

EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

**SAINT LUCIA
COMMERCIAL DIVISION**

CLAIM NO. SLUHCM2019 /0087

BETWEEN:

**CLICO INTERNATIONAL LIFE INSURANCE LIMITED
[In Judicial Management]**

Claimant/ Respondent

And

EASTERN CARIBBEAN HOME MORTGAGE BANK

Defendant/ Applicant

Before: The Hon. Mde. Justice Cadie St Rose-Albertini

High Court Judge

Appearances:

Ms. Diana Thomas with Ms. Cleopatra Mc Donald, for the Claimant/ Respondent
Mr. Damian Kelsick with Dr. Kenny D. Anthony, for the Defendant/Applicant

2020: October 16
November 2

DECISION IN CHAMBERS

- [1] **ST ROSE-ALBERTINI, J. [Ag]:** The defendant/applicant, Eastern Caribbean Home Mortgage Bank (“ECHMB”) has applied pursuant to rule 7.7(1) of the Civil Procedure Rules 2000 (the “CPR”) for an order setting aside service of a claim form and statement of claim, which was served at its principal place of business in Basseterre, in the Island of Saint Christopher (commonly called St. Kitts).

- [2] By order dated 12th November 2019, the claimant/respondent CLICO International Life Insurance Limited (“CLICO”) obtained permission from this Court to serve the claim form and statement of claim on ECHMB outside the jurisdiction. In CLICO’s application for permission, it relied on CPR 7.3(6) that the Court may grant permission to serve a claim outside the jurisdiction if the whole subject matter of the claim relates to property within the jurisdiction. The substantive claim¹ concerns 20,000 Class F shares (“the Shares”) owned by CLICO in ECHMB².
- [3] ECHMB says that the Shares, do not constitute property within the jurisdiction and ECHMB is not a company incorporated within the jurisdiction. As such, the conditions for an order for service out were not satisfied.

The Issues

- [4] The issues which arose for determination are: -
1. Should service of the claim be set aside?
 2. If service is proper, does this Court have jurisdiction to try the claim?

Background

- [5] The claim form and statement of claim were served on 21st November 2019. Acknowledgment of service was filed on 16th December 2019, followed by this application filed on 3rd January 2020.
- [6] The claim is for (i) a declaration that CLICO, acting through its court-appointed Judicial Manager is entitled to deal with and sell the Shares for such sums and on such terms as it thinks fit, subject only to ECHMB’s by-laws; and (ii) payment of the sum of \$1,550,000.00 due and owing to it by ECHMB as dividends on the Shares for the financial years 2011-2019, together with interest.

¹ Filed on 6th November 2019

² These Shares were purchased by CLICO from The Home Mortgage Bank of Trinidad & Tobago

- [7] CLICO pleaded that by Pledge Form dated 6th October 2008, the Shares were pledged (“the Pledge”) to the Registrar of Insurance in Saint Lucia (“the Registrar”), in satisfaction of the insurance fund requirement under section 88 of the **Insurance Act**³. CLICO says ECHMB acknowledged the Registrar’s interest in the Shares by signing the Pledge Form. By a court order dated 19th November 2018 in Claim No. SLUHCV2011/0316 (a claim concerning the judicial management of CLICO) the Pledge was discharged and released by the Registrar to the Judicial Manager of CLICO. The Judicial Manager wishes to sell the Shares and collect the dividends due, and although its rights are no longer fettered by the Pledge, ECHMB has resisted its ability to deal with the Shares. Exchange of letters between the parties on this matter has reached a stalemate and CLICO has therefore filed the claim seeking relevant orders from the Court.

