IN THE COURT OF APPEAL OF BELIZE, 2009

CIVIL APPEAL NO. 25 OF 2008

BETWEEN:

THE BELIZE BANK LIMITED	**Appellant**
AND	
THE CENTRAL BANK OF BELIZE	**Respondent**

—

BEFORE:

The Hon. Mr. Justice Sosa	**-**	**Justice of Appeal**
The Hon. Mr. Justice Carey	**-**	**Justice of Appeal**
The Hon. Mr. Justice Morrison	**-**	**Justice of Appeal**

E A Marshalleck for the appellant.
L Young SC for the respondent.

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22 October 2009 and 19 March 2010.

SOSA JA

[1] On 22 October 2009 I agreed with the other members of this Court that the two preliminary objections of the respondent by way of notices dated and field on 13 March 2009 and 16 October 2009, respectively, (as amended, in the case of the later of the two notices, by a further notice filed on 20 October 2009) should be upheld and that, accordingly, this appeal should be dismissed and the

respondent should have its costs, to be agreed or taxed. I concur in the reasons for ruling stated by Carey JA in his judgment, which I have had the privilege of reading in draft.

SOSA JA

CAREY JA

[2] The appellant lodged an appeal against a decision of Awich J, Chairman of the Appeal Board, constituted under the Banks and Financial Institutions Act, Cap. 263, whereby he refused a stay of further action regarding two directives issued by the respondent against the appellant. The respondent objected to the hearing of the appeal. We heard submissions on the 22 October when we upheld the objections and dismissed the appeal with costs. Reasons were promised. My contribution is set out hereunder.

[3] The objection to the hearing of the appeal was two pronged:

> "(i) The appellant has no right of appeal to the Court of Appeal from a decision of the chairman of the Appeal Board.
>
> (ii) The issue of whether or not the trial judge erred in law in the exercise of his discretion by refusing a stay is academic because the directive has been complied with and a decision of the Court of Appeal will have no practical effect."

[4] With respect to the first ground, Ms. Young SC referred us to section 70(2) of the Banks and Financial Institutions Act, Cap 263 (the Act) which states as follows:

> "(2) An Appeal Board for the purpose of this Act shall be constituted of –
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> (a) the Chief Justice or other judge of the Supreme Court nominated by the Chief Justice, who shall be the Chairman of the Board;
>
> (b) two other members appointed by the Minister from among persons who have knowledge of banking, finance or other related disciplines:
>
> Provided that …"

and to section 76 of the Act which is in these terms:

> "76. An appeal to the Appeal Board against a decision of the Central Bank shall not have the effect of suspending the execution of such decision, unless on an *inter partes* application made to the Chairman of the Appeal Board, the Chairman having heard both sides, is of the opinion that exceptional circumstances exist that warrant the grant of a stay of any further action by the Central Bank"

and also to section 77. So far as is relevant, this section states as follows:

> "(1) Any party aggrieved by a decision of the Appeal Board may appeal to the Court of Appeal on the ground that the decision was erroneous on a point of law."

(2) …

In the light of these provisions, Ms. Young submitted that the decision appealed against is a decision of the Chairman and not a decision of the Appeal Board. The law only permits, she argued, an appeal from a decision of the Appeal Board.

[5] Mr. Marshalleck, for his part, submitted that when the Chairman acts, he does so, on behalf of the Board. He invoked the provisions of section 72 which state

> "(1) The Appeal Board may, with the approval of the Minister, make rules to regulate its procedure for hearing appeals, provided that such procedure shall comply with the rules of natural justice.
>
> (2) In the event of any doubt or dispute arising on any question of practice and procedure, it may be settled by the Chairman of the Appeal Board, whose decision shall be final."

From this base, he reasoned that where no appeal was intended, it was provided that the Chairman's decision was final.

