

IN THE SUPREME COURT OF BELIZE, A.D. 2014

CLAIM NO. 325 OF 2014

BETWEEN:

KEVIN MILLIEN

Claimant

AND

**BT TRADING LIMITED
GEORGE POPESCU
ALPHA SERVICES LIMITED**

**1st Defendant
2nd Defendant
3rd Defendant**

In Chambers: July 10 & 11, 2014.

BEFORE: Hon. Chief Justice Kenneth Benjamin.

**Appearances: Ms. Priscilla Banner for the Claimant.
Mr. Rodwell Williams SC, Mrs. Julie Ann Bradley with him, for the
3rd Defendant.**

RULING

[1] The Claimant Kevin Millien is resident in the USA and brought suit by Claim Form with Statement of Claim filed on June 27, 2014 against the following Defendants: BT Trading Limited, an international business company incorporated in Belize; George Popescu, a resident of the USA and business association of the Claimant; and Alpha Services Limited, a Belize limited liability company, the registered agent of BT Trading Limited.

[2] Upon a without notice application filed on even date with the Claim Form, the Claimant sought and obtained the following interim injunction orders:

- “(1) The Defendants are restrained, whether by themselves their servants or agents or any of them or otherwise howsoever from in anyway taking, selling, pledging, transferring, charging, diluting or in any way disposing of or taking any steps to bring about or facilitate or register the transfer of ownership of the Claimant’s shares held in or the assets of the 1st Defendant or its subsidiaries, BT Prime Ltd. And Boston Prime Ltd;
- (2) The 3rd Defendant is restrained from registering any further resolution, minutes or other such documents in respect of the 1st Defendant which has the effect of altering the ownership or and/or transferring ownership and control of the 1st Defendant or the subsidiaries to any party.

In addition, the 3rd Defendant was ordered to disclose copies of all the registers, books and records of the 1st Defendant currently held by the 3rd Defendant to the Claimant’s Attorneys-at-Law within seven (7) days of the service of the Order.

[3] Presently before the Court is a Notice of Application filed by the 3rd Defendant on July 7, 2014 seeking the discharge of the interim injunction order made against it. In the alternative, the 3rd Defendant sought a variation of the said Order by the discharge and deletion of the order for disclosure of copies of documents of the 1st Defendant held by the 3rd Defendant. Further, should the Court find it fit to discharge or vary the interim injunction order, the Court ought to order an inquiry as to damages. As a further alternative, in the event that the application for discharge or variation was refused, the 3rd Defendant sought an order that the Claimant pay to the 3rd Defendant reasonable costs incurred in complying with the order for disclosure.

[4] The facts relied upon by the Claimant in seeking the interim injunction and disclosure orders were set out in the first affidavit of the Claimant. So far as relevant, the background to the suit can be gleaned from such affidavit. The Claimant and the 2nd Defendant were made equal shareholders of the 1st Defendant upon its incorporation. At first, their shareholding was as to 25,000 shares each of the 50,000 issued shares. By subsequent resolution, the share capital was decreased to 25,000 shares with 12,500 shares being held by each individual party, both of whom were stated to be the directors of the 1st Defendant. The Claimant and 2nd Defendant also co-founded BT Prime Ltd., a BVI registered company and Boston Prime Ltd. (changed from BT Prime Ltd.) incorporated in England. The entire shareholding of BT Prime Ltd. was held by the 1st Defendant and the Claimant and 2nd Defendant were appointed as directors. The sole issued share of Boston Prime Ltd. was held by the 1st Defendant and the 2nd Defendant and the Claimant were appointed as directors. The net effect was that the 1st Defendant became the holding company and shareholder of BT Prime Ltd. and Boston Prime Ltd. (“the subsidiaries”). The group of companies together with an associated software company, Boston Technologies Inc., incorporated in Delaware, USA and of which the Claimant and the 1st Defendant are sole shareholders, are engaged in the business of foreign exchange trading.

[5] On June 18, 2014, the Claimant caused a company search to be made and discovered that the 1st Defendant’s authorized share capital had been increased from 25,000 to 150,000. It was said that this was done without the knowledge or consent of the Claimant in breach of the governance structure of the 1st Defendant. The affidavit further detailed information as to the proposed sale of Boston Technologies Inc. and of the 1st Defendant and its subsidiaries by the 2nd Defendant unknown to the Claimant. The Claimant also exhibited evidence of statements by the 2nd Defendant disputing their equal shareholding in Boston Prime Ltd.