The Application

- [8] The grounds of the Application are that (i) the property which is the subject of the claim are the Shares in ECHMB, which is an international organization incorporated by the Eastern Caribbean Home Mortgage Bank Agreement dated 27th May 1994 (“the Agreement”); (ii) ECHMB is recognized in Saint Lucia by virtue of the **Eastern Caribbean Home Mortgage Bank Agreement Act**⁴ (“the Act”) and is recognized in each of the Member States of the Organization of Eastern Caribbean States (“OECS”) by virtue of legislation in substantially identical terms; (iii) ECHMB is not incorporated in Saint Lucia and the Shares are not property situate within Saint Lucia; and (iv) there was no basis on which to grant ECHMB permission to serve the claim form and statement of claim outside the jurisdiction.
- [9] The affidavit in support of the Application is deposed by Mr. Randy Lewis. He is the Chief Executive Officer of ECHMB. In his affidavit he restates ECHMB’s position that: -
- (i) the sole basis upon which CLICO relied in its application for permission to serve out of the jurisdiction was that the whole subject matter of the claim relates to property within the jurisdiction⁵;

³ Cap 12.08 of the Revised Edition of the Laws of Saint Lucia

⁴ Cap 19.08 of the Revised Edition of the Laws of Saint Lucia

⁵ Paragraph 3.9 of that application

- (ii) however, the Shares are located in the jurisdiction where the issuing company or body corporate is located;
- (iii) ECHMB was not incorporated or organized in or under the laws of Saint Lucia and the Shares are therefore not amenable to the jurisdiction of the courts in Saint Lucia;
- (iv) the Pledge did not affect the status of the Shares and the Shares are therefore not in fact property located in Saint Lucia; and
- (v) to the extent that the Pledge is relied on to say that the Shares are in Saint Lucia:
 - a) the Registrar had no statutory authority to accept the Shares in satisfaction of the security requirement of Part 6 of the Insurance Act in Saint Lucia;
 - b) the Shares were not a form of security in accordance with Schedule 2 of the Insurance Act and exceeded in value the maximum deposit the Registrar was permitted to take by way of security; and
 - c) such an ultra vires act could in no way grant the courts of Saint Lucia jurisdiction which it would not otherwise have.
- (vi) The claim does not fall within any of the classes in the rule⁶ in respect of which permission to serve out of the jurisdiction could properly have been given.

Opposition to the Application

[10] CLICO filed a notice of opposition, followed by an affidavit in answer. The affidavit was deposed by Mr Charles Hippolyte, Executive Clerk in the Chambers of Deterville, Thomas & Co., the legal practitioners for CLICO. Mr. Hippolyte stated that he was instructed to conduct a search at the Registry of Companies and Intellectual Property in Saint Lucia to retrieve all corporate documents in relation to ECHMB. His search did not return any such documents. Similar instructions were given to a law firm in Grenada to be carried out at the Corporate Affairs and Intellectual Property Office in Grenada ("CAIPO"). He exhibits an affidavit of Veronica Plenty who carried out those instructions.

⁶ This was referenced as CPR 9.7 but appears to be an error and that the intended reference was to CPR 7.3

- [11] Ms. Plenty's affidavit states that a search at CAIPO revealed that ECHMB is registered under the provisions of the Eastern Caribbean Home Mortgage Bank Act, No. 9 of 1995 of the Laws of Grenada. However, its corporate file at CAIPO contained no Certificate of Registration, Notice of Registered Address, Notice of Directors, Notice of Corporate Secretary or Annual Returns. There were no documents which revealed a registered address and no documents to confirm registration, save for the legislation which cites the establishment of the ECHMB.

ECHMB's Submissions

- [12] In written submissions, Counsel for ECHMB, Mr. Kelsick, submits that the property in relation to which CLICO is asking the Court to make orders are the Shares in ECHMB and the dividends due on the Shares, which is no more than an incident of share ownership. He says CLICO did not, identify the property to which the claim relates for the purposes of CPR 7.3(6) in its application or the affidavit in support, or how its asserted that the property is situated in the jurisdiction of Saint Lucia.
- [13] Counsel further says that ECHMB is a corporate body created by treaty and is established by Article 3 of the Agreement in accordance with Article 40 thereof. The entire Agreement is set out in the Schedule of the Act which recognizes ECHMB in Saint Lucia. He cites several authorities which speak to the nature of such an entity and referred the Court to **re International Tin Council**⁷ where it was said that an international organization is a subject of international law, capable of possessing international rights and duties, and has capacity to maintain its rights by bringing international claims. He says for a treaty to have any effect in domestic law, it must be enacted by Parliament.⁸
- [14] Counsel also cites **Halsbury's Laws of England** Volume 61 (2018) para 39 which states:

⁷ [1987] Ch 419

⁸ The Proper Law of International Organizations (1962), pp.3, 8-9, by Dr. C. Wilfred Jenks:

“International organisations whose membership comprises states are capable of enjoying international legal personality separately from their respective Member States...”

