

**THE EASTERN CARIBBEAN SUPREME COURT**

**GRENADA**

**IN THE COURT OF APPEAL**

**Civil Appeal No.17/03**

**BETWEEN:**

**DARYL SANDS, CONTROLLER OF BANK CROZIER LIMITED**

**APPELLANT**

**AND**

**GARVEY LOUISON, LIQUIDATOR OF BANK CROZIER LIMITED**

**RESPONDENT**

**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, 1994, NO.35**

**AND**

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

**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 27<sup>th</sup> day of November 2003, a copy of which is attached to this Notice.

**1. Details of order appealed:**

The Appellant is appealing the judgment of the High Court dismissing the Appellant's application pursuant to section 398(3) of the Companies Act, 1994, No. 35 for directions and orders on, inter alia, the Appellant's entitlement to indemnification by the estate of Bank Crozier Limited and the Appellant's security interest in the assets of Bank Crozier Limited in support of such indemnity.

**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 fact in finding that:

- (i) The Appellant had made no claim as a creditor to the Respondent;
- (ii) There was no evidence that the Appellant had performed duties as controller of Bank Crozier Limited

(b) The Learned Judge erred in fact and/or in law in finding that:

- (i) The Appellant had not established his right or entitlement to be reimbursed his cost and expenses from Bank Crozier Limited;
- (ii) There was nothing to classify the Appellant as a creditor or a contributory and, as a consequence, in finding that he had no locus standi to make the application;

(c) The Learned Judge erred in law in finding that:

- (i) It was exclusively the function of the Minister of Finance to determine the cost expenses and remuneration of the

Appellant as Controller and not that of the licensee over which the Appellant was appointed;

(ii) The Appellant's appointment lapsed by operation of law upon the appointment of the Respondent as Liquidator of Bank Crozier Limited;

(iii) The Appellant's claim as a creditor failed as it was hypothetical;

(iv) The application before the High Court was not the appropriate method to seek the relief as prayed;

(v) The Appellant as Controller was not clothed with the rights of a Receiver; and

(d) Such further and findings of fact and/or law as may appear.

**3. 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 and/or in fact by findings that the Appellant had no locus standi to make the Application under Section

398(3) of the Companies Act, 1994, No.35 having found that on the law and evidence presented there was nothing to classify the Appellant as a creditor of Bank Crozier Limited.

- (d) The Learned Judge erred in law by misconstruing Section 398(3) of the Companies Act, 1994, No. 35 and by applying a restrictive interpretation of the phrase “any creditor” in determining the issue of the Appellant’s locus standi.
  
- (e) The Learned Judge erred in law by finding that the Appellant had no locus standi on the basis that his appointment as Controller lapsed by operation of law upon the appointment of the Liquidator.
  
- (f) The Learned Judge erred in law by misconstruing the Minister of Finance’s prerogative pursuant to section 20(1) (v) of the Offshore Banking Act, No 39 of 1996,
  
- (g) The Learned Judge erred in law by finding that the Appellant, as Controller, is not clothed with the rights of a Receiver vis-à-vis an indemnity from and a security interest over the assets of Bank Crozier Limited.
  
- (h) The Learned Judge erred in fact by finding that the Appellant had never made a claim to the Liquidator.
  
- (i) The Learned Judge erred in law by refusing to grant the Appellant relief sought in finding that:
  - The Appellant had not established his right of entitlement for reimbursement of his costs and expenses from Bank Crozier Limited;

- The Appellant had not produced evidence that Bank Crozier Limited or the Liquidator ought to indemnify the Appellant for expenses incurred in defending litigation brought against him in his capacity as Controller of Bank Crozier Limited;

- The Appellant's claim was hypothetical

- (j) The Appellant will, if permitted, rely on such further grounds of appeal as appear to be appropriate upon being served with the written notes of evidence in relation to the judgment.

#### **4. Order Sought**

The Appellant seeks the following relief:

- (a) That the judgment of the High Court made on the 17<sup>th</sup> day of November, 2003 be set aside;
- (b) That the Court of Appeal substitute its judgment in favor of the Appellant, specifically granting the Appellant an Order containing direction that he has been and shall continue to be indemnified by the estate of Bank Crozier Limited until such time as his costs, expenses and contingent liabilities have been determined and properly reimbursed, which indemnification is and shall continue to be secured by the assets of Bank Crozier Limited in priority to the general body of creditors subject only to prior secured interests; and
- (c) That costs of the application before the high Court and of this Appeal before the Court of Appeal be awarded in favor of the Appellant.

#### **5. Any specific power, which the Court is asked 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 objective pursuant to part 26 Rule 26.1 91) (w) of the Civil Procedure Rules 2000.

**6. Details of other parties to the proceedings in the court below:**

Name	Address for Service
(a) Mr.Garvey Louison	Amicus Attorneys

Legal Practitioners for the Respondent  
Upper Church Street  
St.George's

Dated the 16<sup>th</sup> day of December 2003

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SEON & ASSOCIATES

Attorneys-at-Law for the Appellant

The Court office is at York House, 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.

Address for service of the Appellant is:

St. Martin's

Lucas Street

St.George's