

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

**PLAINT NO. 23/18**

IN THE MATTER of section 50B Judicature Act 1980-81,  
and the High Court's general equitable  
jurisdiction

AND  
IN THE MATTER of an application for judicial review of a  
decision under the Mutual Assistance in  
Criminal Matters Act 2003

BETWEEN **ORA FIDUCIARY COOK ISLANDS  
LIMITED**, Rarotonga, Cook Islands

Applicant

AND **ATTORNEY-GENERAL** of the Cook  
Islands

First Respondent

AND **FINANCIAL INTELLIGENCE UNIT**  
of the Cook Islands

Second Respondent

Date of present  
Application: 15 August 2019

Counsel: Mrs N R Williams for Applicant  
Mr S C Baker, Solicitor-General for Respondents

Date of Judgment: 10 October 2019

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**JUDGMENT OF HUGH WILLIAMS, CJ  
(re. Release of Interim Orders Judgment)**

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**For the reasons appearing throughout this judgment, the application of the applicant dated 15 August 2019 to disclose the contents of the Minute dated 12 November 2019 contrary to the orders for confidentiality made in this proceeding is dismissed.**

**Introduction**

[1] On 8 November 2018 the applicant, Ora Fiduciary (Cook Islands) Limited<sup>1</sup> issued judicial review proceedings against the Attorney-General and the Financial Intelligence Unit<sup>2</sup> pleading that on 29 August 2018 the Attorney-General made an

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<sup>1</sup> "Ora".

<sup>2</sup> "FIU".

international request for assistance in criminal matters under ss 10 and 17 of the Mutual Assistance in Criminal Matters Act 2003<sup>3</sup> to the Ministry of Justice of Liechtenstein in relation to “a criminal investigation into suspected criminal offences that are believed to have been committed in the Cook Islands”, the request being mainly for information in relation to bank accounts held at Bank Frick & Co in Liechtenstein by a Mr Leontiev, a Russian national, and companies, trusts and persons associated with him.

[2] The statement of claim recounts a number of issues – most of which were raised in the associated proceeding *Solicitor General v. Capital Security Bank Limited and Ora Fiduciary (Cook Islands) Limited*<sup>4</sup> – and then pleaded a number of grounds relating to the application for judicial review, principally being the standard grounds in such proceedings of failing to take relevant matters into account, taking account of irrelevant considerations, improper purpose, unfairness, breach of natural justice or procedural fairness, breach of a duty of candour, and unreasonableness. The relief sought is that the request to the Liechtenstein authorities be declared invalid and therefore should be quashed or revoked.

[3] The respondents filed a detailed defence on 22 February 2019 and the parties are now involved in pre-trial matters preparatory to a hearing of the substantive claim.

### **Interim Orders Judgment**

[4] On the same day, 8 November 2018, Ora applied for interim orders in relation to the Attorney-General’s request, namely a declaration that the Attorney-General should notify the Liechtenstein authorities that the request was withdrawn pending further order; a declaration that the Attorney-General should disclose other similar requests in relation to Ora or Mr Leontiev as a prelude to interim orders in that regard; and a further declaration that both respondents should not transmit anywhere outside of the Cook Islands any information or material relating to Mr Leontiev, Ora or Misc. 9/18 pending further order.

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<sup>3</sup> “MACMA”.

<sup>4</sup> Misc. 9/18.

[5] In the same application, Ora sought confidentiality orders debarring any person's access to the file in Plaint 23/18 or "any document on that file," other than counsel for the parties or Ora, unless the Court has granted leave for the same. It also sought prohibition of publication without leave of any documents filed in the proceeding and their contents plus the "details of the content of this proceeding".

[6] That application resulted in what the parties referred to as the "Interim Orders Judgment" of 12 November 2018<sup>5</sup>.

[7] The minute recounted:

[6] The interim order application is supported by a voluminous affidavit sworn by the solicitor for Ora. Much of the bulk resulted from the affidavit incorporating a significant proportion of the documents filed in Misc. 9/18 but the exhibits also include:

- a) What appears to be an acknowledgment of the Request – the document is in German – dated 17 September 2018 which, in the heading, names Mr Leontiev and four others plus four trusts and four companies associated with him;
- b) The Request by Crown Law dated 29 August 2018<sup>6</sup> and what appears – the document is again in German – to be a translation of the same;
- c) A letter from Ora's solicitors dated 17 October 2018 to Crown Law raising the issues also raised in the application for interim orders, a reply from Crown Law dated 22 October 2018 saying that no material subject to the undertaking or orders in Misc. 9/18 has been disclosed and a response from Ora's solicitors dated 29 August 2018 again seeking the withdrawal of the Request as it relates to Ora.

