 months.  
20 In the US it will likely take twice as long and  
21 perhaps longer.

22           3) The claim here is in excess of a  
23 million dollars. Mr. Friend worked for several  
24 years and claimed he was not paid. Mr. Ryan is  
25 asking that these proceedings be stayed,

1 pending his lawsuit for what at present appears  
2 to me to be an accounting for about \$110,000.

3 4) It is not clear that the proper law to  
4 be applied to the engagement letter is Florida  
5 law. It appears that the claim in Florida is  
6 that the Caymanian companies or Caymanian  
7 residents, developing a project in these  
8 islands, hired Mr. Friend to give them legal  
9 advice on this project. The legal advice  
10 alleged is that he negotiated contracts between  
11 them (that is either the Cayman residents and  
12 Caymanian companies) with others, including  
13 persons or companies in Arizona, Washington DC,  
14 and Delaware. It is not clear what, if any,  
15 advice was given to Ryan and his companies  
16 regarding Florida law. The contracts were  
17 apparently executed in the Cayman Islands for  
18 services to be given to Caymanian companies or  
19 residents regarding business dealings on a  
20 Caymanian property development with persons  
21 outside the state of Florida.

22 I do not see in the material before me  
23 that Judge Siegel was asked to determine if the  
24 proper law of the contract was Florida law or  
25 Cayman Islands law. I can see that there is a

1 substantial argument that it should be Cayman  
2 Islands' law, and that this issue should be  
3 determined sooner rather than later. If it is  
4 determined that the proper law of the contract  
5 is the Cayman Islands, then that trial should  
6 probably proceed here, rather than have all of  
7 the opinion evidence on Cayman Islands law  
8 being heard in a trial in the state of Florida.  
9 Judge Siegel felt that it was in the public  
10 interest to have the matter heard in Florida,  
11 because it involved allegations of a Florida  
12 attorney practising law there while under  
13 suspension, and doing so negligently. Clearly  
14 that is a matter of public interest in Florida,  
15 but I think it is important that the question  
16 of what is the proper law of the contract be  
17 determined first.

18 5) There was an argument in the hearing  
19 before me that, as a matter of Florida law, it  
20 is not prohibited or wrong for a lawyer who is  
21 not a member of the Florida bar to act as  
22 in-house counsel to a foreign person or a  
23 company doing business in Florida. Again, I  
24 think that should be the determined sooner  
25 rather than later, and should be done by the

1 Florida courts.

2 6) That some of the claims here  
3 (specifically cause 184/02) was a stand alone  
4 claim in that at least \$250,000 of the deposit  
5 that was advanced for the purchase of property  
6 here had nothing to do with the validity of the  
7 engagement agreements.

8 7) That Judge Siegel ruled that the  
9 actions here should be tried here, (but  
10 suggested that this be done after the trial in  
11 Florida).

12 8) That the parties here are different  
13 than in the Florida proceedings. Mr. Ryan is  
14 not a plaintiff or a party in Florida and he  
15 has no assets there. Although Mr. Alberga did  
16 indicate that he felt he could probably obtain  
17 an undertaking from Mr. Ryan personally to  
18 accept the jurisdiction of the Florida court,  
19 should Mr. Friend wish to file any judgment  
20 here, against Mr. Ryan. He did offer such an  
21 undertaking for the corporate parties that were  
22 named.

23 I think the narrow question that I have to  
24 decide is, therefore, should this court await  
25 the determination by the Florida court on

1           whether or not the engagement agreements are  
2           void under Florida law. Mr. Alberga submitted  
3           that was the most efficient way of dealing with  
4           the problem and it would avoid unnecessary  
5           expense. He also urged me not to go behind the  
6           decision of Judge Siegel. I have considered  
7           all of the reasons he advanced for favouring  
8           the Florida courts determination of this issue  
9           first, and I will not repeat them here.

10           On balance, I am not persuaded that there  
11           has been a sufficient determination of some of  
12           the important preliminary issues, such that a  
13           stay should be entered in these proceedings at  
14           this time. Rather, I think the stay should be  
15           refused to allow for the following:

16           1) That the parties apply to this court  
17           for its determination on what the proper law of  
18           the contract should be. That would, I expect,  
19           necessarily involve leading some additional  
20           Affidavit evidence outlining the description of  
21           what work was being done, where it was being  
22           performed, and the nature of the work.

23           2) That the parties should apply to the  
24           Florida courts for preliminary determination on  
25           whether a lawyer can be in-house counsel to a

1 foreign company without being a member of the  
2 Florida bar.

3 3) That the discovery of documents  
4 continue in both jurisdictions because there  
5 will be significant duplication of document  
6 production, and that documents produced in one  
7 action should be produced in the other.

8 4) That the pleadings be completed here;  
9 with 21 days for the filing of the statement of  
10 defence, and seven days thereafter for the  
11 reply.

12 5) That the parties will be subject to the  
13 courts further directions as to whether or not  
14 a stay shall be granted in these proceedings or  
15 any part of these proceedings after the issues  
16 referred to in paragraphs 1 and 2 have been  
17 dealt with. I think costs should be in the  
18 cause, gentlemen, unless you have submissions  
19 to the contrary.

20 MR. ALBERGA: Well, My Lord, at the moment  
21 I think until these two issues are determined,  
22 perhaps Your Lordship should make no order as  
23 to costs, but depending on how those issues are  
24 determined both parties may wish to make a  
25 further application to Your Lordship.

1 THE COURT: Mr. Broadhurst.

2 MR. BROADHURST: I think they should be in  
3 the cause, My Lord. Regardless of what happens  
4 in the first two circumstances, I think these  
5 costs should be in the cause.

6 THE COURT: Yes, I think that's right. I  
7 think they will be costs in the cause.

8 MR. ALBERGA: As I submitted, I think the  
9 relevant order is costs reserved or --

10 THE COURT: Well, my intention is that  
11 costs will go to the successful party in this  
12 litigation ultimately.

13 MR. ALBERGA: Ultimately, yes.

14 THE COURT: So if Mr. Friend is  
15 successful, he will get his costs of this  
16 application. If Mr. Ryan is successful he will  
17 get the costs of this application.

18 MR. ALBERGA: That's a matter for Your  
19 Lordship's discretion. There is only one  
20 clarification I seek, sir. In which of these  
21 two matters, one to be determined in Cayman and  
22 one to be determined in Florida, is it your  
23 intention should go first?

24 THE COURT: I think it's going to be  
25 entirely a matter of the court's availability

1 to hear them. I would suggest that material be  
2 prepared as quickly as possible and submitted  
3 to the court and heard as quickly as possible.  
4 Whichever is determined first, I don't have any  
5 view as to which is desirable. I think from my  
6 perspective I need to know the answers to those  
7 questions before I can make a proper  
8 determination.

9 MR. ALBERGA: On what should happen after  
10 that?

11 THE COURT: Yes, and I think I would like  
12 answers to both questions.

13 MR. ALBERGA: Before that. That's what I  
14 was wondering, My Lord.

15 THE COURT: I think for my own perspective  
16 the important question is the proper law of the  
17 contract. Thank you gentlemen.

18  
19 (PROCEEDINGS ADJOURNED)

20  
21 *DG Sanders*

