IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. FSD 025 OF 2011(ASCJ)
(Formerly Causes G0209, G0216, and G0257 of 2010)

BETWEEN **AFONSO HENRIQUE ALVES BRAGA**
(In his capacity as Administrator) **PLAINTIFF**

AND
1. **EQUITY TRUST COMPANY (CAYMAN) LIMITED**
2. **CIBC BANK AND TRUST COMPANY (CAYMAN) LIMITED**
3. **COMMERCE MANAGEMENT SERVICES LIMITED**
4. **COMMERCE CORPORATE SERVICES LIMITED**
5. **COMMERCE ADVISORY SERVICES LIMITED**

DEFENDANTS

AND
1. **ARNAGE HOLDINGS LIMITED**
2. **BROOKLANDS HOLDINGS LIMITED**
3. **SECURINVEST HOLDINGS S.A.**
4. **BANCO RURAL S.A.**
5. **KATIA RABELLO**

APPLICANTS

1. In the course of the settling of the terms of the formal order finally to follow from the written judgment delivered in this matter on 20th May 2011, concerns have been raised by the Applicants about the dissemination and use of the judgment in Brazil.

2. The judgment is said by the Applicants to contain material or references to material susceptible of being misconstrued or misrepresented before the Courts of Brazil in ways that may be prejudicial to their cases. The Applicants are involved in cases which are at various stages of progression before the courts of that country and the conclusions reached in the judgment of the 20th May 2011 is regarded as being

relevant to only one of the central issues involved in those cases – the identity of the ultimate beneficial ownership of Securinvest, one of the Applicants.

3. The Applicants' primary position on this issue is that as the formal order will declare the findings of this Court on the matters that it decides, the judgment can and should be embargoed in its entirety from publication, in order to avoid its potentially prejudicial misuse.

4. Their secondary position, failing complete embargo, is that the judgment should be redacted of the aspects which are potentially prejudicial.

5. At all events, and this is agreed by Miss Wilkins for Dr. Braga, the formal order should expressly declare the true meaning and effect of the judgment in such a way as to minimize, if not eliminate all together, the scope for its potential misconstruction and misrepresentation.

6. I have concluded that the Applicants' first position – the embargo from publication of the judgment – is not acceptable.

7. The proposition that a final judgment of the Court should be embargoed to prevent its misuse in another jurisdiction is unsupported by authority. Such a recourse would not only be unprecedented as far as I am aware, it would also offend the established principles of open justice; including as those principles recognise the interest of the public in access to the judgments of the courts. See AHAB v SICL case FSD 54/09, written judgment delivered on 25th May 2011.

8. I am however, alive to the concerns of the Applicants about the potential for misconstruction and misrepresentation of the judgment, given the complexity of the

issues as they have unfolded and will continue to unfold in Brazil and with which it deals.

9. I consider that the appropriate recourse to address the applicant's concern is the latter recourse – that of redaction – as well as the inclusion of declaratory terms in the formal order. The formal order is in the process of being settled in draft by the attorneys for approval by the Court.

10. Before specifying the terms in which the judgment will be redacted in the corrigendum below, I must explain that nothing in the redaction is intended to or should in anyway be construed as affecting the substance of the judgment, the findings and conclusions of which remain the same.

CORRIGENDUM

Paragraphs 7, 10, 11, 32, 91, 120, 131, 132, 140 and 200 of the judgment are replaced respectively by the following paragraphs (with changes highlighted for ease of reference only):

Paragraph 7:

I will, of course, come to examine and decide upon the allegations of Dr. Braga's failure to make full disclosure, of his alleged misrepresentations and breaches of undertakings but, before so doing, the factual context of this complex matter must be explained. It arises from amidst allegations of the fraudulent stripping away of the assets of the Petroforte Group of companies which are in bankruptcy in Brazil, by the former principal of the group Ari Natalino de Silva (now deceased), in collusion with another large group of companies called

the Rural Group, whose principals are the Rabello family. **I preface the findings and observations made in this judgment about the allegations raised by Dr. Braga against Securinvest, its affiliates and beneficial owners in this way: all such allegations are, for the purposes of this judgment to be regarded only as allegations, as yet unproven. This judgment proceeds on the basis that it is for the Brazilian Courts and not this Court, to decide upon the factual merits or lack of merits of all such allegations.**

Paragraph 10:

It must be squarely recognised and understood, that the information obtained by Dr. Braga through the Norwich Pharmacal Orders in this jurisdiction, is firstly the identity of the ultimate beneficial owner of Securinvest, as well as information that **arguably** shows that the Superior Court of Brazil ("the STJ") was provided with false information by Securinvest as to its real beneficial ownership. This happened in response to an order of 22 September 2009 by which the STJ stayed bankruptcy proceedings which had been instituted against Securinvest. While there is controversy before me now as to its meaning and effect, it is clear at least that that order was specifically made to allow Securinvest to provide that Court with proof of its true beneficial ownership, the issue that was central to Securinvest's appeal to the STJ.