[6] There can be little doubt that section 76 confers on the Chairman solely the power or jurisdiction to hear the inter partes application for a stay. The question which he is asked to determine, is one, entirely of law, which, as a judge, he would be eminently qualified to adjudicate. In light of the composition of the Board, more likely than not, he would be the only member with legal knowledge. If, as Mr. Marshalleck suggests, he was a sort of sub-committee of one representing the Board, he would be required to submit his adjudication for

the concurrence of the other members. Such a suggestion would be regarded as beyond credulity. There is no ambiguity of language in the provision, and accordingly, no room for doubt that the Act intended the decision on the matter of stay to be that of the Chairman. Mr. Marshalleck did not suggest nor pray in aid, any rule or principle of interpretation which would justify the court in departing from the plain grammatical meaning of the words in section 77 that an appeal lies only against a decision of the Appeal Board.

[7] I venture to suggest, as a postscript, that there is no lacuna in the law. The jurisdiction conferred on the chairman relates to stays which would have the effect of "suspending" the execution of [the] decision" of the Central Bank. Necessarily, the suspension would be intended to operate for a comparatively short period pending the hearing of the Appeal Board. The menu of the Appeal Board comprises administrative malfeasance and non-feasance of banks and financial institutions. See for example, section 71 of the Act. The instant case is a striking example of the risk of significant delay of decisions if the Chairman were subject to an appeal process. The essential purpose of the Appeal Board to deal expeditiously with its responsibilities would be lost. In my opinion, it was the intention of Parliament that no appeal would lie in these circumstances, to ensure that the Appeal Board dealt expeditiously with grievances alleged by bankers and such persons. This, in my view, is sufficient to dispose of this matter but, out of deference to the arguments advanced, I propose to consider the second limb of objection.

[8] It was that "the issue whether or not the trial judge erred in law in the exercise of his discretion by refusing a stay of the Central Bank's Directive No. 1 is academic because the said Directive has been complied with and a decision of the Court of Appeal will have no practical effect."

[9] In order to fully appreciate this aspect of the objection, a short introduction is called for. The Chairman of the Appeal Board, on 7 August 2008, refused to

grant a stay of the execution of Directive 1 which had been issued by the Central Bank on 14 March 2008.

Directive 1 was in these terms:

> "1 BBL should forthwith credit GOB's account with the Central Bank of Belize with US$10.0 Million as per "Payment Details" stated on wire transfer instructions sent by Bandes-Fideicomisos De Venezuela on the "Cash Payment Confirmation" dated 28 December 2007."

On 8 August 2008, the appellant complied with this Directive. In the course of the hearing, the court was informed that a reason for the stay being sought by the appellant was ongoing arbitration proceedings in London. These proceedings have been completed and a partial award made by which the appellant's claims, including a claim for restitution of US$10.0 million, were dismissed.

[10] Ms. Young submitted that no practical value was to be gained by hearing the appeal having regard to these circumstances. She pointed out also that the issue raised on the appeal itself questions the exercise of the judge's discretion. It was a point which had become academic. She cited **Tindall v Wright [1922] Times Law Reports 521** in which it was held that the Court will not determine a point of law which has become academic, even though both parties are anxious to have it determined and it is a matter of public importance on which a Government Department desires the guidance of the Court with a view to introducing amending legislation, if necessary. She relied also on **Sun Life Assurance Company of Canada v Jervis [1944] AC 111**. The House of Lords held that since there was no issue to be decided between the parties, the House should decline to hear the appeal. Viscount Simon LC said this –

> "and I think it is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue."

To the like effect was **Ainsbury v Millington [1987] 1 WLR 379**.

[11] Mr. Marshalleck did not seek to refute the respondent's argument that the appeal was academic, but while accepting that, in general, academic appeals would not be entertained, relied on the observations of Sir Anthony Clarke, Master of the Rolls in **Gawler v Raettig [2007] EWCA Civ 1560**. (That – "[the] case [viz. **Sun Life Assurance v Jervis (supra)**] supports the general principle that academic appeals will not generally be entertained but does not support an absolute rule in any class of case. Moreover it does not support the proposition that the question whether or not the court should entertain an academic appeal is one of jurisdiction." He was not therefore shut out despite the accepted fact that the appeal would be characterized as academic. He found much comfort in the dictum of Bingham LJ (as he then was) in **National Coal Board v Ridgway [1987] 3 All ER 562** at 604 where he observed:

> "… so far as I know, no agreement had been reached concerning the costs of the appeal, and it would seem that that of itself provides sufficient lis to keep the appeal alive (see **Westminster City Council v Croyalgrange Ltd [1986] 2 All ER 353** at 354, [1986] 1 WLR 674 at 678 per Lord Bridge).

