

PARTIES: WILDMAN RIVER PLANTATIONS  
PTY LTD  
v  
CRIDLANDS PTY LTD

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: Supreme Court of the Northern Territory  
Exercising Territory Jurisdiction

FILE NO: 210/96 9622623

DELIVERED: 28 November 1996

HEARING DATES: 7 November 1996

JUDGMENT OF: Thomas J

**CATCHWORDS:**

Practice and procedure - application for relief by way of interpleader - conflict as to ownership of company shares - conflicting instruction as to disbursement of trust monies.

Supreme Court Rules (NT) Order 12 rules 12.02, 12.08

**REPRESENTATION:**

*Counsel:*

Plaintiff: J.E. Reeves  
Defendant: N.J. Henwood

*Solicitors:*

Plaintiff: Elston & Gilchrist  
Defendant: Cridlands

Judgment category classification: C  
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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

SCC 210/96 (9622623)

BETWEEN:

**WILDMAN RIVER PLANTATIONS  
PTY LTD**  
Appellant

AND:

**CRIDLANDS PTY LTD**  
Respondent

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 28 November 1996)

This is an application by the defendant, represented by Mr Henwood, for relief by way of interpleader and for directions as to the further conduct of the matter.

The application is opposed by the plaintiff company who is represented by Mr Reeves.

The application is supported by Mr J. Rajmohan Pillai, represented by Mr McDonald. Mr Pillai is not a party to these proceedings, however, he was served with a summons and has an interest in this application.

Mr Henwood, in his affidavit sworn 28 October, deposes to the fact that the defendant company holds as trustee for Wildman River Plantation Pty Ltd the sum of \$1,956,989.81 which is held in an interest bearing deposit on behalf of the plaintiff. These funds represent the balance of funds received on 7 June 1996 in part payment of compensation payable to the plaintiff for the compulsory acquisition of the plaintiff's land in the vicinity of Wildman River in the Northern Territory of Australia.

In March 1996, the defendant company received instructions from Mrs Gopika Nina Pillai, Mr Rajmohan Pillai and Mr Antony Joseph on behalf of 20th Century Limited to oppose an application for the winding up of the plaintiff. After the winding up proceedings were resolved, the defendant was instructed by the abovementioned persons to act on behalf of Wildman River Plantations Pty Ltd in relation to the acquisition of their land. It was in that capacity monies were paid into the defendant's trust account. Subsequent to the receipt of these monies a dispute has arisen between Mr Pillai (who is Mrs Pillai's brother in law) as to who is entitled to the control of the plaintiff company.

All of the issued shares in the plaintiff are owned by 20th Century Limited, a Liberian company. The dispute is as to who has or is entitled to shares in 20th Century Limited. 20th Century Limited is entitled to appoint or

remove the directors of the plaintiff company by notice in writing. According to the Articles of Association of the plaintiff, it is 20th Century Limited which is entitled by notice in writing to appoint and remove directors.

It is Mr Henwood's understanding, and he has deposed in his affidavit to this effect, that the original shares in 20th Century Limited were held by or under the control of the late Mr Rajan Pillai (Mrs Pillai's husband), and Mr Rajmohan Pillai's brother who died in July 1995. Mrs Pillai believes the original shares have been lost and she has, in her capacity as President of 20th Century Limited, issued replacement bearer share certificates and further shares in favour of herself and her son. Copies of the said replacement shares are annexed to the affidavit of Mr Henwood. Mr Pillai advises Mr Henwood that the shares are not lost and that Mr Pillai is entitled to the original bearer shares. Mr Pillai forwarded to Mr Henwood copies of the original bearer shares together with a form of transfer of those shares to Mr Pillai. These documents are annexed to the affidavit of Mr Henwood.

Both Mr Pillai and Mrs Pillai purported to convene separate board meetings of 20th Century Limited effectively removing each other as directors of the company.

In July 1996, Mrs Pillai instructed Mr Henwood to remit the monies held in trust on behalf of the plaintiff to her bank account in London.

Mr Henwood has received conflicting instructions from Mr Pillai as to where the monies held by the defendant in trust on behalf of the plaintiff are to be disbursed.

For these reasons, the defendant makes application to the Court by way of interpleader. Rule 12.02 of the Supreme Court Rules provides as follows:

“12.02 STAKEHOLDER’S INTERPLEADER

(1) Where -

- (a) a person is under a liability (otherwise than as a sheriff) in respect of a debt or other personal property; and
- (b) he is sued or expects to be sued in a court for or in respect of the debt or property by 2 or more persons making adverse claims to or in respect of the debt or property,

the Court may, on application by him, grant relief by way of interpleader.

(2) Where a stakeholder is sued in a proceeding in the Court for or in respect of the property in dispute, an application under subrule (1) shall be made by summons in the proceeding.

