

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

**IN THE HIGH COURT OF JUSTICE
CLAIM NO. SKBHCV2020/0166**

In the matter of an Application by Police Co-operative Credit Union (St. Christopher and Nevis) for leave to apply for judicial review of a decision made by the Registrar of Credit Unions to (i) place the Police Co-operative Credit Union (St. Christopher and Nevis) Ltd. under Administrative Supervision pursuant to section 7(1)(b)(ii) of the Co-operative Societies Act, CAP. 21.04 and (ii) to appoint Mr. Walter Bass as Administrative Supervisor, as contained in a letter dated the 24th day of July, 2020, and pursuant to Part 56 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 (as amended)

BETWEEN:

POLICE CO-OPERATIVE CREDIT UNION

Applicant

AND

REGISTRAR OF CREDIT UNIONS

Respondent

Before: The Hon. Mr. Justice Trevor M. Ward QC

Appearances:-

**Mr. Sylvester Anthony and Ms. Rénal Edwards for the Applicant.
Ms. Sasha Lloyd and Ms. La Shaun Smart for the Respondent.**

2020: November, 27
December, 02

JUDGMENT

- [1] **WARD, J.:** The Police Co-operative Credit Union(St. Christopher and Nevis) Ltd. (hereafter “PCCU”) is registered as a Co-operative Society. Registration as such renders it a body corporate pursuant to section 18 of the Co-operative Societies Act, Cap.21.04. (The Act). It is licensed by the Financial Services Regulatory Commission (“the FSRC”) to carry on business as a co-operative credit union. Mr. Ivor Blake is President of the Board of Directors of the PCCU.
- [2] The Registrar of Credit Unions is appointed by the FSRC pursuant to section 5(2) of the Act. The incumbent office-holder is Mrs. Kjellin Rawlins-Elliott. Pursuant to section 198 of the Act, the Registrar is charged with the responsibility for administering the system of regulation and for the supervision of credit unions, with a view to the protection by each credit union of the funds of its members; and the maintenance of the financial stability and well-being of credit unions generally.
- [3] On 29 September, 2020, the applicant filed an application for leave to apply for judicial review and for interim relief. The application is supported by affidavits sworn by Mr. Blake. The applicant challenges two decisions made by the Registrar, purportedly in pursuance of section 7(1)(b)(ii) of the Act. These decisions were contained in a letter under the hand of the Registrar dated 24 July, 2020 wherein the applicant was informed of the decisions to (i) place the PCCU under administrative supervision; and (ii) appoint Mr. Walter Bass as Administrative Supervisor.
- [4] The applicant challenges these decisions on grounds of procedural irregularity, illegality and irrationality. The applicant therefore seeks leave to apply for judicial review and seeks an interim order granting a stay of the decisions of the Registrar pending the final determination of these proceedings on its merits or until further order of the court; and such further and/or other reliefs as the court thinks fit.

The factual background

- [5] On 14 July, 2020 Mr. Blake received correspondence from the Permanent Secretary in the Ministry of Labour informing him of allegations of fraudulent severance payments involving four senior members of staff of the PCCU. On 17 July, 2020, he sought a meeting with the Director of the Financial Services Regulatory Commission (FSRC) and the Registrar to discuss the issue. The Registrar was on leave at the time but he managed to secure a meeting with the Director of the FSCR, Ms. Kerstin Petty, that afternoon. Mr. Blake was accompanied by two members of the Board of Directors of the PCCU: Mr. Percy Daniel, Secretary to the Board and Mr. Leroy Percival.
- [6] Mr. Blake informed Ms. Petty that he had received a letter on 14 July, 2020 from the Permanent Secretary with responsibility for Labour relating to allegations of fraudulent severance payments relating to four senior staff members of the PCCU. He stated that the first he had heard of the allegations was in the letter from the Permanent Secretary. All three Board members asserted that they had no personal knowledge of the matter. Mr. Blake indicated that the Board intended to conduct an investigation into the matter but said that the purpose of the visit was to seek advice from the FSRC on the course of action to be taken by the Board of Directors.
- [7] Ms. Petty requested of Mr. Blake that the PCCU should officially inform the FSRC of the matter by submitting a letter to the FSRC detailing the allegations. She further suggested that it might be best to suspend the employees concerned or place them on administrative leave pending the investigation; and that if a Director of the Board was in fact involved, the Board would need to take action against that person.

