

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANIGUILLA CIRCUIT
(CIVIL)
A.D. 2017

CLAIM NO. AXAHCV 2014/0039

BETWEEN:

[1] GLOBAL SKYNET INTERNATIONAL LTD.
[2] ALEXANDER BLOCH

RESPONDENTS/CLAIMANTS

AND

[1] SKYNET LTD.
[2] GLORY TRADINGS HOLDING LTD.
[3] OLEG DOVBNYA

APPLICANTS/DEFENDANTS

[4] BALTHASAR HEFTI

DEFENDANT

Appearances

Ms. Tara Carter and Ms. Kristy Richardson for the First, Second and Third Applicants/Defendants

Ms. Jean Dyer for the Respondents/Claimants

2017: May 26, June 7, November 17

DECISION

[1] **RAMDHANI, J.:** (Ag.) This is an application by the first, second and third defendants ('the Applicants) for specific disclosure of certain documents made pursuant to CPR 28.5 of the Civil Procedure Rules 2000. It is now ordered that this application for disclosure be dismissed and costs be in the cause for the reasons set out in this decision.

[2] The Application for disclosure was filed on the 16th September 2016 and sought the following orders compelling the respondents to disclose:

1. ...all documents relating to the sale and purchase of Bearer Share Certificate No. 1 of Skynet Ltd., particularly:
Proof of payment in the form of wire transfer documents and/or copies of cheques and/or bank records or statements.
2.all documents relating to the sale and purchase of the land known as Block 29945 Lot 25 [which is the subject of the claim before the court], and in particular 'proof of payment in the form of wire transfer documents and/or copies of cheques and/or bank records or statements.
3. ...any and all credit agreements between the claimants, Multiple Consultants International Inc. and any financial institution for the purchase of Bearer Share No. 1 and property known as Block 29945 Lot 25.
4. ...confirmation from their bank or bank statements showing payments made pursuant to the share Purchase Agreement.
5. ...written confirmation from the Custodian that Bearer Share Certificate No. 1 has been deposited and/or registered.
6.certificates of Incumbency, Good Standing and Restoration for Global Skynet International Ltd. and Multiple Consultants International Inc.

[3] The question and main issue for this court is whether the respondents ought to be compelled to make disclosure of the requested documents.

The Law, Analysis and Findings

- [4] The law on specific disclosure is clear. The court must be satisfied that specific disclosure is 'necessary in order to dispose fairly of the claim or to save costs'.
- [5] An applicant is required to provide reasons why he is not satisfied so far with the disclosure provided and in any event why he 'anticipates that the specific disclosure sought would be worthwhile'¹. The court must be concerned about questions of reasonableness and proportionality. These considerations will of course only arise where the documents themselves are relevant and under the control of the respondent. The overriding objective provides the context on which the court's discretion is to be exercised.
- [6] The underlying claim relates to ownership of a parcel of land located in Israel. It is the claimants' case that the land was purchased by the first defendant, Skynet Ltd. in June of 2000 (Skynet Ltd was incorporated earlier that year). The Claimants claim that through one Holyland International Ltd, later renamed Global Skynet, the first claimant, bought all of the shares of Skynet Ltd.
- [7] The Applicants have moved this application on the basis that they dispute the purchase and validity of the 'Bearer Share Certificate No. 1' which really go to the beneficial ownership of the parcel of land in Israel, and unless specific disclosure is ordered, they 'will be prejudiced'.
- [8] As relates to the purchase agreement for Bearer Share Certificate No.1, the Applicants claim² that Mr. Spaendock who supposedly signed the agreement on behalf of the first applicant lacked the authority as he was not a director of the first applicant; it is alleged that at the relevant time Skynet Ltd. had only one Director. It appears that the applicants accept that on the 21st August 2000, Skynet Ltd issued Bearer Share Certificate No. 1 to

¹ The Caribbean Civil Court Practice Note 24.16 at page 285.

² Affidavit of Andrei Kravchuk dated 16th September 2016, supporting application for Specific Disclosure

the first respondent but then say that '[i]t is believed that no consideration passed for Bearer Share Certificate No. 1'.

[9] The court notes that the basis of this belief has not been provided. This Court is not deciding this claim on this application. Whether the claimants will come up to proof is yet to be seen. It is also noted that the transactions being referred to took place over 17 years ago, and from an affidavit filed in response by the respondents it is noted that the bank has relocated and records which have been requested have not been forthcoming.

[10] For practical purposes, I have dealt with the application under several headings. These are set out below.

Wire Transfer Documents - Documents relating to Sale and Purchase of Bearer Share Certificate No. 1 of Skynet Ltd – Written Confirmation that the Bearer Share has been deposited with a Custodian.

[11] The applicants are here seeking specific disclosure of documents relating to the sale and purchase of the Bearer Share. They have asked this court to make an order compelling the respondents to produce all wire transfer documents showing that they have in fact made payment. This is a transaction which the respondents according to their pleadings took place a long time ago. (This also relates to the request for all documents relating to the sale and purchase of the land known as Block 29945 Lot 25, as the claimants' pleaded case is that in purchasing the Bearer Share they effectively acquired the land.)

