

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2021/0527 (formerly GDAHCV2021/0111)

BETWEEN:

**CLICO INTERNATIONAL LIFE INSURANCE LIMITED
(Under Judicial Management)**

Claimant

and

EASTERN CARIBBEAN HOME MORTGAGE BANK

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Afi Ventour de Vega, Ms. Yurana Phillip, Ms. Aloytha Thomas and Ms.
Aisha McLean instructed by Ms. Diana Thomas for the Claimant
Mr. Damian Kelsick K.C. with Ms. Sheriba Lewis for the Defendant

2023: October 31;
2024: March 5.
Re-issued on March 14, 2024.

JUDGMENT

- [1] **ACTIE, J.:** The sole issue arising on this claim is whether the claimant's court appointed Judicial Manager has standing to bring this claim and to deal with its shares in the defendant company.

Background

- [2] Clico International Life Insurance Limited ("Clico Life"), is a company duly incorporated under the laws of Barbados with insurance business in several

Eastern Caribbean Countries, including St. Lucia. Clico Life went into receivership and judicial managers were appointed to manage its affairs.

- [3] The defendant is a regional bank incorporated in the State of Grenada and is governed by the Companies Act of Grenada, with its principal place of business in the State of Saint Kitts and Nevis.
- [4] Clico Life as an insurance company was required to establish insurance funds with the Registrar of Insurance in each jurisdiction where it operated, as security for its obligations under the policies issued in those respective jurisdictions.
- [5] Clico Life pledged twenty thousand (20,000) shares in the defendant (hereafter referred to as “the Shares”), to the Registrar of Insurance in St. Lucia on 6th October 2008 as part of its mandatory statutory deposit requirement to conduct insurance business.
- [6] By order dated 11th April 2011 in Saint Lucia Claim, **The Registrar of Insurance et al v Clico International Life Insurance Limited**¹, the claimant was placed in receivership, and Mr. Richard Surage was appointed as judicial manager with respect to the insurance business carried on in St. Lucia.
- [7] The Judicial Manager of the claimant became authorized to deal with all the assets and property owned by the claimant. Wilkinson J. at paragraph 2 of the order, directed that :

“The Judicial Manager shall have the authority as an officer of this Honourable Court to act in Saint Lucia or any foreign jurisdiction where he believes assets and property of the Company may be situated and shall have the right to bring any proceeding or action locally or in any foreign jurisdiction for the purpose of fulfilling his duties and obligations under this Order and the Insurance Act and to seek the assistance of any Court of a foreign jurisdiction in the carrying out of the provisions of this Order or any subsequent order in this proceeding...”
- [8] The order further directed that the Judicial Manager in discharging his obligations shall be empowered to carry out the following functions: (a) to ascertain the assets of the Company and their location and take all steps necessary including Court

¹ No. SLUHCV2011/0316

actions where appropriate to obtain possession of such assets, including, without prejudice to the generality of the foregoing, reinsurance receivables, and to bring the same under his control and further, where appropriate, bring the same into the jurisdiction of this Honourable Court and, for this purpose, to seek the assistance of the Courts of the various jurisdictions in which assets of the Company are located.

- [9] Further, by way of an order made on 19th November 2018 in the said claim, Smith J. discharged the pledge with the Registrar of Insurance and released the shares to the Judicial Manager in the following terms:

“The Judicial Manager shall be empowered to take all steps as are necessary to recover dividends due to CLICO from ECHMB for the years 2011-2018, and thereafter to sell the said shares.”

- [10] However, despite repeated demands, the defendant has refused to pay over the dividends to the claimant.

- [11] Under the authority of the above referenced orders, the claimant brought an action in the jurisdiction of Saint Lucia, in **Claim Number SLUHCV2019/0087 Cllico International Life Insurance Limited (in Judicial Management) v Eastern Caribbean Home Mortgage Bank** (hereafter referred to as “the SLU claim”) to order the defendant to comply with the claimant’s demands with respect to the Shares. St. Rose-Albertini J. in a decision dated 16th October 2020 dismissed the claim on the basis that a court of Saint Lucia had no jurisdiction to make the orders sought and said:

“What it does say however is that the Companies Act of Grenada, applies to ECHMB as if it were a public company registered under that Act, with such modifications as are necessary or expedient. Thus, the Agreement expressly provides that ECHMB is subject to the domestic law of Grenada as contained in its Companies Act. The Companies Act of Grenada does not contain any immunities, protection, or privileges for public companies as against shareholders and would contemplate that an action could be taken against a company by its shareholders.”

- [12] In conclusion, the learned judge declared that:

“...whilst an international corporate body is not to be treated as subject to the domestic law of any one participating state, it is to be governed by the treaty which establishes it. It is the case with ECHMB that the Agreement

provides that the Companies Act of Grenada applies to it as if it were a company incorporated there. In these circumstances, the Shares would have to be treated as though they were shares in a Grenadian company subject to the Companies Act of Grenada and therefore it is a court in Grenada which would have jurisdiction to try the claim and not this Court.”

