

Standing and Mis-joinder under Rules of the High Court of Justice

The First Deemster Kerruish in the Chancery Division of the High Court of Justice in the Isle of Man recently clarified standing and mis-joinder/non-joinder within the ambit of Order 9 Rule 11 of the Rules of the High Court of Justice the relevant part of which rule reads:-

“11 Mis-joinder and non-joinder

.....The Court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added.....”

In summary, matters arose from a dispute between the parties over the ownership and distribution of assets that had allegedly been unlawfully removed from the Federal Republic of Nigeria (FRN) and distributed both in the Isle of Man and UK. The FRN sought declarations and return of the assets, which allegedly involved an individual Mr Abacha and an Irish company Rosewood, of which in whom the individual was a Director and Shareholder and accepted beneficial owner.

FRN subsequently lodged a motion requiring that Mr Abacha be struck out as a party.

The FRN submitted that the test under Order 9 Rule 11 was twofold; whether Mr Abacha presence was necessary to enable the court to effectively and completely adjudicate and settle upon all the allegations and only if the answer was in the affirmative does it become

necessary for the Court to consider whether Mr Abacha should continue as a party. The Applicant further submitted that because Rosewood is a party that the continued participation of Mr Abacha would serve no purpose given that his interests would be adequately represented by Rosewood who would look after his interests. Further Mr Abacha’s participation was incompatible with fundamental principles of corporate identity and submitted that to permit Mr Abacha to continue as a party would set a novel and unwelcome precedent.

Mr Abacha relied on Article 6 of the Human Rights Act 2001 and submitted that it was not disputed that Mr Abacha was the legal and equitable owner of Rosewood and one of two Directors, the other being his wife, however it was artificial to distinguish between beneficial ownership of the company and beneficial

ownership of the funds. Further, Mr Abacha had a clear interest in the subject matter of the proceedings and that any determination of the proceedings in favour of FRN would legally and financially prejudice Mr Abacha citing Gurtner –v-Circuit (1968) 1All ER 328 in support. Furthermore the Advocate argued should Mr Abacha not be permitted to remain a party, he would have no opportunity to make submissions on what should happen to funds in which he has an interest. It was further submitted that the basis of FRN’s claim to the funds rest not on allegations directly against Rosewood or Mr Abacha as his capacity as an officer, agent or servant of Rosewood but upon allegations of dishonesty, concealment, money laundering, breach of trust and breach of fiduciary duties on the part of or owed by Mr Abacha.. The Advocate denied that through Rosewood, Mr Abacha was or would continue to be in a position to conduct the course of these legal proceedings.

The motion was dissolved with the court finding that if the participation of Mr Abacha was solely dependant upon his indirect claim to the funds as legal and beneficial owner of the whole of the issued share capital in

Rosewood, then he would have no hesitation in granting the motion. Mr Abacha’s submissions were not restricted to or solely dependant upon his beneficial ownership of Rosewood, and indirect claim to the funds but relied also on Article 6 of the Human Rights Act 2001 and that such engagement required the court to dismiss the motion. The Court agreed with the Advocates submissions that Rosewood was concerned within the substantive proceedings as the holder and thus owner of the bank accounts in which funds are presently held and/or as an alleged instrument of Mr Abacha in his alleged wrongdoings and breaches. Further, the court held that Article 6 of the Human Rights Act 2001 was engaged and that the proceedings make serious assertions, claims and allegations against Mr Abacha personally and independent of Rosewood. Furthermore, in respect of Mr Abacha and Order 9 Rule 11 he considered Mr Abacha’s presence necessary to enable to court effectively and completely to adjudicate upon and settle all questions involved in this matter.

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