

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
TERRITORY OF ANGUILLA
(CIVIL)
AD 2009**

CLAIM NO. AXA HCV 2009/0014

**IN THE MATTER OF SECTION 17(1)(a) OF THE TRUST COMPANIES AND
OFFSHORE BANKING ACT, R.S.A CHAPTER T60**

AND

**IN THE MATTER OF AN APPLICATION BY NIGUEL STREETE
(DIRECTOR OF THE ANGUILLA FINANCIAL SERVICES COMMISSION)**

AND

**IN THE MATTER OF THE APPOINTMENT OF AN ADMINISTRATOR ON
BEHALF OF CARICOM MANAGEMENT SERVICES AND PRIVATE
INTERNATIONAL TRUST CORPORATION AND ITS SUBSIDIARIES
OWNED AND MANAGED BY JOSEPH BRICE**

BETWEEN:

**NIGUEL STREETE (DIRECTOR OF THE
ANGUILLA FINANCIAL SERVICES COMMISSION)**

Claimant/Respondent

AND

**CARICOM MANAGEMENT SERVICES
PRIVATE INTERNATIONAL TRUST CORPORATION
AND ITS SUBSIDIARIES OWNED AND MANAGED
BY JOSEPH BRICE**

Defendants/Applicants

APPEARANCES:

Mrs. Cora Richardson-Hodge for the Defendants/Applicants

Mr. Ivor Greene for the Claimant/Respondent

2009: March 9th and 11th

JUDGMENT

MICHEL J (Ag.): On January 21st 2009, Mr. Niguel Streete, the Director of the Anguilla Financial Services Commission, made an ex parte application to the Court for the appointment of an administrator of Caricom Management Services and Private International Trust Corporation and its subsidiaries. The application, which was made without notice to the respondents, was supported by an affidavit of Niguel Streete, filed on the same date. The application was made pursuant to Section 17(1)(a) of the Trust Companies and Offshore Banking Act, Chapter T60 of the Revised Statutes of Anguilla (the Act) and came before the Honourable Mr. Justice Anthony Ross on January 27th 2009, who granted the application and appointed Ms. Felicia Hill as Administrator.

On the same January 27th 2009 Mr. Streete, still in his capacity as Director of the Anguilla Financial Services Commission, filed a Claim Form seeking the same relief as was sought in his ex parte application.

By Notice of Application filed herein on February 19th 2009, the respondents to the application of January 21st 2009 made an application that the statement of case filed herein on January 27th 2009 be struck out and/or that the ex parte Order made herein on January 27th 2009 be set aside. The application was supported by an affidavit of Joseph Brice dated February 19th 2009 and a second affidavit of Mr. Brice dated February 27th 2009. Mr. Niguel Streete filed an affidavit on March 4th 2009 in response to the application of February 19th 2009.

Ground (1) of the application by the Defendants/Applicants is that the statement of case filed herein on the 27th day of January 2009 does not comply with Rule 3.12 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 (the CPR).

Rule 3.12 of the CPR provides that every statement of case must be verified by a certificate of truth signed either by the party personally or, if it is impracticable for the party to sign personally, then by the party's legal practitioner.

The only statement of case filed in this matter to date is the claim form filed by the Claimant/Respondent on January 27th 2009 and the aforesaid claim form is not verified by a certificate of truth signed by anyone. In accordance with Rule 3.13(1) of the CPR, therefore, the claim form will be struck out for failing to comply with Rule 3.12.

Ground (2) of the application by the Defendants/Applicants is that the statement of case does not comply with Rules 8.1 and 8.2 of the CPR.

Rule 8.1 of the CPR provides that, subject to Rule 8.2, a claimant must file, together with his claim form, either a statement of claim or an affidavit or other document required by a rule or practice direction. Rule 8.2 indicates the circumstances in which a claim form can be issued and served without a statement of claim or affidavit or other document as provided for in Rule 8.1.

There is no statement of claim or affidavit or other document issued with the claim form filed in this matter on January 27th 2009, as required by Rule 8.1. There is however a submission on behalf of the Claimant/Respondent to the effect that words spoken by Ross J. when the parties were before him on January 27th 2009 might amount to permission by the Court to file and serve a claim form without a statement of claim or affidavit or other document required by Rule 8.1. There is however a notable absence of an order to this effect, which appears to have been contemplated by the authors of the CPR, when one considers the wording of Rule 8.2(6).

Counsel for the Defendants/Respondents was prepared to concede this issue if the Court could be satisfied that Ross J. had granted permission, but not otherwise. Counsel for the Claimant/Respondent was not himself in a position to say that Ross J. had done so, since he was not present in Court on January 27th 2009 when the matter came before Ross J., but only that he had been so informed.