The constituent instrument of an international organisation is usually a treaty among states. This treaty will specify the purposes of the organisation, the conditions for membership, and the organs and powers through which the organisation's purposes will be realised. It will also govern relations between the organisation and its Member States...”

- [15] Counsel therefore submits that the law governing membership of ECHMB, its competence, the composition and the mutual relations of its various organs, their procedure, the rights and obligations of ECHMB and its members in relation to each other, financial matters, the procedure of constitutional amendment, the rules governing the dissolution or winding up of ECHMB, and the disposal of its assets are all matters of international law. Further, its corporate status under public international law is not recognized in domestic law, except by legislation.
- [16] Mr. Kelsick further says that CLICO rightly did not rely on CPR 7.3(7) as ECHMB is not incorporated in Saint Lucia and the sale of its shares is an issue which concerns the constitution, administration, management or conduct of its affairs; or its ownership or control. This, he says, is an internal matter over which the courts of Saint Lucia have no jurisdiction and the only matter which could be relied upon as being property in the jurisdiction is the Pledge. However, the pleadings incorrectly assume that the relevant law is that of Saint Lucia. A pledge of property cannot be considered a right to property, independent of the property pledged. The ability to pledge and the formalities and incidents of a pledge, must be determined by the law governing the property in question. The fact that the Insurance Act allows foreign shares to be taken as security for insurance deposits does not render those foreign shares or the companies that issue them subject to the law of Saint Lucia.

- [17] Counsel submits that even if the Pledge could have given the Court jurisdiction to deal with this matter, the Pledge itself would have to be lawful. Section 80 of the Insurance Act deals with the amount and form of the deposit and provides that an insurer shall not be required to deposit any sum in excess of \$1,500,000.00; and that every such deposit shall be in the form of cash, or prescribed securities, or partly one and the other and defines prescribed securities as those listed in Schedule 2. He submits that the Shares do not fall within the categories listed in Schedule 2 of the Insurance Act, and exceed the value permitted as deposits, therefore the Registrar had no authority to take the Shares as a deposit.
- [18] Mr. Kelsick submits that the corporate status of ECHMB could not be recognized in Saint Lucia or any other member state without domestic legislation. A suggestion that the effect of Section 3 of the Act, which says that the Agreement is hereby given the force of law in Saint Lucia, is what confers jurisdiction to the courts of Saint Lucia is wrong. He referred to the case of **Westland Helicopters Ltd v Arab Organization for Industrialisation**⁹, which considered the effect of domestic legislation passed by several countries recognizing an international body corporate. There it was said that the Arab Organization for Industrialisation was a single and indivisible corporate entity whose legal personality had been created by being accorded the capacity of a body corporate under the law of its 21 participants. Although it had in that sense ‘multiple incorporation’ and ‘multiple nationality’, it was incorrect to suggest that the consequence of treating the domestic legislation of each State as creating a legal personality under the law of that State, would be to bring into existence as many separate legal personalities as there were States.¹⁰ He submitted that Millet J made a similar finding in **re International Tin Council**.¹¹
- [19] Mr. Kelsick therefore insists that the effect of each OECS Member State passing domestic legislation recognizing the corporate personality of ECHMB does not subject it to the domestic law of any of the Member States. The powers, administration, membership and other matters relating to ECHMB are still matters governed by the treaty by which it was established. He says no Member State can hijack ECHMB and make it subject to its

⁹ [1995] Q.B. 282

¹⁰ At page 298 H

¹¹ Supra note 5 at page 452C:

domestic law, and all the Act did was to recognize the corporate capacity of ECHMB to enable it to carry out its functions in St Lucia. He acknowledged that this did not mean that domestic courts have no jurisdiction whatsoever its dealings, as it can and does enter contracts with financial institutions for financial transactions. These contracts are subject to the jurisdiction of domestic courts, but this does not open the gateway for the courts to have jurisdiction with respect to the internal dealings of ECHMB.