Counsel summed up by stating that the appellant's position was that it had incurred costs in the proceedings and wished to see the matter through.

[12] As I understand the cases cited to us and those referred to in those cases, the principles which may be extracted, seem to be these –

(i) The rule that the Court will not decide a point of law which has become academic, even though both parties are anxious to have it determined and it is a matter of public importance on which a Government department desires the guidance of the Court is not an absolute rule.

(ii) Even though litigation is private, if it was for good reason in the public interest to entertain the appeal, the court is free to do so.

(iii) There is no longer any need to seek an artificial lis such as, for example, costs, which is wholly peripheral to the appeal.

(iv) The occurrence of cases which come within these parameters will be rare, the moreso where the rights and duties to be considered on appeal are private and not public.

(v) When the issue is of public law of very great importance, the court will entertain the appeal, even if the appeal is academic between the parties.

[13] Seeing that the litigation from which the appeal originated is private, counsel was obliged to show good reason why it was in the public interest to entertain the appeal. Of course, for purposes of argument, it is to be assumed that the appeal was properly constituted. Mr. Marshalleck suggested that the matter is of general public interest because the litigation relates to the supervisory functions of the Appeal Board, which this Court is obliged to monitor.

[14] I fear that is not a true picture of the situation. The appeal itself, as Ms. Young rightly points out, concerns the exercise of a discretion given to the Chairman of the Board. It cannot be in the public interest to entertain a matter

which does not require further examination or debate. The principles on which an appellate court will interfere with the exercise of discretion is now well settled. See **Hadmor Productions Ltd v Hamilton [1983] AC 191**. Nor in my opinion, is the issue raised in the appeal an issue of public law of very great importance. I cannot therefore agree with Mr. Marshalleck's *crie de coeur*.

[15] For those reasons also, the second preliminary objection succeeds, with the result as set out in paragraph 1.

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CAREY JA

MORRISON JA

Introduction

[16] When this matter came on for hearing in this court on 22 October 2009, the respondent ("the Central Bank) took two preliminary objections to the appeal being proceeded with. These objections were resisted by the appellant ("BBL"). After hearing counsel, both objections were upheld and the appeal was accordingly dismissed, with costs to the Central Bank, to be agreed or taxed. These are my reasons for concurring in that decision.

[17] BBL is a commercial bank operating in Belize and the Central Bank is established by section 4 of the Central Bank of Belize Act, with responsibility under the Banks and Financial Institutions Act ("the Act") for the licensing and supervision of banks and financial institutions operating in Belize.

[18] The Banks and Financial Institutions Appeal Board ("the Appeal Board") is the body established and appointed pursuant to section 70 of the Act to hear and determine appeals in respect of matters which may be referred to it under the Act.

[19] The Chairman of the Appeal Board ("the Chairman") is a judge of the Supreme Court of Belize nominated by the Chief Justice (pursuant to section 70(2)(a) of the Act) to be chairman of the Appeal Board.

[20] This is an appeal from a decision made by the Chairman on an application made to him pursuant to section 76 of the Act for a stay of any further action by the Central Bank pending the hearing of BBL's appeal to the Appeal Board against two directives issued to it by the Central Bank on 14 March 2008 ("the directives").

The background

[21] The relevant background has been fully described in the judgments of this court in **Belize Bank Ltd. v The Attorney General and others** (Civil Appeal No. 18 of 2008, judgment delivered 19 June 2009 – see in particular the judgments of Carey JA at paras. 2 and 3 and Morrison JA at paras. 22 to 28), and I therefore do not propose to rehearse it in this judgment. It is sufficient to note that that was an unsuccessful appeal by BBL from the decision of Conteh CJ in Claim No. 338 of 2008, given on 1 August 2008 (as to which, see para. [25] (iii) below).

[22] The directives which BBL sought to stay in the instant case were in the following terms:

(i) "BBL should forthwith credit GOB's account with the Central Bank of Belize with US$10.0 million as per 'Payment Details' stated on wire transfer instructions sent to Bandes –

Fideicomisos De Venezuela on the 'Cash Payment confirmation' dated 28 December 2007" ("the first directive"), and

(ii) "BBL should forthwith provide to the Central Bank written documentation regarding the authority to deposit funds to the account of UHS regarding the US$10 Million received from the Embassy of the Republic of China (Taiwan)" ("the second directive").