[13] The claimant in the present claim filed on 16th March 2021 seeks the following relief:

(1) A declaration that the Claimant acting through its Judicial Manager is entitled to deal with and sell the 20,000 Class FF Shares owned by the Claimant in the Defendant for such sum and on such terms as the Claimant might think fit, subject only to the Bye-Laws of the Defendant and the Eastern Caribbean Home Mortgage Bank Agreement Act Cap. 19:08;

(2) Payment of the sum of \$1,550,000.00 due and owing to the Claimant by the Defendant as dividends on 20,000 Class F shares numbered 074563 to 094562, for the financial years 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018 and 2019 together with interest.

[14] The defendant in its filed defence admits that the pledge was signed between itself and the Registrar of Insurance but states that the Registrar had no statutory authority to accept the pledge as it was not an authorised asset for the purposes of the insurance fund. The defendant however denies that the claimant has jurisdiction to collect the dividends.

[15] The defendant challenges the order of Wilkinson J. dated 11th April 2011, alleging that the order has no effect whatsoever outside of Saint Lucia and cannot bind the defendant in its dealing with its shareholders or give authority to deal with the shares in the defendant company. The defendant alleges that notwithstanding the order the claimant has no rights to deal with the shares.

Legal Analysis

- [16] The sole issue arising is whether the claimant has jurisdiction to bring the claim against the defendant and to collect the dividends accrued and to deal with the shares.
- [17] The sum due and owing as dividends is not in dispute. The only dispute raised by the defendant is the claimant's jurisdiction to pursue the claim pursuant to the order made by Wilkinson J. The defendant contends that the court's order giving extra territorial jurisdiction to the claimant to pursue the claim is ultra vires.
- [18] The defendant's contention involves three issues. Firstly, that the order of Wilkinson J. is ineffective, secondly the claimant has no locus standing to bring the action for the payment of the dividends, and thirdly the grounds for the claim should fail as this court does not have the jurisdiction to grant the reliefs claimed by the claimant.
- [19] It is a well-founded and established principle that a court order, at least until it is set aside by a subsequent order, is to be treated as effective in law. This is because of the well-established rule by the Privy Council in the seminal case of **Isaacs v Robertson**² where it is stated that "an order made by a court of unlimited jurisdiction ... must be obeyed unless and until it has been set aside by the court".
- [20] In the case of **Isaacs v Robertson**³, Lord Diplock pronounced that:

"The contrasting legal concepts of voidness and voidability form part of the English law of contract. They are inapplicable to orders made by a court of unlimited jurisdiction in the course of contentious litigation. Such an order is either irregular or regular. If it is irregular, it can be set aside by the court that made it upon application to that court; if it is regular, it can only be set aside by an appellate court upon appeal (if there is one to which an appeal lies)."

² [1984] 3 All ER

³ [1984] 3 All ER

- [21] The order of 11th April 2011 made by Wilkinson J. in **The Registrar of Insurance et al v Clico International Life Insurance Limited** authorized the Judicial Manager as an officer of the court to act in Saint Lucia or any foreign jurisdiction where he believes assets and property of the Company may be situated, and to have the right to bring any proceeding or action locally or in any foreign jurisdiction for the purpose of fulfilling his duties and obligations.
- [22] The filing of this claim in Grenada is made pursuant to that order. Further, Smith J. in the same claim on 19th November 2018, empowered the Judicial Manager to take all steps as are necessary to recover the dividends due to CLICO from the defendant.
- [23] The order of Smith J. is clear on the authority which the claimant possesses in relation to collection of dividends on the Shares. This authority is coupled with the direction of the court in the St . Lucia claim that relief be sought through the courts of Grenada, and the non-contest of the defendant as to the claimant's entitlement to the dividends.
- [24] The challenge to the court's jurisdiction now being raised as a defence should have been raised in the proceedings before Wilkinson J. when the order conferring the authority of the Judicial Manager was made, and before Smith J. when the court directed collection of the dividends and the sale of the Shares by the Judicial Manager and also by the defendant in the claim before St. Rose Albertini J in **Claim Number SLUHCV2019/0087 Clico International Life Insurance Limited (in Judicial Management) v Eastern Caribbean Home Mortgage Bank .**
- [25] Even if the court did not have jurisdiction, which is not admitted, it is not now open to the defendant **affected by the order** in this claim to challenge the court orders as a defence to the claimant's claim. Whenever a judge makes an order, it must be taken implicitly that the judge had jurisdiction to make it. If the judge is wrong or makes an error whether of law or fact it can be corrected by an application to set aside or the Court of Appeal. The aggrieved party has the option to either apply to set aside the order or appeal.

- [26] A party cannot in a subsequent proceeding raise a ground of claim or defence which upon pleadings or form of the issue was open to him in the former one⁴.
- [27] It was always open to the defendant affected by the orders to apply to set aside the order. As long as the order of the court remains in force, the defendant cannot effectively challenge the order to deny the claimant from bringing the action. Further, the dicta of Lord Diplock in **Rochdale Metropolitan Borough Council v KW** are consistent with principles of finality and certainty which are necessary for the administration of justice⁵. After having gained authority in the two orders of the High Court of St. Lucia to collect dividends on the Shares and being directed to pursue the said dividends in the High Court of Grenada, this court is constrained to allow the claimant's claim to proceed.

