

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVGHCV0073 / 2003



**IN THE MATTER OF THE INTERNATIONAL BANKS ACT NUMBER 19 OF 1996
AND
IN THE MATTER OF AN APPEAL BY UNITED BANK LIMITED FROM A DECISION OF
THE SAINT VINCENT AND THE GRENADINES OFFSHORE FINANCE AUTHORITY**

UNITED BANK LIMITED

Appellant

and

THE SAINT VINCENT AND THE GRENADINES OFFSHORE FINANCE AUTHORITY

Respondent

Appearances:

Mr. Bertram Commissiong QC for the appellant
Mr. Ronald Burch-Smith for the respondent

2003: July 28, 31

IN CHAMBERS

JUDGMENT

ALLEYNE J.

- [1] On the 17th September 1998 United Bank was issued a Class 1 Banking License under the International Banks Act by the Offshore Finance Authority, a statutory body established by that Act and charged with the responsibility of ensuring the proper administration of the Act. In pursuance of that responsibility the Authority carried out an inspection of the Bank and sent the Bank a copy of its report under cover of a letter dated 4th December 2002. The Bank responded by letter dated 12th December 2002. It admitted and sought to explain the late filing of audited

accounts, and responded to other issues raised by the Authority. On the following day, the Authority issued to the Bank a “ **Notice to Show Cause**” pursuant to section 18(3) of the Act. The Notice required the Bank to attend a meeting on 19th December 2002 to show cause why the license must not be revoked and a liquidator appointed, or other action taken pursuant to section 18(2) of the Act. The Notice stated;

“The Authority is concerned that United Bank may be satisfying the conditions enumerated in section 18(1)(d), (e) and (f)”

and went on to enumerate a number of issues.

[2] At trial, learned counsel for the Authority informed the court that the only grounds on which the Authority is now seeking to sustain its decision are those set out in its letter to the Bank following the meeting as follows;

- (a) A perusal of the bank's financial records indicates that it (is) unable or appears likely to become unable to meet its obligations as they fall due;
- (b) The bank's beneficial owners cannot be properly identified and are not known as is contemplated by the Act;
- (c) Mr. Ian Leaf, who is (*sic*) does not satisfy the 'fit and proper criteria' exercises, (*sic*) influence, direction and/or control of the bank's operations.

[3] The meeting was held as scheduled. The affidavit of Julie Marshall Barnwell filed on behalf of the Bank alleges that by that time the Bank's auditors had submitted their accounts and report, and the Bank's representatives sought information on what was the factual basis or accounting principles on which the Authority had concluded that there was a preponderance of back to back loans on the Bank's

accounts and why, if the loans were fully secured, should there be cause for great concern. The deponent also alleged that at the meeting Mr. Commissiong, a Director of the Bank, told the representatives of the Authority that Mr. Ian Leaf, a former Director, was now a consultant to the Board, and his only contact with the staff might occur if the Board requested him to advise on the implementation of technical and administrative procedures, that Mr. Leaf no longer has any decision-making power on the Board and neither exercises control over or directs the staff. The Authority was asked to say on what evidence it had been determined that Mr. Leaf was not a 'fit and proper' person as contemplated under the Act. The Authority, according to the deponent, did not, and still had not at the date of the affidavit, answered that question. The deponent further said that at the meeting none of the Authority's representatives indicated any dissatisfaction with the answers given to its queries.

- [4] The Authority has not in any of its affidavits denied or in any way challenged this version of events.
- [5] By letter dated 29th January 2003, the Authority informed the Bank that it had decided to revoke its International Banking licence. Five grounds for this decision were given, but at trial, as earlier indicated, counsel for the Authority sought to defend only three.
- [6] Learned Queens Counsel for the Bank submitted that the Authority, in exercising its powers under section 18(3) of the Act, is bound to act fairly and in accordance with the rules of natural justice.
- [7] Section 18(1) of the Act authorizes the Authority, with the advice of the Minister, to take certain actions where it is satisfied of any of a number of facts. The conditions relevant to this case are:

“(d) is unable or appears likely to become unable to meet its obligations as they fall due.

“(e) ...

“(f) has contravened any provisions of this Act; or

“(g) has failed to comply with the conditions of its licence.”

[8] If any of these conditions are met, the Authority may take a number of actions including, most radically, revocation of the licence. The Authority may, alternatively, impose new or additional conditions upon the Licensee; the substitution of any director or officer of the Licensee; the appointment, at the expense of the Licensee, of a person to advise the Licensee and to report to the Authority; the appointment, at the expense of the Licensee, of a person to assume control of the Licensee's affairs, with all the powers of a person appointed as a receiver or a manager of a business under the Companies' Act.