- [20] In concluding Mr. Kelsick says that any order made by a court in Saint Lucia for the sale or disposition of the Shares which are in another jurisdiction will not be enforceable in that other jurisdiction. Whilst the Eastern Caribbean Supreme Court (“ECSC”) serves the Member States of the OECS, it does not have multinational jurisdiction. When it sits in any jurisdiction, it sits as the High Court of that jurisdiction only and cannot whilst so sitting make orders to take direct effect in another jurisdiction. Thus, this Court has no jurisdiction to make any of the orders sought by CLICO in the claim.

CLICO’s Submissions

- [21] Counsel for CLICO, Ms. Thomas, in written submissions submits that CLICO’s opposition is twofold. First, notwithstanding that leave was granted to serve out of the jurisdiction, service was not in fact out of the jurisdiction; rather it was within the Court’s jurisdiction. As such, permission was not required. Further, ECHMB acknowledged service and that is enough to trigger the Court’s jurisdiction. Second, even if the claim form was served outside of the jurisdiction, as a company incorporated by statute in Saint Lucia, ECHMB is located in Saint Lucia and its shares are held in Saint Lucia by virtue of the statute which created it. Accordingly, the Court has jurisdiction to try the claim.
- [22] Additionally, Counsel submits that by allowing the Registrar to take the Pledge, ECHMB submitted to the Court’s jurisdiction by agreement and cannot now challenge jurisdiction. Further, the validity of the Registrar’s ability to take the Pledge is not relevant to the question of the Court’s jurisdiction and is not appropriate to be decided on an application to set aside service. She contends, that in any event, the Insurance Act permitted the Registrar to accept the Shares and there was no conduct which was ultra vires, in doing so.

- [23] On the issue of whether the claim was served out of the jurisdiction, Ms. Thomas submits that the jurisdiction of the ECSC extends to all its Member States and territories, which includes Grenada – the Companies Act of which governs ECHMB, and St Kitts – where ECHMB’s principal place of business is located. This, she says, is provided for in the Supreme Court Order made under section 6 of the West Indies Act, 1967 of the United Kingdom and Part 2 of CPR, which defines the jurisdiction of the ECSC as “*extending throughout the Member States and Territories*,” and defines ‘Member States’ to include “...*(c) Grenada, (d) Saint Christopher and Nevis and (e) Saint Lucia...*”
- [24] Counsel therefore says this Court has jurisdiction to pronounce on ECHMB’s dealings with its shareholders (including CLICO) because its principal place of business is in St Kitts, its governing law is the Grenada Companies Act; and it is incorporated in each of the islands of the Eastern Caribbean Currency Union, all of which are within the jurisdiction of the ECSC.
- [25] Notwithstanding, that the claim was not served out of the jurisdiction, she submits that service out would have been permissible, not only under CPR 7.3(6) but also by CPR 7.3(3)(b) as a claim relating to a contract which by its terms or by implication, is governed by the law of any Member State or territory; was made by or through an agent trading or residing within the jurisdiction; or was made within the jurisdiction. She submits that the Pledge was executed by two entities both of which reside within the jurisdiction of the ECSC and the shares were purchased and registered with ECHMB which also resides within the jurisdiction. Consequently, all the indicia of submission to the jurisdiction of this Court have been met. In support she relied on the case of **OBM Ltd. v LSJ LCC**.¹²
- [26] On the matter of ECHMB submitting to the Court’s jurisdiction by agreement, Counsel submits that having acknowledged the interest of the Registrar in the Shares and agreeing to the condition that the hold would only be removed upon receiving instructions from the Registrar, ECHMB cannot now disavow this agreement on the basis that it is not incorporated here and the shares do not reside here. By virtue of incorporation by statute in

¹² ECSCJ No 118

each of the Member States, the Shares reside in each Member State and each of the Courts in each of the Member States has jurisdiction.

