

25/6/08

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

Cause No: 104/05

BETWEEN:

TRITTON DEVELOPMENT FUND LTD.

Plaintiff

AND:

FORTIS BANK (CAYMAN) LIMITED
(FORMERLY MEESPIERSON (CAYMAN)
LIMITED MEESPIERSON MANAGEMENT
(CAYMAN) LIMITED MEESPIERSON
NOMINEES (CAYMAN) LIMITED

Defendant

Appearances:

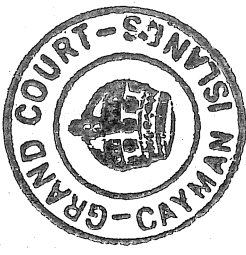
Mr. Kenneth Farrow of Mourant du Feu & Jeune
for the plaintiff
Mr. David Railton Q.C. instructed by
Mr. Jonathan Tarboton of Appleby for the defendants

Before:

Hon. Justice Henderson

Heard:

June 25, 2008



RULING

The plaintiff asks for leave to adduce evidence from one additional expert “in the discipline of fund management and investment advice.”

I have come to the conclusion that the proffered expert evidence is unlikely to be of real assistance to the court and is probably inadmissible.

The evidence, if admitted, would go to the standard of care expected of a director of a fund management company in the Cayman Islands and of an investment advisor here.

The plaintiff has said that it wishes the proposed expert to testify about the “steps” a competent director would be expected to take and the advice a competent investment advisor would be expected to give in the circumstances of the transactions occurring here in June and December, 1999.

Neither directors nor investment advisors belong to what is properly described as a “profession.” There are no objective standards or canons of conduct governing how they discharge their duties. The law of fiduciary obligations does impose certain overarching duties on directors and investment advisors. I must, of course, be the judge of these and expert evidence on that subject is not admissible. Once one descends from the general to the particular and asks questions like: “what steps would a competent director take in these circumstances?” or “what advice would a competent investment advisor give in these circumstances?” the lack of any objective standard against which to measure conduct makes the evidence of an expert of little value. Everything depends on the circumstances including the experience and expertise of the person involved. No expert would be able to describe a general standard of conduct and competence which dictates that certain steps be taken or advice given. The most the expert could say, ultimately, is: “I am an experienced director (or investment adviser) and I would have done it

this way.” That sort of evidence is not admissible. I also find myself in agreement with

Mr. Railton that the proposed expert evidence is unlikely to assist the court.

Dated this 25th day of June, 2008

Henderson, J.

Henderson, J.
Judge of the Grand Court