The meeting of 24 July

- [8] On 24 July, 2020 the FSCR convened a meeting to discuss the matter. In attendance were: the Commissioner of Police, Mr. Hilroy Brandy, Assistant Commissioner of Police, Mr. Andre Mitchell, Mr. Peter Jenkins and Ms. Julie

Charles, President and General Manager respectively of the St. Kitts and Nevis National Co-operative League (SKNNCL), the Registrar and Ms. Petty.

[9] The summary of what transpired at that meeting which follows hereunder is constructed from the minutes of that meeting which are exhibited to the affidavit of the Registrar. The stated objective of the meeting was to discuss the allegations of fraudulent activities involving four senior staff members and a board member of the PCCU and to arrive at a course of action that would provide the necessary support and guidance to the PCCU. Ms. Petty informed those present that the FSRC had received correspondence from the DPP, dated 24 July 2020 informing of allegations of suspicious transactions and fraudulent activities involving the Board of Directors of the PCCU. She reported that the DPP had recommended the suspension of the Board of Directors with immediate effect pending the outcome of an official investigation, due to what appeared to him to be poor oversight of the operations of the PCCU. Copies of the DPP's correspondence were provided to the attendees.

[10] So far as relevant, the letter from the DPP stated:

"It has come to my attention that there are some suspicious transactions involving the Board of the Directors and employees of the Police Co-operative Credit Union. You would agree that such allegations, if true, are extremely serious. It is important that directors and employees of financial institutions are not only honest but appear to be so. I am extremely concerned about these allegations and the apparent reluctance of the board of directors to take decisive actions. These allegations come at a time when we have pending onsite visit from CFATF. It goes without saying that we must take every measure to arrest these types of allegations. Accordingly, I would respectfully suggest that as the head of the Financial Services Regulatory Commission that you utilise the powers vested in you and suspend the Board with immediate effect pending the outcome of an official investigation....By copy of this letter, I am advising

the Commissioner of Police to officially launch an investigation, if he has not already done so, into this matter... ”

- [11] Ms. Petty advised the attendees that the FSRC was recommending that the PCCU be placed under administrative supervision. After a brief discussion with the Registrar, Ms. Petty informed that the FSRC would reconsider the suspension of the Board of Directors. She then introduced Mr. Walter Bass, the administrative supervisor, to the attendees at the meeting. Mr. Peter Jenkins, President of the St. Kitts and Nevis National Co-operative Society Ltd expressed concern that representatives of the Board of Directors of the PCCU were not present at the meeting. Miss Petty stated that given that there was no evidence of the extent of the involvement of the members of the Board of Directors and based on the recommendation of the DPP no invitation had been extended. A discussion followed and it was agreed that the President of the Board of Directors should be invited. Mr. Ivor Blake was contacted by the Commissioner of Police at approximately 4:30 p.m. Mr. Brandy informed him that he was at a meeting at the FSRC and that they would like him to attend. Mr. Blake agreed to join the meeting within 15 to 20 minutes.
- [12] In the interim, a discussion ensued and there was General agreement with the following:
- that the general manager should be terminated and the other three staff members of the PCCU sent on administrative leave;
 - dismissal of the board director involved; and
 - the PCCU would be placed under administrative supervision and an Administrative Supervisor appointed.
- [13] Commissioner Brandy and Assistant Commissioner Mitchell agreed that immediate action was necessary and gave support to the appointment of Mr. Walter Bass as Administrative Supervisor.

