

BERMUDA SUPREME COURT

Oil Basins Limited -v- Conticommerce S.A. and Foundation Anora, 2004 Civil Jurisdiction No. 171 [original location: SC Vol. 76 P. 167] (Jan 2012)

PROCEDURE - INTERPLEADER - STAY OF PROCEEDINGS - LIFTING PRIOR STAY

The Defendants, based in Switzerland and Lichtenstein respectively, were in dispute in Switzerland as to which of them should receive certain royalty payments held by the Plaintiff. The Plaintiff, a Bermuda company, placed the royalties in escrow and in 2004 commenced an interpleader action in the Bermuda Courts to determine which defendant was the proper recipient.

Also in 2004, the Defendants successfully stayed the Bermuda proceedings (with liberty to apply to vary or set aside the stay) to enable determination of the Swiss proceedings and separate proceedings in Lichtenstein involving the Second Defendant.

In September 2011, the Second Defendant applied in the stayed Bermuda proceedings for information relating to the monies paid by the Plaintiff into escrow. The First Defendant opposed this contending the application purported to vary the previous interim order in circumstances where there had been no material change in circumstances. The interlocutory dispute came before Kawaley J.

The Court acknowledged that the First Defendant was correct in the law relating to the variation of interim orders, but nonetheless found that the Second Defendant's application, when properly framed, went beyond that narrow variation issue because it also focused on asset preservation by the interpleading Plaintiff. The Court held: "*A more flexible approach should be adopted to an application seeking clarification of the [Plaintiff] stakeholder/trustee's ancillary duties and powers under Orders...*"

This was because, where an interpleader "*holds the funds under the Court's direction, such claimant is effectively acting as an officer of the Court*". The Plaintiff is therefore implicitly empowered to inform the Defendants about its compliance with the Court's Orders.

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