

CAYMAN ISLANDS

GRAND COURT

Embassy Investments -v- Houston Casualty Company Cause Number FSD 94 of 2011 (Formerly 278/05 and 127 and 128/06), per Quin J (26 January 2012)

PROCEDURE - INSURANCE - STRIKING OUT - ABUSE OF PROCESS

The Plaintiff purchased the Hyatt Hotel, Grand Cayman, in December 2003 and obtained property and business interruption insurance for it from various insurers in three layers. Part of the second layer of insurance was provided by the London office of a Texas insurance company (the "Texas insurer"). In September 2004 Hurricane Ivan devastated Grand Cayman and the Hyatt was badly damaged. The Plaintiff claimed on all of its policies. The claim was not paid and action was brought in Cayman by the Plaintiff against its insurers. During the discovery phase of litigation the Plaintiff threatened to bring a separate action for punitive damages in Texas against the Texas insurer. Settlement negotiations followed, during which the parties entered into a standstill agreement whereby neither party would file any new legal proceedings in any jurisdiction until the Cayman litigation was either settled or went to judgment. Protracted negotiations followed during which the Plaintiff alleged that a settlement had been reached (thus concluding the standstill agreement) but funds not paid. The Plaintiff commenced the punitive damages action against the Texas insurer in Texas. Eventually, settlement was reached with all of the second layer insurers save the Texas insurer. The Texas insurer made a full tender offer, plus costs and interests, without prejudice to the Texas claim, an offer which sat open for some ten months and was neither accepted nor declined by the Plaintiff. The Plaintiff took no formal steps in its action against the Texas insurer in Cayman for a period of over three years. The Texas insurer then brought this application to strike out the claim against it. During this drama, the Plaintiff made repeated statements to the press accusing the Texas insurer of, *inter alia*, dishonesty and bad faith. The Texas insurer counterclaimed against the Plaintiff for damages to its reputation, upon which summary default judgment was granted. Application

was brought for an order setting aside the Judgment on the counterclaim, but affidavit evidence in support of that application was not filed for some four months.

The Decision

The Court of the Cayman Islands has an inherent jurisdiction to strike out a case which is an abuse of process and actual prejudice does not need to be shown. The sole responsibility for the inordinate delay in the progress of the Plaintiff's claim falls entirely on the Plaintiff, which did not want to settle the policy claim in these proceedings, because it wished to maintain and magnify the allegation of the Texas insurer "blocking" a settlement to further its claim for punitive damages in Texas. On the facts there was no difficulty in finding that the Plaintiff's intentional and contumelious conduct, together with its inordinate and inexcusable delay, amounted to an abuse of process of the court. With respect to the application to set aside the summary default judgment, the Court was guided by the principles set out in *Alpine Bulk Transport Co. Inc. -v- Saudi Eagle Shipping Co. Inc.*: The Court has discretion in granting relief in such applications. In matters of discretion, no one case can be authority for another. The primary consideration is whether the defendant has merits to which the Court should pay heed. As a matter of common sense rather than as a condition precedent, the Court took into account the explanation as to how it came about that the Defendant found himself bound by a judgment to which he could have set up some serious defence. It is not sufficient to show a merely arguable defence that would justify leave to defend. The defence must have a real prospect of success and carry some degree of conviction. If proceedings are

deliberately ignored, this conduct (although not amounting to an estoppel at law) must be considered before exercising the discretion to set aside. In this case, the Plaintiff had, by its blatant and continuous breaches of the rules of the Grand Court shown what could only be described as a contemptuous disregard for the Court's practice and procedure. The Plaintiff failed to file any substantive evidence which either carries some degree of conviction or demonstrates a real likelihood that its draft defence to the counterclaim could succeed. Given that the Plaintiff had conducted this part of the proceedings improperly, unreasonably and negligently, the application to set aside the Judgment was dismissed and costs were ordered against the Plaintiff on an indemnity basis.

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