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

CLAIM NO. GDAHCV2008/0361

IN THE MATTER OF BANK CROZIER LIMITED (IN LIQUIDATION)

AND

IN THE MATTER OF THE OFFSHORE BANKING ACT 39 OF 1996

AND

IN THE MATTER OF THE COMPANIES ACT 1994, NO. 35

AND

IN THE MATTER OF THE INTERNATIONAL COMPANIES ACT, CAP 152

AND

IN THE MATTER OF AN APPLICATION BY GARVEY LOUISON
LIQUIDATOR OF BANK CROZIER LIMITED
(IN LIQUIDATION)

Applicant

Appearances:
Mr. Roysdale Forde and Mr. Sean Lewis for the Applicant
Mr. Dickon Mitchell and Ms. Cindy John for the Respondent

2010: February 15, June 9

RULING

[1] **PRICE FINDLAY, J.:** This is an application arising out of a series of Orders, but more particularly the Order of Justice Davidson Baptiste dated 24th November 2005. The terms of the Order were as follows:-

"1. That the Liquidator of Bank Crozier Limited (Grenada) do pay to the Liquidator of Bank Crozier International Limited (Saint Lucia) from the sum of US$3,500,000.00, the sum of US$2,000,000.00 from funds held in the RBTT Bank Grenada Limited savings account number 7669948 in the name of Garvey Louison, Liquidator of Bank Crozier Limited (Grenada).

2. That in accordance with paragraphs 1 and 3 hereof, RBTT Bank Grenada Limited do forthwith:

    (i) pay to Bank Crozier International Limited in Liquidation (Saint Lucia) the said US$2,000,000.00

    (ii) pay to Bank Crozier Limited in Liquidation the sum of US$1,500,000.00 held in the said account number 7669948.

3. That the payment of US$2,000,000.00 referred to in paragraphs 1 and 2(i) above shall be made by way of wire transfer to the bank account number 901070431 of Bank Saint Lucia Limited, Bridge Street, Castries, Saint Lucia, SWIFT: BOSL LC LC.

4. That the order of the Court made on the 23 may 2003 and all subsequent Orders is as a consequence discharged.

5. That this Order is made in accordance and is subject to the Settlement Agreement executed between the Liquidator of Bank Crozier International Limited in Liquidation and Bank Crozier Limited in Liquidation dated 24 November 2005 and attached hereto.

6. That there be no order as to costs."

[2] Consequent upon that Order certain actions were taken by the parties named in the Order and it is as a result of those actions that the present application comes before the Court.

[3] The present application seeks the following relief:

1. That under the Companies Act, s. 398(1)(a) the Applicant be given leave to institute a claim against RBTT Bank Grenada Limited of Grand Anse, St. George's, Grenada for –

   (a) Reinstatement of the balance to the account in the name of Garvey Louison, Liquidator of Bank Crozier Limited held by RBTT Bank Grenada Limited; and

   (b) Damages and losses interest and costs and such further and other relief sustained as a result of its release, disbursement and or transfer of the sum of US$2,000,000.00 from its account held therein to Bank Crozier International Limited (St. Lucia) (In Liquidation) without the authority of the Liquidator of Bank Crozier Limited (In Liquidation) and in breach of the aforementioned Orders of the Court particularly the Orders dated 24th November 2005 and the 20th December 2005.

[4] This application is based on s. 398 (1)(a) of the Companies Act, No. 35 of 1994 which states:

> "The liquidator in a winding up by a court may with the sanction either of the Court of the Committee of Inspection:
>
> (a) Bring or defend any action or other legal proceedings in the name and on behalf of the Company.

[5] The Company Bank Crozier Limited is incorporated under the International Business Companies Act. By s. 97 of that Act, the provisions of the Companies Act with respect to the winding up of a Company are made applicable to companies incorporated under the International Business Companies Act.

[6] The Applicant to these proceedings is the Liquidator duly appointed for and on behalf of Bank Crozier Limited (in Liquidation), Mr. Garvey Louison.

[7] Pursuant to the Order of Baptiste J. made on the 24th November 2005 the Bank, RBTT Grenada Limited paid the sum of US$2,000,000.00 to Bank Crozier International Limited

(in Liquidation) St. Lucia. They did so by way of wire transfer to the named account as set out in the Order.

[8] The Applicant contends that the Bank RBTT acted in breach of the Order and/or without the authorization of the Applicant.

[9] A brief history of this matter setting out the various Orders is necessary for the understanding of the sequence of events. They are as follows:

In Claim GDAHCV2003/0255 – Benjamin J. on the 22nd August 2003 ordered RBTT to allow Mr. Garvey Louison access to and the ability to operate two accounts subject to the maintaining of deposits in the sum of US$5,000,000.00 (five million) until the discharge of injunctions filed by Carla Bella Limited and Bank Crozier International Limited (hereinafter referred to as BCIL).

