CJ
22.8.95

CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 282/95

BETWEEN: **LLOYDS BANK INTERNATIONAL (CAYMAN) LTD** **PLAINTIFF**

AND: **UNYLEVEN CORPORATION S.A.** **DEFENDANT**

For the plaintiff: Mr. Phillip Boni
For the defendant: Mr. Angus Foster
For beneficiaries: Mr. Ian Paget-Brown
For the Attorney General: Mr. William Helfrecht

BEFORE HARRE CJ.

RULING

This is a point which arises out of an application by the plaintiff bank as trustee in relation to certain proceedings in New York. The application itself is yet to be heard and I am dealing today with a question as to how evidence is to be presented in relation, in particular, to the question whether it is appropriate to fund from the trust assets the costs and expenses of the protector corporation, its officers and shareholders. It arises because of the modern phenomenon of appointing such protectors as well as trustees. I need not go into the history beyond saying that serious allegations are being made in New York against them on behalf of the estate of the deceased settlor.

The bank as trustee has particular concerns, of which I will mention two - that it may be required (as the result of an order made by a foreign court) to distribute trust assets in accordance with directions given solely for the purpose of removing those assets from the trust; and that unless some effective defence is mounted to the New York proceedings there will inevitably be further litigation in the Grand Court.

Against that background the bank seeks directions both as to the conduct of its own case in the New York proceedings and in relation to the costs and expenses of the protectors.

There is only one contentious issue which I need to determine today. It lies between the beneficiaries of the settlor's estate and the protectors. The arguments of the respective parties are succinctly set out in an exchange of letters between their attorneys, dated respectively 16th and 18th August. It is convenient to refer to them. The following is said on behalf of the beneficiaries of the estate -

> "The Protectors Byleven and Unyleven must in a document, (be it an affidavit or otherwise), make it precisely clear what it is they want the Court to do so that our clients fully understand what is the case they have to meet. The Protectors must make it clear in an affidavit or other document what it is they want and what are the grounds for asking for it. This will enable our clients to respond to the Protectors' position.
>
> The Court must allow sufficient time for our clients to file whatever evidence is necessary in order to respond to the Protectors' case."

The protectors's reply is this -

> "The applications before the Court are not made by our clients; they are applications by the trustees for directions in which our clients as directly interested parties will submit to the Court that the directions which the Trustees seek in relation to the costs of the Protector Corporations in the New York proceedings should be as stated above. We cannot see why and do not accept that our clients should be obliged to produce in advance of the hearing any statement of their submissions in support of their position that the directions stated above should be given to the trustees. We contend that it is entirely a matter for our clients and ourselves as to what material they should put in any affidavit which they may choose to serve. Parties are not normally required to give advance notice of their submissions. We have made it quite clear what our clients "want the Court to do"' namely to direct the trustees as stated above.
>
> As explained previously we do not agree or accept that Paget-Brown, Quin, and Hampson's clients are entitled to "respond to the Protectors' case." Their clients are entitled, subject to the overriding discretion of the Court at the hearing, to make such submissions to the Court as they wish in relation to the directions which the trustees seek and to file such affidavit evidence, if any, as they choose in support of their position on such directions. Accordingly, we contend that any affidavit evidence which is to be filed by our clients, by Paget-Brown, Quin, and Hampson's clients and indeed, by the Attorney General, should be filed and exchanged simultaneously and should not be filed by way of reply one to the other.

There is one other aspect arising in connection with this exchange. The presence of beneficiaries at a hearing of this kind is unusual, but no point was taken on that in view of the order of this court that they be served. Issues of confidentiality as to the merits of the New York case do however arise. It is well established that this court

follows the principles set out in **Re Mortiz** (1960) Ch 251 and Re Eaton (1964) 3 ALL. E.R. 299 in that regard, but as Wilberforce J said in Re Eaton, Re Mortiz does no more than set out a general rule and the court in dealing with these matters acting essentially in an administrative capacity should, and does, endeavour to adjust to the circumstances of the individual case with a view to doing justice as far as possible to all the parties. A point such as the one which I am now considering is well suited to that approach. In fact there is no conflict with regard to the suggestion with regard to confidentiality which was set out in the following paragraph of the letter dated 16th August to which I have referred -

> "We suggest that the court should stand over until the substantial hearing the question as to whether the court should hear evidence on a confidential basis from the protectors as to the merits of the New York proceedings

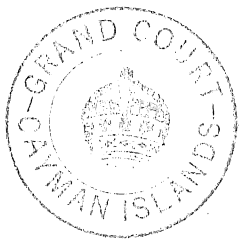
That course commends itself to me also.

The argument in favour of a sequential filing of affidavits, as presented to the Clerk of Court by Mr. Paget-Brown has an attraction. The trustees are concerned that "an effective defence" should be mounted in the New York action To that extent there is an issue between them and the testamentary estate and a community of interest between them and the protectors. It would nevertheless be wrong in my view for that to lead to a procedure whereby the protectors and the beneficiaries exchange adversarial affidavits in this application by the trustees. This must not become a mini-trial of the New York issues except to the extent necessary to deal with the trustees' own

application. The trustee has made its concerns quite clear in its affidavit, and the reasons why it seeks directions. It will be able to respond to the affidavit evidence of the protectors, the beneficiaries and the Attorney General in the normal manner. The presentation of the evidence by the parties other than the trustee should be in response to the application by the trustee - that is to say simultaneous and not sequential - and should take place by 18th September.

The costs of the summons will be reserved.

22nd August 1995



G.E. Harre

Chief Justice