[6] The Claimant’s Claim Form seeks a declaration that he is a 50% shareholder of the 1st Defendant and that the acts removing him as a director and increasing the share capital, thereby diluting his shareholding, were done in bad faith and for an improper

purpose. The Claim further seeks a declaration that the purported increase of the 1st Defendant's share from 25,000 shares to 150,000 shares is unlawful, null, void and of no effect as well as an order reversing all resolutions passed by the 1st Defendant intended to carry into effect the acts in respect of which a declaration is sought. In addition, the Claimant seeks a permanent injunction against the Defendants restraining dealing with the shares in and assets of the 1st Defendant and its subsidiaries. Finally, consistent with the interlocutory application, the Claim prays for an order directing the 3rd Defendant to permit the Claimant to inspect the books and records of the 1st Defendant and to make copies and extracts therefrom.

[7] At the instance of the 3rd Defendant, the Court heard the application for the discharge or variation of the interim injunction order on an urgent basis given that the order stipulated that the 3rd Defendant disclose the documents sought by the Claimant on or before July 15, 2014. At the outset, learned Senior Counsel proceeded on the basis that the disclosure order was in the nature of a **Norwich Pharmacal** order and hence it was not proper to have joined the 3rd Defendant as a party to the main proceedings. However, as the argument proceeded, it became apparent that the order was plainly not to be characterized as such. It needs to be pointed out that the 3rd Defendant was by no means to be treated as an innocent party caught up in any wrongdoing. The Claim seeks substantive relief against the 3rd Defendant by way of an order for the inspection of the books and records of the 1st Defendant in its possession as well as by permanent injunction in respect of the transfer of the ownership of the Claimant's shares held in or the assets of the 1st Claimant or its subsidiaries. Accordingly, there is substantive relief sought against the 1st Defendant and the 3rd Defendant is not cast in the role of an innocent party mixed up in the wrongdoing of unknown persons.

[8] The contention of the Claimant is that the disclosure order is required in order to hold the ring and to monitor the effectiveness of the injunction order to prevent any further dealing with the shareholding of the 1st Defendant and by extension the shareholding and assets of its subsidiaries. It was asserted that having regard to the Claimant deposing that the 3rd Defendant refused his request to inspect the books and

records of the 1st Defendant in his capacity as a member, the basis of the order was justified.

[9] The jurisdiction of the Court to grant an injunction order is derived from section 27 of the Supreme Court of Judicature Act, Chapter 90 which mirrors section 45(1) of the Supreme Court of Judicature Act, 1925 [UK]. This is buttressed by Rule 17.1(g) of the Supreme Court (Civil Procedure) Rules 2005 which empowers the Court to grant interim remedies including a freezing order restraining a party from dealing with assets whether located within the jurisdiction or not. However, it is fair to say that neither party disputed the jurisdiction of the Court in this regard. Rather, the focus was on the power of the court to make a disclosure order ostensibly in aid of the interim injunction order.

[10] Learned Senior Counsel for the 3rd Defendant made the point that in the ordinary course of proceedings the Claimant would be entitled to seek disclosure. It was highlighted that the Claimant was clothed with sufficient information to have filed his Statement of Case in the substantive matter ergo, the disclosure was not required to determine who were the parties against whom suit ought to be brought. In response, learned Counsel for the Claimant sought to invoke rule 17.1(3) as the source of the Court's wide power to make the order for disclosure.

[11] In the arguments on behalf of the Claimant, reliance was placed on the case of **Danone Asia Pte. Ltd et al v Golden Dynasty Enterprise Ltd. et al BVIHCV 2007/0262** – Eastern Caribbean Supreme Court – BVI. That case involved a freezing order and in her judgment, Hariprashad-Charles, J justified the making of a companion disclosure order as being for the prevention of abuse and the proper exercise and fulfilment of the objective of the freezing order. In contrast, the present case involves shares as against tangible assets and it has not been explained as to the beneficial effect of rendering disclosure at this early stage of the proceedings. It seems to me that the disclosure can await an order for disclosure in the normal course of case management and is accordingly premature and unnecessary for the purpose of aiding the policing of the injunction order.

[12] In the premises it is ordered that the interim order be varied by the discharge of the order for disclosure made against the 3rd Defendant seeking the providing of information in the registers, books and records of the 1st Defendant. The 3rd Defendant shall be entitled to its costs which shall be in the cause. It is further ordered that there be an inquiry as to damages (if any) before the Registrar as to any loss suffered by the 3rd Defendant.

KENNETH A. BENJAMIN
Chief Justice