The Liquidator, Mr. Garvey Louison, on 24th November 2005 entered into a Settlement Agreement with BCIL to pay the sum of US$2,000,000.00 in settlement of the claims of the BCIL injunction. The Settlement Agreement was made an Order of the Court by Consent in Claim GDAHCV2003/0228 on 25th November 2005 – (Consent Order No. 1).

On 8th December 2005 Mr. Garvey Louison entered into a Settlement Agreement with Carla Bella Limited. This Settlement Agreement was also made into a Consent Order in Claim GDAHCV2003/0220 – (Consent Order No. 2).

With respect to Consent Order No. 1, it was ordered on 29th November 2005 in Claim No. 2003/0228 that the Consent Order be stayed pending the hearing of an application by Carla Bella Limited.

Justice Baptiste in respect of Consent Order No. 1 further ordered that the Order be stayed pending the hearing and determination of Civil Appeals 27 and 30 of 2003, which were appeals from applications filed by Daryl Sands, the then Comptroller of Bank Crozier Limited.

The Appeals of Daryl Sands referred to above were dismissed by the Court of Appeal and the matters were remitted tot eh High Court for hearing. A Conservatory Order was made by the Court of Appeal freezing US$3,000,000.00 pending the outcome of the remitted matters.

The claims of Sands which were remitted were dismissed by Baptiste, J. On 22nd December 2006 Benjamin J. ordered that US$3,000,000.00 be retained pending the application for leave to appeal to the Court of Appeal by Sands and that the aforesaid monies be paid out and distributed by the applicant only by Order of the Court.

Sands appealed to the Court of Appeal and the Court of Appeal granted leave to appeal. The Conservatory Order of Benjamin J. was varied to permit the payment of US$2,500,000.00 to Peter Foster, Liquidator of BCIL. RBTT in accordance with the Order made payment to Peter Foster.

The Court of Appeal dismissed the appeal of the Comptroller on 27th November 2008.

This Court on the 31st March 2006 consequent upon an application filed by RBTT on the 15th March 2006 made orders allowing the Liquidator access to part of the funds held in his name, amounting to US$1,800,000.00 and releasing such sums to Garvey Louison out of monies held by the said Garvey Louison in RBTT account number 7669948 and 5539986. This US$1,800,000.00 being part of the funds remaining in the said account beyond the US$3,000,000.00 frozen by the Conservatory Order of the Court of Appeal dated 20th February 2006.

[10] A stay was granted by Baptiste J. with respect to Consent Order No. 1 on 29th November 2005. The purpose of the stay was to allow Carla Bella to file an application by 10:00 a.m. the following day for (a) Carla Bella to be made a party to the St. Lucia action, and (b) for Carla Bella to have determined whether Settlement Agreement No. 1 and Consent Order No. 1 would constitute a preference payment in breach of ss. 448 and 458 of the Companies Act.

[11] Carla Bella however compromised its claim against the Bank via Settlement Agreement No. 2 and Consent Order No. 2 and did not pursue its application with respect to GDAHCV2003/0228.

[12] It is against this background that RBTT Grenada Limited paid the sum of US$2,000,000.00 to BCIL and which gives rise to the application before this Court.

[13] The issues to be determined are as follows:

1. What is the cost to be applied to determine whether leave is to be granted;

2. Is there any basis for the Applicant's claim;

3. Was there a stay in effect at the date when RBTT made payment to BCIL;

4. Whether the Consent Order is to be considered as a mandate to RBTT.

GRANT OF LEAVE

[14] The factors to be considered in deciding whether to grant leave are as follows:

Has the Liquidator demonstrated that there is a serious or substantial question to be tried;

Does the claim have a solid foundation and give rise to a serious dispute;

The balance of inconvenience.

[15] Esson, CJ. SC in **Columbia Trust v American Home Assurance Co.** [1990] CAN LII 1070 stated that leave should not be granted "except after a careful examination to decide whether a proper foundation has been established and this entails a very careful examination of both the factual and legal issues in the proposed action."

[16] It is clear from the authorities that the Court ought not to grant leave unless there is some foundation for the claim which has been put forward.

[17] The Liquidator is required to show that there is a serious or substantial issue to be tried and must establish to the satisfaction of the Court that there is a solid basis for the claim. If, in the Court's opinion, the claim is baseless or futile, leave will be refused.

[18] The Applicant in these proceedings contend that there was a stay of execution validly in force with respect to Consent Order No. 1 and that stay had the effect of preventing any payments being made pursuant to that Order.

[19] The Bank RBTT contends that the stay was no longer in effect, the Order making the Stay not having been complied with and further that there was no need for any formal Court Order discharging the Stay.