[8] The minute then dealt with the claim in Misc. 9/18, then still on foot, and covered the state of that proceeding as follows:

[10] Without needing to go into the details in this minute, aspects of the evidence in Misc. 9/18 relevant to the current matter are:

- a) That as a prelude to Ora disclosing a considerable volume of information relating to the Leontiev interests, the Solicitor-General and FIU gave Ora an undertaking inter partes as to confidentiality dated 8 December 2017, that that the information volunteered should

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<sup>5</sup> Technically a minute of that date as it dealt with a number of additional matters.

<sup>6</sup> Extending over 23 pages.

be “held confidential and shall not be disseminated or disclosed to any other person, entity or governmental or quasi-governmental entity or their representatives” subject to a number of conditions including Ora’s consent or an order of this Court; and

- b) In a minute following a conference call with counsel on 11 May 2018 the Court noted the changing course of the application in those proceedings by saying:

“[2] Putting the matter broadly, the nub of the conference call was expected to be whether the applicant was to be permitted to disclose information provided by the second respondent to persons or organisations outside the Cook Islands, particularly in the Russian Federation, and, if so, to which persons, on what terms and for what purposes should they be permitted to see and comment on the material.

[3] However, as the conference progressed the argument reached the point where Mr James, Solicitor-General and counsel for the applicant, abandoned any wish to disclose the material provided to the Financial Intelligence Unit by the second respondent to any person or organisation outside the Cook Islands...”

[11] It is correct, as Mr Williams, leading counsel for Ora in this matter, submitted that no further orders for non-disclosure or confidentiality were thought to be necessary in Misc. 9/18 by reason of the undertaking of 8 December 2017 and the Solicitor-General’s abandonment of the respondents’ intention to disclose matters in that proceeding as recorded in the 11 May 2018 minute.

[12] It is also pertinent to note that the minute of 7 February 2018 in Misc. 9/18 said that “pending further order of the Court there shall be no right of search of the file related to this application and confidentiality is required in relation to the same”.

[13] It is also noteworthy that the minute of 30 April 2018 in Misc. 9/18 said:

[8] The Registrar is to note that this proceeding is likely to be covered by the confidentiality provisions of the Cook Islands International Trusts Act 1984 and accordingly:

- (a) The public’s right to search any of the documents on the file is to be suspended pending the substantive hearing of this application, including the judgment; and
- (b) The hearing on 31 May 2018 is to be in camera; and

- (c) The names of the parties should not appear on any fixture list with the matter being referred to in any such lists as application under Proceeds of Crime Act 2003 and Mutual Assistance in Criminal Matters Act 2003.

and that s 23 of the International Trusts Act 1984 makes it an offence for any person to “divulge or communicate information relating to ... an international trust” and requires that no details of judicial proceedings related to international trusts be published except in certain circumstances.

[9] The minute then outlined the contents of the request<sup>7</sup> and relevantly concluded:

[19] In view of all of that, there will be orders:

- a) That within 5 working days from their receipt of this minute, the respondents are to file and serve such evidence and submissions as they choose to adduce explaining how they contend that they have not been in breach of their obligations and other matters as described in the last two preceding paragraphs of this minute; and
- b) Forthwith on their receipt of the minute the respondents are to advise the Liechtenstein Ministry of Justice that they do not wish the Ministry to take any further action in relation to the Request pending a decision on the matters discussed in this Minute, file a copy of their advice and not renew the Request in any way; and
- e) That pending further orders of the Court the confidentiality orders in force in relation to Misc. 9/18 are to be orders covering all aspects of this proceeding. For the avoidance of doubt, that includes the orders set out in the 30 April 2018 minute in that proceeding.

[10] Notably, paragraph [4](b) of the minute of 24 May 2018 extended the bar on the right to search to Plaintiff 23/18.

### **Current application**

[11] Ora’s application of 15 August 2019 sought “permission to disclose [the Interim Orders Judgment] to Mr Leontiev’s Liechtenstein counsel to disclose to the Liechtenstein Princely District Court” saying:

- “13 Allowing the Liechtenstein Court to be accurately appraised of the content of the Interim Orders Judgment is simply to support the interim relief already granted, in particular the relief granted at [19](b)

of the Interim Orders Judgment, which required the respondents to advise the Liechtenstein Ministry of Justice that they do not wish the Ministry to take any further action in relation to their MLAT request.