[14] Upon the arrival of Mr. Blake at the meeting at about 5:00 p.m. Ms. Petty updated him on the discussions and decisions made. Mr. Blake presented correspondence from the Board of Directors of the PCCU pursuant to the undertaking given to Ms. Petty on 17th July. This was reviewed and discussed. Mr. Blake told Ms. Petty that he would seek an appointment with the PCCU's attorney to seek advice in relation to the decisions made and in relation to placing the employees in question on administrative leave.

[15] The meeting ended with Ms. Petty handing him the letter signed by the Registrar. The letter stated:

“The FSRC hereby informs that the Police Co-operative Credit Union Ltd has demonstrated non-compliance with the regulatory provisions and guidance provided by the Co-operative Societies Act Cap 21 0.04. The FSRC received a correspondence from the Office of the Director of Public Prosecutions (DPP) dated 24th July 2020 informing of allegations of suspicious transactions and fraudulent activities involving the Board of Directors (BOD) of the PCCU. In view of the allegation stated above the DPP has requested the suspension of the BOD with immediate effect pending the outcome of an official investigation. The FSRC therefore has taken the decision to place a PCCU under Administrative Supervision in accordance with Section 7(1) (b)(ii). Sections 7 and 198 of the Co-operative Societies Act, Cap. 21.04 outline provisions for the appointment of an Administrative Supervisor in the interests of the orderly and proper regulation of the business of a credit union. The FSRC has identified and appointed Mr. Walter Bass to act as Administrative Supervisor of the PCCU. The terms of reference (TOR) of the Administrative Supervisor are attached.”

The applicant's submissions

[16] Learned counsel for the applicant, Mr. Sylvester Anthony, submitted that the Registrar failed to observe basic rules of natural Justice; failed to act with

procedural fairness; and failed to give the applicant an opportunity to be heard before placing the PCCU under administrative supervision. The Registrar ought to have informed the applicant of her intention and should have afforded the PCCU a hearing before she made those decisions. Her failure to do so amounts to a breach of natural Justice and the principles of fairness. Summoning Mr. Blake to a meeting without notice and without affording him time to consult board members did not allow for due process of law. Further, submitted Mr. Anthony, this meeting to which he was summoned was not one in which he was initially intended to be a participant. It was only because of the insistence of Mr. Jenkins that he was subsequently invited. Mr. Anthony further submitted that the minutes would clearly demonstrate that, in any event the decisions were taken before Mr. Blake arrived and therefore refutes the impression sought to be given by the Registrar that he was part and parcel of these discussions and was involved in, and acquiesced in the decisions made.

- [17] Mr. Anthony further submitted that the Registrar acted ultra vires or failed to properly exercise her discretion under the Act and or acted without jurisdiction when she failed to send notice to the applicant pursuant to section 7(1)(b)(ii) of the Act. He submitted that the Registrar's letter of 24th July does not conform to the requirements of that section and does not constitute notice within the meaning of that section. This is so because the letter failed to identify what action the Registrar believed the PCCU was likely to take that would affect its financial soundness; and the Registrar further failed to have regard to 7(1)(b)(i) which mandated her to specify what action or practice the PCCU should cease or what measures it was required to take to protect the funds of the PCCU or the interests of its members. Section 7(1)(b)(i) and (ii) must be read conjunctively, so that the Registrar could not proceed to place the PCCU under administrative supervision and appoint an administrative supervisor unless she had first complied with the requirements of section 7(1)(b)(i).

- [18] Further, Mr. Anthony argued, the Registrar failed to have regard to section 7(7) by failing to give the applicant sufficient time to consider the contents of her letter before taking the drastic step of placing it under administrative supervision.
- [19] While Mr. Anthony was prepared to concede that Mr. Blake ought properly to have disclosed in his first affidavit that he had in fact attended the meeting of 24 July, this non-disclosure is not so grave as to warrant a denial of leave having regard to his evidence that this meeting was sprung upon him and that on arrival he was simply told of the decisions that had already been taken in his absence.
- [20] Mr. Anthony submitted that the applicant has an arguable case with a realistic prospect of success and there are no bars to the grant of leave by reason of delay or the availability of an alternative remedy. Accordingly, he submitted that the balance of convenience lay in staying the Registrar's decision to place the PCCU under administrative supervision given that there was no legal basis under which this course of action could be justified.

