

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2010/0298

BETWEEN:

**THE LIQUIDATORS OF EUROFED BANK LIMITED
(IN LIQUIDATION)**

Intended Appellants

and

**THE SUPERVISORY AUTHORITY
(UNDER THE MONEY LAUNDERING (PREVENTION) ACT 1996)**

Intended Respondent

Appearances:

Mr. Nicholas Fuller for the Intended Appellants
Mr. Justin Simon Q.C. and Mr. Curtis Bird for the Intended Respondent

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2010: November 12, 26
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JUDGMENT

- [1] **MICHEL, J.:** On 21st September 2010 Harris,J. ordered that a Restraining Order of the United States District Court for the District of Columbia be registered in the High Court of Justice of Antigua and Barbuda and given effect with respect to all funds or property restrained thereby which are held or controlled by Scotia Bank, High Street, St. John's, Antigua and the Joint Liquidators of Eurofed Bank (In Liquidation). On 12th October 2010

the Learned Judge gave his reasons for decision in a written judgment delivered on that day by the Registrar of the High Court.

- [2] By Notice of Application filed on 20th October 2010 the Liquidators of Eurofed Bank Limited (In Liquidation) made application to the Court for leave to appeal against the aforesaid judgment of Harris, J. and for stay of execution, enforcement and all further proceedings on the decision and orders of Harris, J. dated 12th October 2010 and on the registered United States District Court Restraining Order dated 8th July 2005 pending the hearing of the appeal. An affidavit in support of the application, along with several exhibits and a draft order, were also filed by the Intended Appellants on 20th October 2010.
- [3] The application came before the Court on 12th November 2010, by which date the Intended Appellants had filed Written Submissions & Legal Authorities on 2nd November and the Intended Respondent, the Supervisory Authority (Under the Money Laundering (Prevention) Act 1996), had on 9th November filed an affidavit in response with several exhibits and written submissions & authorities in opposition to the application for leave to appeal and for a stay of execution.
- [4] On 12th November aforesaid the Court heard detailed arguments by Counsel for the Intended Appellants, Mr. Nicholas Fuller, and by Counsel for the Intended Respondent, Mr. Curtis Bird, who was led by the Honourable Attorney General, Mr. Justin Simon, Q.C., on the question of whether leave to appeal the decision of Harris, J. ought to be granted to the Liquidators of Eurofed Bank Limited (In Liquidation).
- [5] On this question, having perused the written submissions and authorities filed therewith, and having reviewed the oral submissions of Counsel made to the Court on 12th November 2010, the Court takes the view that the Intended Appellants may well have a very difficult task to convince the Court of Appeal to overrule the decision of Harris, J. in this matter but they do have a realistic prospect of doing so. The very verve, vigour and vitality of the arguments on both sides of the question, itself spoke eloquently to the fact that there is a real, if even a difficult, prospect of the Intended Appellants succeeding in an appeal in this

matter. On the authority therefore of the case of Othneil Sylvester v Faelleseje, A Danish Foundation, St. Vincent and the Grenadines Civil Appeal No. 5 of 2005, decided by the Court of Appeal of the Eastern Caribbean Supreme Court in February 2006, the Court accordingly grants leave to the Intended Appellants to appeal against the decision of Harris, J. contained in his written judgment dated 12th October 2010 on the basis that the intended appeal has a real prospect of success.

[6] Although Mr. Simon had intimated at the commencement of the hearing of the application for leave to appeal that if leave is granted then a stay would automatically follow, this is not consistent with Rule 62.19 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000, which provides that an appeal does not operate as a stay of execution or of proceedings. If an appeal does not do so, then the mere grant of leave to appeal could never do so.

[7] In the circumstances, Counsel for the Intended Respondent not having expressly directed any submissions to the issue of whether a stay should be granted on the facts of the present case, and Counsel for the Intended Appellants not having pressed his submissions in the light of the intimation by the Learned Attorney General, the Court will decline at this time to determine the application for a stay of execution and enforcement of the judgment of Harris, J. pending the hearing of the appeal. If the Intended Appellants proceed hereafter to file an appeal – having been granted leave to do so – then they may proceed at the same time to apply to this Court or to the Court of Appeal for a stay pending the hearing of the appeal.

[8] No order is made as to costs.



Mario Michel
High Court Judge