- 14 It is submitted that such disclosure of the Court’s judgment, which would occur in the ordinary course of events save for the specific legislative provisions designed to protect the interests of Cook Islands international trusts and trustees, will entail very limited disclosure and will be for the specific purpose identified and is in the interests of justice.”

[12] The application cited the following background:

- 2 Counsel for Mr Leontiev has recently advised Ora that in order to properly appraise the Liechtenstein Court in relation to the withdrawal by the respondents of their Mutual Legal Assistance request to Liechtenstein, they seek to obtain and file with the Liechtenstein Court the Interim Orders Judgment.
- 3 Domestic investigation proceedings in Liechtenstein are being conducted before the Liechtenstein Court, based on allegations by the Russian authorities against Mr Leontiev that are substantially similar to those set forth in the MLAT request submitted by the Russian Federation to the Cook Islands. Mr Leontiev’s counsel advises that Mr Leontiev has cooperated fully with the Liechtenstein Court, providing extensive information and evidence to substantiate the source of funds in question.
- 4 The Deposit Insurance Agency of the Russian Federation (DIA) has been admitted by the Liechtenstein Court as an “interested private party” to the domestic proceedings. As this Court is already aware, the DIA has mischaracterised the Cook Islands proceedings in its litigation against Mr Leontiev in Austria, and Mr Leontiev has significant concern that the DIA may be submitting similar misinformation regarding the Cook Islands proceedings to the Liechtenstein Court.
- 5 Due to the confusion caused by the former Solicitor-General’s correspondence with the Liechtenstein Court (as well as the direct correspondence from Mr Hunkin of the Cook Islands FIU to the Liechtenstein Court, in breach of protocol), the applicant believes it is desirable to correct any misconceptions of the Liechtenstein Court, as this Court ruled with respect to the Austrian Proceedings in its minute dated 31 January 2019.

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<sup>7</sup> At 14-18.

[13] The application is resisted by the respondents in the Solicitor-General's memorandum of 19 August 2019 drawing attention to the following matters:

- a) That Mr Leontiev and his associates including associated trusts and companies are not parties to Plaintiff 23/18, nor were they parties to Misc. 9/18;
- b) That the Interim Orders Judgment is a "document on Plaintiff 23/18" – as must be plainly right – and accordingly the confidentiality order applies;
- c) The Liechtenstein proceedings may become a public document;
- d) The memorandum drew attention to looseness in the applicant's request: no more than "advice" had been received by an un-named counsel and that Mr Leontiev only has a "significant concern" that the DIA may be submitting misinformation so the Liechtenstein Court may have misconceptions concerning the matter;
- e) The respondents have formally withdrawn the request by emailed letter of 31 January 2019;
- f) That the judicial review proceedings were then in an early state.

[14] The respondent's memorandum drew a reply from counsel for Ora dated 18 September 2019 (NZ time)<sup>8</sup>. The memorandum attached a letter dated 16 September 2019 from a Doctor Stefan Wenaweser, a partner in a firm of Liechtenstein attorneys.

[15] The salient parts of the letter state:

- a) Doctor Wenaweser is representing Holdco Limited before the Liechtenstein Courts in proceedings relating to Mutual Legal

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<sup>8</sup> First received, with associated documents by Chief Justice on 8 October 2019 (NZT) on his inquiry

Assistance Treaty requests from the Russian Federation in relation to Mr Leontiev and his associates;

- b) The attorneys have “followed with interest” the Ora proceedings, particularly in relation to the Legion trust, the parent trust of Holdco;
- c) The substantive judgment in Misc.9/18 “has been instructive for the Liechtenstein Princely District Court” in relation to Holdco matters and that interim orders issued by this Court would serve to “further clarify to the Liechtenstein Court, whether the initial request of 29 August 2018 was, proper and justified as a matter of law”; whether allegations concerning Mr Leontiev and his trusts “should be considered relevant or substantiated”; and the “nature and legitimacy of the communications delivered directly by the director” of the FIU to the Liechtenstein Court including the allegations.
- d) That the Liechtenstein proceedings “are not public and no private parties have access to the respective Court files.”
- e) The letter seeks permission from this Court to obtain a copy of the interim orders to “respectfully submit to the Liechtenstein Court for consideration” in their proceedings.

