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



CAUSE NO. 153/95

BETWEEN:

Coutts & Co. (Cayman) Limited

Plaintiff

AND:

1. Jerry M. Lindzon
2. Elena Gomez Del Campo De Lindzon
3. Elena Laura Pessino De Balmaseda
4. Cesar Jaime De Balmaseda (A minor, by the guardian ad litem George Giglioli, on his own behalf and on behalf of all minor and remoter beneficiaries of the Cotorro Trust)
5. Santiago Casas
6. Mariana De Quirch
7. Maria Eugenia Pessino De Rothwell



Defendants

Appearances

Mr. Ritchie of Charles Adams Ritchie and Duckworth for the Trustee.
 Mr. Timms of Maples and Calder for the 1st and 2nd Defendants;
 (holding also for Mr. Foster of W.S. Walker & Co. for the 6th and 7th Defendants).
 Mr. Chapman of Ian Boxall & Co. for the 5th Defendant.

BEFORE SMELLIE J.

DIRECTIONS

The question is whether orders and judgments given in this matter upon proceedings held in chambers should be reported and if so in what form.

The issue is prompted by a request received from an overseas law reporter for permission to report the most recent judgment given in this matter. The parties represented before me all agree that the matters decided in this case, in particular the recent judgment, are of general interest and importance and should be reported. Mr. Timms for his clients and Mr. Ritchie for the Trustee do not, however, press for the matters to be reported. If publication is allowed they would seek directions at least that names of parties, individuals and companies be redacted. They suggest that initials be replaced by letters, preferably in alphabetical order, so as to bear no actual relationship to the identity of the parties and entities.

The directions which follow are not to be taken as permission to the overseas law reporter. I regard that as a matter for the Attorney-General who will need to consider the implications for our own Cayman Islands Law Reports the costs of which are subsidised by Government. The directions are intended to apply in general and so would include any publication by any publisher of judgments.

Prior to the Administration of Justice Act of 1962 in England, the publication of proceedings or orders held or given in Chambers invariably required leave of the Court. Without that leave publication was treated as a contempt of court: Alliance Perpetual Building Society v. Belrum Investments (1957) 1 W.L.R. 720.

That was changed by Section 12 of the 1962 Act which limited the rule to specified classes of cases and to others in which a specific prohibition on publication is imposed by order of the Court.

Section 12 of the 1962 U.K. Act bears setting out in full:

“Publication of information relating to proceedings in private

(1) The publication of information relating to proceedings before any court sitting in private shall not itself be contempt of court except in the following cases, that is to say -

(a) where the proceedings relate to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;

(b) where the proceedings are brought under Part VIII of the Mental Health Act, 1959, or under any provision of that Act authorising an application or reference to be made to a Mental Health Review Tribunal or to a county court;

(c) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;

(d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings;

(e) where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

(2) Without prejudice to the foregoing subsection, the publication of the text or a summary of the whole or part of an order made by a court sitting in private shall not of itself be contempt of court except where the court (having power to do so) expressly prohibits the publication.

(3) In this section references to a court include references to a judge and to a tribunal; and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting in camera or in chambers.

(4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section.

In the absence of local rules, in the past the practice of this court has reflected the English practice as set out in Section 12 of the 1962 U.K. Act.

There are however important reasons why the practice embodied in the 1962 Act would need to be enhanced to meet the needs of the modern local practice and procedure. Not least is the sensitivity of cases now routinely being taken in the commercial or civil jurisdiction of the Court. The present is one such in which it is to be accepted that there are cogent reasons for preserving the confidentiality of the identity of the parties and of the affairs of the entities administered under the Trust.

Thus, while the principles embodied in the 1962 U.K. Act may usefully continue to be followed in practice here, it is necessary to add to them by providing that the parties involved in any matter taken in chambers about which, but for an express prohibition information might be published, are to be at liberty to apply for an order against or delimiting publication. That was in fact the procedure adopted in the present application and there are several reported cases in the past where changes have been made to protect the identity and so the confidentiality of parties.

It is also necessary to simplify the procedure for such applications.

Once the application is made, the matter will then fall to the discretion of the judge in the particular case to determine the ambit of publication.

It follows from all the foregoing that the publication of information relating to proceedings taken in private shall not of itself be a contempt of court unless it is contrary to the guidelines set out herein (adopting the English practice as set out in Section 12 of the 1962 Act) or it is contrary to a direction made by the judge in the particular case.

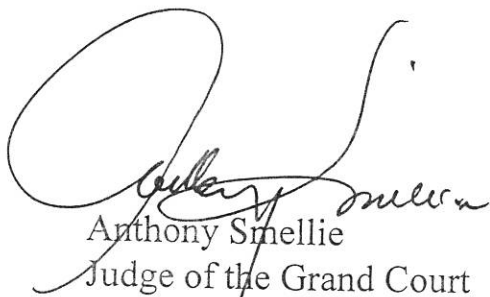
As to the procedure to address the issues of confidentiality which may arise from case to case and which would require a specific order, parties are to be at liberty to apply for protective orders by way of an application in the form appended to this ruling. The form is intended to facilitate such applications and to advise the judge of any objections to publication and of any suggested changes or redactions to meet concerns of confidentiality. The form should be submitted by counsel prior to and certainly no later than the occasion of the delivery of the written ruling or judgment, in any case in which the issue arises. This will avoid the need for any separate application by way of summons in the Cause. Notice of the submission of the form is to be given to all sides. Unless it is necessary that counsel be heard in person (for instance if any other party objects) the application may be submitted with written reasons, to be considered by the judge administratively and the decision notified in writing. And particularly

where a matter is pending decision, it is preferable that the application setting out the proposed restrictions be submitted in advance and if accepted by the judge, may thus be reflected in the order, ruling or judgment.

In this case I grant the directions sought and in the manner advised by the attorneys. Future publication of the orders and judgments in this matter is to be allowed only in the form redacted in accordance with these directions.

Mr. Timms has undertaken to agree with the others and to present a redacted version of the recent judgment in the case for approval and for inclusion in the formal order to be made.

I am to advise that the foregoing directions have been discussed and agreed with the Honourable Chief Justice, as to their general applicability.


Anthony Smellie
Judge of the Grand Court



Dated this 11th day of August 1997

IN THE GRAND COURT OF THE CAYMAN ISLANDS.

**APPLICATION TO RESTRICT THE
PUBLICATION OF A RULING ORDER
OR JUDGMENT GIVEN IN CAMERA**

1. Full title of Cause or Matter:

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2. Name of party on whose behalf the issue of confidentiality
is to be raised:

.....

3. Name of counsel or attorney:

.....

4. Order, Ruling or Judgment to be considered;
(already given or to be given - describe by reference to the
instant pleading):

.....

5. Suggested restrictions, changes or redactions:

.....

Signature of counsel

Dated: _____

Filed by: _____ etc.

NOTE: Brief written reasons for the proposed restrictions on
publication are to be submitted with this form.