

BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

SUIT NO. 83 OF 2001; 84 OF 2001; 87 OF 2001 Consolidated
BETWEEN:

SARA ROLDAN DEL CASTILLO

Applicant

and

1. HEIRS OF RAMON MENDOZA FONTELLA
2. WORLD WIDE CORPORATION SERVICES INC. LTD.

Respondents

Appearances:

Mr. R. Davis and Mr. M. Pringle for Applicant
Mr. P. Dennis for the First Respondent
Mrs. J. George-Creque for the Second Respondent

2002: April 9 and 12.

JUDGMENT

[1] **MATTHEW J. Ag.:** This judgment pertains to an application by the Applicant for specific disclosure by the Respondents pursuant to *Rule 28.5(4) of the CPR 2000* of particulars of the estate of Ramon

Mendoza Fontella (deceased) and certain interim and audited accounts of Boarder Ltd. and Applegate Ltd. Overseas two IBC's, for the years 2001 and 2002.

- [2] Ramon Mendoza Fontella died on April 4, 2001 intestate and there are certain main proceedings before this Court scheduled for hearing on April 23 to 25 to determine the ownership of shares in the two companies mentioned above.
- [3] The proceedings are initiated by the Second Respondent as interpleader and the contest at those later proceedings are essentially between the Applicant and the First Respondent. The Second Respondent is the sole director of Boarder Ltd. and Applegate Overseas Ltd.
- [4] In support of the application filed on March 21, 2002 is an affidavit of Michael George Pringle, Solicitor, who states, inter alia, that both the Applicant and the First Respondent are domiciled and resident in Spain, and it is arguable that the Spanish law of inheritance restricts the extent to which the Applicant could benefit from the ownership of the shares should she succeed on the main issue.
- [5] Indeed it seems to be more than arguable, and at the hearing both sides seem to agree that under Spanish Law the Applicant could not succeed to more than one-third share of the Estate of the Deceased. That was the opinion of Spanish law experts for either side.

- [6] In his second affidavit sworn to on January 21, 2002, Luis Muniz Garcia at paragraph 11 states that she was the attorney of Fontella, and that the assets in the BVI companies, Boarder and Applegate, represent a very significant part of the total funds and assets of the Deceased.
- [7] If he is correct, then the Applicant must be concerned that she is not likely to obtain more than one-third of the value of the shares in the two companies.
- [8] Learned Counsel for the Applicant submitted that the Heirs are raising a new issue to the effect that the Mr. Mendoza would not have intended to deprive his family from the bulk of his assets and so it is unlikely he would make a gift of all his shares to the Applicant. I do not think this is germane to this application.
- [9] The other submission main made by Counsel is that if the application is successful it would prevent further hearing by the Court in the event that the Court finds in favour of the Applicant at the main hearing and it would be a saving of costs.
- [10] Learned Counsel for the First Respondent submitted that the application is misconceived when viewed in the context of the case before the Court.
- [11] Counsel submitted if on the main issue judgment is given in favour of the Heirs, that would be an end of the matter and it would therefore be

precipitous for the Heirs to disclose at this time. It is only if judgment is given in favour of the Applicant would it become necessary for a further inquiry.

[12] Counsel also submitted that the Heirs are not in control of the companies and it is barking up the wrong tree to ask the Heirs to disclose the accounts of the companies. Counsel also raised the issue of confidentiality of the documents.

[13] Learned Counsel for the Second Respondent took a similar view as Counsel for the First Respondent in that the documents were not necessary at this interpleader stage of the proceedings. Counsel referred to *Rule 28.6* pertaining to the criteria for ordering specific disclosure.

CONCLUSIONS

[14] I am of the view that the Court needs to resolve all issues in a trial at one hearing and not in stages. It seems to me that the Applicant should rightly be concerned as to the effect of Spanish law on her claim and the resulting size of it if she is successful.

[15] If as the witnesses for the Heirs suggest, and that includes Gonzello Rodriguez-Fraile who filed a second affidavit sworn on January 18, 2002, that the bulk of the Estate of the Deceased is his shares in the Companies, then the Heirs will not find it too difficult to furnish particulars of the Estate.

[16] I cannot see any undue difficulty in the Second Respondent furnishing the accounts required either. These matters can easily be attended to without major difficulty.

[17] As I suggested at the hearing to overcome the issue of confidentiality the disclosure could be made in a sealed document to the Court and this is the order I propose to make.

[18] My order is as follows:

(1) The First Respondent is to furnish full particulars of the Estate of Ramon Mendoza Fontella more particularly:

(a) a certified inventory, alternatively account of the Estate of the Deceased reflecting its administration and distribution; and

(b) if such an inventory or account does not exist or has not been and is not now under the control of the First Respondents, they are to declare the contents and extent of the Estate of the Deceased and produce all records of the Estate in support of such declaration as at the date of the death, that is, April 4, 2001 to the Registrar of the High Court.

(2) The Second Respondent is to furnish certified interim and audited annual accounts and current monthly or periodical management accounts, if any, of Boarder and Applegate for the years 2001 and 2002 to the Registrar of the High Court.

- (3) The above mentioned documents are to be provided in sealed envelopes addressed to the Registrar within 10 days and the Registrar shall make the same available to the Court at the conclusion of the main proceedings.
- (4) Cost in these proceedings shall be reserved until the conclusion of the main proceedings.

A.N.J. MATTHEW
High Court Judge (Ag.)