[27] Ms. Thomas observes that ECHMB has not identified a convenient forum where the claim should be filed and the ECSC is the only court which is in a position to pronounce on the validity or otherwise of ECHMB's refusal to permit the Judicial Manager to deal with the shares or to pay dividends. She says the Pledge was taken pursuant to section 88 and 89(1) of the Insurance Act and not section 80. Schedule 4A(2) provides that "*the securities may be held in ordinary or preference shares in a company incorporated in Saint Lucia or a Commonwealth Caribbean country which either paid at least 4% dividends in each year of the preceding five years or such company as is approved by the Minister.*" Counsel submits that ECHMB is such a company and relied on the case of **Jemima Bacchus and another v RBTT**¹³ as to the purpose and operation of the insurance fund.

[28] Counsel concludes by saying that the allegation that the Registrar acted ultra vires is misguided as there is no limit to the insurance fund that is to be established by an insurance company, it being equal to the amounts to be paid to policyholders on maturity of their policies. Further the sum does not secure the statutory deposit under Schedule 2, but the insurance fund governed by Schedule 4 of the Insurance Act. In the circumstances, she submits that the application ought to be dismissed.

ECHMB's Reply

[29] In response to Ms. Thomas' argument that permission for service out was not required, Mr. Kelsick says that the term jurisdiction has many nuances, and in the context of CPR 7.3, jurisdiction does not mean that the Court is transnational. The term jurisdiction must be a reference to the individual jurisdiction of each Member State. Otherwise, CLICO's interpretation would lead to the erroneous outcome that the court in each Member State would have unchallenged jurisdiction to deal with disputes arising in any of the Member States. Such an outcome is flawed because whilst the ECSC sits throughout the region as a

¹³ [2014] ECSCJ No. 281

single court, it has the ability to discharge the laws of each State as conferred by the Constitution of that Member State.

- [30] To this, Ms. Thomas says jurisdiction can have different meanings depending on how it is used and in CPR 7.3 (3) (a) it appears twice; on the first occasion it refers to the authority of the court and in the second, it refers to locality. She agreed that a court sitting in one Member State cannot rule on a matter reserved to the court of another Member State, but says this does not take away from the fact that service of process within the Member States which make up the ECSC can take place without the leave of the court.

Analysis

Should service of the claim be set aside?

- [31] As I understand it, the genesis of CLICO's argument lies in the fact that the **Supreme Court Act**¹⁴, which is legislated in each of the Member States of the ECSC, provides at section 9 (3) and (4) that :-

*“(3) **The process of the Supreme Court shall run throughout the States** and any judgment of the Court shall have full force and effect and may be executed and enforced in any of the States.*

(4) The provisions of subsection (3) of this section shall be without prejudice to the provisions of the constitution of each State relating to fundamental rights and freedoms.” [My Emphasis]

- [32] By extension Part 2 of the CPR defines the jurisdiction of the court as “*extending throughout the Member States and Territories and any part of their territorial waters.*” Member States is also defined in Part 2 to mean inter alia “... (c) Grenada, (d) Saint Christopher and Nevis, (e) Saint Lucia...”

