



In The Supreme Court of Bermuda

CIVIL JURISDICTION
2010: NO. 32
(Commercial)

BETWEEN:

(1) KINGATE GLOBAL FUND, LTD
(In Liquidation)

1st Plaintiff

and

(2) KINGATE EURO FUND, LTD
(In Liquidation)

2nd Plaintiff

-v-

PRICEWATERHOUSECOOPERS
(a Firm)

Defendants

RULING

(Ex tempore-in Chambers)

Date of Hearing: August 13, 2010

Date of Judgment: August 13, 2010

Mr. Cameron Hill, Sedgwick Chudleigh, for the Plaintiffs
Ms. Kiernan Bell, Appleby, for the Defendants

Introductory

1. The Plaintiffs applied by Summons dated July 2, 2010 for the following relief:
 - (a) a declaration of the Generally Endorsed Writ of Summons filed herein on 29th January 2010, and sanctioned by this Honourable Court by Order dated 4th March 2010, has not been served and/or that the said Writ of Summons is not deemed to have been served pursuant to Order 10 Rule 1 (3) of the Rules of the Supreme Court of Bermuda, or in the alternative;
 - (b) an Order that the Memorandum of Appearance purportedly filed by the Defendant 19th May 2010 be set aside and/or struck out on the grounds that service of the said Writ could not take place without leave of the Court, or alternatively;
 - (c) an Order that the time for the service of the Statement of Claim be extended until the 26th February 2011.
2. The Defendant filed a Memorandum of Appearance herein after the Plaintiffs, acting by their Liquidators, obtained leave to issue a Protective Writ. The Memorandum of Appearance was served under Order 10 Rule 1 (3) of the Rules of The Supreme Court, which provides as follows:

“Where a Writ is not duly served on a Defendant but he enters an unconditional appearance in the action begun by the Writ, the Writ shall be deemed to have been duly served on him and to have been so served on the date on which he entered the appearance.”
3. Having heard the submissions of counsel, I am satisfied that the Defendant validly filed its Memorandum of Appearance. I accept the submissions of Ms. Bell in this regards, in particular her reliance upon the case of *Abu Dhabi Helicopters Ltd. –v- International Aeradio PLC* [1986] 1 WLR 312, a decision of the English Court of Appeal, which demonstrates that Order 10 Rule 1 (3) of the Rules of The Supreme Court applies to protective writs.

4. However, having regard to the question of the Defendant's request that the Court fix a time for the Plaintiffs to serve their Statement of Claim, in my judgment the Defendant has no legitimate interest in seeking such relief at this stage. The question of the active pursuit of the present claim against the Defendant is subject to the control of this court in the liquidation proceedings by virtue of section 175 (1) (a) of The Companies Act 1981. A reserved judgment on the Liquidators' ability to obtain an Order under Section 195 of The Companies Act 1981 against the Defendant, specifically with the view to their deciding whether or not they wish to substantively proceed with the present action, is currently pending before this court. It is entirely possible that a time may come when the Defendant is in a position to contend that the delay on the part of the Liquidators in deciding on whether or not to actively pursue the present action is causing them undue prejudice. That point is far from being reached at this stage.
5. Accordingly, I grant the Plaintiffs an extension of time for serving their Statement of Claim being 28 days after this Court grants leave to the Liquidators to serve such Statement of Claim. Obviously, this Order is without prejudice to the right of the Defendant to apply to the Court for appropriate relief, is so advised, should the Plaintiffs' Liquidators take an unreasonable time to decide whether or not they are going to pursue or abandon the present claim.

Dated this 13th day of August, 2010

Ian Kawaley, ACJ