

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

Cause No.: FSD 276 OF 2020 (MRHJ)

**IN THE MATTER OF THE EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS)
(CAYMAN ISLANDS) ORDER 1978**

**AND IN THE MATTER OF CIVIL PROCEEDINGS NOW PENDING BEFORE THE UNITED
STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK ENTITLED AS
FOLLOWS;**

18-MD-2865(LAK)

**CUSTOMS & TAX ADMINISTRATION OF THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) (“SKAT”) TAX REFUND SCHEME LITIGATION**

IN CHAMBERS

Appearances: Mr. Peter Tyers-Smith and Ms. Ilona Groark of Kobre and
Kim for the Plaintiff

Before: Hon. Mme Justice Margaret Ramsay-Hale

Heard: 10 December 2020

Ex Tempore Judgment Delivered: 11 December 2020



HEADNOTE

Request for International Judicial Assistance in Civil Proceedings-special circumstances for release of implied undertaking not to use documents in any other proceedings

EX TEMPORE JUDGMENT

1. SKAT, which is the acronym adopted by Counsel for the Danish Customs and Tax Administration - the Skatteforvaltningen - alleges that it has been the victim of a \$2 billion fraud.
2. The scheme as described in the papers before the court was a sophisticated one which involved over 300 entities who each represented themselves as pension plans purporting to own shares in Danish companies and entitled to recover from SKAT a withholding tax imposed by the Danish Government on dividends.



3. They sought recovery of the dividend withholding tax payment pursuant to a treaty between the United States of America and Denmark intended to give relief to non-Danish shareholders from double taxation.
4. SKAT contends that the application for reimbursements were fraudulent as these entities did not, in fact, own the Danish shares they claimed to own, did not earn the dividends they claimed to have earned, and were not entitled to the tax refund they had claimed from SKAT and received.
5. Proceedings have been instituted in several jurisdictions to recover the monies wrongly paid out under the scheme, including the United States, the United Kingdom, Denmark, Dubai, Malaysia and Canada. 184 claims have been made against defendants in various federal judicial districts in the United States, including the US based pension plans who applied refunds of the dividend withholding tax.
6. These claims have been consolidated and assigned to the Honourable Judge Lewis Kaplan of the United States District Court in the Southern District of New York. Judge Kaplan describes the claim asserted by SKAT as sounding in fraud, aiding and abetting fraud, payment by mistake, unjust enrichment, negligent misrepresentation and other related claims.
7. SKAT alleges that these US Defendants used certain Cayman Third Parties to advance the scheme to defraud SKAT as well as to conceal their involvement in the scheme.
8. SKAT asserts that it has already obtained evidence which connects several Cayman third parties to the principal organiser of the fraudulent scheme for a vast majority of the Defendants.
9. Judge Kaplan has issued Letters of Request to this Court on SKAT's application which seek the production of a number of documents from the corporate services providers for the Cayman entities. The Defendants in the SKAT proceedings were aware of the application and none objected to the Letters of Request being issued to this Court.



10. Having considered the background to this application and the matters set out by Judge Kaplan in his request, the Court grants the application accepting, as His Honour says, that *“the documents sought are likely to demonstrate that the US Defendants either owned, controlled or were benefitted by the Cayman Third Parties and will reveal the relationships between the Cayman Third Parties and the Defendants in the common fraudulent scheme”* and that these matters *“bear directly on SKAT’s case against the Defendants and are necessary for the purposes of justice.”*
11. In short, the letters of request seek evidence which is both relevant and admissible in the civil proceedings which are already underway in the US Court that makes the request, and so comply with the requirements of the **Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order 1978**.
12. The principle underlying the grant of the request is comity. As said by Lord Denning, then Master of the Rolls in *Rio Tinto Zinc Corporation v Westinghouse Electric Corporation*,

“It is our duty and pleasure to do all we can to assist the foreign court just as we would expect that Court to help us in the circumstances.”
13. I have Judge Kaplan’s assurance that his Court would be willing to provide similar assistance to this Court if and when required.
14. The documents sought are all required to be generated or obtained and/or are likely to be maintained by Corporate Services Providers in these Islands pursuant to the **Companies Law** and other Cayman Islands legislation and pursuant to the Anti-Money Laundering Regulations and the Guidance Notes on the application of those Regulations made by CIMA. I am, therefore, satisfied that the documents requested exist or have existed and that SKAT is not engaged in a *“fishing expedition”* which is not permitted under section 2(4)(b) of the Schedule to the 1978 Order.
15. I appoint Gary Smith as examiner for the purposes of the Order, having noted his consent to being so appointed.

16. With respect to the application to release the implied undertaking not to use the documents other than in the US proceedings, the general principle is that the Court will not release or modify the implied undertaking given on disclosure, save in special circumstances and where the release or modification will not occasion injustice to the person giving disclosure: see *Crest Homes Plc v Marks*.
17. In deciding the issue, I take into account that the purpose for which the material has been obtained is to assist SKAT in recovering money of which it has been defrauded. The non-US proceedings, in which it proposes to deploy the documents obtained in these proceedings if relieved of its implied undertaking, arise out of the same fraud and are intended to provide financial redress to SKAT for the wrongs it has suffered. The documents are likely to be material to the issues in those proceedings as well.
18. The principles enunciated in the authorities relied on by Mr. Tyers-Smith make it plain that when the public interest in the prosecution of fraud is put in the scales against the public interest in preserving confidentiality, the balance comes down in favour of the former and further, that international co-operation between courts of different jurisdiction to deal with multi-international fraud, as exemplified by the allegations in this case, is salutary.
19. I therefore grant permission to SKAT to use the requested documents in the foreign civil proceedings.



Hon Mme Justice Ramsay-Hale
Judge of the Grand Court