¹⁴ Cap 4.01 of the Revised Edition of the Laws of Saint Lucia

- [33] CPR 7.1(1) which deals with service of process outside the jurisdiction provides that “*this Part contains provisions about (a) the circumstances in which court process may be served out of the jurisdiction and (b) procedure for serving court process out of the jurisdiction.*”
- [34] Practice Direction No. 4 of 2008 of the ECSC entitled ‘Service of Claim Form Out of Jurisdiction’ supplements Part 7 of the CPR and is instructive in that regard, where it says at Rule 4: “*Jurisdiction: The jurisdiction of the court extends to the six independent Member States to wit Antigua & Barbuda, Dominica, Grenada, St. Kitts & Nevis, Saint Lucia and St. Vincent & The Grenadines, and the three overseas territories to wit Anguilla, Montserrat and Territory of the Virgin Islands.*”
- [35] I agree that service of process under Part 7 is only invoked when service is to be effected in a jurisdiction which is outside the locality of the Member States and any part of their territorial waters. Taken together, the Rules convey that the Member States and Territories of the ECSC are one space or jurisdiction for the purposes of the Court’s process. As such no permission is required for service of process on a party in another Member State.
- [36] I therefore conclude that permission was not required to serve the claim form and statement of claim on ECHMB in St Kitts, as that Member State is not outside the Court’s jurisdiction (locality) as it relates to service of process. This is separate and distinct from jurisdiction (authority) to adjudicate on a claim. As no permission for service out was required, CLICO was entitled as of right to serve the claim on ECHMB in St Kitts, and there is no basis for the Court to set aside such service.

If Service is proper, does this Court have jurisdiction to try the Claim?

- [37] Although the application was made pursuant to CPR 7.7 to set aside service, the parties seemed to have conflated the issues and engaged in arguments on whether this Court had jurisdiction to try the claim. This question would ordinarily fall to be considered on an application pursuant to CPR 9.7. Nonetheless, an acknowledgement of service was filed as required by CPR 9.7(2) and CPR 9.6 clearly states that a defendant who files an acknowledgment of service does not, by doing so, lose any right to dispute the court’s

jurisdiction. In the circumstances, for completeness and to save time and cost I will address the issues raised in relation to jurisdiction to try the claim. In the main, the submissions advanced by Counsels concerned the Pledge and the corporate personality of ECHMB.

[38] The Pledge: Much was made of the Pledge as the factor which grounds the claim within the jurisdiction of this Court. The endorsement by ECHMB at the bottom of the Pledge Form merely acknowledged the existence of the rights of the Registrar by virtue of the charge and stated that the hold would only be removed upon receiving instructions from the Registrar. I do not agree that by acknowledging the Pledge in this way, ECHMB is to be treated as having submitted to the jurisdiction of the court in Saint Lucia. Additionally, the Registrar has since discharged the Pledge in keeping with a court order, and this has been communicated to ECHMB. Therefore, the question whether the Pledge was validly taken under the Insurance Act adds nothing to the discussion in relation to jurisdiction at this time. In my view the contention between the parties as outlined in the claim concerns whether ECHMB can preclude the Judicial Manager of CLICO from exercising its rights as a shareholder, to collect outstanding dividends with interest, and to sell the Shares to a willing buyer. Thus, CLICO's argument that the Pledge is what gives this Court jurisdiction, whether in relation to the application for service out or in relation to the claim, has no merit.

[39] The Corporate Personality of ECHMB: Mr. Kelsick says that ECHMB is an international corporate body established by treaty and is therefore subject to and governed by international law and not the law of any one of its members. In addition, its internal affairs are governed by the dictates of the Agreement which establishes it.

[40] Ms. Thomas' position is that ECHMB is a company incorporated in each of the Member States including Saint Lucia, and therefore its Shares are located in each of the Member States and each has jurisdiction over the Shares and ECHMB. Thus, the Courts in Saint Lucia would have jurisdiction to try the claim.

[41] The tendency to refer to the ECHMB as being incorporated in the various Member States has caused some confusion. On one hand, 'incorporation' was used in the sense of the formation of a company under the Companies Act and on the other hand, it was used in the

sense of incorporation of a treaty by statute into the domestic laws of each Member State. The latter is a well-known and accepted principle of public international law, the effect of which has been explained in the cases¹⁵ cited by Mr. Kelsick. It is therefore correct to say that a body corporate established by treaty has its legal personality in international law and is not subject to the domestic law of any State unless its governing provisions expressly say otherwise.

