SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO.: 0052 of 2003

BETWEEN

ANDROS CONSORTIUM S.A.

Claimant

and

BANK CROZIER INTERNATIONAL LIMITED

Defendant

Appearances

For the Claimant: Mr. A. McNamara QC with Mr. R. McNamara
For the Defendant: Ms. N. Glitzenhirn Augustin

2003: February 3rd and 6th

JUDGMENT

[1] Saunders J: The claimant opened a current account with the respondent bank on 11th July, 2002 and large deposits of Euros were made to the account. The bank became suspicious of the manner in which the claimant was operating the account. As early as late July, the bank began closely to monitor the account and compare all instructions received with details previously given by the claimant in its Corporate Account Application.

[2] As time went on the bank became even more uneasy about responses received by it to requests for information made of the claimant. The bank thought that it had reasonable grounds to report its concerns to the Money Laundering (Prevention) Authority ("the Authority"). On 26th August, 2002 the bank wrote to the Attorney General outlining its concerns.

[3] Well before the claimant wrote that letter, by email dated 12th August, 2002, and by a subsequent fax dated 16th August, 2002, the claimant requested that its account be closed and that all funds in the account be transferred to another bank. As at 12th August, 2002 the claimant alleges that there was a total of Euro Σ45,281.51 in the account, but that additional wire transfers had already been issued to, but not received by, the bank. The Applicant instructed that these funds should be returned to the remitting sources.

[4] On 22nd August 2002 the Bank wrote to the claimant outlining its many concerns regarding the possibility of money laundering activity. In that letter the bank stated that it no longer wished to operate an account in the name of the claimant; that it would wire all monies on the account to a bank of the claimant's choice; and that it would return, to the issuing banks, all monies wired on the claimant's behalf without depositing same on the claimant's account.

[5] The bank subsequently promised to return the claimant's monies but it has not done so. It received into the claimant's account and did not return monies wired to the account. On the 1st October, 2002, the bank informed the claimant that it had been instructed by letter from the Money Laundering (Prevention) Authority that pursuant to section 4 of the Money Laundering (Prevention) Act No 36 of 1999, all monies now deposited to the claimant's account should be held until further directive was issued by the Authority.

[6] On the 17th January, 2003 the claimant filed a Notice of Application for an injunction against the bank seeking the release of its monies. It is this application that has come before me for hearing.

[7] Before looking at the merits of the Application I wish to make an observation about interim remedies. Although in Part 17.2(1)(b) of the Civil Procedure Rules, a litigant is entitled to apply for some relief before a claim has been made, those rules permit the court to grant such relief only if the matter is urgent or it is otherwise ***necessary*** (my emphasis) to do so in the interests of justice. See: Part 17.3. In other words, a litigant should generally first file a claim and then seek interim relief. There are several practical reasons for this rule. One

that instantly springs to mind is that the filed claim can often provide a useful reference point for a court that has to weigh such factors as the balance of convenience and the adequacy of damages. This point was not taken by counsel for the bank and, in any event, the claimant can probably bring itself within the provisions of Part 17.3.

[8] The bank justifies its retention of the claimant's monies on two grounds. First of all it points to a provision in the contract between the claimant and itself where the claimant agreed "that the bank may hold any sums deposited ……..in a suspense account if and so long as the bank considers it necessary to make enquiries concerning …[the]…account. If such enquiries prove unsatisfactory to the bank in its absolute discretion, the deposited sum will be returned …… without interest".

[9] The bank also relies on the instructions it received from the Authority. By letter dated the 27th September, 2002, the Authority had indicated to the bank that it was carrying out in depth investigations into the source of the claimant's funds and that the matter had become quite complicated. The Authority advised the bank "pursuant to Section 4 of the Money Laundering Prevention Act No. 36 of 1999, that all monies now deposited to the account of …[the claimant]… at your bank be held there until a further directive is issued by the Authority".

[10] In my judgment neither of these two reasons provides a sufficient basis for the bank's continued retention of the claimant's funds. The first ground provides no justification at all because once the bank was not satisfied after making enquiries, the customer's worst off position was to have its funds returned to it without interest. This, the bank has failed to do. As to the second reason, subsequent to the directive from the Authority to it, the bank was admittedly in a dilemma. The appropriate way of getting out of that dilemma is to have the court sanction a course of action that is reasonable and just in the circumstances. See: *Bank of Scotland vs. A Ltd. [2002] EWCA Civ 52..*

[11] This application concerns itself only with the release of the claimant's funds. Given that a claim is shortly to be made against the bank, it would not be wise for me to delve too

deeply into and hence pre-judge matters that are likely to arise upon the hearing of that claim. I would only say that, as between the bank and its customer, I can see on the material placed before me no basis for the continued retention of the claimant's funds. The bank acted commendably in being alert to the possibility of money laundering and then reporting its suspicions to the Authority. But it is a very serious thing to freeze a customer's bank account. This can only be accomplished pursuant to a court order. In section 12 of The Money Laundering Prevention Act, Parliament has provided strict conditions governing the application for such an order. Nothing appears to have been done to trigger that section and, in any event, it is the Director of Public Prosecutions and not the bank that is entitled to make such an application.

[12] In all the circumstances I have no choice but to order that, subject of course to any claims or liens on the claimant's funds that existed or might have arisen, the bank must immediately release to the claimant all funds held in the claimant's account. The claimant is to give an undertaking as to damages and file and serve its claim within five (5) days. The bank will bear the costs of this application. If counsel are unable to agree then I shall entertain submissions on this issue.

Adrian D. Saunders
High Court Judge