[12] Quite apart from contending that they have taken all steps to secure these documents to no avail, the respondents argue that it is clearly a fishing expedition designed to discover a smoking gun.

[13] Having considered this matter, while I do believe that these documents are relevant, I do not believe that it is reasonable or appropriate that I make the order sought. First, from

what is before me, there is nothing which, makes me find, that the documents being sought here is in the respondents' possession or control. Second, in context of the passage of time, I find that the respondents have in fact taken reasonable steps to locate the documents without success.

[14] Third, the Applicants find themselves unable to properly dispute whether consideration has been paid for the share, and so it seems that they wish to make the respondents prove this. I have noted Mr. Bloch's evidence at paragraph 5 of his second affidavit that some other documents have been disclosed which relates to the issue of this compensation being paid. I agree with counsel for the respondents that 'it is for the court to determine at trial what probative value should be given to those documents as well as the other evidence. Any prejudice related to the absence of these documents will likely fall to the respondents. No order will be made in relation to these documents.

[15] There had been some question relating to the disclosure and or inspection of the Bearer Share. It was revealed at the hearing that this was available for inspection and that in any event the issue was whether there should be 'written confirmation from the Custodian that Bearer Share Certificate No. 1 has been deposited and/or registered.'

[16] It was also clarified at the hearing that there was no document relating to any confirmation that this Bearer Share had been deposited with any Custodian. This being the case, the court can make no order related to this aspect in this application.

Credit Agreements

[17] The applicants have sought an order requiring the respondents to disclose 'any and all credit agreements between [the claimants], Multiple Consultants international Inc and any financial institution for the purchase of Bearer Share Certificate No. 1 and the property known as Block 29945 Lot 25'.

- [18] In answer the respondents have disclosed a Credit Agreement between Gavey Finance Ltd. and Multiple Consultants International Inc. The applicants have challenged the authenticity of this document.
- [19] The respondents have now argued that 'the applicants, having obtained the credit agreement are now seeking 'train of enquiry/nitty gritty' documents'. Essentially, the contention is that the applicants are hoping to do a train of enquiry with the hope that evidence would be revealed which would either advance their case or harm the respondents' case.
- [20] During the hearing, much was made as to whether the applicants could inspect the original Bearer Share. It appeared that there was some miscommunication on both sides as Ms. Dyer indicated that this was available for inspection and would be prepared to allow same.
- [21] On this aspect of the application, I am of the view that the respondents have disclosed all that they have in their possession; the credit agreement has been disclosed. Questions related to the authenticity of the agreement are not for me. Further, and more significantly, the applicants have again not presented any basis or a scintilla of evidence to show that 'the lake is not likely to be empty'. CPR 28.1 does not allow a party to seek disclosure on the basis that it opens up new enquiries; this is essentially fishing. This Court is not of the view that it is in the interests of justice that an order be made at this stage.

Certificates of Restoration, Certificate of Incumbency, and Certificate of Good Standing of the Global Skynet International Ltd, and Multiple Consultants International Inc.

- [22] The applicants are seeking disclosure of the above described certificates. They argue that there is evidence that the Multiple Consultants International Inc and the first respondent had been struck from the companies register by the Registrar of Companies at the relevant times. They presented evidence which stated that '[f]urther searches have revealed that the said Multiple Consultants International Inc was at the material time struck from the

company register and consequently could not transact business as alleged by the Claimants...³. They also presented evidence that stated that, 'the 1st Claimant was struck from the Register in May 2008 and not restored until February 2011.'⁴

[23] The respondents are first relying on Mr. Bloch's evidence which states that save for a certificate of good standing in respect of the 1st respondent and the results of a company search which they caused to be conducted in October 2016, the respondents are not in possession of any documents which is being sought under this heading. Second, they assert that having regard to the applicant's own admission that they have made searches in the Companies Register and found the very documents they are now seeking. They also effectively argue that an order of disclosure cannot be made for documents which are not in existence or issued; some of the requested certificates would only be issued on application.

[24] None of the parties addressed whether business conducted by a company which was struck off the Register and then later restored, had no validity in law. I hold the provisional view that the restoration would validate all actions taken during that period when the company had been struck off.

[25] But that aside, it is not expected that such certificates would be presented to prosecute an action. Here, the applicants have not simply stated that they 'suspect' or that they 'believe', but have gone further to assert. On this application, the applicants have asserted that they have conducted searches which led to these discoveries. Well, why should the respondents have to present documents to support this finding. Having regards to the applicants' clear statements, I see no utility in making this order of disclosure related to any of the documents under this heading. I have considered whether an order would fairly dispose of the matter or save costs. I am of the view that it is not appropriate to make an order on this request.

³ Paragraph 16 of the Re-Amended Defence filed on the 10th July 2015.

⁴ Paragraph 10 of the Affidavit in support of the Application

Conclusion

- [26] The application is dismissed. The applicants shall pay costs to be agreed within 21 days of this order, failing which costs shall be assessed.

Darshan Ramdhani
High Court Judge (Ag.)

By the Court

Registrar