[42] ECHMB is not a foreign company incorporated in another place and registered here as an external company, neither can it be equated to or treated as a company incorporated in Saint Lucia by virtue of the Act. The evidence in relation to its status is that the search at the Companies Registry in Saint Lucia returned no documents, so it is not a company incorporated or registered under the Companies Act in Saint Lucia. It was suggested that it is a company incorporated under the Companies Act of Grenada. However, a search of CAIPO revealed that it is a body established under the provisions of the Eastern Caribbean Home Mortgage Bank Act, No 9 of 1995 of the Laws of Grenada. There is a corporate file at CAIPO's office but it is without any corporate documents save the said Act No 9 of 1995 incorporating the Agreement into the domestic laws of Grenada, in much the same way as the Act did in Saint Lucia. It is therefore unlikely that ECHMB is incorporated as a local company there.

[43] In the circumstances, the rights, obligations and privileges of ECHMB which could be recognized and enforced by the courts in Saint Lucia would have to be determined by reference to and in accordance with the Act and any other legislation to which it falls subject in Saint Lucia. Having perused the Agreement, which is in Schedule 2 of the Act, it is inescapable that ECHMB is a body corporate having legal personality. Article 3 of the Agreement states inter alia that it is established as a Bank and may sue and be sued in its own name and may conduct or defend legal proceedings brought against it concerning its affairs. There are also several other Articles¹⁶ of the Agreement which would have some bearing on jurisdiction to try this claim. In this regard, ECHMB is authorized to operate as

¹⁵ Supra note 5 at pages 442-443; 444-445 and 451-452

¹⁶ Articles 2,3,5,7,24,29,30,31,32,34,35,36 and 41.

though it were a company by establishing a share capital, issuing shares and share certificates and keeping a register of shareholders, permitting sale and transfer of shares, and payment of dividends on shares. 'Affairs' is a broad term and could conceivably include all of the foregoing, as well as any disputes arising from its relations with shareholders.

- [44] Article 7 requires that ECHMB must at all times have a fixed address for service of documents in one of the member territories, and that address shall be registered with the Registrar of Companies in that member territory. Service may be effected by leaving documents at that address or sending same by registered post. All of this indicates that the member territories contemplated that ECHMB could be sued and made provision for this. Nowhere in the Agreement does it contain any provision granting immunities or privileges – such as immunity from suit or legal process on ECHMB.¹⁷
- [45] Article 36: entitled Disputes states: ***“(1) Any dispute between the participating Governments concerning this Agreement or between the Bank and a participating Government, shall be submitted to arbitration by a tribunal of arbitrators appointed pursuant to paragraph (2) of this article.”***
- [46] Article 41: entitled “Application of Companies Act” is noteworthy. It says ***“The Companies Act applies to the Bank, as if the Bank were a public company registered under that Act, with such modifications as are necessary or expedient but subject always to this Agreement. (Inserted by S.I. 34/1996).”*** The Companies Act is defined in Article 2 as the ***“Companies Act 1994 No. 35 of the Laws of Grenada.”***
- [47] Whilst the Agreement provides for dispute resolution among Member States by way of arbitration, it is silent on disputes with shareholders. 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,

¹⁷ Barbara Vargas v Organization of Eastern Caribbean States and Maxine Alexandre Nestor SLUHCV2017/0264 at Paras 6-25.

protection, or privileges for public companies as against shareholders and would contemplate that an action could be taken against a company by its shareholders.

- [48] Based on the dicta of Millet J in **re International Tin Council**, Ms. Thomas' argument that ECHMB is incorporated as a company in each of the Member States by their respective legislation and in Saint Lucia by virtue of the Act is incorrect. This Court could therefore have no jurisdiction over the Shares on that basis. However, 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.

Conclusion

- [49] Considering the foregoing, I make the following orders:

1. The application to set aside service of the claim is dismissed.
2. This Court declares that it has no jurisdiction to try the claim and it is therefore dismissed.
3. The parties will each bear their cost of these proceedings.

Cadie St Rose-Albertini
High Court Judge

By the Court

[SEAL]

Registrar