

**IN THE HIGH COURT OF THE COOK ISLANDS  
HELD AT RAROTONGA  
(CIVIL DIVISION)**

**PLAINT NO. 2/17**

**BETWEEN**            **NATALINA LOWSON**, Mother of Los Angeles in the State of California in the United States of America  
First Plaintiff

**AND**                    of **DRAKE LAWSON**, a minor of Los Angeles in the State of California in the United States of America, by and through his guardian **NATALINA LOWSON**  
Second Plaintiff

**AND**                    **ASIACITI TRUST PACIFIC LIMITED**, a company duly incorporated under the Companies Act 19070-71 and having its registered office at Bermuda House, Parekura Place, Avarua on the island of Rarotonga  
First Defendant

**AND**                    **ASIA TRUST LIMITED**, an international company incorporated under the International Companies Act 1981-82 and having its registered office at Bermuda House, Parekura Place, Avarua on the island of Rarotonga  
Second Defendant

**Date of Hearing:**        17 March 2017

**Counsel:**                Mr B Mason for the Plaintiffs  
Mr B Gibson for the Defendants

**Judgment:**             23 March 2017

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**JUDGMENT OF HUGH WILLIAMS CJ**

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[1]        This proceeding had a first call on 17 March 2017 at which timetable orders were made by consent and the claim adjourned for a further call over at a future session.

[2] Left outstanding however, on 17 March, was a request by the Defendants for confidentiality with regard to the Court file. The application was based on an assertion that the proceedings involved an “international trust” governed by the International Trusts Act 1984 and accordingly confidentiality orders were appropriate under s 23(3) of that Act.

[3] The application was opposed by Mr Mason, counsel for the Plaintiffs.

[4] According to the Statement of Claim the First Defendant is incorporated under the Companies Act 1970-71 and is a professional trustee company licensed under the Trustee Companies Act 2014. The Second Defendant is a company incorporated under the International Companies Act 1981-82 and is a wholly owned subsidiary of the First Defendant.

[5] Putting the matter broadly, the Plaintiffs are citizens of the United States of America and the subject matter of the claim is that the former husband of the First Plaintiff and father of the Second lodged a substantial sum of money with the Second Defendant on some date after 2006. The Plaintiffs claim that the Defendants have utilised part of that sum in a way not sanctioned by the trust deed which the First Plaintiff’s former husband settled and of which they are beneficiaries.

[6] The application for confidentiality orders is based on the International Trusts Act, s 23(3) as substituted by the International Trusts Amendment Act 2004. The subsection now reads:

All judicial proceedings other than criminal proceedings relating to an international trust shall, unless ordered otherwise by the Court, be heard in-camera. The decision of the Court in any proceeding may, unless ordered otherwise by the Court, as to the whole or any part of the decision, be published.

[7] Mr Mason submitted that the confidentiality provisions of the original s 23 enacted in 1984 had been weakened by the 2004 Amendment and further eroded by the suite of statutes covering money laundering and corruption enacted at about the time of the Amendment. He submitted that the Plaintiffs’ attitude was supported by the decision of the Court of Appeal in

*515 South Orange Grove Owners Association v Orange Grove Partners*<sup>1</sup>. That was a decision of the Court of Appeal on an application for leave to appeal to the Privy Council, not the judgment in the substantive matter, but the Court’s judgment that gave leave to publish the principal judgment.

[8] The application was supported by affidavits averring that publication of the principal judgment would seriously prejudice the Cook Islands’ offshore banking and trust industry, a submission echoed by Mr Gibson for the Defendants in the present case.

[9] The Court of Appeal held that the facts that the applicants were apprehensive as to the effect publication of the decision would have was not a governing factor in respect of the giving of leave to appeal to the Privy Council adding that the applicants contended that “not one word of a judgment interpreting certain provisions of the Act which are obscure should come to the notice of anyone other than a nominated few representing the offshore industry even although persons aside those few may be affected by the Court’s construction of the Act”. The application for leave to appeal to the Privy Council on the publication point was declined.

[10] Assuming, but without deciding, that the matters in issue in this case are proceedings “relating to an international trust” (but noting that only the Second Defendant is incorporated under the International Companies Act 1981-82) this matter is governed by the provisions of s 23(3). They carefully differentiate between the hearing of proceedings falling under the subsection and the management and determination of the issues arising out of the rest of the file. While it is clear, in terms of s 23(4), that the substantive hearing must be heard in-camera unless the Court otherwise decides, there is nothing in the wording of the subsection according similar confidentiality to the balance of the proceedings including the Court file. Indeed, by making specific provision for the hearing to be in-camera, Parliament implied that, absent a specific order to that effect, the balance of the proceeding should be open. The limitation of confidentiality to the hearing as opposed to the rest of the proceeding is supported by the second sentence in s 23(3) which relates to publication or otherwise of the judgment. The above citation from the Court of Appeal judgment in *515 South Orange Grove Partners* on which Mr Mason relied provides a certain generalised measure of support for that approach even though

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<sup>1</sup> *515 South Orange Grove Owners Association v Orange Grove Partners* [1995] CKHC 12; Plaintiff No. 208/1994 (20 December 1995)

it relates to publication of judgments – the second sentence of s 23(3), not the first – and was decided well before the present s 23 was enacted.

[11] It follows that confidentiality needs to be accorded to all hearings, substantive or interlocutory, in relation to this matter and any minutes and judgments flowing therefrom (absent an order to the contrary) but that, without evidential support for a confidentiality order in respect of all other aspects of the proceeding including the file, no basis has been made out for the broad form of confidentiality sought by the Defendants. Their application for an Order to that effect is therefore declined, with costs reserved.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, CJ