(3) A summons under subrule (2) shall be served on each party to the proceeding who is a claimant and shall be served personally on each claimant who is not a party.

(4) Where subrule (2) does not apply, an application under subrule (1) shall be commenced by originating motion in which all claimants are joined as defendants.”

The defendant has complied with the provisions of subrule (2) and (3).

I accept on the affidavit of Mr Henwood sworn 28 October 1996, that the defendant in these proceedings is in possession of conflicting evidence as to

who owns the shares in 20th Century Limited. The ownership of the shares in 20th Century Limited is the central question to be determined in deciding who is entitled to appoint the directors of the plaintiff company. Prima facie there is a conflict between Mr Pillai and Mrs Pillai as to who is authorised by the plaintiff company to give directions as to the disbursement of monies held in trust by the defendant.

Mr Reeves, on behalf of the plaintiff, argues that the application for relief by way of interpleader should be dismissed and submits the Court should make orders as sought by the plaintiff in the originating motion or alternative orders that Mr Pillai file affidavit material to enable his claim to be assessed.

Mr Reeves argues three reasons for the dismissal of the application for interpleader.

(1) There is no evidence the defendant expects to be sued by Mr Pillai (*Eddy v Working Miners Gold Mining Company* 1865 Cases in Equity; *Watson v Park Royal Caterers Ltd* [1961] 2 All ER 346 at 352).

I do not accept this argument. Mr Henwood has a clear instruction from Mr Pillai to deal with the trust money in a certain way. The defendant has been provided with conflicting evidence as to whether it is Mr Pillai or Mrs Pillai who is the person authorised to give directions on behalf of the plaintiff company. The defendant may well risk being sued by Mr Pillai if the defendant disburses the money contrary to the instructions of Mr Pillai if Mr

Pillai is ultimately found to be entitled to give directions on behalf of the plaintiff company. I apply the test as expressed by Williams, Civil Procedure Victoria at p2812:

“There must be conflicting claims on which the applicant cannot decide without risk. See *Sun Insurance Office v Galinsky & Ors* [1914] 2 KB 545.”

(2) There has been no evidence of a genuine claim raised by Mr Pillai at p552.

I reject this submission. Mr Pillai has provided documentary evidence and made verbal assertions which are detailed in the affidavit of Mr Henwood sworn 28 October 1996. Whether or not Mr Pillai has a claim can only be finally determined by a Court after hearing all the evidence. Mr Pillai has provided the defendant with sufficient information which on the face of it raises a genuine claim. The applicant for the interpleader cannot decide for itself between the competing claims how to direct the disbursement of trust monies without putting itself at risk.

(3) Mr Pillai may issue proceedings in respect of the shareholding of 20th Century Limited. However, this is not an adverse claim in respect of the trust monies held by and to be accounted for by the defendant.

I also reject this argument. On the affidavit evidence of Mr Henwood sworn 28 October 1996 which is not disputed, the owners of the shares in 20th Century Limited have the right to appoint the directors of the plaintiff

company. It is only the properly appointed directors of the plaintiff company who are authorised to give directions on behalf of the plaintiff company. At present there is a conflict between Mr and Mrs Pillai as to who are the directors of the plaintiff company.

I accept the submission of Mr Henwood for the applicant supported in his argument by submission from Mr McDonald.

I consider the applicant has satisfied the provisions of rule 12.02 and is entitled to the relief sought.

The powers of the Court are provided in rule 12.08 which states:

#### “12.08 POWERS OF COURT

On application for relief by way of interpleader, the Court may -

- (a) where a proceeding in the Court is pending in which the applicant is sued for or in respect of any of the property in dispute - order that a claimant be added as a defendant in the proceeding in addition to or in substitution for the applicant, or order that the proceeding be stayed or dismissed;
- (b) order that a question between the claimants be stated and tried and direct which of the claimants is to be plaintiff and which defendant;
- (c) where proceedings in another court are pending in which the applicant is sued for or in respect of any of the property in dispute restrain the further continuance of those proceedings;
- (d) order the applicant to pay or transfer any of the property in dispute into court or otherwise to dispose of it;
- (e) where a claimant claims to be entitled by way of security for debt to any of the property in dispute - make orders for the sale

of any of the property and for the application of the proceeds of sale;

- (f) summarily determine a question of fact or law arising on the application; and
- (g) make such order or give such judgment as it thinks fit.”

I grant the application for interpleader and make the following orders:

1. The defendant have relief by way of interpleader.
2. The defendant be excused from further participation in the proceedings.
3. The defendant to have leave to make further submissions before any final orders are made.
4. The parties are entitled to make submissions as to the appropriate directions for the hearing of this matter in accordance with the ruling on the defendant’s application.
5. I will hear the parties on the issue of costs.