IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

30-11-10

CAUSE NO: FSD 61 OF 2010-AJEF

BETWEEN:

RENOVA RESOURCES PRIVATE EQUITY LIMITED
(A company incorporated in the Bahamas suing as shareholder of the Second Defendant, Pallinghurst (Cayman) General Partner LP (GP) Limited)

Plaintiff

AND

(1) BRIAN PATRICK GILBERTSON
(2) PALLINGHURST (CAYMAN) GENERAL PARTNER LP (GP)
(3) PALLINGHURST (CAYMAN) GENERAL PARTNER LP
(4) PALLINGHURST RESOURCES MANAGEMENT LP
(5) AUTUMN HOLDINGS ASSET INC.

Defendants

(By Original Action)

AND BETWEEN:

(1) BRIAN PATRICK GILBERTSON
(2) AUTUMN HOLDINGS ASSET INC

Plaintiffs to Counterclaim

AND

(1) VIKTOR VEKSELBERG
(2) VLADIMIR VIKTOROVICH KUZNETSOV
(3) RENOVA HOLDING LIMITED
(4) RENOVA RESOURCES PRIVATE EQUITY LIMITED

Defendants to Counterclaim

(By Counterclaim)

Coram: The Hon. Mr. Justice Angus Foster, QC

Appearances:

1) Mr. Graeme Halkerston and Ms Marit Hudson of Appleby for the Applicants (First and Fifth Defendants /Plaintiffs to Counterclaim)

2) Mr. James Eldridge and Mr. Marc Kish of Maples and Calder for the Respondents (Plaintiff/Defendants to Counterclaim)

Heard: Thursday, 25th November 2010

EX TEMPORE RULING

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The Court has already ruled that this matter should be tried with full discovery, examination and cross-examination of witnesses in the usual way and the trial is now listed for 8th June 2011 for a period of 6 weeks.

In order for justice to be done and seen to be done by a fair trial of the issues it is essential that all of the parties to the claim and the counterclaim list and produce for inspection by way of discovery all documentation that is in any way relevant to the issues in dispute which are or have been in the "possession, custody or power" of the party concerned. Documentation includes *inter alia* email communications, memos, notes of meetings and discussions, including telephone conversations, etc., whether in hard copy or electronic form on any computer, server, laptop, or handheld device of any kind wherever they may be. This is so whether or not such documentation is considered by the party to be important or to be helpful or unhelpful to his case. This is the law in this jurisdiction, as it is in England, and it is considered by the court to be a serious breach by any party, with serious consequences, not to give full and proper discovery. In the case of a corporate party this will include giving discovery of any relevant documentation which is or has been in the possession or custody of any director, officer or employee such as, in the present case, Mr. Kalberer.

It is also the professional duty of a party's lawyer in this country, as an officer of the court, to ensure as far as reasonable that the party whom he or she represents clearly understands and acts upon the requirement to give full and proper discovery. That professional duty may require a party's lawyer to go somewhat further in this respect in the case of a foreign party, who may not understand and/or appreciate the rationale for and the nature and extent of the obligation to give full and proper discovery of all documentation relating to the issues in dispute and to whom the obligation to list and produce documents which seem to go against his own case or which seem to help the case of the opposing party may be unattractive and contrary to his own interests.

Having reviewed the affidavit evidence and considered the skeleton arguments, the authorities cited and heard the oral submissions, it seems to me that there is an obvious lack of discovery by

the plaintiff and each of the 4 defendants to the counterclaim (together "the Renova Parties"). There are issues in this case in respect of which in all probability there would have been a significant number of internal communications and discussions as between the Renova Parties and each of them (and in the case of the corporate Renova Parties, their directors, officers, beneficial owners and employees) and as between each of them and other members of the Renova Group. The issues in dispute in the claim and the counterclaim are well known to all the parties but in the absence of full, specific and detailed explanation by affidavit by each of the Renova Parties it is not easy to accept that there is not, and never was, a substantial amount of internal documentation relating to these issues. For example, it seems most probable that there would have been considerable internal communication and discussion concerning the significant decision not to finance the proposed purchase of the Faberge Rights from Unilever as originally intended unless on acquisition ownership of those Rights was held by a different Renova Group company, Lamesa Arts Inc, outside the Pallinghurst structure. It is similarly unconvincing that there were not a number of internal communications and discussions within the Renova Group concerning whether the proposed acquisition of the Faberge Rights should or should not be, or was or was not to, within the Pallinghurst structure and also subsequently relating to the decision to send the letter dated 25th May 2007 contending that it had never been intended that the Faberge Rights should be held within the Pallinghurst structure. These are just examples of issues concerning which internal discussions and communications seem most likely but of which there is an apparent lack of discovery of documentation which still may exist or at least must have existed and, which, if appropriate searches and steps had been taken, should and would have been discovered. It seems that even now such documentation, particularly in electronic form, may possibly yet be ascertained and listed.