[20] Halsbury's Laws 4th Ed. Vol. 37 at para 438 states:-

> "A stay may be removed if good cause or proper grounds are shown or the continuance of the stay could cause or produce a prejudice or injustice or where there has been a change in the law. In the case of a general stay an application for its removal is necessary. On the other hand, the order to stay proceedings may define the circumstances in which it will be removed. For example, the order may provide that a specified act or condition should be performed or complied with within a specified time otherwise the action will be dismissed or the plaintiff would be at liberty to enter judgment within a specified period. In these circumstances, the stay is removed immediately upon performance or compliance with the specified act or condition, and no application for the removal of the stay is necessary."

[21] I am not satisfied that given the terms of the Order dated 29th November 2005 that it is an Order which defined the circumstances in which the stay would be removed.

[22] The Order of 29th November 2005 gave no indication that the matter would be dismissed or that the stay would be removed immediately upon the non compliance with the Order.

[23] And while Carla Bella never pursued the application, and never made the application to be joined as a party to GDAHCV2003/0228, in the opinion of the Court, the stay remained in force, unless and until an application was made to discharge same.

[24] I do not agree that the stay would have automatically expired on the failure of Carla Bella to file and serve the application.

[25] I accept the view expressed by Neill LJ in **Rofa Sport Management AG v DHL International (UK) Ltd.** [1989] 1 WIR 902 at page 91:-

> "In my judgment, for the sake of clarity and certainty, the word "stay" in an order should not be treated as a possible equivalent of a dismissal or a discontinuance. There may well, of course, be cases, however, where the person who wished to have the stay removed will face great difficulties. An action which has been stayed by consent following a compromise provides an obvious example. But, as it seems to me, the action following a stay remains technically in being. The action cannot proceed or resume its active life without an Order of the Court, but I do not consider that it can properly be regarded as dead in the same way as an action which has been dismissed or discontinued b y order."

[26] I find that the stay imposed by the Court in the Order of 29th November 2005 is still in force, no application having been made to set it aside.

[27] The fact that Justice Baptiste in February 2006 ordered that the same Consent Order be stayed is not, to my mind, an indication that he considered the first stay to be voided or no longer in existence. It may have been a mere oversight, but I will not guess as to why he made that further Order.

[28] I have no doubt that RBTT would have been well within the terms of the Order of 24th November 2005 when they paid the sum of US$2,000,000.00 to BCIL but for the stay.

[29] The Order, like many others made, spoke to the Bank (RBTT) directly. The question to be answered is, did RBTT need the authorization of the Liquidator to wire the US$2,000,000.00 to BCIL.

[30] Looking at the terms of the Order, especially paragraph 2 thereof: -

> That in accordance with paragraphs 1 & 3 hereof, RBTT Grenada Limited do forthwith:
>
> (i) Pay Bank Crozier International Limited (in Liquidation) the said US$2,000,000.00

(ii) Pay to Bank Crozier Limited (in Liquidation) the sum of US$1,500,000.00 held in the said account number 76669948.

[31] While the preceding paragraph states that the Liquidator was to pay the sum of US$2,000,000.00 to the Liquidator of BCIL, the Court clearly intended for RBTT to carry out the payment scheme. The Order is clear and unambiguous in its terms and RBTT did not require the authorization or permission of the Liquidator to disburse the funds as set out in the Order.

[32] It has been argued that the Bank was not a party to the proceedings and therefore could not purport to act without the sanction of the Liquidator. that argument does not find favour with the Court.

[33] Banks, without being parties to proceedings have been ordered by Courts to do or not do certain acts with respect to monies held on account by parties before the Court. The Bank obeys these direct Orders from the Court without reference to the party whose account(s) the Bank is ordered to act in relation to. In this case I see no difference between those orders and the direction contained in the Order in question.

[34] But for the stay which I find was in force at the time that RBTT paid the funds to BCIL I can find no fault in the actions of RBTT.

[35] There was no breach of contract here, as between customer and banker.

[36] Having considered all the circumstances of the case, I find that both on the factual and legal issues involved in the matter that there is a foundation for the claim put forward by the Applicants.

[37] I would therefore order as follows:-

1. That the Liquidator of Bank Crozier Limited (in Liquidation) Mr. Garvey Louison is hereby authorized to institute a claim in the name of Bank Crozier Limited (in Liquidation) against RBTT Grenada Limited of Grand Anse, St. George's, Grenada for:

Damages and loses, interest and costs and such further and other relief sustained as a result of its release disbursement and/or transfer of the sum of US$2,000,000.00 from its account held therein to BCIL (St. Lucia) in Liquidation in breach of the Order of the Court, particularly the Orders dated 29th November 2005 and 21st December 2005.

2. That each party to the proceedings bear their own costs.

[38] The issue of security for costs can be dealt with once the suit is filed by the Liquidator.

Margaret Price Findlay
High Court Judge