WeirFoulds LLP

Case Law Update: E. Anthony Ross v. Bank of Commerce (Saint Kitts Nevis) Trust and Savings Association Limited

December 20, 2010

By Mark Edelstein

Appellate Jurisdiction – Civil Procedure – Privy Council

The plaintiff obtained a judgment in the courts of Saint Christopher and Nevis ("Nevis"). The Nevis Court of Appeal (the "Court") set the judgment aside. The plaintiff sought to appeal to the Privy Council, and asserted that he could do so as of right, without seeking leave to appeal.

Prior to changes to the Privy Council's Rules of Procedure in 2009, the plaintiff would have needed to seek leave to appeal from the Court. If leave to appeal was not obtained from the Court, it was then possible to obtain special leave from the Privy Council.

The Privy Council held that, in light of changes to the Rules, it was possible that an appeal could be heard without leave. However, the Privy Council held that a Nevis law regarding procedures for seeking leave still applied to appeals to the Privy Council from Nevis courts. As a result, the Privy Council concluded the plaintiff was required to seek leave to appeal from the Court.

However, the Privy Council also noted that the Court, in light of the rule changes, had previously held that leave to appeal had to be sought at the Privy Council itself. Furthermore, under the Nevis constitution, an appeal to the Privy Council is available as of right for claims above a certain monetary value. As such, the Privy Council considered the application as an application for special leave, and determined that the plaintiff should be granted leave to bring an appeal.

Frank Walwyn of WeirFoulds argued the case before the Privy Council on behalf of the plaintiff. The quality of his submissions were praised by the Privy Council in its judgment.

WeirFoulds LLP

www.weirfoulds.com

Toronto Office
4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office
1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035

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