CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NOS:281 and 282/95

11-12-95

BETWEEN: LLOYDS BANK INTERNATIONAL (CAYMAN) LIMITED PLAINTIFF

AND : BYLEVEN CORPORATION S.A. DEFENDANT

BETWEEN : LLOYDS BANK INTERNATIONAL (CAYMAN) LIMITED PLAINTIFF

AND : UNYLEVEN CORPORATION S.A. DEFENDANT

Mr. Charles Quinn for the Fernandez family applicants
Mr. James Bergstrom for Lloyds Bank International (Cayman) Ltd.
Mr. Angus Foster for the Unyleven and Byleven Corporations
Mrs. Julene Banks for the Attorney General

ORDERS

Schofield J.

Because there is an issue in this application which does not appear to have been aired before in this Court I have adjourned the delivery of these orders into Open Court.

On the 20th October 1995 I made Beddoe orders in these matters on the applications of Lloyds Bank International (Cayman) Ltd. The applicants in this application who were brought in as parties to the original applications now wish to appeal against my decision to the Court of Appeal.

The first point I had to decide upon was whether the applicants needed

leave to appeal. The second point was, if leave is required whether that leave shall be granted. The portion of the Court of Appeal Law relevant to this application is section 4 (f) which says (so far as we need recite it):

> "No appeal shall lie-
> (f) without leave of the Grand Court, or of the Court, from an interlocutory judgment made or given by the Judge of the Grand Court....."

The question for determination was whether an order on a Beddoe application is an interlocutory judgment. What is final and what is interlocutory is a difficult question which has exercised the Courts in England on numerous occasions. It seems that the Court of Appeal in England is now committed to the approach adopted by Lord Denning MR in Salter Rex & Co v Ghosh [1971] 2 All ER 865 (see the judgment of Sir John Donaldson MR in white v Brunton [1984] 2 All ER 606, 608). The test is the true nature of the application rather than the nature of the order made. Does an application for directions on a Beddoe summons finally determine the matters in litigation? I think not even though, as here, a Beddoe application may be made on an originating summons and in respect of proceedings in another jurisdiction. It is, in its nature, a directions hearing and it is usual to include in the order that further directions may be sought. Such was the case in these applications. In Salter Rex v Ghosh (Supra) Lord Denning

MR had this to say at p.866:

> "The question of 'final' or 'interlocutory' is so uncertain that the only thing for practitioners to do is to look up the practice books and see what has been decided on the point. Most orders have now been the subject of decision. If a new case should arise, we must do the best we can with it. There is no other way."

Counsel could find only one other case is which an appeal had been lodged in this jurisdiction against a Beddoe order. No one can remember whether leave was applied for in that case. The files are now in the archives. It is common ground, however, that the practice in England is for leave to be applied for. Section 20 (2) of our Grand Court Law says:

> "20.(2) In any matter of practice or procedure for which no provision is made this or any other Law or by any Rules, the practice and procedure in similar matters in the High Court in England shall apply so far as local circumstances permit and subject to any directions which the Court may give in any particular case."

That the practice in England is that leave is necessary fortifies my view that leave to appeal must be applied for in respect of these orders.

Should I grant such leave? The application was strenuously opposed. The argument against the grant of leave was that my judgment involved the exercise of a discretion and as the applicants can point to no misdirection on or misunderstanding of the law in the judgment there is no basis upon which the Court of Appeal can interfere with it. The following passage from the speech of Lord Diplock in Hadmor Productions Ltd v Hamilton and others [1982] 1 All ER, 1042 at p. 1046 was cited:

> "Before adverting to the evidence that was before the judge and the additional evidence that was before the Court of Appeal, it is I think appropriate to remind your Lordships of the limited function of an appellate court in an appeal of this kind. An interlocutory injunction is a discretionary relief and the discretion of its own. It must defer to the judge's exercise of his discretion and must not interfere with it merely on the ground that the members of the appellate court would have exercised the discretion differently. The function of the appellate court is initially one of review only. It may set aside the judge's exercise of his discretion on the ground that it was based on a misunderstanding of the law or of the evidence before him or on an inference that particular facts existed or did not exist, which, although it was one that might legitimately have been drawn on the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal, or on the ground that there has been a change of

circumstances after the judge made his order that would have justified his acceding to an application to vary it.

However, this is the first case to the knowledge of those involved in it where this Court has authorised a Trustee to indemnify a Protector of the trust for the expenses involved in the Protector defending proceedings in which the Trustee is involved. Whilst there is previous authority for a third party being indemnified for such expenses out of a trust fund this is a sufficiently important point, and the judgment itself raises sufficiently arguable matters, for me to grant leave to appeal. After all the bias must always be towards allowing the Court of Appeal to consider the complaints of a dissatisfied litigant (see the judgment of Sir Denise Malone CJ. in Universal and Surety Company Limited 1992-93 CILR 157 adopting the views expressed by the English Court of Appeal in The Iran Nabuvat [1990] 3 All ER 9).

Leave to appeal is granted.

I am also asked to fix a sum as security for costs. I order that the Fernandez family furnish security in the sum of $3000 to each of the three respondents.

Dated this 11th day of December, 1995.

D. Schofield

Judge

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