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IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN ON WEDNESDAY the 11th day of JANUARY, 1978

BEFORE HIS LORDSHIP, SIR JOHN SUMMERFIELD.

IN THE MATTER of the Companies Law, 1960

and

IN THE MATTER of the Banks & Trust Companies Regulation Law, 1966

and

IN THE MATTER of the Confidential Relationships Preservation Law, 1976

and

IN THE MATTER of International Monetary Bank (In Liquidation)

RULING

The applicant is the Liquidator of the International Monetary Bank, a bank (hereinafter called the bank) which was put into voluntary liquidation in December, 1974. By an Order of this Court of January 1975 the winding up was ordered to be continued subject to the supervision of this Court. On that basis the applicant seeks the directions of this Court in relation to a suit he has instituted in his capacity as liquidator in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, Case No. 74-37006, against the Bank of North Bay Village, George Davis and Maureen Davis for the recovery of a sum of approximately U.S.$192,000 which he contends forms part of the assets of the bank.

Under the relevant procedure before the Circuit Court the defendants George Davis and Maureen Davis caused to be served on the applicant's attorneys interrogatories dated 6th December, 1976. Interrogatory 7D requested:-

"a list of any and all creditors, their addresses, the amounts claimed as well as a brief description of the nature of their claim."

On legal advice the applicant submitted the answer:-

"Object on the grounds that it seeks information not relevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence; and the Banks and Trust Companies Regulation Law, 1966 of the Cayman Islands of Section 10 (1) and (2) makes it an offence, inter alia, to disclose any information relating'.....to the affairs of a licensee or of any customer of a licensee.....' Accordingly no information can be supplied at this time regarding any creditors or claimants against International Monetary Bank. Plaintiff intends to make application to the relevant Cayman Islands Court for guidance of this matter."

By an order of the Circuit Court dated 9th February, 1977 that Court reserved its ruling on the applicant's objection to answering that interrogatory and ordered further documents to be filed.

By letters sent out in July, 1976 the applicant sought the approval of depositors with the bank to the disclosure of the requested details of themselves and their accounts for the purpose of the action. In reply 44 depositors whose aggregate deposit represented 62.57% of the total deposits with the bank consented to the release of the information requested and 45 depositors representing 37.03% of the total deposits refused.

Through his attorneys in Miami the applicant offered to disclose to the defendants the information he had permission to disclose and also other limited information about other deposits without disclosing the identity of the other depositors but the defendants' attorneys indicated that this was not acceptable and, by motion, are seeking to compel the applicant to answer the interrogatories in full.

The applicant's attorneys in Miami have advised him that on the merits of the case he is likely to succeed but that if he fails to comply with the procedural rules and answer the interrogatories in full there is a strong possibility that his case will be dismissed for failure to comply and that, in any event, such failure would be likely to prejudice him in the presentation of his case.

The applicant is of the opinion that it is in the interest of the bank's creditors that he pursue the action to the best of his ability in the belief that he will succeed in recovering substantially all of the sum claimed which will then be available for distribution to creditors. Accordingly, he seeks the direction of this Court on whether he should disclose all the information requested in the interrogatory notwithstanding that to do so would prima facie be in breach of the

Confidential Relations Law 1976 and/or section 10 of the Banks & Trust Companies Regulation Law, 1966.

The relevant part of section 10 of the Banks & Trust Companies Regulation Law provides:-

> "Except for the purpose of the performance of his duties or the exercise of his functions under this law or when lawfully required to do so by any court of competent jurisdiction within the islands or under the provisions of any Law of the Islands, no person shall disclose any information relating to any application by any person under the provisions of this Law or to the affairs of a licensee or of any customer of a licensee which he has acquired in the performance of his duties or the exercise of his functions under this Law."

A contravention of that provision renders the offender liable to a substantial fine or imprisonment for a term not exceeding one year, or both.

This provision empowers a court of competent jurisdiction within the islands to require the disclosure of information otherwise protected by that section. The exact circumstance in which such a court in these Islands could so "lawfully require" are not spelled out in the Law and no procedure is laid down for an application to any court for the exercise of its discretion in the matter. It may well be that this power is confined to compelling a witness in a court in these Islands to disclose the protected information in appropriate circumstances. However, it is unnecessary to delve into this aspect further so far as the present application is concerned as the matter is further governed by the Confidential Relationships Preservation Law, a later enactment, which gives no such discretion to a court.

