

22/7/08

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

CAUSE NO. 350 OF 2004

BETWEEN:  
  
EVEN WAHR-HANSEN ET AL

PLAINTIFFS

- AND -

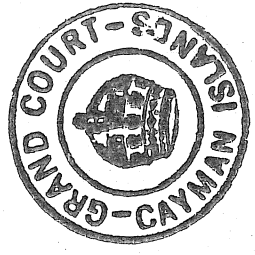
COMPASS TRUST CO LIMITED ET AL

DEFENDANTS

Appearances: Mr. Stephen Rubin QC and Mr. Justin Higo instructed by  
David Collier of Charles Adams Ritchie & Duckworth for  
the Plaintiffs  
Mr. Carlos Pimentel and Mr. Michael Loberg of Appleby  
For the 1<sup>st</sup> to 13<sup>th</sup> Defendants

Before: Hon. Justice Henderson

Heard: July 22, 2008



RULING

The Plaintiffs, in their skeleton brief prepared for this pre-trial review, have asked for a direction that the First to Thirteenth Defendants disclose:

“6.1. written communications, notes of oral communications, and attendance notes of discussions between the Defendants, Mr. Robert Slatter, Mr. Colin Shaw and/or Mr. Neil Timms relating to the retainer of Mr. Shaw and Mr. Timms in June 1992 by the Fourth Defendant (“AT&B”) to investigate the affairs of the Aall Foundation, including all documents relating to the creation of the so-called “Slatter memorandum” and all other documentation recording communications between Mr. Shaw and/or Mr. Timms and any third parties which relate to the instructions and/or advice prior to the relevant meetings of AT&B commencing on September 1992;”

One of the issues in this complex litigation will be the honesty, or lack thereof, of the Defendants who were acting as directors of Aall Trust and Banking Corporation in

1992. There is an allegation that various assets of the Aall Foundation were converted illegally and that the directors of AT&B did not make any honest and sincere attempt to retrieve those assets then. Matters suggesting that action should be taken were brought to their attention.

Two witness statements have been delivered to the Plaintiffs. The usual course is that the statements would stand as the direct evidence of these witnesses at the trial.

The witness statement of Erik Monsen addresses AT&B's relationship with Mr. Colin Shaw, a solicitor at Maples and Calder here in the Cayman Islands. Mr. Monsen says in part:

"It was June when Colin Shaw called me. He said that while digging around on the question of ownership he'd seen a number of memos from Slatter that suggested problems with the way the Foundation had been run. He wanted my blessing to investigate matters further and report back to me. I told him to go right ahead. If things weren't right or needed sorting out I wanted to know about it and if my father owed the foundation money I wanted it paid back.

"It was Colin who was responsible for setting up the AT&B meetings in the Fall and getting Slatter to put together his infamous memorandum. He said we needed to sit down and put the whole history of the Foundation under a microscope and decide what needed to be done.

"That's what we tried to do in the long AT&B Board meetings that we held between September 1992 and January 1993."

In that short passage one can see reference to matters which ordinarily would be privileged. Mr. Shaw reports to Monsen (who was a director of the client, AT&B) that Shaw had seen a number of memos suggesting problems with the way the Foundation had been run. Shaw then goes on to ask for authority to do certain things and Monsen instructs him to do them. Those are all privileged communications. The

brief and somewhat conclusory nature of the evidence does not change the fact that privileged communications are being revealed intentionally.

The witness statement of Mr. Colin Shaw reads in part as follows:

“The issue Frank and Erik came to me on in May 1992 was whether Douglas Gibson should go to Norway to testify in the Norwegian tax proceedings that Thorleif had been the owner of Continental Trust Company Inc (“CTC”). I was asked to look at the available paperwork from a Cayman legal standpoint to see what evidence there was and to try to help Erik reach a decision.

“As part of that exercise, my colleague Neil Timms (an experienced and extremely able London barrister who had Joined Maples and Calder’s litigation department) and I studied documents and minutes relating to the Aall Foundation and the Continental Foundation before it. As I read, I became increasingly concerned with how the Foundations had been run.

“I met with Erik as soon as possible to air my very serious concerns. His instructions to me were to investigate matters thoroughly. Erik left me in no doubt that it was his genuine desire to uncover any problems and to address them. I gained the clear impression that he saw it as part of his responsibilities in taking over the running of the family businesses and affairs from his father. Obviously if he had wanted to, Erik could have sacked me at any time, told me to mind my own business or told me to limit my attentions to the narrower task which I had been given of gathering evidence on early ownership of CTC and advising on the legal pros and cons of Erik allowing Douglas Gibson to go to Norway to testify in the Norwegian tax proceedings. Instead, he instructed me to draw up an action list and agenda of things that needed to be done and matters which needed to be investigated. This was with a view to holding a meeting of the Board of AT&B...

“Erik’s personal knowledge of the history of the Foundations was (so far as I could ascertain) rather limited and he directed me to Bob Slatter (who had been Trustee since the Continental Foundation was first settled, as well as Thorleif’s golfing companion and right hand man) and to Frank Flanagan, who had been involved since 1985. Those instructions were effectively the origin of the so-called Slatter memorandum. It seemed to me that what was needed was (so far as possible) a full review of the Foundations’ activities since their

establishment and the formation of a coherent plan of action for the future. Neil Timms assisted and worked extensively with Bob and Frank Flanagan to put together what was intended (on the basis of the documentation available to us and individuals' recollections) to be a comprehensive record of the Foundations' investments, income, outgoings, donations etc over the years, and some issues which needed to be addressed."

Again, one can readily see the disclosure of what would otherwise be privileged information in that passage. Mr. Shaw recounts the concern he had with how the Foundations had been run and describes receiving an instruction from his client to address the problems thoroughly. He describes his client's attitude as being a genuine desire to uncover any problems. No doubt Mr. Shaw formed that opinion from privileged communications and conversations with Mr. Monsen.

There has also been a disclosure of a series of minutes of board meetings. The first in that series (viewed chronologically) is a certain attendance note written by Mr. Shaw and describing, in considerable detail, a board meeting of AT&B and the Aall Foundation which he attended on September 22, 1992. In my ruling earlier today, I have determined that this attendance note is no longer privileged and may be entered in evidence for any relevant purpose by the Plaintiffs.

The attendance note records a mixture of privileged and non-privileged information. Some of the advice given by Mr. Shaw is referred to in that attendance note and questions asked by directors are mentioned. That attendance note is part of a sequence of documents relating to meetings which were held not only on the 22<sup>nd</sup> but on the four immediately succeeding days of that month. There are board minutes for each of these meetings which record, again, a mixture of privileged and non-privileged information. No effort has been made to redact these documents.

Cumulatively, they show advice proffered in bits and pieces over several days by Mr. Shaw to his client to the effect that there were serious problems connected with past transactions which now needed to be investigated and possibly set right. As I say, these documents have already been disclosed without any effort made to redact them.

The cumulative impact of these disclosures of privileged information is to render all of the material now requested by the Plaintiffs subject to a disclosure obligation. The solicitor/client privilege between Aall Trust and Bank and Maples and Calder for the time period described in the Plaintiffs' request, June 1, 1992 to September 26, 1992, had been displaced.

I will therefore direct that all relevant documentation in that time period which would otherwise be privileged must now be disclosed to these Plaintiffs within 14 days.

Dated this 22<sup>nd</sup> day of July, 2008

*Henderson, J.*

Henderson, J.  
Judge of the Grand Court