[23] The application for a stay was made by notice to the Chairman dated 1 August 2008, pursuant to section 76 of the Act, which provides for such an application to be made to the Chairman, rather than to the Appeal Board itself (see para. [45] below for the full text of the section). The notice of application referred to what BBL described as "a multiplicity of proceedings concerning the subject matter of the Directives" and these proceedings were summarised by BBL as follows:

"(i) Claim No. 228 of 2008 commenced by the Government of Belize ("GOB") against BBL seeking, inter alia, recovery of US$10 million from BBL (this action was subsequently stayed in consequence of the development at (ii) below).

(ii) The commencement of arbitration proceedings in the London Court of International Arbitration ("LCIA") on 9 July 2008 for a determination of the issue between GOB and BBL as to the entitlement to the said amount of US$10 million.

(iii) BBL's appeal from the judgment of Conteh CJ given in Claim No. 338 of 2008, which was an action by BBL against GOB and

others challenging the constitution of the Appeal Board on various grounds (including its lack of independence and impartiality)."

[24] On the basis of these various proceedings, BBL asked that the directives be stayed, pending:

> (i) The determination of BBL's appeal to the Appeal Board against the issue of the directives by the Central Bank; alternatively
>
> (ii) the determination of the arbitration proceedings before the LCIA, to which BBL is a party and which relate to the same subject matter as the first directive viz, the true entitlement to the US$10 million; alternatively
>
> (iii) the outcome of BBL's proposed appeal from the decision of the Chief Justice in Claim No. 338 of 2008; alternatively and in any event
>
> (iv) the rescheduling of the hearing of the Appeal Board previously scheduled for 1 and 4 August 2008.

[25] BBL's application was opposed by the Central Bank and on 7 August 2008 the Chairman refused to grant it in respect of the first directive, on the ground that no exceptional circumstances had been shown justifying it, but granted it in respect of the second directive, considering that there was sufficient material before him to justify a stay (see the Chairman's written reasons dated 3 October 2008).

[26] On 8 August 2008, the application for a stay in respect of the first directive having been refused, BBL duly complied with it by crediting GOB's account with the Central Bank with US$10 million.

[27] This is BBL's appeal from the Chairman's refusal to grant a stay in respect of the first directive on the ground that the Chairman erred in law and misdirected himself when considering whether there were exceptional circumstances that warranted the grant of a stay. In particular, BBL complained that, in coming to his decision not to grant a stay of this directive, "no regard was given to the fact that the legal entitlement to the US$10 million had not been judicially determined".

The preliminary objections

[28] On 13 March 2009, the Central Bank filed notice of its first preliminary objection to the hearing of this appeal, pursuant to Order 2, rule 7(1) of the Court of Appeal Rules. The notice (which was amended by leave of the court on 22 October 2009) was as follows:

> "The Respondent hereby gives notice that it intends to object to the hearing of this appeal on the ground that the Appellant has no right of appeal to the Court of Appeal from a decision of the Chairman of the Appeal Board given pursuant to section 76 of the Banks and Financial Institutions Act, Chapter 263 of the Laws of Belize, R.E. 2000.
>
> **AND TAKE NOTICE that the grounds on which the Respondent intends to rely are as follows:**
>
> 1. **The Appeal Board is defined in the Act as being constituted by three persons.**
>
> 2. **The decision appealed against is a decision of the Chairman. It is not a decision of the Appeal Board.**

3. An Appeal is permitted against a decision of the Appeal Board.

4. Appellant should have taken Judicial Review proceedings of the Chairman's decision."

[29] Notice of the second preliminary objection was filed on 16 October 2009 as follows:

> "The Respondent hereby gives notice that it intends to object to the hearing of this appeal on the ground that the issue of whether or not the trial judge erred in law in the exercise of his discretion by refusing a stay of the Central Bank's Directive No. 1 is academic because the said Directive has been complied with and a decision of the Court of Appeal will have no practical effect."

