

GRENADA

**IN CHAMBERS OF THE COURT OF APPEAL
IN SUPREME COURT OF GRENADA**

APPEAL CASES NO.27 OF 2003 AND 30 OF 2003

BETWEEN

DARYL SANDS

**CONTROLLER OF BANK CROZIER LIMITED
APPELLANT/RESPONDENT**

AND

GARVEY LOUISON

**LIQUIDATOR OF BANK CROZIER LIMITED
RESPONDENT/APPLICANT**

Appearances:

In case No. 27 Of 2003, Ms Sheila Harris for the Appellant/Respondent,
And Ms. Claudette Joseph for the Respondent/Applicant
In Case No. 30 of 2003, Ms. Lisa Taylor for the Appellant/Respondent
And Ms. Claudette Joseph for the Respondent/Applicant

2004: July 1

JUDGEMENT

(1) **ARCHIBALD, J A, (Ag):** This Judgment relates to the matters of:

- a) Civil Appeal No.27 of 2003 in which the Appellant Daryl Sands, Controller of Bank Crozier Limited (“the Controller”) filed Notice of Appeal on 16 December 2003 against a Judgment of Pemberton J made 17 November 2003, the Respondent in the Appeal being Garvey Louison, Liquidator of Bank Crozier Limited (“the Liquidator”):
 - b) Civil Appeal No. 30 2003 in which the Controller filed Notice of Appeal on 23 December 2003 against the Order of Pemberton J made 29 October 2003, the Respondent in the Appeal being the Liquidator.
- (2) Both appeals became the subject of letters request dated 3 February 2004 from the Liquidator seeking security for cost from the Controller within seven days on the sole ground that the Controller was not resident within the jurisdiction of the Court. One letter requested EC \$ 150,000 security in Appeal Case 27 of 2003. The other letter requested EC \$ 50,000 security in Appeal Case 30 of 2003.
- (3) The Controller replied by two letters dated 5 February 2004 denying the security requests for reasons stated therein. The reply to the \$150,000 request contained four enumerated reasons. The reply to the \$50,000 request gave a single reason that non-residency in the jurisdiction was not a requirement in law as a basis for giving security.
- (4) On 2 March 2004 the Liquidator filed two separate Applications supported by two separate Affidavits of the same data sworn by the Liquidator seeking Orders of the Court of Appeal for the Controller to give security in each of the two Appeals; that in the meantime all further proceedings be stayed; and that each Appeal should stand dismissed if such security is not provided in the time prescribed.
- (5) In his Affidavits supporting the security Applications in Appeal Case 27 of 2003, the Liquidator proposed EC \$254,700 security according to an exhibited costs estimated (**Exhibit GL5**), and gave reasons other than non-residency as grounds for the Application.
- (6) In his Affidavits supporting the security Application in Appeal Case 30 of 2003 the Liquidator proposed EC \$256,500 security according to an exhibited

costs estimate (**Exhibit GL10**) and gave reasons other than non-residency as grounds for the Application.

- (7) The issue of security for cost came before Brain Alleyne JA who, having heard Counsel for the Controller and the Liquidator, made Orders dated 8 march 2004 entered 9 march 2004 for the parties to file Affidavits, Written Submissions, Response by certain prescribed dates up to 19 April 2004, and for the “Matter to be decided by the Court on those Written Submissions”.
- (8) Both parties have furnished the Court with Affidavit evidence and skeleton Arguments of Counsel to support their rival contentions.
- (9) I have found no or no persuasive new fact or circumstances to justify an increase in **(a)** the security application from \$150,000 in the letter request to \$254,700 in the Liquidators Affidavit evidence in Appeal case 27 of 2003 or **(b)** The security applications from \$50,000 in the letter request to \$256,500 in the Liquidator’s Affidavit evidence in Appeal case 30 of 2003.
- (10) The Controller’s Affidavit evidence has satisfactorily explained his delay and difficulty in paying \$5,000 costs ordered against him in the other proceedings; he has satisfied me on evidence that his non-residency in the jurisdiction is not a factor to be construed against him on these Applications; he has satisfied me that he is not impecunious in fact or law; and he has satisfied me that he will do his best to obey any Court Order for him to give security within his means.
- (11) But the Affidavit evidence as a whole from both leaves me with a clear impression that despite his best efforts in the future to meet a Court Order for costs of whatever size, the Controller has not put in place or is in control or any arrangements to do so in a timely manner, and such a failure will prejudice the Liquidator as a litigant in these proceedings.
- (12) I would hold, on a study of all the law and authorities place before me by both parties that the Court, in determining whether to order a party to give security for costs, must consider **(a)** the likely ability of that party to pay the costs of the appeal if ordered to do so, and **(b)** whether in all the circumstances it is just to make the order.

(13) I have taken into account that the Controller, according to the evidence, was appointed as such by the Minister of Finance under section 20 of the Offshore Banking Act 1996, and that his litigation efforts and responsibilities, as he perceives them, are being carried out in good faith with a public interest aim. This factor in the circumstances of these Appeals, coupled with big difference between the letter request of 3 February 2004 for \$150,000 security in Appeal Case 27 of 2003, and the letter requested of the same date for \$50,000 in Appeal Case 30 of 2003, which difference vanished in principle and fact one month later on the Liquidator's Affidavit of march 2004 in support of the Applications, has constrained me to conclude that "the amount of security sought is excessive" as argued in paragraph 41 of the Skeleton Arguments of the Controller's counsel with specific reference to the letter request for \$150,000 in Appeal Case 27 of 2003.

(14) For the reason given above I hold that the Liquidator should have an Order made in his favour in an amount which should be within the ability of the Controller to pay at the prescribed time and that I should exercise my discretion accordingly because in all the circumstances it would be just to make the Order, in respect of each Appeal Case 27 of 2003 and 30 of 2003.

(15) Accordingly I do hereby Order that-

- a) In Appeal Case 27 of 2003, the Controller do within 14 days of this Order give security for the Liquidator's costs in the amount of EC \$100,000 by deposit of the same to Court, that in the meantime all further proceedings be stayed; and that Appeal 27 of 2003 should stand dismissed if such security is not provided within the time prescribed.
- b) In Appeal Case 30 of 2003, the Controller do within 7 days of this Order give security for the Liquidator's costs in the amount of EC\$50,000 by deposit of the same to court; that in the meantime all further proceedings be stayed; and that Appeal 30 of 2003 should stand dismissed if such security is not provided within the time prescribed.
- c) That the costs of the Applications be paid by the Controller agreed in the amounts of

EC \$1,500 in Appeal Case 27 of 2003

EC \$1,500 in Appeal Case 30 of 2003

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J.S Archibald Q.C
Acting Justice of Appeal