The respondent's submissions

- [21] On behalf of the respondent, learned counsel, Ms. Sahsa Lloyd's first salvo was to suggest that the court could not be satisfied that the applicant had locus standi given there is no evidence in the form of a resolution of the members of the PCCU authorizing Mr. Blake to commence these proceedings on its behalf. Secondly, Ms. Lloyd submitted that the decision to place the PCCU under administrative supervision was not made solely on the DPP's letter. According to her, the other factors considered were: the discussion between those parties who attended the meeting; the letter from the Permanent Secretary with responsibility for Labour regarding the allegations; and the consent of the PCCU at the meeting to the course of action taken by the Registrar.
- [22] In so far as due process is concerned, Ms. Lloyd submitted that, that is achieved through the provisions of section 7(7) of the Co-operative Societies act whereby the PCCU would have had 21 days after the service of the Registrar's letter to state why the action required should not be taken. In this regard, counsel

submitted that the Registrar's letter did constitute proper notice under section 7 and was compliant therewith because it stipulated that the measure that the PCCU was required to take was to submit to the authority of the administrative supervisor. Section 7(1)(b)(i) was to be read disjunctively so that there was no need for the Registrar to also state what action the PCCU should cease. It was sufficient that she identified the measure that they were required to take. To that extent, submitted Ms. Lloyd the letter was compliant with the section.

[23] Ms. Lloyd further submitted that on a proper construction of section 7, the Registrar could proceed to immediately place the PCCU under administrative supervision at the time of serving the letter. Opportunity would then be afforded to the PCCU, pursuant to section 7(7) of the Act, to respond within 21 days and say why that measure should not be taken. The PCCU failed to avail itself of this opportunity. Accordingly it was not denied due process or procedural fairness, nor was it a breach of natural Justice to simultaneously place the PCCU under administrative supervision. In any event, submitted Ms. Lloyd, procedural fairness may be dispensed with where the decision affects so many people as the PCCU's membership. A wide range of public policy considerations come into play. In this case, the members of the PCCU constituted a class of the public and the Registrar's actions were taken on an urgent basis in order to protect the interests of the PCCU members.

[24] As it relates to the request for interim relief, Ms. Lloyd submitted that the administrative supervisor has made good progress since July 24th for the protection of the PCCU's interests. Thus, the current status quo should be preserved in order to safeguard the interests of the PCCU's members.

The issues

[25] The issues for resolution are: (i) whether the applicant has locus standi to bring this application; (ii) whether the applicant has an arguable case with a realistic prospect of success; (iii) whether there are any bars to judicial review such as delay or availability of an alternative remedy; and whether interim relief should be granted should the application succeed.

Discussion

- [26] I bear in mind that as I consider this application I am not concerned with the merits of the decision in question nor am I required to perform an in depth analysis of the applicant's case. Rather, I am concerned with the legality, rather than the merits, of the decision; with the jurisdiction of the decision maker and with the fairness of the decision making process.

The Locus standi issue

- [27] Undergirding the requirement for leave to apply for judicial review is the necessity to filter out unmeritorious claims. Part 56.2(1) **CPR 2000** requires an applicant for leave to establish that he has sufficient interest in the subject matter of the application. This he may do by demonstrating, *inter alia*, that he has been adversely affected by the decision which is the subject of the application.
- [28] The respondent argued that Mr. Blake does not have locus standi to bring this application on behalf of the PCCU because he has not produced any evidence that the membership approved a resolution authorising him so to do. It is important to bear in mind that the applicant here is the PCCU. By virtue of section 18 of the Act, upon registration as a Co-operative Society, it is rendered a body corporate. **CPR 22.3** provides that subject to any statutory provision to the contrary, a duly authorised director or other officer of a body corporate may conduct proceedings on its behalf. Mr. Blake is the President of the Board of Directors of the PCCU. In his affidavit in support of the application, he avers that he is authorised to swear the affidavit on behalf of the PCCU and in support of its application for leave to apply for judicial review. I therefore find that this evidence is sufficient to meet the requirements of **CPR 22.3**. The respondent has not furnished the court with any authority in support of its contention that there must additionally be evidence of a resolution passed by the membership of the PCCU authorizing the bringing of this claim. Since, undoubtedly, the PCCU is affected by the decisions under challenge, the court holds that the test of sufficient interest under **CPR 56.2**. is met.