The hearing

[30] When the appeal came on for hearing in this court on 22 October 2009, Ms. Young SC moved the court in support of both preliminary objections. In respect of the first, she submitted that under the Act no appeal lay to this court from a decision of the Chairman made pursuant to section 76. She referred us in particular to sections 70(2)(a) and (b) (the composition of the Appeal Board), to section 76 itself, and to section 77(1) (the right of appeal to this court). Her submission was that section 76 had carved out a special jurisdiction for the Chairman to hear and determine applications for a stay pending appeals to the Appeal Board and that the right of appeal conferred by section 77(1) was from decisions by the Appeal Board itself, and not by the Chairman in the exercise of this special jurisdiction.

[31] Before moving the second preliminary objection, Ms. Young applied to the court (pursuant to section 20(c) of the Court of Appeal Act) to introduce and rely on an affidavit from Mr. Glenford Ysaguirre, the Governor of the Central Bank, the purpose of which was "to bring the Court of Appeal up-to-date with what has transpired with the arbitration before the [LCIA] over the dispute between [BBL] and [GOB] …". This application was granted and the affidavit admitted without objection from Mr. Marshalleck. Exhibited to the affidavit was a copy of the First Partial Award by the LCIA arbitral tribunal hearing the dispute between BBL and GOB, which was published on 4 August 2009. The tribunal dismissed BBL's claim to recover the sum of US$10 million with interest, holding that the agreement pursuant to which BBL based its entitlement to these funds ("the 2008 Settlement Agreement") was void for illegality and that no action could be maintained in respect of the funds in the arbitration proceedings. The tribunal concluded that there was "simply no scope" for BBL's restitutionary claim and its claim that the Central Bank acted unlawfully or improperly in requiring the return of the monies in question.

[32] With regard to the second preliminary objection, Ms. Young adverted to the fact that the first directive had in fact been complied with by BBL and submitted that in the circumstances BBL's appeal had become purely academic and, even if it was successful, could have no practical effect. The principle to be applied in this situation, she submitted, is that the court will not decide a point of law which has become academic, even though both parties are anxious to have it determined. There being no dispute in this case over the jurisdiction of the Chairman to refuse to order a stay if, in his view, no exceptional circumstances exist to warrant a stay, BBL's appeal was therefore no more than an appeal against the Chairman's exercise of his undoubted discretion. The result of all of this, Ms. Young submitted, was that the entire matter had been overtaken by events.

[33] In support of these submissions, Ms. Young referred us to a number of authorities, **Tindall v Wright [1922] TLR 521**, **Sun Life Assurance Company of Canada v Jervis [1944] AC III**, **Ainsbury v Millington [1987] I WLR 379** and **C.O. Williams Construction Ltd. v Blackman [1995] I WLR 102** (all on the question of academic appeals); and to **Hadmor Productions Ltd v Hamilton & others [1983] AC 191** and **Conticorp S.A. v Central Bank of Ecuador [2007] UKPC 40** (both on the approach to be taken by an appellate court to a challenge to the exercise of a discretion). I will return to the authorities in due course.

[34] As regards the first preliminary objection, Mr. Marshalleck in response submitted that the Central Bank's contention that a decision of the Chairman under section 76 was not a decision of the Appeal Board, and therefore not appealable under section 77, "was clearly wrong". He pointed out that section 76 is itself located in Part X of the Act, which "sets out and delimits the jurisdiction of the Appeal Board, including the jurisdiction under section 76 in exceptional circumstances to stay enforcement of a decision of the Central Bank pending determination of the appeal by the Appeal Board." In giving his decision in the instant case, therefore, the Chairman did so acting on behalf of the Appeal Board and his decision is "self-evidently" an exercise of the Appeal Board's jurisdiction. Further, Mr. Marshalleck submitted, section 76 is merely a reflection of the common appellate practice "of making most efficient use of judicial resources by having a single member of the appellate body make interim decisions on behalf of that appellate body."

[35] Mr. Marshalleck also drew our attention to section 72 of the Act. Section 72(1) provides that the Appeal Board may make rules to regulate its procedure for hearing appeals (subject to the approval of the Minister and to the rules of natural justice) and section 72(2) provides as follows:

> "In the event of any doubt or dispute arising on any question of practice and procedure, it may be settled by the Chairman of the Appeal Board, whose decision shall be final." (emphasis supplied).