### **Discussion and decision**

[16] Issues of confidentiality in relation to the Court files, the information contained in documents on those files and the redaction from, and distribution of, the various judgments and minutes has been a significant feature of both Misc. 9/18 and Plaint 23/18, proceedings in both of which, as the Solicitor-General submitted, Mr Leontiev, his family, his companies and trusts and associates were not parties. That remark equally applies to the Russian authorities and agencies which appear to be intent on pursuing Mr Leontiev and his interests in various jurisdictions around the world.

[17] That said, as a result of previous judgments in Misc. 9/18 and this case, all those parties have now legitimately received a significant body of information



concerning the matters in issue in both pieces of litigation, to the point where it is unclear what additional information they will receive were Ora's present application to be granted

[18] The present application also needs to be seen in the context of, first, the provisions of the International Trusts Act 1984 making confidentiality of matters relating to such trusts the overriding situation without Court order and, secondly, the strong emphasis on confidentiality maintained by the parties to both these proceedings as exemplified in the orders to which reference was earlier made, most of which were made by consent.

[19] The Court's view is accordingly that the starting point to consider allowing Ora's present application is that it needs to demonstrate a principled basis for departing from the statutory and other confidentiality arrangements previously discussed.

[20] Some of the uncertainties and lack of detail in the application to which the Solicitor-General referred in his memorandum have been overtaken with the provision of the additional material in Ora's 18 September 2019 memorandum but, even so, there remains significant uncertainty as to the precise reasons disclosure of the Interim Orders Judgment is sought, the purpose for which disclosure is requested, the persons to whom disclosure would be given and the purpose for which the disclosure is requested, both in relation to the persons to whom disclosure is given and any onward transmission of the material. Doctor Wenaweser's description, helpful though it is, on those topics is indicative rather than definitive.

[21] In light of the information already available to the parties and the public, the application seems inquisitive rather than determinative.

[22] More specifically, the legal justifiability of the Attorney-General's initial request is a matter to be determined when Plaintiff 23/18 comes to hearing so any judgment in that regard by a court in another country, necessarily acting on incomplete information and the Interim Orders Judgment, does not seem to be a reason for granting Ora's request.

[23] Similarly the allegations concerning the relevance or substantiality of Mr Leontiev and his interests do not seem to be matters likely to be assisted by the Liechtenstein authorities' knowledge of the Interim Orders Judgment. They will be making their own decision on such matters on the pleadings and evidence available to them.

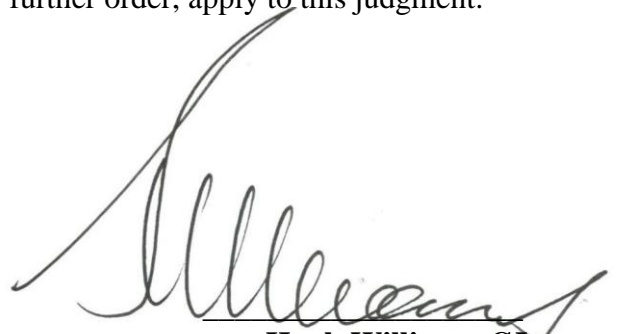
[24] Much the same comments apply to the legitimacy of direct communications by FIU to the Liechtenstein Court.

[25] In addition, issues relating to the propriety or otherwise of the request withdrawal need to be seen against the entire context of both pieces of litigation in this country especially the direction in para 19(b) of the Interim Orders Judgment and the fact that, in general, how litigants manage their litigation is, subject to direct court orders, a matter for them.

[26] Further, it is not at all clear how disclosure to the authorities of one country of a small part of proceedings in another country will assist those authorities to a decision on the matters before them. In particular, any mischaracterization of the Cook Islands proceedings in other jurisdictions would seem unlikely to assist or influence Courts in other countries to decide the matters in issue before them.

[27] All those matters, seen against the statutory background and the previous orders in both these proceeding, lead to the conclusion that no sufficient basis has been demonstrated for authorizing the disclosure of the Interim Orders Judgment to the Liechtenstein authorities and Ora's application for such to occur is accordingly dismissed.

[28] For completeness, the orders relating to non-disclosure and confidentiality in Plaintiff 23/18 remain in place and, absent any further order, apply to this judgment.



**Hugh Williams, CJ**