[29] The court is satisfied that the applicant has crossed this *locus standi* hurdle.

Is there an Arguable case

[30] An applicant for leave to apply for judicial review must demonstrate that he has an arguable case with a realistic prospect of success. In conducting this assessment I have in mind the relevant learning as enunciated in the case of **Sharma v Browne-Antoine**¹

“The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy...the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.”

[31] The threshold for the grant of leave to apply for judicial review is low. The court at this stage is concerned only to examine whether the applicant has an arguable ground for judicial review which has a realistic prospect of success. See: **Attorney General of Trinidad and Tobago v Ayers-Caesar**.²

[32] Germaine to the resolution of this issue are: the minutes of the meeting of 24 July; the Registrar’s letter of 24 July and Section 7 of the Act.

[33] I have set out above a summary of what transpired at the meeting of 24 July, 2020. It is plain from the minutes that the decisions to place the PCCU under administrative supervision and to appoint Mr. Bass as Administrative Supervisor were taken before the arrival of Mr. Blake.

¹ [2007] 1 WLR 780 at 787

² [2019] UKPC 44

[34] Since the Registrar purported to act pursuant to Section 7(1)(b)(ii), it is important to examine the provisions of this section. So far as relevant section provides:

“7. (1) Where-

(a) ...

(b) The Registrar has reason to believe that a co-operative society is likely to take any action that would affect the financial soundness of the co-operative society, the Registrar may -

(i) by notice in writing, direct the Board within such period as the Registrar may specify, to cease such action or such practice as the Registrar may specify or to take such measures as the Registrar considers necessary to protect the funds of the co-operative society or the interests of the co-operative society's members; and

(ii) place a co-operative society under administrative supervision and appoint a person who in the Registrar's opinion, has the necessary experience and training to supervise or advise the co-operative society on the action to be taken to remedy the situation. ...

(2)...

(3)...

(4)...

(5)...

(6)...

(7) A co-operative society or a person that is required to take any action under this section, may within twenty-one days of the service of the notice by the Registrar, make representation in writing to the Registrar as to why the action required should not be taken.”

[35] I understand these provisions to mean that before the Registrar may act under section 7(1)(b)(ii) she must first have reason to believe that the PCCU was likely to take some action that would affect its financial soundness. She is then required, pursuant to section 7(1)(b)(i), to direct the Board by notice in writing that within a specified time, the PCCU should cease such action or such practice as the Registrar may specify or to take such measures as the Registrar considers necessary to protect the funds of the co-operative society or the interests of the co-operative society’s members. Having done so, the Registrar may also place the PCCU under administrative supervision.

[36] It seems clear that under section 7(1)(b) the catalyst for the Registrar’s intervention to place the PCCU under administrative supervision must be a belief that the Co-operative society (PCCU) is likely to act in a way that affects its financial soundness. In this case, it is at least arguable that the allegation that some employees and a director of the PCCU may have defrauded the Department of Labour cannot reasonably give rise to a belief that the PCCU was likely to act in a way that imperiled its financial soundness within the meaning of section 7. Further, having regard to the contents of the minutes and the contents of the Registrar’s letter, it is at least arguable that on the facts, no such belief is evident. It is at least arguable that the true motivating factor behind the decisions were the views expressed by the DPP in his letter to the FSCR, containing rather vague and generalised allegations, into which an investigation had not yet been launched. It is at least arguable that this inference is irresistible when one considers that his letter was penned on 24th July, the FSCR convened the meeting that very day, and the impugned decisions were taken and implemented that very day.