Whether the claimant is entitled to the dividends

- [28] The pledge was signed by the claimant with the Registrar of Insurance as a deposit to satisfy its insurance business in Saint Lucia. It is to be assumed that the shares pledged and accepted by the Registrar of Insurance at the time were owned by the claimant and considered as its assets. The Judicial Manager appointed by the court to administer the affairs of the claimant in Saint Lucia rightly anticipates that he has the power to deal with the claimant's assets as well as its liabilities, in keeping with his mandate, upon his appointment by the court.
- [29] The defendant alleges that the shares were owned by Clico Barbados and that it is the Judicial Manager in Barbados that has jurisdiction to claim the dividends. The defendant has not provided any textual basis for such purported restriction of the Judicial Manager to deal with the assets of the claimant, in relation to its business in Saint Lucia. Assets which had been deposited as part of the insurance fund would have been considered as the claimant's assets for its business in Saint Lucia, unless otherwise agreed.

⁴ Halsbury's

⁵ [2016] 2 All ER 181

- [30] The pledge with the Registrar of Insurance was set aside only because the shares pledged did not form part of the recognizable assets in the schedule of the Insurance Act. Had the shares formed part of the schedule of recognizable assets, then the Registrar of Insurance would have had jurisdiction to benefit from any dividends from those shares, if it became necessary to utilize the funds forming part of the claimant's capital. The payment in respect of the dividends on the shares are deemed to be payment out of the claimant's capital.
- [31] A shareholder has a right to follow its assets wherever they are located and bring the necessary actions to enforce its rights. This inherent right was conferred upon the Judicial Manager by the court. It is not disputed that the claimant pledged the shares to the Registrar of Insurance in Saint Lucia for the conduct of its business in Saint Lucia, and the underlying purpose of the pledge was clear. In any event, the Pledge over the 20,000 F Class shares has been discharged and the shares have been released to the Judicial Manager, who is authorised to deal with them.
- [32] The conduct of the parties, that is the Claimant and the Registrar of Insurance took place on the basis of a state of affairs namely that the claimant owned the shares pledged as money value for its insurance business in Saint Lucia. This would be on the guarantee given by the claimant at the time, that the shares formed part of its assets. The transactions took place on the basis of that assumption, and their course was influenced by it in the sense that, if the assumption had not been made, the course of the transactions would without doubt have been different.
- [33] The conduct of the claimant and the Registrar of Insurance was agreed and assumed by both parties to be true and on the basis of which they had entered into the pledge transaction. The conduct of the parties gave rise to an estoppel by convention which estopped each party as against the other from questioning the truth of the facts assumed by them to be true.
- [34] **Spencer Bower and Turner on Estoppel by Representation**⁶⁶ states:

⁶⁶ (3rd Edn, 1977, p 157):

“When the parties have acted in their transaction upon the agreed assumption that a given state of facts is to be accepted between them as true, then as regards that transaction each will be estopped against the other from questioning the truth of the statement of facts so assumed.”

[35] The defendant’s assertions that it is the Judicial Manager appointed in Barbados to pursue the payment of the dividends, is not supported by the evidence before this court. No evidence was produced from the Judicial Manager, (Barbados) in the form of a witness statement or affidavit to persuade the court. There is no question that the Shares are the property of the claimant and having pledged these shares as security with the Registrar of Insurance to conduct insurance business in Saint Lucia, it is clear that this asset was intended to benefit the claimant’s business in Saint Lucia.

[36] The pledge in favour of the Registrar of Insurance having been discharged, therefore it is axiomatic that the unencumbered shares have reverted to the claimant. Reading of the two orders together, they have clearly conferred jurisdiction to the Judicial Manager to pursue this claim and to deal with the shares and dividends, including selling the shares.

[37] The claimant having satisfied its claim on a balance of probabilities is entitled to the reliefs claimed and judgment is entered accordingly.

Conclusion

[38] The court orders and declares as follows:

- (1) Judgment is entered in favour of the claimant.
- (2) The claimant acting through the Judicial Manager, Richard Surage, appointed by the High Court of Justice of Saint Lucia is entitled to the 20,000 Class F Shares owned by the claimant in the defendant and to deal with the shares and may sell for such sum and under such terms as the Judicial Manager shall think fit, subject only to the Bye-Laws of the defendant, the Eastern Caribbean Home Mortgage Bank Agreement Act

Cap. 85B of the 2010 Continuous Revised Edition of the Laws of Grenada and the Companies Act Chapter 58A of the Laws of Grenada.

- (3) The dividends due and owing to the claimant by the defendant on the 20,000 Class F shares numbered 074563 to 094562, for financial years 2011 to 2019 shall be paid to the claimant, together with interest at the rate of 6% per annum from the date judgment until payment in full.
- (4) Costs agreed in the sum of \$75,000.00 to be paid by the defendant within Sixty (60) days of today's date.

Agnes Actie
High Court Judge

By the Court

Registrar