The Renova Parties claim that the lack of documentation listed is partly due to the business practices of the individual Renova Parties, which I find hard to accept, particularly having regard to the content of the Renova Group's website, but mainly due to a computer server crash in the Renova Group's office in Zurich in January 2008. This is explained in an affidavit of Mr. Igor Cheremikin, Chief Legal Officer of the Renova Group's management company, sworn in Moscow on 18th November 2010. Mr. Cheremikin also purports to explain, on a hearsay basis of course, what was done by the Renova Group IT personnel following the crash, as a result of

which, he says, no further documentation is available from that server or from back-up tapes. I agree with counsel for the 2 relevant defendants and the plaintiffs in the counterclaim ("the Gilbertson Parties") that these explanations leave significant gaps and unanswered questions and are not sufficient to resolve the concerns about the apparent lack of discovery. There are justifiable concerns also in relation to what is said to have been done by the Renova Group IT personnel following the server crash and about why specialist computer forensic recovery and data reconstitution experts were not used. There is further obvious concern also in relation to the apparent failure to sufficiently pursue possible alternative sources of, particularly electronic, relevant documentation in Russia, the Bahamas, the USA and Cyprus. Relevant data may still possibly be in the possession, custody or power of one or more of the Renova Parties or someone on behalf of any of them in any of those places and possibly accessible or recoverable from computers, servers or handheld devices there.

These concerns and possibilities are largely identified and discussed in a report by Mr. Steve Buddell dated 23rd November 2010 which is exhibited to the 5th affidavit of Mr. Jeremy Kosky of Clifford Chance, the London solicitors for the Gilbertson Parties. Mr Buddell is an independent computer expert specializing *inter alia* in forensic recovery and re-constitution of electronic data and resolving problems of the sort identified by Mr. Cheremikin as arising from the computer crash in Zurich. I found Mr. Buddell's report very helpful in setting out various ways in which it may still be possible to recover or reconstitute relevant data, particularly emails, apparently lost as a result of the crash and as a result of the somewhat surprising steps taken by the Renova IT personnel thereafter, including their apparently deciding themselves, without any guidance, which data was not "important" and could therefore be deleted.

In the circumstances it is, in my opinion, now incumbent on and necessary that each of the Renova Parties, having regard to my comments and having regard to the analysis and suggestions in Mr. Buddell's report, and I so order them, to each serve a further and better list of documents, verified in each case by affidavit by the relevant Renova Party personally and, in the case of a corporate party only by a director of that company, of all documents in each of their respective possession, custody or power. For the avoidance of any doubt, but without prejudice to the generality, I consider that such documents must include *inter alia* emails or other data sent

to or from any email address used by any of the Renova Parties or, in the case of a corporate party, by any of the beneficial owners, directors, officers or employees or anyone else on its behalf, which relate in any way to the Letter Agreement, the Pallinghurst structure, Project Egg or the acquisition of the Faberge Rights. In order that the Renova Parties should each have sufficient time to obtain and utilise the services of an independent forensic computer expert to assist them to comply with their discovery obligations and with the court's order, should they be advised to do so, I shall allow each of them until 11th January 2011 to serve such further and better lists and verifying affidavits.

It goes without saying that each of the Renova Parties, including by their respective beneficial owners, officers, employees, agents and anyone on their behalf, including other members of the Renova Group, must take all steps necessary to preserve all computers, servers, back-up tapes, handheld electronic devices or other means of transmitting or receiving data and all or any data which they are advised may be relevant which is held or stored on or by any such or similar means in any jurisdiction whatsoever and I also so order to that effect with a penal notice to be attached to the order.

I direct too that each of the Renova Parties shall produce a detailed log (with technical assistance if necessary, such technical assistance to be specifically identified) identifying precisely the nature, the medium (whether encrypted or unencrypted) and the exact location of all such means of transmitting, receiving or storing data and the data which is or was thereon which they have been advised may be relevant, as referred to above, such log to be exhibited in each case to the affidavit sworn in verification of each Renova Party's further and better list.

In the particular circumstances I do consider it appropriate that the partner of Maples and Calder responsible for the conduct of this case on behalf of the Renova Parties should, at the same times as service of further and better lists by each of the Renova Parties as I have ordered, serve an affidavit explaining the precise steps taken by each of the Renova Parties in compliance with this order and when, where and how such steps were taken. I therefore make an order to that effect.

I should mention that I have only today received additional submissions in writing from each of the parties. The lateness of these is clearly not satisfactory. However, I have nonetheless been able to review and consider these further submissions but they have not materially affected my Ruling and the orders I make.

In the circumstances I order that each party shall have liberty to apply for further or other directions on proper notice to every other party.

In light of my rulings above, the costs incurred by the Gilbertson Parties in respect of and occasioned by their summons dated 5th November 2010 shall be paid by the Renova Parties in any event, such costs to be taxed if not agreed.

The Hon. Mr. Justice Angus Foster
Judge of the of Grand Court
Financial Service Division

30th November 2010