

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 555 OF 2005



BETWEEN TASARRUF MEVDUATI SIGORTA FONU PLAINTIFF

AND

1. MERRIL LYNCH BANK AND TRUST COMPANY (CAYMAN) LIMITED
2. KAFFEE LIMITED
3. BARLA FINANCE LIMITED
4. CUMUR CASH LIMITED
5. MEDRO LIMITED
6. YAHYA MURAT DEMIREL

DEFENDANTS

CONSOLIDATED BY ORDER DATED 30 MARCH 2007 WITH

CAUSE NO. 80 OF 2007

BETWEEN TASARRUF MEVDUATI SIGORTA FONU PLAINTIFF

AND

1. MERRIL LYNCH BANK AND TRUST COMPANY (CAYMAN) LIMITED
7. KAFFEE LIMITED
8. BARLA FINANCE LIMITED
9. CUMUR CASH LIMITED
10. MEDRO LIMITED
11. YAHYA MURAT DEMIREL

DEFENDANTS

IN CHAMBERS

THE 29TH JUNE 2009

BEFORE CHIEF JUSTICE ANTHONY SMELLIE

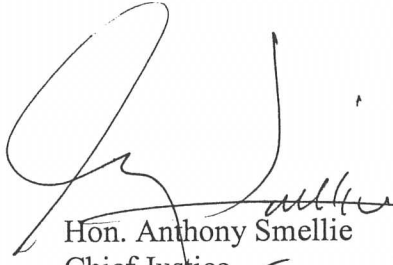
APPEARANCES

Mr. Russell of Ogier for the plaintiff
Mr. McKie for the 1st to 5th Defendants
Mr. Meeson QC for the 6th Defendant

RULING

1. TMSF as a lawful judgment creditor has been compelled at every turn to take whatever steps the law allows to obtain satisfaction of its judgment debt.
2. Its latest attempt to do so by seeking the appointment of receivers by way of equitable execution over trust property has failed as against the Trusts, but the obligation is still owed by Mr. Demeril himself.
3. Limited receivership orders are to be made over any payments out from the Trusts which may be made for Mr. Demeril's benefit and so to that extent TMSF has had limited success.
4. While it was conceded by Mr Meeson QC on Mr. Demeril's behalf, that such limited orders could be made, that concession came only at the hearing itself when the wider receivership appointment was sought. The concession would have served therefore to avoid only a fraction, and I would think not a very large fraction, of the costs of that contest.
5. As costs remain a matter of discretion, I think that I am allowed to take account of the foregoing factors as against the basic rule that costs usually follow the event, even if the event here were to be defined in terms of Mr. Demeril's and the Trustee's success in respect of the wider receivership orders which TMSF tried unsuccessfully to obtain: see *R v Immigration Board, Ex Parte Kirk Freeport Plaza Ltd: 1996 CILR Note 1.*
6. In my view, the costs should be borne as follows:

- (i) As between TMSF and Mr. Demeril there shall be no order, leaving each side to bear its own costs (albeit Mr. Demeril is to be allowed from the Trust Fund on the basis of an existing injunctive order). ^{his costs}
- (ii) As between TMSF and the Trustee, the Trustee to have its costs on the ordinary basis, to be taxed if not agreed, with the Trustee being allowed to rely upon its indemnity from the Trust Fund for any balance.


Hon. Anthony Smellie
Chief Justice

29th June 2009