Paragraph 11:

The information obtained here ~~**shows**~~ **is described by Dr. Braga as proof** that representations were made to the STJ as to the ownership of Securinvest which were untrue, such representations supported by false certificates which showed a structure of purported ownership (per certain Costa Rican entities and individuals) only brought into existence on 4

~~**November**~~ **December** 2009 and so some two months after the 22 September 2009 STJ stay order was made.

Paragraph 32:

Investigations in Costa Rica completed by Dr. Braga in the Spring of 2010, suggested that these individuals were in fact of limited means, the inference ~~**to be drawn**~~ **being invited** that they were "straw men" and that the STJ had been misled as to the identity of the true ownership of Securinvest. It is now also said that at least one of the Costa Rican individuals denies any knowledge of Arnage or Brooklands and disavows any interest in Securinvest.

Paragraph 91:

Indeed, in this regard I ~~**am driven to**~~ conclude **for the purposes of this judgment – and** as Dr. Braga **opines** ~~**and as he is supported in this respect by**~~ **and** Prof. Rosenn **both opine** – that the Suspension has not served to remove Dr. Braga from office as officeholder over Securinvest, only to suspend the full extent of his authority in that regard, especially his authority to divest with the assets of Securinvest. In other words, the Suspension has the effect of putting a provisional halt to the liquidation of the assets of Securinvest or to the winding down of its business. By the same token, the directors of Securinvest remain precluded from transferring or selling the assets pending the outcome of the special appeal before the STJ.

Paragraph 120:

In light of ~~**all that is now known**~~ **what has been brought to the attention of this Court** about the allegations of wrong-doing in Brazil by the use of Securinvest for the fraudulent stripping away of Petroforte Bankruptcy assets, the Defendants ~~**had accordingly**~~ **may be**

regarded as having become innocently "mixed-up" in **those allegations by** their arrangements with the Applicants which enabled the ~~**alleged fraud to remain concealed**~~ **impugned transactions to remain concealed.**

Paragraph 131:

Applying these principles to the present case allows, in my view, for the grant of the relief that was given in the Norwich Pharmacal Orders. The Defendants ~~**were**~~ **are** shown to have been "involved" **albeit only** in the **as yet unproven,** alleged wrong-doing of Securinvest**. This is** by way of being the fiduciary services providers to Arnage and Brooklands as the shareholders of Securinvest. To the extent that the concealment of the true identity of the ultimate beneficial ownership of Securinvest would prevent the allegedly fraudulent SOBAR transaction from being unraveled and any true relationships between Securinvest (on behalf of Banco Rural and the Rural Group) and the Petroforte Group from being revealed; the Defendant service providers had become unwittingly involved in ~~**enabling the alleged fraud**~~ **what may yet be proven to be fraudulent activity.**

Paragraph 132:

Dr. Braga had already commenced legal proceedings against Securinvest and is able to point to the need, within those proceedings, to prove the link between Securinvest and the Rural Group; the link which Securinvest ~~**had**~~ **is alleged to have** falsely denied before both the TJSP and the STJ.

Paragraph 140:

In my view, the requirements are amply met in this case. If Dr. Braga**'s** ~~**is correct**~~ **allegations become proven –** that value has been wrongfully removed from the Petroforte

estate to or through Securinvest, - then there ~~is~~ **would** clearly **be** a wrongdoing. The disputes and issues raised by the Applicant do not defeat that proposition – they render it at minimum an arguable rather than a proven wrongdoing. As already noted, this question of wrongdoing is moreover, an issue of fact for the Brazilian Courts to resolve, not this Court. Insofar as such determination has already taken place in Brazil, it has been in favour of Dr. Braga by Judge Beethoven and by the TJSP and Dr. Braga's and the Applicants' experts seem to agree that such an issue of fact is not capable of being reviewed by the STJ**. Rather, the STJ** ~~**which**~~ remains especially concerned to ensure that it is not itself misled as to the true beneficial ownership of Securinvest.

Paragraph 200:

While it is no doubt regrettable from the Applicants' point of view that confidential information revealing the beneficial ownership of Securinvest got into the public domain, the real damage to them – and so their greater concern – must surely arise from the fact of the extension of the Bankruptcy to them becoming public knowledge in Brazil. That, from all I ~~**have seen of the situation**~~ **now understand about the legal requirements for publication of such matters** in Brazil, was an inevitability.

Hon. Anthony Smellie
Chief Justice

10th June 2011