

IN THE ROYAL COURT OF THE ISLAND OF JERSEY

(Samedi Division)

85/29

Between	Dailey International Sales Corporation	Plaintiff
And	Middle East Petroleum Equipment Inc	Defendant
And	Barclays Bank Finance Company (Jersey) Limited	Party Cited

Advocate F.C. Hamon for the Plaintiff.
Advocate A.D. Dault for the Defendant.

DEPUTY BAILIFF: This action arises from an Order of Justice arresting sums of money at the instance of Dailey International Sales Corporation in the hands of Barclays Bank Finance Company (Jersey) Limited, standing to the credit of the defendant Middle East Petroleum Equipment Incorporated.

As a result of the action taken by the plaintiff, the manager of the bank has certified that as of the 22nd February, 1985, there was \$826,517.62cents standing to the credit of the defendant company. The issue which is before the Court today is, first of all, whether the Court has jurisdiction to entertain the injunction which was sought in respect of that money. It being a matter of law, it falls to me to rule on the application before we turn, if we do, to the issue as to whether the injunction itself should continue or should be lifted. Neither the plaintiff nor the defendant have any connection with this Island; they are Texan companies and their dispute - as, indeed, it is clear there is a dispute between them - is, at present, before the appropriate Court in Texas, therefore if I were, without any further consideration of the facts to follow the precedents set in two previous cases in this Court, that of Garslund, Godman-Irvine, v. Jacomb, Lloyds Bank Ltd a la cause ^{(1954) 248 Ex 545 (1955) 148 Ex 405} and Middle East Engineering Ltd and Charles Edwards ^{(1980) 13 JRS}, I would decline a jurisdiction; but in the case of Middle East Engineering ^{and} Edwards, I said at the end of my judgment that in that particular case - and I was then distinguishing the Dreyfus case from the Edwards case - there was no proprietary interest in the money that was sought to be arrested. Therefore before I can find that this Court has jurisdiction, I should have to be satisfied that I can properly distinguish the Edwards case from the present facts and I am satisfied that I can do so only if I find that there was a proprietary interest in the money. Now, that decision depends really on the construction of the document setting out the relationship between the parties. Mr Hamon, for the plaintiff, has drawn my

attention to Clause 5.08 in the agreement, which is a form of agency and licensing agreement, and it is true, as Mr Dart has pointed out, that the agreement is not confined solely to agency but covers licensing matters. As I say, Mr Hamon has drawn my attention to Clause 5.08 where the relationship between the parties is clearly defined. I read the clause:

"Fiduciary Relationship

AGENT hereby acknowledges and agrees that the relationship created under this Agreement between AGENT and DISC is a fiduciary relationship from which certain duties flow; and further that AGENT shall not act or fail to act in any manner whatsoever which would constitute a breach of those fiduciary duties."

It is quite true that Mr Dart has equally drawn my attention to another clause, that of 8.05 which deals with invoicing and suggests that that clause, to some extent, negatives or reduces the effect of Clause 5.08; I cannot find it possible to agree with that submission; in my view, Clause 8.05 is merely a clause effecting a method of payment and it does not affect the relationship created between the parties by Clause 5.08. Therefore, I am satisfied there is a fiduciary relationship between the parties and had this been an English case or a Jersey case being decided in this Court, then the authority of Bowstead, to which Mr Hamon referred me, would have been sufficient for me to hold that there was that proprietary interest by the plaintiff in the fund. However, the matter didn't rest there because Mr Dart raised the point that this Court is not here to deal with the law of Jersey or the law of England because the agreement itself, in a particular clause, states that the law is to be the law of Texas. It is for that reason that I thought it right to hear the evidence of a counsel at law, an attorney, Mr Arthur E Ott, who practises in Texas, and he told us that the law of Texas is very similar to the law of England although couched in perhaps slightly different terms, but he mentioned three particular matters^{to} which I've had regard in coming to my conclusion. First, that the agent has to hold the money in trust for his principal; secondly, he is not to co-mingle the money with other monies; and thirdly, if he does co-mingle it, then he has a duty to identify the parts of that money so co-mingled. He added also that it followed that if there had been co-mingling in this particular case, the plaintiff would not necessarily have a claim to it all. However, the

amount that is in issue is something over \$800,000 and in the course of his address, Mr Dart conceded that at least the amount which would be due by the defendant would be not less than \$800,000, so virtually the whole of that amount may be taken to be the amount in which the plaintiff has an interest. The amount which other creditors may also have an interest is mentioned in an affidavit of Mr John Markham, who is a member of the internal audit for Dailey International Sales Corporation, that's the plaintiff, and he, at the end of his affidavit - and this is not challenged by Mr Dart for the defendant - suggests that MEPE - to abbreviate the defendant's name - had, as at September 12th, 1984, paid all its principals and creditors with the exception of approximately \$77,024 90 cents in outstanding payables owing to seven trade creditors exclusive of the amount owed to Dailey, therefore it seems to me that the amount which the other creditors might have in the sum of money at present arrested is very small in relation to that claim by the plaintiff and therefore I am able, in my opinion, to distinguish the previous case of Edwards from the facts in the present case and I am satisfied that this Court has jurisdiction and I so hold.

(Court adjourns briefly)

DEPUTY BAILIFF: We have looked, Mr Dart, at the principles that you rightly drew our attention to and are satisfied that we would have to consider, on the authorities, the balance of convenience between the parties, whether it's clearly a dispute between them relating to the money at present under arrest, and we quite understand the difficulties your clients face. On the other hand, it seems to us that we cannot overlook the position which we've already found that there is a fiduciary relationship between your clients and those of the plaintiffs which, in fact, enable me to find my decision which I gave earlier that the plaintiffs had a proprietary interest in the money, and even if your clients are, for the time being, in difficulties winding up their affairs, it seems to me that if they were to have the money, they would be using money to which we've already found there was a proprietary interest, based on a fiduciary relationship between the parties, to deal with other creditors which could indeed rebound to the difficulties of the plaintiff and might incapacitate them in case of further claims, and we think

it would be to their prejudice if we allowed the matter to continue in the sense of releasing the money. We are, therefore, going to allow the injunction to continue but only for six months and we note that counsel will endeavour, in the course of that period, to see whether our earlier suggestion that the money could be paid into the hands of the Harris County Court might not be the better way out, when it would be fully within the jurisdiction of the law which is to govern this agreement between the parties. Now, as to costs.

ADVOCATE: (indistinct)

DEPUTY BAILLIFF: Well, if they've no money to pay it ... I think it might be better to hold it over; if there's no money to pay it from, it's academic, isn't it? The question of costs held over, then.