- [37] The court is further satisfied that if the allegation of possible criminal conduct by some employees of the PCCU and a Board director, was indeed the reason for the Registrar's decisions, then it is at least arguable that the decision to place the PCCU under administrative supervision was irrational and disproportionate.
- [38] Further, whether or not the respondent is right in saying that the Registrar may serve notice and contemporaneously place the PCCU under administrative supervision, it is at least arguable that section 7, properly construed, cannot mean "comply and then complain". If section 7 (1)(b)(i) requires the Registrar to identify what action the PCCU must cease and to specify the measures it is required to take within a specified time, it would seem a reasonable requirement of due process that an opportunity be afforded to the PCCU to be heard before any drastic measures are taken.
- [39] For the foregoing reasons, the court is satisfied that the applicant has demonstrated an arguable case with a realistic prospect of success that the Registrar took irrelevant matters into consideration; failed to relevantly and properly consider the conditions precedent in section 7(1)(b)(i) to acting under section 7(1)(b)(ii); and acted unlawfully and irrationally and without affording the PCCU due process before placing it under administrative supervision. In the court's opinion these matters require a full hearing on the merits.
- [40] The court is further satisfied that there are no bars to the grant of leave.

Interim relief

- [41] In expectation of leave being granted, the applicant respondents seeks a stay of the decisions to place the applicant under administrative supervision and to appoint Mr. Walter Bass as administrative supervisor pending the final determination of this matter. This course, it is said, would preserve the status quo and ensure as far as possible that if the applicant is ultimately successful it will not be deprived of the full benefit of its success.

[42] Ms. Lloyd for the respondent says that in the interest of the members of the PCCU, the balance of convenience favours the current status quo whereby the PCCU is under administrative supervision.

[43] The principles governing the grant of interim relief in a public law case are settled. The case should be approached along the lines articulated in the American Cyanamid case but with modifications appropriate to the public law element of the case which is a special factor. Another relevant factor might be whether the grant or refusal of interim relief were likely to be, in practical terms, decisive of the whole case: **Bacongo v Department of the Environment of Belize (Practice Note)**³.

[44] Additionally, in this case there is no contention that damages would be an adequate remedy should the applicants ultimately succeed. The real question is whether the balance of justice requires that the decisions be stayed. In performing this assessment, the court must choose the course which in all the circumstances appears to offer the best prospect that an eventual injustice can be avoided or minimized. See **R. (on the application of Miranda) v Secretary of State for the Home Department**.⁴

[45] Applying these principles to the case at bar, and in light of my finding that the applicant has established an arguable case with a realistic prospect of success, I am satisfied that if the issue is the conduct of a limited number of employees not relating to the funds belonging to the PCCU, that concern can be effectively addressed without the need for the PCCU to be placed under administrative supervision.

Accordingly, I am of the view that the balance of justice lies in granting a stay of the decisions.

³ [2003] UKPC 63

⁴ 2013 WL 4411328 Divisional Court

[57] IT IS ORDERED:

1. Leave is hereby granted to the applicant to apply for judicial review against the decisions herein of the respondent, the Registrar of Credit Unions, on the grounds of procedural irregularity, illegality and irrationality;
2. The decisions of the Registrar are hereby stayed pending the final determination of these proceedings on its merits or until further order of this Court;
3. The applicant must file and serve a claim for judicial review within 14 days or on or before 17th December, 2020.
4. The Defendant shall file their Affidavits in Answer within 28 days of the service of the Fixed Date Claim Forms and Affidavits or on or before 15th January, 2021.
5. The Applicant will (if necessary), file their Affidavits in Reply within 14 days thereafter or on or before 1st February, 2021.
6. Costs to be costs in the cause.

**Trevor M. Ward, QC
High Court Judge**

By the Court

Registrar