

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

CAUSE #389 OF 1992

BETWEEN:

- (1) INTERNATIONAL CREDIT AND INVESTMENT
COMPANY (OVERSEAS) LTD
(In Liquidation)
- (2) FINANCE AND INVESTMENT
INTERNATIONAL LIMITED

Plaintiffs

AND

- (1) SHAIKH KAMAL ADHAM
- (2) FAISAL SAUD AL FULAIJ
- (3) GHAITH RASHAD PHARAON
- (4) PHARAOH HOLDINGS LIMITED
- (5) LHASA INVESTMENTS LIMITED
- (7) CONCORDE INTERNATIONAL TRADING SA

Defendants

For the plaintiffs: Charles Purle QC and Ewan McQuater of Counsel
instructed by Hunter & Hunter

For the defendants: Richard McCombe QC, Ramon Alberga QC and
Anthony Trace of counsel instructed by
Myers & Alberga

HARRE C.J.

RULING

Among the reliefs sought by the Fifth and Seventh defendants in their summons dated 14th of July is an order that the parties be at liberty to adduce expert evidence at trial. It was agreed that the experts should be a forensic document examiner, a chartered accountant and an expert in banking regulation matters. The point at issue is whether these reports should be simultaneously exchanged, as is the normal practice, or in sequence.

I will refer at some length to note 38/35/2 in the English Supreme Court Practice because it sets out the principles. It is there said that the objects intended to be achieved by the rules include avoiding surprise at the trial, securing where possible, agreed expert reports, identifying matters of expert opinion which are really in controversy between the parties and enabling the experts themselves to prepare their evidence more thoroughly and helpfully. Machinery for the pretrial disclosure of expert evidence is intended to operate on the basis of fairness and mutuality as between the parties and, conversely, neither party should be able or should be allowed to operate such machinery so as to overreach any other party by obtaining the disclosure of the party's expert evidence before the trial without at the same time disclosing his own expert evidence to that party or being precluded from calling such expert evidence at the trial. To achieve such fairness and mutuality the machinery is intended to operate so as to provide for the simultaneous exchange of experts' reports on or before a fixed date. The normal rule of practice will be subject to variations subject to special circumstances of particular cases but always the overriding consideration will be to maintain fairness and mutuality between the parties. Importantly, the terms of the rules do not limit the powers of the court in the orders that it can make for the disclosure of experts reports.

I will deal with each class of expert separately. Obviously the defendants cannot instruct a "forensic document examiner" until they know which forensic document or documents the plaintiffs propose

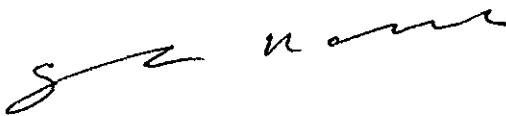
to have examined by their own expert. Equally obviously, if reports are to be simultaneously exchanged, each expert will need enough time to examine the documents. That is a physical problem and I have no knowledge of its extent. If the examination has to be sequential the presentation of the reports may have to be sequential also. What the court requires is an indication from the plaintiffs, in the context of the further submissions as to timing of the reports which will follow this ruling in any event as to how this may be addressed.

The factors relating to the other two experts are different. The experts on banking regulation will have to give their views on the allegation that if the Financial Statement of ICIC had not been falsified its banking licence would have been withdrawn, it would have ceased to trade, and would not have suffered the loss and damage claimed. The accounting experts will give their views on what the state of the accounts of ICIC would have been if they had been properly presented.

I have here to look at the function and relationship of pleadings, particulars and evidence. I have already considered that the amended pleadings sufficiently perform their function. The particulars given are already very lengthy and the list of the first plaintiff's documents is not only long but indicative of the way in which the records of the first plaintiff were kept. Whatever may be the difficulty of the liquidators in this regard, they must be at some advantage as against the fifth and seventh defendants.

These experts will have to address themselves to particulars. Mr. Trace's argument was indeed about particulars, but in my view well based nevertheless.

It is not enough, in my view, for the plaintiff to say in this context that the gist of the case is plain from what the defendants already have. A balance of fairness can, in my judgment, best be achieved by having sequential reports from these two experts, with questions of timing, as agreed last week, to be the subject of further submissions.



G. E. Harre
Chief Justice

1st August 1994.