IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NOS. 221 AND 222 OF 2007

24-3-09

BETWEEN **EURO FIXED INCOME LIMTED (In liquidation)**
(formerly Global Financial Fund Limited and
formerly Titan Euro-Financial Fund Limited

AND **GLOBAL FIXED INCOME LIMITED (In liquidation)**
(formerly Global Currency Portfolio Limited) **PLAINTIFFS**

HSBC BANK CAYMAN LIMITED
Formerly HSBC Financial Services (Cayman) Limited
And formerly Midland Bank Trust Corporation
(Cayman) Limited **DEFENDANT**

IN CHAMBERS
BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE
THE 20th MARCH 2009

Appearances: **Mr. McGrath of Samson & McGrath for the plaintiffs**
Mr. Justin Pennay and Mr. O'Dwyer of Maples & Calder for the defendant HSBC

RULING

1. This is the plaintiffs' application for leave to appeal against two earlier rulings given by me in this matter. The first ruling – that given on 6th May 2008 – granted the defendant's application for an order for security for costs against the plaintiff. The second ruling – given on 5th November 2008 – refused the

plaintiff's application for a stay of the security for costs order, pending the plaintiffs' intended appeal against that order.

2. In bringing the application now for leave to appeal against both the 6th May and 5th November 2008 orders, the plaintiffs accept that leave to appeal should only be given where, in the circumstances of this case, there is shown to be an arguable case with a real prospect of success on appeal ***TIW v CVC Opportunity 2001 CILR N21***.

3. Here the plaintiffs specifically do not rely on any public interest ground of appeal.

4. In seeking to show the plaintiffs' prospect of success on appeal, Mr. McGrath directs his criticism primarily to the ruling for security for costs in favour of the defendant.

5. He says it is wrong in principle for there to have been imposed upon the plaintiffs a requirement to show, not just that it itself is impecunious and so would be driven from pursuing its claim by the security for costs order; but also that its shareholders are impecunious. This is Mr. McGrath's paraphrase of one of my reasons for having ordered security in the context of the plaintiffs' investors failing to explain why they would not fund the litigation which the impecunious plaintiffs seek to undertake on their behalf.

6. Moreover, says Mr. McGrath, it was an improper exercise of discretion for me to have placed little emphasis upon the plaintiffs' counter-allegations; which is that the defendant itself had caused their impecuniosity by its very conduct which is the plaintiffs' cause of action.

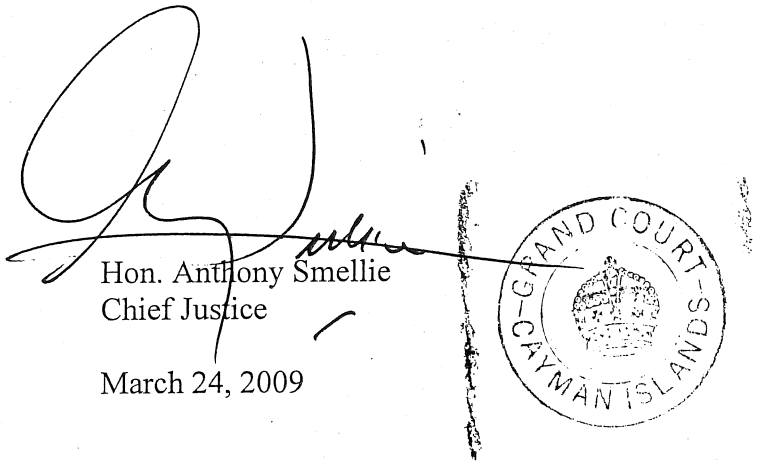
7. In light of the previously decided cases, including ***Keary Development Ltd. v Tarmac Construction Ltd. [1995] 3 All ER 534*** in the English Court of Appeal and from this Court in ***J.M. Bodden & Son International Limited v Dettling and Sparkes 1990-91 CILR 220*** – I remain satisfied that this Court was obliged to consider not only the impecuniosity of the plaintiff companies themselves, but also the attitude of their stakeholders to the plaintiffs' lack of finance to fund the litigation and to fund the defendant's costs if the plaintiffs lost. The decision of the Hong Kong Court in ***Easy Watch Products Manufacturing Company Limited v Epson Precision (Hong Kong) Limited HCA 3943/2002*** is also confirmatory of this principle.

8. The degree of emphasis to be placed upon the plaintiffs' admitted impecuniosity thus became a matter for consideration in the exercise of discretion whether or not to order security. And this is admitted by Mr. McGrath. Thus his complaint now is really against the manner of the exercise of discretion.

9. In all the circumstances of this case as presented, especially both at the application for security for costs and later at the application for the stay of that order, no properly arguable case on appeal arises that the emphasis placed was so lop-sided or imbalanced as to amount to an improper exercise of discretion.

10. Yet, on the authority of ***Llasha v ICIC 1994-95 CILR 293,*** such a clearly improper exercise of discretion is tantamount to what Mr. McGrath would need to show now, in order to have a realistic prospect of succeeding on appeal in this matter.

11. I am not persuaded that that test is met here and so I am obliged to refuse the application for leave to appeal, both as against the order for security for costs and as against the order refusing the stay of that earlier order.



Hon. Anthony Smellie
Chief Justice

March 24, 2009