In light of the clear words of Rule 8.1 of the CPR that a statement of claim or affidavit or other document is to be filed in the court office together with the claim form, and in the absence of any such document being filed with the claim form and in the absence of any order or note by Ross J. giving permission, in accordance with Rule 8.2, for the claim form to be filed without this, and in the absence even of an assurance by Counsel that Ross J. had granted permission, all the Court has is an indication by Counsel for the Claimant/Respondent that he was informed that Ross J. might have spoken words amounting to a grant of permission and a statement in the affidavit of Mr. Niguel Streete, referred to by Counsel for the Claimant/Respondent, that: "I am aware that Justice Ross had expressed his views with respect to the application and had provided guidance as to how the form of the Application and rules under which the application was to be made. I recall that he specifically indicated the rule and form under which the application was to be made. When he was satisfied with the form of the application and the rule under which it was made he granted the Order." Of course the application referred to here, on the basis of which Ross J.'s Order was granted, could only be the ex parte application for appointment of an administrator and not the claim form, so this statement by Mr. Streete does nothing to support the submission made in relation to compliance with Rule 8.1.

On this state of facts, and although it is not now necessary to determine this issue in light of a determination already made about the validity of the claim form, the Court will strike out the claim form, in accordance with Rule 26.3(1) of the CPR, for non compliance with Rule 8.1 of the CPR.

Ground (3) of the application by the Defendants/Applicants is that the Claimant/Respondent has breached the provisions of Rule 21.2 of the CPR in constituting the 2nd named Defendant as a representative party.

I do not find as a fact that the Claimant/Respondent has constituted the 2nd named Defendant as a representative party in these proceedings. In fact, if truth be told, I am not sure who (if anyone) is the 2nd named Defendant in the claim form filed on January 27th 2009. But, that is not now relevant, since the claim form is, for other reasons, being struck out.

Ground (4) of the application by the Defendants/Applicants is that the Claimant/Respondent had no locus standi to apply for or to be granted the relief sought and obtained by him and consequently the Court lacked the jurisdiction to make the Order dated January 27th 2009.

Section 17(1) of the Act specifically authorizes only the Inspector of Trust Companies and Offshore Banks to apply to the Court for the appointment of an administrator to take over and manage the licensed business of a licensee under the Act. The Claimant/Respondent was not at any material time the Inspector of Trust Companies and Offshore Banks and never claimed to be acting as such and did not therefore have the capacity to apply to the Court for the Order granted on January 27th 2009.

There is no legal or factual basis for the statement made by Mr. Niguel Streete in his affidavit filed herein on March 4th 2009 that in the absence of the appointment of an Inspector he is empowered to apply for the appointment of an administrator under section 3 of the Financial Services Commission Act, Chapter F28 of the Revised Statutes of Anguilla. Section 3 of the Financial Services Commission Act categorically does not say so.

Incidentally, I note from an Extraordinary Issue of the Official Gazette of the Government of Anguilla that there is a Bill now before the Anguilla House of Assembly which seeks to amend the Financial Services Commission Act to authorize the Financial Services Commission to perform functions assigned to other persons or authorities under the Financial Services Enactments, including the Trust Companies and Offshore Banking Act. This may well be an attempt by the legislature to bolt the stable door after the Director of Financial Services had ridden out with the Inspector's horse.

There is also no legal or factual basis for the statement made by Mr. Streete in his affidavit that the Order of January 27th 2009 is a final Order with respect to the appointment of the administrator and that the Court is now functus officio with respect to issues relating to the appointment. The Order was made on application without notice and can, therefore, be set aside by the Court by virtue of Rule 11.16(1) of the CPR. Since therefore the application for the Order was made by someone who did not have the capacity to make the application in the first place, the Order granted by the Court in this matter on January 27th 2009 will therefore be set aside.

It is noted that Rule 11.16(2) of the CPR states that an application to set aside an ex parte order must be made not more than 14 days after the date on which the order was served on the respondent to the order. It is noted too that in his first affidavit in support of the application to set aside the Order, Mr. Joseph Brice states that the Order was served on him on January 29th 2009. It is also to be noted that the application to set aside was made on February 19th 2009, which is more than 14 days after the Order was served on Mr. Brice. But, it must also be noted that the only document served on the Defendants/Applicants – who are the respondents to the Order of January 27th 2009 – is the Order itself and not also a copy of the application for the Order and the affidavit in support of the application as is required by Rule 11.15 of the CPR. The 14 days provided for in Rule 11.16(2) cannot therefore run against the Defendants/Applicants when they were

not served with the documentation which the rules required to be served on them apart from the Order itself.

Counsel for the Defendants/Applicants also contended that when the parties came before Ross J. on January 29th 2009 both sides agreed to stay any action in this matter until the rendering of a judgment by the Court in Claim No. 11 of 2009, and that judgment was rendered by the Court on February 17th 2009, so that the 14 days under Rule 11.16(2) of the CPR would only start to run from then. However, as Counsel for the Claimant/Respondent pointed out, there was no order to this effect and the Court could not therefore rely on this agreement.

The other grounds contained in the Defendants/Applicants' Notice of Application do not find favour with this Court. But, on the basis of the determinations already made, the claim form filed herein on January 27th 2009 is struck out and the Order of the Court dated and entered on the 27th day of January 2009 is set aside. The Claimant/Respondent is to pay the legal costs of the Defendants/Applicants to be agreed or otherwise assessed.

MARIO MICHEL

High Court Judge (Ag.)