THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
CV 2006-01245

IN THE MATTER OF TRINCAN OIL LTD
AND
IN THE MATTER OF THE COMPANIES ACT
CH.88:01

BETWEEN

KEITH SCHNAKE

Claimant

AND

TRINCAN OIL LIMITED

Defendant

Before The Hon. Madam Justice C. Gobin
Appearances:

Mr. N. Bisnath and Mr. S. Sharma instructed by Mrs. Mendonca for the Claimant
Mr. Avory Sinanan SC instructed by Ms. Ferdinand for the Defendant

JUDGMENT

1. On the 30th July 2008 I delivered judgment in this oppression action in the claimant's favour. At paragraph (69) of my judgment I said in conclusion –

> The claimant has sought several reliefs aimed at rectifying every wrongful result of the defendant's conduct. I do not consider it necessary to grant each of the reliefs claimed. I prefer to approach the matter in the round and to grant the relief which is most appropriate bearing in mind my overall findings in the matter and the ultimate aim

> which in this case is to sever the relationship of the claimant and the defendant while ensuring that the claimant is properly and fairly compensated for his proper interest in the defendant.

2. My intention could not have been more clearly expressed, or so I thought. It has now been brought to my attention the order that I made fell short in certain respects. Specifically at paragraph (d) where I sought to give effect to the intention I expressed above, I granted this –

> *"An order that the defendant do pay to the claimant compensation together with interest thereon pursuant to the Supreme Court of Judicature Act, Ch.4:01. Such compensation to be the value of the claimant's shareholding in the defendant".*

I made no formal declaration that upon payment of the compensation, the claimant's interest in the defendant would extinguish. I thought this was obvious given that I had ordered no rectification of the records at the company's registry and that no formal transfer of shares was required. From the arguments and evidence in this case, it appears that it was obvious only to me and to a certain judge sitting in Houston in an application brought there by the claimant.

3. In my original order I continued to give further and what I thought were comprehensive instructions, as to how the claimant's shareholding was to be valued. I granted the following:

> *"The value of the claimant's shareholding to be determined by an independent valuation to be conducted by a suitably qualified expert to be*

> *agreed by the parties on or before August 21st 2008 and in default of agreement between the parties by a valuer nominated within 21 days thereafter solely by the claimant."*

I omitted to give directions as to who was to pay for the valuation. This omission as with the other one was only brought to my attention recently when these applications were filed. By this time the matter had engaged the attention of the Court of Appeal on the grounds which are not relevant for my purposes. Suffice it to say no appeal was eventually allowed to proceed.

4. The law recognizes that judges err. Most errors can only be corrected by the Court of Appeal but it is well established that in appropriate circumstances a first instance judge is allowed to correct accidental slips or omissions and to give directions for working out orders. The omissions which are the subject of these applications are of a nature which good sense and established procedure allow the court to rectify. The defendant has made an application to cure the first defect. I have confirmed that my intention was consistent with what was expressed in paragraph (69) of the judgment. I thought it was clear that I was not awarding damages for oppression under a separate head of relief, rather I was compensating for the claimant for his proper interest in the defendant. In the face of my express intention, the interpretation now put on the order by the claimant is somewhat surprising. This is more so since it leads to what can only be described as an absurd result, that is, the claimant would be entitled

damages assessed in the full value of his shareholding and still retain the exact interest in the company. This was not what I indicated I was aiming to achieve and I daresay reason and fairness would not have allowed me even to contemplate such.

5. The claimant contends that the court does not have the jurisdiction to grant the application. I do not agree Part 43:10 of the CPR provides –

> (1) The court may at any time correct (without an appeal) a clerical mistake in a judgment or order, or an error arising in a judgment.
>
> (2) A party may apply for a correction without notice.