[36] Section 72(2), Mr. Marshalleck accordingly submitted, demonstrates that where the legislature intended that there should be no appeal from a decision of the Chairman, it did so in so many words, rather than leave it to inference or interpretation.

[37] In respect of the second preliminary objection, Mr. Marshalleck told the Court that his client's position was that it had incurred significant costs in bringing this appeal, and so wished to see it through. There was, he submitted, an element of public importance in the appeal with respect to the correct test to be applied by the Chairman on a section 76 application. For the court to decline to hear the appeal on the basis that it is academic would amount to an abdication of the supervisory jurisdiction contemplated for the court by section 77 of the Act. However, given all that had taken place, Mr. Marshalleck indicated that all BBL now sought from the court was an order setting aside the Chairman's ruling and giving reasons for doing so. There was, he submitted, a public interest in that. In answer to a direct question from the court, Mr. Marshalleck quite candidly agreed that BBL had no financial interest in the outcome of the appeal, save with respect to the costs of the proceedings.

[38] Mr. Marshalleck referred us to **Gawler v Raettig [2007] EWCA Civ 1560**, on the basis of which he submitted that the true test of whether a matter alleged to have become academic should be allowed to proceed is whether there is some public interest in the matter proceeding.

[39] Ms. Young in a brief reply reminded the court that its role was not supervisory and that in any event the limits of the Chairman's jurisdiction under section 76 were clear and required no explanation or elucidation from the court.

Discussion

The first preliminary objection

[40] It is a well known and generally accepted principle that the jurisdiction of courts of appeal is to be determined solely by reference to the relevant statutory provisions (which is the sense in which it is usually said that courts of appeal have no "inherent" jurisdiction – see **Taylor v Lawrence [2002] 3 WLR 640**, per Lord Woolf CJ at paras. 14 to 17). It follows from this that the answer to the first preliminary objection must be sought for in the provisions of the Act itself.

[41] The Appeal Board was established by section 70 of the Act, which provides as follows:

> "70.-(1) The Minister shall cause to be appointed a Banks and Financial Institutions Appeal Board (referred to in this Act as "the Appeal Board") to hear and determine all appeals in respect of matters which may be referred under this Act to the Appeal Board.
>
> (2) An Appeal Board for the purpose of this Act shall be constituted of –
>
> (a) the Chief justice or other judge of the Supreme Court nominated by the Chief justice, who shall be the Chairman of the Board;
>
> (b) two other members appointed by the Minister from among persons who have knowledge of banking, finance or other related disciplines:

Provided that no serving member of the Central Bank or of any other bank or financial institution in Belize shall be appointed as a member of the Board.

(3) The terms of office of the members appointed under paragraph (b) of subsection 2 shall be such as may be specified in their instruments of appointment.'

[42] Section 71 provides that any person aggrieved by a decision in specified circumstances may appeal against that decision to the Appeal Board. (The section itself list these circumstances as (a) to (f), with (e)making specific reference to decisions made under section 36 of the Act, which is where BBL's appeal in this case falls). I have already referred to section 72, which deals with the procedure of the Appeal Board (see para. [36] above). Section 73 states the quorum required at any sitting of the Appeal Board (two members, one of whom must be the Chairman), while section 74 provides that decisions at any meeting of the Appeals Board may be taken by a majority (again provided that the Chairman is one of the majority).

[43] The powers of the Appeal Board are dealt with in section 75(1), which provides that it may affirm or set aside the decision appealed against or may make any other decision which the Central Bank could have made. Section 75(2) empowers the Appeal Board to give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

[44] Section 76, which is the section pursuant to which the application for a stay of the directives was made, is obviously very important. It provides as follows:

"An appeal to the Appeal Board against a decision of the Central Bank shall not have the effect of suspending the execution of such

decision, unless on an inter partes application made to the Chairman of the Appeal Board, the Chairman having heard both sides, is of the opinion that exceptional circumstances exist that warrant the grant of a stay of any further action by the Central Bank."

