



1 **APPEARANCES:**

2 Mr. Ritchie of Charles Adams, Ritchie & Duckworth for the plaintiff.

3 Mr. Moses of Hunter & Hunter for the 3rd defendant.

4 Mr. Timms of Maples and Calder for the 1st and 2nd defendants.

5 Mr. Giglioli of Giglioli & Co. for the 4th defendant.

6 Mr. Helfretch of Ian Boxall & Co. for the 5th Defendant.

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**RULING**

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15 The 3rd defendant has withdrawn her instructions to her attorneys of record  
16 and her summons filed in these proceedings has been dismissed.

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18 The question is whether I should accede to Mr. Mose's application made on  
19 limited instructions from her, instructions which are confined strictly to the  
20 making of this application for an adjournment of the 1st and 2nd  
21 defendants' summons of the 31st December 1996.

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23 That summons seeks declaratory and permanent injunctive relief which is,  
24 from the point of view of the 1st, 2nd and 6th defendants, very important in  
25 the context of these proceedings.

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27 The possibility of personal claims against them by the 3rd defendant  
28 remains and will remain a matter of great concern to them whatever the  
29 outcome of the preliminary hearing now set for April 1997.

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31 The action which has been brought in Florida and further action threatened  
32 there is manifestation of the reasons for those concerns.

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34 They - the 1st and 2nd defendants, (and more recently the 6th defendant)  
35 have conducted their cases in these proceedings in nothing but a proper  
36 manner so far, and so they have at all times since the 3rd defendant's  
37 claims or allegations were first brought to the attention of this court by the  
38 Trustee, in mid 1995. The 1st and 2nd defendants have always, through

1 their attorneys, expressed their concerns that the claims and allegations be  
2 identified, particularised and determined by this court in an expeditious and  
3 comprehensive manner.

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5 Unfortunately, the same reasonable approach has not typified the 3rd  
6 defendant's response. On the important issues such as the original validity  
7 of the Trust and of the settlement of the Trust assets, she has, to say the  
8 least, equivocated and her equivocation has been costly in terms of time and  
9 expense to all parties.

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11 So far as the 1st, 2nd and 6th defendants are concerned, and who have so far  
12 funded their own defence in the action, those are all factors which I may not  
13 overlook.

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15 The Trustee has separate but equally legitimate concerns and although the  
16 relief sought in the present summons might not directly touch the Trustee's  
17 position, if it is granted, it might be important to the ultimate resolution of  
18 the entire matter. In any event, the injunctive relief would be important to  
19 the Trustee as it would confine the issues it faces, to be resolved within the  
20 context of the present proceedings.

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22 Delay therefore affects the Trustee as well.

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24 I also feel compelled to mention my disquiet about what must now be  
25 described as the questionable good faith of the 3rd defendant in relation to  
26 her dealings with this court and her regard for its proceedings.

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28 I may not overlook the very selective nature of this very application for an  
29 adjournment - being made as it is on her behalf by her very attorneys whom  
30 she has otherwise instructed to cease to act in the proceedings.

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32 I must be astute at all times not to allow any party to play fast and loose  
33 with the process of the court. I must also regard her reported intent to  
34 instruct new Cayman attorneys in that light of scepticism.

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36 Finally, I see no prejudice to the 3rd defendant likely to arise from the  
37 refusal of the application for the adjournment. If the relief sought is  
38 granted, the 3rd defendant will be afforded adequate opportunity to apply to

1 have it set aside, if the merits when examined on an inter partes basis, so  
2 require.

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4 The application for the adjournment is therefore refused.

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6 As to the application for liberty to the 1st, 2nd and 6th defendant to use  
7 evidence in these proceedings in their defence of actual or threatened  
8 proceedings in Florida - the application is granted in terms of the draft  
9 submitted but with the inclusion of a further provision that that liberty is  
10 conditional to allow only such steps to be taken by the 1st, 2nd and 6th  
11 defendants as may be advised to be necessary notwithstanding the anti-suit  
12 injunction earlier ordered by this court. That condition is to be suitably  
13 modified to achieve the same effect in the event the permanent injunction  
14 now being sought is granted.

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Anthony Smellie  
Judge of the Grand Court



Dated this 7th day of January 1997