6. This part was considered in the case of ***Bryston-Myers Suibb Co v Baker Norton Pharmaceuticals Inc*** (No.2). In that case Aldous L.J. was dealing with an application under the corresponding UK CPR Part 40:12 on the applicability of "slip rule". After he reviewed several cases cited he concluded as follows:

> *"Those cases establish that the slip rule cannot enable a court to have second or additional thoughts. Once the order is drawn up any omissions must be corrected by an appellate Court. However, it is possible under the slip rule to amend an order to give effect to the intention of the Court".*

The instant case is not one of my having second thoughts. It is simply a case of amending my order to effect my stated intention, since it turns out it was not as clear as I thought.

7. The application did not specify that it was made pursuant to Part 43:10. It did seek a correction of the order and I am satisfied that it falls within the scope of Part 43:10. The claimant has pointed out that previously when the defendant approached the Court of Appeal he construed the order in a different way. He says I should disallow the application now because it is inconsistent with that earlier position. As it turns out both sides have misconceived my order at different times, the defendant at some stage in the Court of Appeal and the claimant even now. That cannot change what was at all times my own intention. Neither side should benefit from any uncertainty as to its effect and in the light of what has arisen it is the duty of the Court is to rectify the problem and to insert what was omitted, to bring it in line with what I intended. I shall therefore amend the order accordingly to specify that upon payment of the compensation, all the claimant's interest in the defendant shall extinguish.

The second omission

8. I neglected to state who should pay for the valuation. The parties could not agree on the matter. The order was intended to provide for valuation of the claimants 12½ % share in the defendant. I have now made it clear, if it wasn't clear before to the parties, that it was with a view to having the claimant compensated for his interest in the company in full settlement of his interest in it. Clearly, the order cannot be carried out if no

one is willing to pay for the valuation in the absence of further directions of the Court.

9. If the court cannot direct how this aspect of the valuation exercise is to be conducted at this stage, the entire judgment would be defeated. The original order included liberty to apply. This is a clear case of the claimant seeking further directions for working out the order for the assessment of the value of the claimant's shares. What is being sought is not a variation of the original order. Liberty to apply provides an avenue for the Court to deal with this matter in a summary way and I propose to do so. I now direct that the parties shall bear all costs associated with the valuation in ratio of 1/8 by the claimant to match his interest in the company and the defendant will meet the balance.

10. Orders

The order of the Court of 30th July 2008 is hereby amended at paragraph 70 (d) in the following terms:

> (d) An order that the defendant do pay to the claimant compensation together with interest thereon pursuant to the Supreme Court of Judicature Act, Ch. 4:01. Such compensation to be the value of the claimant's shareholding in the defendant. Upon full payment of the said compensation, all the claimant's share-holding or any other interest in the defendant will be extinguished.

(e) The claimant is to pay 1/8 of all costs associated with the valuation and the defendant is to bear the remainder of such. Parties are to pay such sums as are required by the valuator within four (4) weeks of written notification of a request to instructing attorneys.

11. On the issue of costs, the adversarial approach which was adopted in these applications was unwarranted and led to more than an appropriate amount of time being spent by the Court. The duty of parties is to further the overriding objectives. The parties have not done so. The same result could have been so easily achieved with a joint referral to the Court of the matters, under Part 43:10 and under the provisions of liberty to apply. I cannot help but feel that the unreasonable position adopted by the claimant in the first instance is what set the tone for the response of the defendant. That does not absolve the defendant. A good guide to what is now expected of practitioners is to be found in Blackstone's Civil Practice 2005 Ch.1 1.34. I think it is worth setting it out here:

> "*The effect of the new procedures is that the legal profession will continue to perform its traditional adversarial role, but in a managed environment governed by the courts, and by rules which require the parties to focus their efforts on the key issues. However, it is now less adversarial than before the CPR came into force, and the CPR encourage and require greater cooperation between parties in the preparation of cases for trial. There is an overall emphasis on reducing the role of taking technical points and obstructive tactics, and encouraging the identification and speedy trial of relevant issues only. The parties are required to exhibit openness and cooperation from the outset, to assist the expeditious resolution of their dispute."*

12. The claimant is to pay the costs of the respondent's application in the sum of $7,000.00. Insofar as the claimant's application is concerned, the parties will bear their own costs.

Dated this 9th day of June 2010

CAROL GOBIN

JUDGE