[45] And finally, of equal importance for the purposes of this appeal, is section 77, which provides for an appeal to this court from a decision of the Appeal Board, in the following terms:

> "77.-(1) Any party aggrieved by a decision of the Appeal Board may appeal to the Court of Appeal on the ground that the decision was erroneous on a point of law.
>
> (2) On any such appeal, the Court of Appeal may affirm or set aside the decision appealed against and may remit the matter to the Appeal Board for rehearing and determination by it."

[46] A reading of these sections suggests to me that the following factors provide clear support for Ms. Young's contention that there is no appeal to this court from a decision of the Chairman:

(i) A sitting of the Appeal Board is not fully constituted unless a quorum of two members, including the Chairman, is present (section 73).

(ii) A decision of the Appeal Board requires a majority of its members (section 74).

(iii) The powers given by the Act to dispose of appeals to the Appeal Board are powers given to the board itself (section 75).

(iv) Applications for a stay of further action under a decision by the Central Bank, pending appeal, are made to the Chairman, who is empowered to deal with such applications himself, without reference to the other members of the Appeal Board (section 76).

(v) The right of appeal conferred by the Act is from decisions of the Appeal Board (section 77).

[47] The only section which appears, on the face of it, to point the other way is the one highlighted by Mr. Marshalleck, that is section 72, which deals with the procedure of the Appeal Board. For it does seem curious, which is Mr. Marshalleck's point, that it should have been thought necessary by the legislature to provide explicitly in section 72(2) that the decision of the Chairman "shall be final" with respect to any doubt or dispute arising on any question of practice or procedure settled by him pursuant to the power given to him in that section, while, in relation to the comparable powers given to the Chairman in section 76, the Act is silent. Surely, then, Mr. Marshalleck submitted, this is a clear indication that when the legislature intended that there should be no right of appeal from a decision of the Chairman, it opted for the simplicity of saying so in so many words.

[48] But despite the obvious force of this point, it is in my view met by the consideration that section 72(1) makes it plain that it is the Appeal Board itself which is empowered to make rules to regulate its procedure for hearing appeals. So that a decision taken by the Chairman settling a doubt or dispute in a question of practice and/or procedure is, it seems to me, a decision as to how rules laid

down by the Appeal Board itself are to be interpreted and as such will always, as a practical matter, be in effect a decision taken on behalf of the Appeal Board in the context of a duly constituted sitting of the Board. Looked at in this way, it is hardly surprising that the legislature should have sought to make it clear that such a decision is not subject to the right of appeal given by section 77, since this court might otherwise find itself inundated by appeals on purely procedural matters from the Appeal Board, which is the body best placed to determine its own procedure.

[49] I therefore consider that, on a reading of Part X of the Act as a whole, it is unambiguously clear that the Act does not confer a right of appeal against a decision of the Chairman taken in the exercise of his powers under section 76. The first preliminary objection accordingly succeeds.

The second preliminary objection

[50] All of the authorities referred to by Ms. Young in support of her submissions on this point were also considered by the court in the case of **Belize Telemedia Ltd v Christine Perriott** (Civil Appeal No. 33 of 2007, judgment delivered 20 June 2008). In my judgment in that case (with which Sosa JA expressly agreed), after referring to the **Sun Life Assurance** case, **Tindall v Weight, Ainsbury v Millington** and **C.O. Williams Construction Ltd v Donald George**, I concluded (at para. 23) that the authorities undoubtedly established that it is, as Lord Bridge put it in **Ainsbury v Millington** (at page 381), "a fundamental feature of our judicial system that the courts decide disputes before them; they do not pronounce on abstract questions of law when there is no dispute to be resolved".

[51] But Mr. Marshalleck also referred us to **Gawler v Raettig**, which is a decision subsequent to **Ainsbury v Millington**. The judgment of Sir Anthony Clarke MR (as he then was) in that case contains a valuable survey of the

relevant principles in the light of a number of more recent decisions concerned with the question of the approach of the court to appeals said to be purely academic (see paras. 20 to 37). From this survey it emerges that while cases like the **Sun Life Assurance** case and **Ainsbury v Millington** represent the position in relation to disputes concerning purely private law rights between the parties to the case, the position might be different in cases involving questions of public law.

