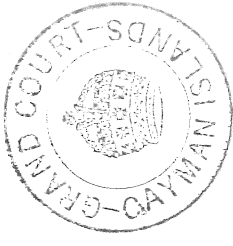


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IN THE GRAND COURT OF THE CAYMAN ISLANDS

PCCL 1 of 1999
Cause No. 379 of 1999
PCCL 2 of 2002

IN THE MATTER of the Proceeds of Criminal Conduct Law (2001 Revision)

AND IN THE MATTER of Euro Bank Corporation (in Liquidation)

AND IN THE MATTER of Crystal Limited

BEFORE THE HONOURABLE MR. JUSTICE KELLOCK (IN CHAMBERS)

APPEARANCES:

Cheryll Richards for the Attorney-General
Colin McKie of Maples and Calder for Euro Banks Corporation (in Liquidation)

REASONS FOR JUDGMENT

On March 10, 2003 I made a costs order which followed upon the judgment of my brother Henderson J. dated October 25, 2002. The last mentioned judgment put an end to proceedings commenced by the Attorney-General against Euro Bank in respect of money standing to the credit of Crystal Limited (“Crystal”) in that bank.

There were in all 3 proceedings.

In the first proceeding the Attorney-General sought a restraint order under section 10 of the Proceeds of Criminal Conduct Law (2001 Revision) (“the PCCL”) restraining Euro Bank (which

is in liquidation) from dealing in any way with funds which were or might become due to Crystal. In the second proceeding the Attorney-General sought an order against Crystal (one of the bank's depositors) restraining it from making use of those funds. In the third proceeding (the winding up proceedings) the Attorney-General put forward some other claims, but these were withdrawn before the argument before Mr. Justice Henderson commenced.

The relief claimed by the Attorney-General in the applications to Henderson J, constitute a second attempt to obtain the relief originally provided for by a restraining order obtained *ex parte* in November 2000. That order was eventually set aside as the Attorney-General could not establish the necessary grounds to support it. The Attorney-General then sought to persuade Henderson J. to grant the relief provided for in the discharged *ex parte* order by putting a new spin on old facts. My brother Henderson was not persuaded and the applications were dismissed with leave to the liquidators of Euro Bank to apply for costs. The liquidators made that application to me on March 10, 2003.

I note that Mr. Justice Henderson's reasons make it clear that the restraining order sought would, if granted, have afforded the Attorney-General with the opportunity to obtain confiscation orders in respect of Crystal's funds held by the Bank.

Ms. Richards urged me to deny the liquidators their costs on the grounds that the Attorney-General's participation in these proceedings was in the public interest and the liquidators participation in the argument before Henderson J. was minimal if not unnecessary as counsel for

Crystal assumed and discharged the burden of persuading Henderson J. to dismiss the applications for the restraint orders.

Notwithstanding these submissions I made an order requiring the crown to pay the costs of the bank and the liquidators but directed they be taxed as the costs of one summons.

On April 16, 2003, Ms. Richards sought leave from me to appeal to the Court of Appeal from that order.

The grounds put forward in support of that application were essentially the same as those advanced on March 10, 2003.

Mr. McKie pointed out that it was not until the commencement of the argument before Henderson J. on September 18, 2002 that the learned Judge made it clear that there was a common threshold issue raised in each application. That issue was whether or not there were reasonable grounds for thinking that the money on deposit with Euro Bank for Crystal was the proceeds of criminal conduct. If not, the applications against Crystal and Euro Bank would fail.

I have consulted Mr. Justice Henderson and he has confirmed the accuracy of Mr. McKie's submission. I, therefore, have no doubt that Mr. McKie was required to prepare for the hearing and did, in fact, provide the court with skeleton arguments. The liquidators were primary parties to the proceedings and there is no basis for regarding them as interveners, third parties, or

persons whose interests could be protected by a watching brief. I am therefore of the opinion that any appeal on that ground would be bound to fail.

With respect to the argument that the Attorney-General should be immune from liability for costs in this case, I note firstly that the Crown's cost liability is specifically addressed by section 24(5) of the Judicature Law (as amended by the Judicature (Amendment) (Costs) Law 2001). This section states that "Costs, including wasted costs, may be awarded to or against the Crown"

Secondly, Order 62 of the Grand Court Rules was replaced in 2002 by a new order which has as "its overriding objective" that a "successful party to any proceeding should recover from the opposing party the reasonable costs incurred by him..." (Order 62 rule 4(2)). Having so provided, Order 62 makes provision for "Cases Where Costs Do Not Follow The Event", in Rule 6 sub-rules 1 to 8. None of these subrules mention the Attorney-General or the Crown or provide an exception to the overriding objective of Order 62. It is of course possible that in some exceptional or unusual situation the court might consider releasing the Crown from liability for costs but this is definitely not such a case. Indeed, in this case the proceedings could be viewed as a contest between two competing funds; on the one hand, the general revenue account of the Cayman Islands Government and on the other, the amount realized by the liquidators for the purposes of paying the creditors (depositors) of the bank whose ranks will include many people with no involvement whatever in any alleged criminal conduct.

Thirdly, I discovered following the argument of the application for leave to appeal (heard Wednesday, April 16, 2003) that Mr. Justice Henderson had released his judgment in another

similar proceeding brought by the Attorney-General (In the matter of an Application by the Attorney-General pursuant to the Proceeds of Criminal Conduct Law (2001) Revision and In the matter of Donald Fraser (defendant) and another, PCCL# 1/99. That is the same file as the application against Euro Bank in respect of Crystal.

In the *Fraser* case, Mr. Justice Henderson was asked to award costs against the Crown to two parties who assets had been frozen by a restraint order but who had been successful in obtaining a variation to it. Ms. Richards appeared for the Attorney-General on April 10, 2003 to make essentially the same submissions to Mr. Justice Henderson that she made to me on March 10, 2003 and again on March 16, 2003 in support of the application for leave to appeal.

Mr. Justice Henderson made the costs order against the Crown in his April 14, 2003 judgment for essentially the same reasons I have set out above.

It is to be regretted that Ms. Richards did not inform me on April 16, 2003 that Mr. Justice Henderson had been required to decide the same issue on April 10, 2003 and had decided it on April 14, 2003. Likewise, Mr. Justice Henderson advises me that Ms. Richards did not tell him that I had (in March) rejected the arguments she put to him on April 10, 2003.

In the circumstances, I do not think it would be appropriate to grant the leave sought as I am firmly of the view that there is no proper basis for an appeal. Even if I were in doubt, the proper course would be to deny leave to appeal (see Practice Note paragraph 8 (1999) 1 ALL E.R. 186.

Leave to appeal is therefore refused with costs to be taxed if not agreed.



Mr. Justice Kellock



Dated: April 25, 2003

Reasons released: April, 2003