IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

IN CHAMBERS

BEFORE THE HON THE CHIEF JUSTICE

ON 3RD SEPTEMBER 1992

CAUSE # 339 OF 1984

IN THE MATTER OF UNIVERSAL & SURETY COMPANY LTD.
(IN LIQUIDATION)
AND IN THE MATTER OF THE COMPANIES LAW

M: A. JONES FOR THE OFFICIAL LIQUIDATOR
M: P. LAMONTAGNE Q.C. FOR BEACON INSURANCE CO. LTD.

MALONE C.J.

RULING

On this application for leave to appeal the ruling delivered on the 25th August 1992, Mr. Lamontagne submitted on behalf of the appellant/defendant that leave to appeal should be granted for the following reasons:

1. The decision is unprecedented as it goes against the normal practice of the court to prefer the interest of the creditors to that of the liquidators.

2. The ruling does not deal with the financial aspect and other important matters raised at the hearing.

3. The court's decision leaves the creditors which it should not do with a strong and legitimate sense of grievance.

REASONS 1 and 3, as I understand Mr. Lamontagne, are aspects of the issue he termed the principal issue and which he described as:

> " whether or not liquidations in the Cayman Islands are run for the benefit of liquidators or for the benefit of creditors."

The language used overstates the issue. Nevertheless it seems to me to encase reasons 1 and 3.

In opposing the application Mr. Jones submitted that it was not enough to say that the ruling was unprecedented or that account had not been taken of the financial aspect or that the court's discretion was not correctly exercised. The reasons given, he submitted must be explained in terms of points of law which, arguably, are capable of leading to a reversal of the decision by th Court of Appeal.

The jurisdiction of a judge to give or to refuse leave to appeal from his own decision " is a very delicate one " to adopt the language of Lord Esher M.R. in ex parte Gilchrist (1886) 17 Q.B.D. 521 at 527 when speaking of the Divisional Court's jurisdiction to give leave to appeal.

> " Merely to say that they are satisfied their decision is right is not, I venture to suggest, a sufficient reason for refusing leave to appeal when the question involved is one of principle and they have decided it for the first time. If that was carried to its legitimate conclusion, they ought to refuse leave to appeal in every case."

At such proceedings re - argument of the original application is not wanted as the arguments have been heard by the judge. But re - argument is what I think Mr. Jones' submissions invite. The appellant must have an arguable case but in deciding whether he has such a case, the bias as Lord Donaldson expressed it in The Iran Nabuvat (1990) 3 A.E.R. 9 at p10:

> " must always be towards allowing the Full Court to consider the complaints of the dissatisfied litigant, and the justification for leave to appeal.....must be that it is unfair to the

respondent that he should be required to defend the decision below unfair to the litigants because the time of the Court of Appeal is being spent listening to an appeal which should not be before it and thereby causing delay to other litigants and unfair to the appellant himself who needs to be saved from his own folly in seeking to appeal the unappealable."

Having regard to the guidelines I am of the view that Mr. Lamontagne has not as Mr. Jones submitted, to explain his reasons for leave to appeal in terms of points of law. He has stated an issue which has arisen in this case and which he says is without precedent. On that point my ruling may be wrong or it may be right. The fact is that the issue is one of importance upon which further argument and the decision of the Court of Appeal would be to the public advantage. On that ground leave to appeal is granted.

September 3rd 1992

Denis Malone