

GRENADA

SUPREME COURT OF GRENADA

AND THE WEST INDIES ASSOCIATED STATES

IN THE COURT OF APPEAL

(CIVIL)

CIVIL APPEAL NO. 30 OF 2003

IN THE MATTER OF BANK CROZIER LIMITED (IN LIQUIDATION)

AND

IN THE MATTER OF THE OFFSHORE BANKING ACT, 1996, NO.39

AND

IN THE MATTER OF THE COMPANIES ACT, NO.35

AND

IN THE MATTER OF THE INTERNATIONAL COMPANIES ACT, CAP. 152

BETWEEN:

DARYL SANDS, CONTROLLER OF BANK CROZIER LIMITED

APPELLANT

AND

GARVEY LOUISON, LIQUIDATOR OF BANK CROZIER LIMITED

RESPONDENT

Notice of Appeal

TAKE NOTICE that the Appellant (being the Applicant in the court below) hereby appeals to the Court of Appeal Against the Judgment of Madam Justice Charmaine

Pemberton made on the 29<sup>th</sup> day of October 2003, a copy of which is attached to this Notice.

**1. Details of order appealed:**

The Appellant is appealing the order of the High Court which order dismissed as being “premature” the Appellant’s application made pursuant to Section 398(3) and Section 399(5) of the *Companies Act*, 1994, n0. 35 seeking an order reversing the execution of a previous order of the High Court issued August 22, 2003 and for related directions associated with such reversal.

**2. Details of findings of fact and/or law, which are challenged:**

The Appellant seeks to challenge the following findings made by the court below:

- (a) The learned Judge erred in law in dismissing the Appellant’s application on the basis that it was premature
  
- (b) The learned Judge erred in law in miscomputing Section 399(5) of the Companies Act, 1994, No. 35;
  
- (c) The learned Judge erred in fact finding that the affidavits in support of the Appellant’s application offered no proof on their face that the Appellant was a creditor of Bank Crozier Limited;
  
- (d) The learned Judge erred in fact and/or in failing to find the Appellant as a “person aggrieved” under Section 399(5) of the Companies Act, No. 35 of 1994;
  
- (e) The learned Judge erred in law in ordering an ordinate amount of cost as against the Appellant in the circumstances.

**1. Grounds Of Appeal:**

- (a) The Appellant is dissatisfied with the whole of the Judgment made by the Court below.

- (b) The Appellant will contend that the judgment made goes against the weight of the evidence, skeleton arguments and the supporting authorities submitted in support of the application in respect of which the judgment complained of was made.
- (c) The Learned Judge erred in law in dismissing the application before the High Court on the Basis that the application was premature;
- (d) The Learned Judge in fact and/or in law finding that there was no proof on the face.
- (e) The Learned Judge erred in law by misconstruing the term “*person aggrieved*” as contemplated by Section 399(5) of the *Companies Act, 1994, No. 35* and, in particular, rendered a decision based upon a perverse or otherwise improper statutory interpretation that in order to qualify as a “*person aggrieved*” an applicant seeking relief under Section 399(5) must be either a creditor or contributory of the company in liquidation;
- (f) The Learned Judge erred in law and/or in fact by failing to find the Appellant was a “*person aggrieved*” as contemplated by Section 399(5) of the *Companies Act, 1994, No. 35*;
- (g) The Learned Judge erred in law in awarding an inordinate amount of cost as against the Appellant in all of the circumstances; and
- (h) The Appellant will, if permitted, rely on such further grounds of appeal as appear to be appropriate upon being served with the written reasons or notes of evidence in relations to the hearing leading to the order complained of.

## **1. Order Sought**

The Appellant seeks the following relief:

- (a) That the order of the High Court made on the 25<sup>th</sup> day of October, 2003 be set aside;
- (b) That the Court of Appeal substitute its Order in favor of the Appellant, specifically granting the Appellant an Order reversing the Respondent’s execution of the Order issued by the High Court on August 22, 2003 and directing the Respondent to immediately reimburse the Appellant with all funds transferred from the Appellant’s accounts into the Respondent’s possession since August 22, 2003 together with interest thereon;

- (c) That the Respondent immediately reimburse the Appellant for any costs paid by the Appellant to the Respondent further to the order appealed from herein together with interest; and
- (d) That costs of the application before the High Court and of this Appeal be awarded in favor of the Appellant on a solicitor-and-client- basis.

**1. Any specific power which the Court is ask to exercise**

The Court is asked to take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objectiv4e pursuant to Part 26 Rule 26.1(1)(w) of the Civil Procedure Rules 2000.

Details of other parties to the proceedings in the court below:

Name	Address for service
Mr.Garvey Louison	Amicus Attorneys Legal Practitioners for the Respondent Church Street, St.George's Grenada

Dated            23<sup>rd</sup> December 2003

Signed           .....

Lisa Taylor  
HENRY HUDSON\_PHILLIPS & CO.  
Attorneys-at-Law for the Appellant

The Court office is at the Supreme Court Registry, Church Street, St.George's telephone number 440-2030, FAX 440-6695. The office is open between 8:00a.m and 4:00p.m Monday to Friday except public holidays.

The Claimant's address for services is C/O Henry Hudson-Phillips &Co. Young Street, St.George's, Grenada