



23 November 2010

PRESS SUMMARY

E. Anthony Ross v Bank of Commerce (Saint Kitts Nevis) Trust and Savings Association Limited [2010] UKPC 28

MEMBERS OF THE BOARD OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL: Lord Phillips (President), Lord Mance and Lord Collins

BACKGROUND TO THE APPLICATION

This is an application for permission to appeal. The issue in the application is whether, in circumstances where a party has an appeal to the Privy Council from a decision of the Court of Appeal as of right under the provisions of the Constitution of Saint Christopher and Nevis, it is necessary to seek or obtain leave from the Court of Appeal or the Privy Council.

Mr E. Anthony Ross (the applicant), claims against the Bank of Commerce (Saint Kitts Nevis) Trust and Savings Association Ltd (the respondent) US\$410,000 plus interest in respect of two certificates of deposit. Mr Ross obtained judgment at first instance, but this was set aside by the Court of Appeal. He now seeks to appeal that decision to the Privy Council.

The Privy Council sits as the final court of appeal of St Christopher and Nevis. Section 99 of the Constitution of Saint Christopher and Nevis provides that an appeal shall lie to the Privy Council from decisions of the Court of Appeal as of right where the matter in dispute involves \$5000 or upwards. The procedural rules in force in Saint Christopher and Nevis, contained in the Saint Christopher and Nevis Appeals to the Privy Council Order 1967 ("the Privy Council Appeals Order 1967"), continue to provide for procedures governing the application for permission to appeal where the appeal is as of right, firstly to confirm that the case is one as of right and secondly to impose limited conditions such as security for costs.

Rule 2 of Schedule 2 to the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982 provided that no appeal would be admitted to the Privy Council unless either leave to appeal had been granted by the court appealed from or special leave had been granted by the Privy Council. The 1982 Order was replaced in its entirety by the Judicial Committee (Appellate Jurisdiction) Rules Order 2009, which brought into effect the new Judicial Committee (Appellate Jurisdiction Rules 2009 ("the 2009 Rules"). The 2009 Rules, which cover the powers of and procedures before the Privy Council itself, contain no equivalent to Rule 2 of the 1982 Rules.

Mr Ross argued that, as a result of the 2009 Rules, he was entitled to appeal to the Privy Council as of right, without needing to seek or obtain leave from the Court of Appeal or the Privy Council, the decision being a final one in civil proceedings with a value higher than \$5000.

JUDGMENT

The Board of the Judicial Committee of the Privy Council unanimously held that it remains necessary under the 2009 Rules to obtain leave to appeal from the Court of Appeal or special leave from the Privy Council and that special leave should be granted for an appeal to the Privy Council in the present case.

REASONS FOR THE JUDGMENT

The judgment of the Board was delivered by Lord Mance.

The Privy Council Appeals Order 1967 is an integral part of the law of St Christopher and Nevis so far as it regulates matters within the jurisdiction of that state and consequently the procedures contained therein are not capable of being affected by the 2009 Order. Although the procedures contained in the Privy Council Appeals Order 1967 do not expressly mandate an application to the Court of Appeal in respect of appeals as of right, they reflect the long-standing practice for such an application to be made: [15]-[16]. The 2009 Order in these circumstances should not be understood as disturbing the practice existing hitherto whereby the applicant is expected to apply for confirmation of the right to appeal as of right from the Court of Appeal and any application to the Privy Council in such a case has to be for special leave to appeal: [17].

Further, Practice Direction 1 of the Practice Directions which supplement the 2009 Rules makes clear the contemplation that the previous practice regarding appeals should continue: [9]-[10]. The facts that the 2009 Rules do not contain an express provision to this effect, [7], and that the wording of rules 10 and 18 suggest there could be cases in which no permission to appeal is required from either the court below or the Privy Council [8], do not compel any contrary conclusion: [17].

Notwithstanding the conclusion of the Board, Mr Ross's stance, that no permission at all was required, had been properly arguable under the 2009 Rules. It was appropriate in these circumstances to treat the matter as an application for special leave to appeal. The Board concluded that the case is appropriate for hearing in the Privy Council and granted special leave to appeal: [18]-[19].

References in square brackets are to paragraph numbers in the judgment.

NOTE

This summary is provided to assist in understanding the Committee's advice. It does not form part of the reasons for the advice. The full advice of the Committee is the only authoritative document.

Advises are public documents and are available at: www.jcpc.gov.uk/decided-cases/index.html