[52] Thus in **R v Secretary of State for the Home Department, ex parte Salem [1999] 2 All ER 42, 47**, for instance, Lord Slynn (who delivered the single speech), accepted, as counsel on both sides in the case agreed, that "in a cause where there is an issue involving a public authority as to a question of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se." Lord Slynn therefore concluded that "The decisions of the **Sun Life** case and **Ainsbury v Millington**, must be read accordingly as limited to disputes concerning private law rights between the parties to the case." But he nevertheless sounded this cautionary note:

> "The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so the issue will most likely need to be resolved in the near future."

[53] In the result, Lord Slynn did not consider the case then before the House as having any such special features and, therefore, the particular lis between the parties having fallen away, the House declined to hear the appeal, which was accordingly dismissed.

[54] **Bowman v Fels [2005] 4 All ER 609** provides an example of a case in which the criteria laid down in the **ex parte Salem** case were held to have been satisfied. In that case the parties to private litigation settled their dispute before the appeal was heard, but not before the Bar Council, the Law Society and the National Criminal Intelligence Service had intervened for the purpose of clarifying the reach of anti money laundering provisions in the Proceeds of Crime Act 2002 in its application to the legal profession. The Court of Appeal ruled that although the fact that the parties had settled the litigation would in the ordinary way have put an end to the matter (specifically referring in this regard to the **Sun Life** case and **Ainsbury v Millington)**, it would nevertheless proceed to hear the appeal in light of the fact that "The issue at the heart of the appeal is … an issue of public law of very great importance which is causing very great difficulties in solicitors' offices and barristers' chambers and in the orderly conduct of contested litigation throughout the country" (para. [7]).

[55] Finally on the point, the Master of the Rolls referred, as the court had done in **Bowman v Fels**, to Professor Zuckerman's concluding comment on the issue (in Civil Procedure, 2nd edition, para. 23.148):

> "In sum, the hearing of appeals that are no longer determinative of the rights of the parties will depend on whether the matter is of general public interest and whether entertaining an appeal is the most effective way of resolving the issue and promoting the overriding objective."

[56] In the result, the court declined to allow the appeal in **Gawler v Raettig** to proceed, it having become academic, there being no evidence of any urgency or any pressing need for an academic appeal to be heard in the absence of parties with any real interest in the outcome.

[57] On the basis of this decision and the other cases discussed by Clarke MR in his judgment and referred to in this judgment, it appears to me that the position may therefore be stated as follows. It remains the case that, generally speaking, in the realm of purely private law, courts decide disputes between parties before them in respect of live issues, they do not pronounce on abstract questions of law when there is no dispute to be resolved between the actual parties who are before the courts. However, in the realm of public law (or in a private law dispute in which it is in the public interest to seek a judicial resolution of the particular question involved), the court has a discretion to hear an appeal, even if there is no longer any lis to be decided which will directly affect the rights and obligations of the parties inter se. This discretion must, however, be exercised with caution, taking into account all relevant factors, such as the nature of the issue involved and whether hearing the particular appeal is the most effective way of resolving the issue.

[58] Prominent among the reasons advanced by BBL in its application for a stay was the pending arbitration proceedings in the LCIA between BBL and GOB on the question of entitlement to the sum of US$10 million given to Belize by the Republic of Venezuela. To the extent that that issue has now been decisively settled by the First Partial Award of the LCIA arbitral tribunal, it seems to me that Ms. Young was obviously correct in her observation that the matter of the stay has as a result been overtaken by this event. In short, the question whether or not the Chairman ought to have granted a stay has now been rendered of entirely academic interest. But, Mr. Marshalleck maintained, even if as between BBL and GOB this is in fact the position, there is a public interest involved in a determination by the court of whether or not the Chairman approached the matter

of a stay on a proper or principled basis. For my part, I cannot see what that interest might conceivably be in the circumstances of what appears to me in this case to be an unprecedented and unique set of facts. BBL's remaining interest in the outcome from the standpoint of costs, though no doubt genuine, is also a matter peculiar to it.

[59] For all of these reasons, I have therefore come to the conclusion that the Central Bank's second preliminary objection also succeeds.

Disposal of the appeal

[60] These are my reasons for agreeing with the result of the appeal announced by Sosa J at para. [1] above.

MORRISON JA