Section 3 (1) of the latter Law provides:-

> "This Law has application to all confidential information with respect to business of a professional nature which arises in or is brought into the Islands and to all persons coming into possession of such information at any time thereafter whether they be within the jurisdiction or thereout."
>
> "Professional person" includes a bank, whether or not licensed, and every person in the employ or control of a bank for the purpose of its professional activities.

"Confidential information" is defined as including information concerning any property which the recipient thereof is not, otherwise than in the normal course of business, authorised by the principal to divulge.

"Property" is defined as including every present, contingent and future interest or claim, direct or indire t, legal or equitable, positive or negative, in any money, moneys worth, realty or personalty, movable or immovable, rights and securities thereover and all documents and things evidencing or relating thereto.

"Business of a professional nature" is defined as including the relationship between a professional person and a principal, however the latter may be described.

The relevant part of section 4 (1) of the law reads:-

"4 (1) Subject to the provision of sub-section (2) of section 3 (which have no application to the circumstances of this matter) whoever -

(a) being in possession of confidential information however obtained;

(i) divulges it; or

(ii) attempts, offers or threatens to divulge it to any person not entitled to possession thereof;

....

is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 2 years or both.

It seems to me that these provisions effectively preclude the disclosure of the information sought pursuant to the interrogatory for the purpose of the suit. Disclosure by the applicant would amount to a criminal offence. There is an important distinction between answering questions which may be incriminating (i.e. reveal the commission of an offence) and giving information in answer to questions where the giving of the information in itself constitutes the commission of the offence (i.e. the person giving the information thereby commits an offence)

Counsel for the applicant has sought to rely on section 5 of this Law which provides:-

"Nothing in this Law shall by implication be deemed to derogate from the rule in Tournier v. National Provincial and Union Bank of England (1924) 1KB, 416 (which deals with the civil duty of banks to preserve the confidentiality of the business of their customer) which rule is declared to have application to the Islands."

In my view, the principles this section preserves are those set out in the benchnote to that case, namely:

"The banker's duty of secrecy regarding a customer's account and matters relating to it is a legal duty arising out of contract, and is a qualified, not an absolute, duty. Disclosure is justified where it is under compulsion of law, as in the case of an order under the Bankers' Books Evidence Act, 1879; or when an official of the bank is called on in a proceeding in a court to give evidence relating to a customer's account or transactions, for there is no privilege protecting a banker on such an occasion; or where there is a duty to the public to disclose, as when disclosure is necessary to prevent frauds or crimes; or where the interest of the bank require disclosure, as where a bank issues a writ claiming payment of an overdraft the amount of which is stated on the writ' or where disclosure is necessary to carry on the business of the account, as in giving a reason for declining to honour cheques drawn or bills accepted by the customer; or when the disclosure is with the customer's consent, express or implied, as where he has requested the bank to give information about his account or has authorised a third party to refer to the banker for information.

The duty does not cease the moment a customer closes his account; information obtained during the currency of the account remains confidential unless and until its release falls within one of the exceptions mentioned. The bank's duty is not confined to the actual state of the customer's account; it extends to information derived from the account and the customer's transactions which go through it and the securities, if any, given in respect of it, and also to information derived from an independent source if the occasion on which the information was obtained arose out of the banking relationship between the bank and the customer."

These are well established principles, none of which is applicable to the circumstances of this particular matter. They do not give a bank the right to disregard its legal duty to a client against his wishes merely to advance the bank's self interest in any cause to which that client is not a party and against whom the bank has no legitimate claim. Equally, a bank is not entitled to flout its legal duty to a client merely for the purpose of advancing the interests of other clients or creditors generally. The proportion of depositors consenting to disclosure and the size of their interest is immaterial.

For the foregoing reasons I am of the opinion that it is not open to this court to direct the applicant to give any answer to the interrogatory which would conflict with the Confidential Relations (Preservation) Law or Section 10 of The Banks & Trust Companies Control Regulations Law. The information presently being sought, in so far as it relates to the customer of the bank, would conflict with the provisions of those Laws save to the extent that the consent of any particular client has been obtained for disclosure. The only proper order open to this Court is that the applicant comply with those provisions of law. Accordingly, it is so ordered.

Costs to be met from the assets of the Bank.

Sir John Summerfield
17th January, 1978.

R.D. Alberga Q.C, instructed by Mr. Hayden Keller of Bruce Campbell & Co for the applicant

Seymour Panton for the Attorney General who was served with the application as amicus curiae.