[9] Subsection (3) provides that before ordering any of those actions the Authority shall give the holder of the licence the opportunity to show cause against the action.

[10] The revocation of an International Banking Licence under the Act is a serious action having far-reaching commercial and other consequences, and in keeping with the principles of fairness and the rules of natural justice and indeed with the provisions of the Act, the Licensee must be given an opportunity to show cause against the action. For this right to be meaningful the Licensee must be informed of the basis for the proposed action, that is to say, the facts or allegations on which the Authority relies. The case of **R v Huntingdon District Council, ex parte Cowan and another** [1984] 1 All ER 58 at 64b Glidewell J. said;

“The exercise of a licensing function, in my judgment, by any authority, is one to which the rules of natural justice (including the requirement of giving notice of the substance, at least, of objections, and giving some opportunity for applicant to respond to those objections) would normally apply.”

- [11] Counsel for the Bank cited **Judicial Review** by Supperstone and Goudie at page 153 in support of the proposition that the test of unfairness is not whether an unjust result has been reached, but was there an opportunity afforded for injustice to be done. The question has to be decided in accordance with the principles of fair procedure and if a tribunal adopts a procedure which is unfair, the court may quash the resulting decision. The learned authors say that the rule that no man shall be condemned unless he has been given prior notice of the allegations against him and a fair opportunity to be heard is a cardinal principle of justice. The learned authors continue;

“Accordingly, a duty to act in accordance with natural justice will arise in the exercise of a power to deprive a person of his livelihood or of his legal status where that status is not merely terminable at pleasure; or to deprive a person of liberty or property rights or of another legitimate interest or expectation....”

- [12] In the case of **R v Barnsley Metropolitan Borough Council, ex parte Hook** [1976 3 All ER 452] at page 456 in referring to an appeal against a decision banning Mr. Hook from trading in Barnsley Market for the rest of his life, Lord Denning MR held that that right cannot be determined without just cause and that so long as the stallholder pays the stallage he has a right to continue his business. “It is not to be taken away except for just cause and then only in accordance with the provisions of natural justice.”

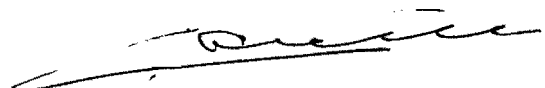
- [13] In the West Indian case of **Griffith v Barbados Cricket Association** [1989 41 WIR 48] at page 59 Sir Denys Williams CJ said;

“The rules of natural justice (i.e. that a man should know what is alleged against him and be given a reasonable opportunity to rebut the allegations...) have been the basis on which the courts have over the years controlled the decisions of statutory and contractual tribunals and bodies exercising judicial or quasi-judicial functions.”

- [14] In response Mr. Burch-Smith for the Authority submitted that the Bank was fully aware of what was alleged against it. In particular, the Bank's financial records

make it apparent that it is unable or appears likely to become unable to meet its obligations as they fall due. In support of this, Counsel sought to rely on the affidavit of Mr. Floyd Patterson, sworn and filed on the 14th July 2003. Mr. Patterson's affidavit, which purports to undertake an analysis of the Bank's financial reports, was not before the Authority at the time of the hearing or at any rate was not disclosed to the Bank at that time. Consequently the Bank had no opportunity to respond to it.

- [15] The affidavit of Judy Marshall Barnwell discloses a letter from St. Vincent Trust Services Ltd to the Authority dated 14th December 2001, exhibit JMB 11, which gives by way of affidavit the names of the directors and officers, the shareholder/ultimate owner and the actual beneficiaries of the Bank at that date. There is no evidence that the Authority questioned this information, nor is there evidence that the Authority gave any reason why it considered that Mr. Ian Leaf did not satisfy the "fit and proper" criteria, nor that the Authority alleged at the time of the meeting to show cause that Mr. Ian Leaf exercised influence, direction and/or control of the Bank's operations, an allegation which the Bank has denied.
- [16] It is clear to me that the Authority, in taking the action which it did, acted in breach of the rules of natural justice and on the basis of procedural unfairness in relation to the Bank. This vitiates the Authority's decision which, as a consequence, is declared null and void and set aside.
- [17] The appellant will have its costs of these proceedings in the sum of \$7,500.00.



Brian G. K. Alleyne
High Court Judge