

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

**CIVIL SUIT NO. SVGHCV118 /2002
119 / 2002**

BETWEEN:

**IN THE MATTER OF NEW BANK LIMITED
AND
IN THE MATTER OF NANO & SONS 1146 PRIVATE BANKERS
AND
IN THE MATTER OF THE INTERNATIONAL BANKS ACT NO. 19 OF 1996
AND
IN THE MATTER OF THE COMPANIES ACT NO. 8 OF 1994
AND
IN THE MATTER OF THE INTERNATIONAL BUSINESS COMPANIES ACT NO. 18 OF
1996**

Appearances:

Mr. Grahame Bollers and Mr. Ronald Burche-Smith for the Liquidator.
Mr. Ronald Marks for Thiery Nano.

2002:September 20, October 4

JUDGMENT

ALLEYNE J.

- [1] On July 31, 2002, the Liquidator of both these companies, New Bank Limited and Nano & Sons 1146 Private Bankers Limited, obtained orders from the court that Thiery Nano of unknown address, described as “a former shareholder and former mind and management” of each of the respective Banks, do attend the Judge's Chambers on Friday the 20th day of September 2002 at 9.00 am to be examined on oath in the liquidation proceedings, and to produce all books, papers and records in his possession or under his control relating to the respective Banks. It

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was further ordered that notice of the orders be effected by service on the Chambers of Ronald Marks, Solicitor, and by publication in two consecutive issues of a newspaper enjoying wide circulation in St. Vincent and the Grenadines.

- [2] On September 20, Ronald Marks, Solicitor, appeared to the summons acting for Thierry Nano, who, he informed the court, resides out of the jurisdiction in France and is unwilling to return to St. Vincent and the Grenadines because he is aware that if he did so he would be arrested and extradited to the United States of America for trial on certain criminal charges. Mr. Marks informed the court that Nano is ready and willing to respond to any questions, submitted in writing or otherwise, in France.
- [3] Mr. Bollers, for the Liquidator, pointed out that the applications were made under section 421 of the Companies Act for examination of Nano as an officer of the Banks, to answer questions as to his knowledge of the operations of the Banks and as to the whereabouts of documentation concerning the Banks which is missing. Counsel further pointed out that there was service of process in compliance with the court's order, and an affidavit of service had been filed. A penal notice had been endorsed on the Notice of proceedings. Counsel submitted that the relevant section and order thereunder required Nano to appear to be personally examined, and that the section does not make provision for the submission by the Liquidator of interrogatories. Counsel pointed out that there are no criminal proceedings pending in St. Vincent against Nano.
- [4] Counsel argued that in order for the Liquidator to do his job, and to fulfil his responsibilities in this Court-supervised winding up proceeding, he needs to examine Nano personally concerning missing documentation, depositors, and disposal of funds of the Banks which have been removed from the jurisdiction. He submitted that Nano cannot refuse to submit to the jurisdiction of the court.

- [5] Mr. Bollers asked the court to issue a warrant for the arrest of Nano in order that he be brought to St. Vincent to answer questions. He informed the court that he would secure the service and execution of the warrant through Interpol.
- [6] Mr. Bollers for the Liquidator, in answer to Mr. Marks' proposal that the court should order interrogatories or some other method of examination which would not require Nano to attend a hearing in St. Vincent in person and thus expose himself to the risk of arrest and extradition to the USA, referred me to the judgment of Megarry J. in **In re Rolls Razor Ltd. No. 2** [1970] 1 Ch. 576 at 595. All the learned judge there decided was that he had a discretion whether or not to order interrogatories as a preliminary to an oral examination, and that in the circumstances of that case, he would not exercise the discretion, but would order the oral examination. The case is not particularly helpful in the present context.
- [7] This court's jurisdiction does not extend to France, and a warrant issued in these civil proceedings could not be properly executed in that country. Section 422 of the Companies Act is interesting, in that it empowers the court to issue a warrant, *inter alia*, to arrest a contributory who is about to abscond to avoid examination, but this is not the situation in this instance. The court will not make a coercive Order where it is clear at the time of making the order that it will not be possible to enforce it for want of jurisdiction.
- [8] Thierry Nano has volunteered, through his Attorney Ronald Marks, to answer all questions put to him by the Liquidator. In light of the fact that this court has no power in the circumstances to enforce the attendance of Nano for an oral examination, I direct that the Liquidator submit written questions to Nano through his Attorney-at-Law Mr. Ronald Marks, to be answered on oath with copies of any relevant documentation, such answers to be supplied within 28 days of submission of the interrogatories to Mr. Marks. Further interrogatories may be issued if the Liquidator considers this necessary.

Brian G.K. Alleyne
High Court Judge

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