

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2009/0347

CLAIM NO. ANUHCV2009/0348

CLAIM NO. ANUHCV2009/0349

CLAIM NO. ANUHCV2009/0350

BETWEEN:

**IGORS KIPPERS
JEVGENIJS KIPPERS
MISSION FINANCE LTD
ELENA SPIVAK**

Claimants

AND

**STANFORD INTERNATIONAL BANK LIMITED
(In Liquidation)**

Defendant

Before:

Master Cheryl Mathurin

Appearances:

Sir Richard Cheltenham QC and Mr. Kelvin John for the Claimants

Mr. Kendrickson Kentish and Ms Kathleen Bennett for the Defendant

2010: March 18th; May 6th

RULING

- [1] **MATHURIN, M:** For convenience, the matters herein have been consolidated for the determination of the issue before me. The claims were all filed on the 26th June 2009 and subsequently served on the 29th June 2009. On the 28th July 2009, the Claimants requested Judgments in Default which were entered by the Court Office on the 5th August 2009. After an hearing on the 13th November, 2009 the judgments were set aside and the Parties were asked to file submissions on the validity of the Claims before the Court, an issue which was of great contention during the hearing of the applications to set aside. The hearing was set down for 18th March 2010 when the determination of the issue was reserved.
- [2] The issue of validity arose pursuant to an Order (the Order) after the hearing of an Application for the Liquidation and Dissolution of Stanford International Bank Limited (the Defendant) and the Appointment of Liquidators in Claim No ANUHCV2009/0149. The Petition was heard on 15th April 2009 and Harris J. having determined that it was just and convenient that Defendant be liquidated and dissolved under the supervision of the Court, made several directives outlining the powers of the liquidators in this regard. It is one of these directives that is the genesis of the issue before me today.
- [3] Paragraph 25 of the Order states as follows;
- “All actions, proceedings and any claims whatsoever and wheresoever initiated against the Bank, its assets and property, are hereby stayed and no person, which shall include a body corporate, shall bring or continue with a claim or proceeding in Antigua or Barbuda or elsewhere as against the Liquidators or the Bank without leave of this Honourable Court.”*
- [4] The Claims herein were all filed on 26th June 2009, some two and a half months after the Order and were done so without the leave of the Court as ordered. The Claimants contend that they were not present when the Order was made in the Liquidation proceedings and in the subsequent publications of the liquidation, there was no mention of the restriction which Paragraph 25 imposed. The Claimants also challenge whether the Judge has jurisdiction to make such an order and if it binds them, assuming its validity,

whether the order could refer to monies which are not the subject matter of the Defendant's assets or over which they had a lien prior to the liquidation. Finally, the Claimants contend that the Order is not one which the Court could validly make under the International Business Act Cap 222 and as such the Master, being of coordinate jurisdiction ought to pronounce on its validity.

- [5] The Defendant contends that the leave of the Court is a condition precedent to the filing of any Claims against the Defendant in accordance with the Order and as such, the Claims herein should be dismissed. The Defendant also contends that the Order in question is one that is quite normal in insolvency pleadings and although the restriction may not be one that is specifically mentioned in the International Business Act, it does not prevent the Court from regulating its own proceedings and laying down directives which in its view are necessary to resolve matters under its supervision. The Defendant asserts that the Court has an inherent jurisdiction to prevent the Court's resources from being wasted on hopeless claims in the absence of any statutory authority and this is further enhanced by the Overriding Objective of the CPR2000.
- [6] The Claimants have referred me to several authorities including;
Hoffman-La Roche & Co v Secretary of State for Trade and Industry (1975) AC 295
Attorney General v Times Newspapers Limited (1973) 3 All ER 54
Hussey v Palmer (1972) 3 All ER 744
In Re Wykeham Terrace (1971) Ch 204
National Commercial Bank v Olint Corp Ltd (2009) 1 WLR 1405
Re Stanford International Bank (In Receivership) (2010) EWCA Civ 137
- [7] The authorities, while compelling on the issue that there are instances and it is clear law that some of the assets of a company in liquidation may very well fall outside of the proceeds of liquidation and do not fall to be disbursed in accordance with the statutory scheme relating to liquidations, did not assist me on the issue of why the Order requiring leave of the Court before the filing of Claims could properly be ignored. Other authorities while referring to the nature of *ex parte* injunctive proceedings and the right of access by

parties to the court as a constitutional grant also did not assist as the Order did not seek to prohibit the approach of Parties to the Court but rather directed leave to obtain permission from the Court to commence proceedings. It seems to me that the request for leave is not an absolute bar to proceedings but rather, a tool that the Court employed in maintaining its supervision of the liquidation and ensuring that the liquidators were not deluged with claims by persons who may be seeking to jump the queue in securing their funds ahead of others. As long as the essence of a litigant's right to access the court is not extinguished, a court has the right to regulate its processes as it thinks fit absent any statute or rule to the contrary.

[8] A case relied on by the Defendant is that of **Bhamjee v Forsdick et al** (2004) 1 WLR 88 where the UK Court of Appeal considered the extent of the Court's jurisdiction to prohibit any proceedings being brought before it without leave. Inasmuch as the matter specifically concerned a vexatious litigant, the Defendant suggests that the principle of that matter explains the power of the Court to protect its process from abuse. In that case reference is made to Lord Diplock's reasoning in **Bremer Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corpn Ltd** (1981) AC 909 where he said that "*it would be conducive to legal clarity if the use of the two expressions, the inherent power and the inherent jurisdiction of the court, was confined to the doing by the court of acts which it must have power to do in order to maintain its character as a court of justice.*" In his discussion of the matter, Lord Phillips of Worth Matravers MR referred to **H v United Kingdom** (1985) where it was stated that "*some form of regulation of access to court is necessary in the interests of proper administration of justice and must therefore be regarded as a legitimate aim.*"

[9] The Defendant states that the question of whether an order of the Court can be disregarded has been laid to rest as early as 1984 in the case of **Isaacs v Robertson** Privy Council decision at 3 WLR 705 where it was held that an order of the Court is valid unless set aside, varied or successfully appealed. The distinguishing factor in that matter however is that the Parties at all material times knew of the order in question. It seems to me that this however would make no difference in its application. An order of the Court is

binding on everyone whom it concerns and it is not within the power of a court of coordinate jurisdiction to carve out exceptions to its operation. In this particular instance where the Claimant seeks to query the jurisdiction of the Court to make the Order and upon the Court obviously deciding that it had the jurisdiction to so do, the proper course would have to have been an appeal against the Order on the ground that such a decision on jurisdiction was erroneous. In that regard I therefore conclude that as Master with coordinate jurisdiction, I am unable to pronounce on the validity of the Order in question and I am restricted to the terms of the Order.

[10] In the circumstances, the proceedings before me being commenced without the leave of the Court are clearly not in compliance with the Order and are as such are improperly before the Court. The Claimants have suggested that in the event that I arrive at this conclusion I should stay the proceedings and allow them the opportunity to seek leave as the Order directs in the Liquidation proceedings. This would, they assert, be in keeping with the Overriding Objective of the CPR 2000 to save parties time and expense. They have provided me with no authority to suggest that this can and should be done. As attractive a resolution as it sounds, to do so would be to allow a process to continue in a way not provided by the Order which remains a valid and binding order and as such I decline to follow the suggestion and accordingly order that the claims herein be struck out with costs to the Defendant to be determined by the Court if not agreed.



CHERYL MATHURIN
MASTER