

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

Plaint No. 123/24

BETWEEN DONALD W. HENRY of 5525  
Oakdale Avenue, Suite 165,  
Woodland Hills, California 91364,  
United States, Receiver pursuant to  
the Stipulation of the Parties to  
Appointment of Permanent Receiver  
and Order thereon dated July 17,  
1994 in the United States Federal  
District Court, Central District,  
California

Plaintiff

AND SOMMERSET LIMITED, a  
company incorporated pursuant to  
the International Companies Act  
1981-82

First Defendant

AND THE WILLIAM A. COOPER  
TRUST aka THE W.A. COOPER  
TRUST an International Trust  
registered pursuant to the provisions  
of the International Trust Act 1984

Second Defendant

AND TRAVIS W. COOPER of  
Sacramento, California, United  
States

Third Defendant

AND PADEN A. COOPER of Villa Park,  
California, United States

Fourth Defendant

AND TRUST NET (COOK ISLANDS  
LIMITED) a Company incorporated  
in the Cook Islands and carrying on  
business there and elsewhere as a  
trustee, including as Trustee of the  
Trust

AND E. ROBERT BERENDS, Costa  
Mesa, California, United States  
Attorney

Sixth Defendant

AND WILLIAM E. COOPER, Villa  
Park, California, United States

Seventh Defendant

AND TERRA COOPER, Villa Park,  
California, United States

Eighth Defendant

Mr Manarangi for the Plaintiff  
Mr Arnold for the Fifth Defendant

Date of Hearing : International Conference Call 20 December (NZ time)

Date of Decision : 20 December (New Zealand time)

#### JUDGMENT OF DILLON J.

A Mareva Injunction has already been granted to the Plaintiff against the eight defendants.

This is an application for the replacement of Trust Net (Cook Islands Limited) and the Fifth Defendant by a new Trustee, Resolution Limited.

#### HISTORY

The original Trust was established by Mr and Mrs Cooper - the Seventh and Eighth Defendants respectively. Under that Trust the Fifth Defendant was the duly appointed Trustee.

As a result of criminal proceedings in the United States, guilty pleas were admitted by the Seventh Defendant to mail and wire fraud, theft and embezzlement of pension funds, as well as interstate and foreign transportation of stolen property and property taken by fraud. A plea bargaining agreement followed whereby the Seventh Defendant was to provide full details of the Trust which, it is alleged by the Plaintiff, was the recipient of the criminal activities already referred to.

The Seventh Defendant has instructed the Fifth Defendant to make available to the Plaintiff full

details and information of the Trust property. The Fifth Defendant refuses to disclose those details on the grounds that the Eighth Defendant jointly established the Trust; that there are separate funds in the Trust belonging to the Eighth Defendant; and that the Fifth Defendant is having difficulty securing adequate instructions from the Eighth Defendant.

### APPLICATION

The application is for the replacement of the Fifth Defendant by the appointment of the new Trustee, Resolution Limited. It is alleged that it is expedient to appoint this new Trustee and that it is inexpedient, difficult and impracticable to do so without the assistance of a Court Order. This application follows the provisions of Section 43 of the Trustee Act 1956 which provides for the appointment and discharge of Trustees.

Mr Arnold appeared for the Fifth Defendant who opposed the application. He confirmed the difficulties already referred to of identifying the property claimed by the Eighth Defendant. The affidavit in support of the application alleges that the whole of the Trust property results from the criminal activities of the Seventh Defendant. However the Plaintiff cannot confirm by independent examination of the Trust records whether either the allegations of the Seventh Defendant or of the Eighth Defendant are correct or partly so in relation to their respective claims that they make to the Trust property. This is because of the Fifth Defendant's refusal to permit the Plaintiff an inspection of the Trust records even though directed by the Seventh Defendant.

### DECISION

It may very well be that the Eighth Defendant has some assets in the Trust quite independent of the assets resulting from the criminal activities of the Seventh Defendant. Clearly therefore the Fifth Defendant should meantime remain as Trustee in order to protect the interests of the Eighth Defendant. There is a clear conflict of interest which the Fifth Defendant is unable to cope with. The Seventh Defendant, one of the settlors of the Trust, has directed the Fifth Defendant to make disclosure. The Fifth Defendant refuses. Clearly it is expedient that a new Trustee be appointed in order to resolve this conflict of interest.

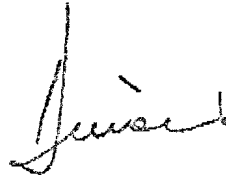
For that reason the objection by the Fifth Defendant is disallowed; Resolution Limited is appointed a new and additional Trustee pursuant to the provisions of Section 31 of the Trustee

Act 1956.

This additional appointment will enable the new Trustee to examine the Trust property and so permit the Plaintiff to proceed with the enforcement of the plea bargaining agreement. It will also permit the Fifth Defendant to continue acting for the Eighth Defendant since it has acknowledged that it is no longer acting for the Seventh Defendant due to its non-compliance with the specific instructions that were provided to the Fifth Defendant and which have not been complied with.

While this Order will enable the two Trustees to act separately, one for the Seventh Defendant and the other for the Eighth Defendant, there could be a potential conflict in the event that the Trustees cannot agree on the identification of the Trust assets once a full examination has been carried out. If for that reason or any other reason there is not unanimity between the Trustees then leave is granted to any party to make application to the Court for directions.

Costs on the application are reserved.



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Dillon J.