

GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2008/0109

IN THE MATTER OF THE BANKING ACT, NO. 19 OF 2005

IN THE MATTER OF THE APPOINTMENT BY THE MINISTER OF FINANCE OF DAVID
HOLUKOFF AS RECEIVER OF CAPITAL BANK INTERNATIONAL LIMITED

BETWEEN:

CAPITAL BANK INTERNATIONAL LIMITED

Applicant/Claimant

and

KEITH CLAUDIUS MITCHELL
Minister of Finance in the Government of Grenada
THE ATTORNEY GENERAL OF GRENADA

Respondents/Defendants

Appearances:

Mr. Cajeton Hood and Mr. Ian Sandy for the Applicant/Claimant
The Hon. Attorney General and Ms. John for the Respondents/Defendants

2010: September, 23

DECISION

[1] **HENRY J.**, The Applicant/Claimant (hereinafter 'The Bank') seeks the Court's permission, pursuant to CPR 12.3(1), to enter judgment against the Respondents/Defendants on the Amended Claim filed herein on the basis that:

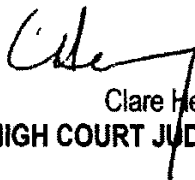
1. The Respondents have failed to file a defence within the time prescribed for so doing;
2. The Court has determined in a written judgment that the appointment of the receiver over the Applicant on February 15th, 2008 was invalid.

- [2] On 15th February, 2008, the first defendant, acting pursuant to section 43 of the Banking Act appointed a receiver of the Bank. On 25th February, 2008, the Bank filed a Claim Form, Statement of Claim and Notice of Application. The application sought an order revoking the appointment of the receiver and return of possession and control to the Bank. The Application was heard and the Court, on 4th March, 2008, granted the application having found that the appointment of the receiver was invalid. An Amended Claim Form and Amended Statement of Claim were filed on 5th March, 2008. By the Amended Claim Form, the claimant seeks damages for breach of statutory and common law duties as well as damages for unlawful interference with the business of the Bank. Subsequent appeal of the Court's decision of 4th March was withdrawn. No defence was ever filed by the defendants. The Bank now seeks leave to enter judgement for damages to be assessed.
- [3] The defendants oppose the application on the grounds that the only remedy available to the Bank pursuant to section 45 of the Banking Act has already been granted, that is, revocation of the appointment of the receiver; that the Bank has suffered no actionable wrong – the acts of the receiver being valid notwithstanding the defects in his appointment; that damages are not available to the Bank and that the matter is now at an end, the Court having ruled on the sole issue.
- [4] The Bank submits that defendants' submissions are no answer to this application and that defendants ought to have filed a defence. The Bank asserts that, the defendants having failed to file a defense, the Court has no choice, under rule 12.5, but to enter judgment.
- [5] I am reminded by the Bank's Notice of Application that this application is made under CPR 12.3, the claim being one for which permission is required to enter default judgment. It is not an automatic process. Where a claimant makes such an application, such judgment is given as it appears to the Court that the claimant is entitled to. This is one of the reasons Rule 12.3 (3) provides that such an application must be supported by evidence on affidavit. In cases where no permission is required a mere request is filed at the court office. So in order for the Court to grant permission to the Bank to enter judgment for damages to be assessed, the Bank must show that it is entitled to damages as set out in its claim.

Exclusive Remedy

- [6] The defendants submit that based on the Privy Counsel decision of **Century National Merchant Bank Ltd. v Davies**, the remedy provided in the Banking Act is an exclusive remedy and therefore the Bank's claim for damages cannot be maintained. The defendants also cite the case of **Barraclough v. Brown** [1897] AC 617. The Bank in their written submission seeks to distinguish both cases from the facts in the case before the court.
- [7] Section 45 of the Banking Act provides:
- "45. Within a period of ten days after the date on which the Minister has appointed a receiver, the financial institution may institute proceedings in the High Court to have this appointment revoked."
- [8] The Bank commenced proceedings for revocation of the receiver within the time provided by the Act. However, included in the proceedings are claims for damages for unlawful interference with the business of the claimant and damages for breach of statutory and common law duties. The issue is whether these claims for damages are maintainable.
- [9] In **Century National Merchant Bank Ltd. v Davis** (1998) 52 WIR 361, the Privy Council had to determine whether the remedies provided under the Banking Act of Jamaica were exclusive. That case involved the appointment by the Minister of Finance of Jamaica of temporary managers of three financial institutions under the statutory provisions of the Act. After the temporary management was carried into effect, the Board of Directors of the three institutions commenced three separate actions against the Minister, the temporary manager and his firm. They sought not only certain declarations that the assumption of temporary management was unlawful, but also damages for trespass, conversion and wrongful interference in the business of the institutions. Part D of the Banking Act of Jamaica had made provision for an appeal. It provided that "A bank served with a notice may, within ten days after the date of such service, appeal to the Court of Appeal and that court may make such order as it thinks fit". The issue for the Privy Council on appeal was whether this appeal provision of the Act was an exclusive remedy. The Board held that there were cogent factors pointing toward the necessary implication that the Part D provided an exclusive remedy.

- [10] There is no doubt that a statute can alter or abrogate rules of common law or equity. Acting within the bounds of the constitutional framework, Parliament has unfettered authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving and expounding of laws.... (see Vol. 8 Halsbury's Laws of England 4th Edn., para 811). A statute may create a civil action for damages directly, and may define the criteria for the assessment of damages. Also by statute, common law remedies may be excluded or limited.
- [11] Here, I find that the Banking Act provides both the right and the remedy and therefore the aggrieved party cannot go outside of the remedy provided. Section 45 provides the exclusive remedy for a party aggrieved by the appointment of a receiver. Accordingly, permission to enter judgment for damages as prayed for in the Amended Claim Form is denied.
- [12] Having determined that section 45 provides an exclusive remedy, there is no need to consider the other grounds advanced by the defendants.
- [13] The application by the Bank for permission to enter default judgment for damages to be assessed is denied. No order for cost.


Clare Henry
HIGH COURT JUDGE