

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2010-01442**

**IN THE MATTER OF  
CLICO INVESTMENT BANK LIMITED – IN COMPULSORY LIQUIDATION**

**AND**

**IN THE MATTER OF THE COMPANIES ACT CHAPTER 81:01  
AND THE WINDING UP RULES IN THE SECOND SCHEDULE OF THE COMPANIES  
ACT AND, IN PARTICULAR, RULES 6, 7, 88 AND 89**

**BETWEEN**

**MARIE BRIZARD WINE & SPIRITS S.A.  
(formerly BELVÉDÈRE S.A.)**

Applicant

**AND**

**THE DEPOSIT INSURANCE CORPORATION  
(as the Liquidator of Clico Investment Bank Limited – In Compulsory  
Liquidation)**

Respondent

Before the Honourable Mr Justice Ronnie Boodoosingh

**Appearances:**

Mr Ramesh Lawrence Maharaj SC leading Mr Ronnie Bissessar instructed by Mr Varin Gopaul-Gosine for the Applicant

Mr Ian Benjamin SC leading Mr Pierre Rudder instructed by Ms Elena Araujo for the Respondent

Date: 31 March 2020

## **JUDGMENT**

1. The applicant, Marie Brizzard Wine and Spirits S. A. (Brizzard) produces and sells wine internationally. The company is based in France. They say they invested money in Clico Investment Bank Limited (CIB). CIB is in liquidation. The Deposit Insurance Corporation (DIC or liquidator) is the court appointed liquidator.
2. Brizzard says in June 2006, its predecessor company, Bevedere S. A., transferred € 25 M from their account to Caribbean Money Market Brokers (CMMB). This was to be invested by CIB. CIB issued an Investment Note Certificate (INC) acknowledging this investment. The evidence is clear that this money was not put into CIB, but was sent to an Angostura escrow account. Angostura is one of the companies in the CLF group.
3. Brizzard pursued proof of debt proceedings with the liquidator to have the debt of the € 25 million paid. The liquidator admitted € 17 million of

the debt, but asked for further proof of the payment into CIB. Certain correspondence passed between the parties. Brizzard eventually indicated that there was no other proof that could be provided. Brizzard contends the request for further information is in effect a refusal to admit the debt.

4. Brizzard has come to the court to reverse the decision of the liquidator under section 377 (5) of the **Companies Act Chapter 81:01. Rule 88** of the **Winding Up Rules** provide as follows:

“The Liquidator shall examine every proof of debt lodged with him and the grounds of debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.”

5. The duty exercised by the liquidator is quasi-judicial. The liquidator has to be satisfied that each debt is truly and properly due. The liquidator has to balance the rights of all the creditors and make a just determination based on the evidence presented.

6. The evidence in this matter came from Stephane Laugery and Mr Richard Trotman on behalf of the applicant and from Michelle Rolingson-Pierre from the respondent.
  
7. Much of the evidence in this case is undisputed from the documents placed before the court. By letter dated 27 June 2006 Brizzard's predecessor gave instructions to its bankers to transfer € 25 million to CMMB. On 10 July 2006 CIB issued an INC. This expressly stated CIB acknowledged receipt of this sum from the investor. There was an accompanying letter confirming the instructions to invest the sum as an INC.
  
8. It is clear that the authenticity of the INC is not disputed. The reason for this is that € 17 million of the claim has been admitted. It would be unlikely that this would be admitted if the INC was not accepted to be genuine. Further, there is evidence presented by Brizzard from Richard Trotman that the money was received and € 8 million was put into a "CIB Escrow Account which CIB held with Angostura Holdings Limited". He was a former President and CEO of CIB. He gave an affidavit that he signed the INC along with Mala Ghandi. Both of them were authorised signatories at the time. He said he further signed a CIB Investment Memorandum, dated 6 September 2006. Mr Trotman also confirmed that CMMB acted on behalf of CIB. He said this transaction was recorded in CIB's books.

9. The essential case of the liquidator is that there is no sufficient evidence that the money was paid over by the applicant to CIB.
  
10. The documentary evidence supported that € 25 million was received by CMMB. The real question is whether the liquidator's position in effect is justified in these circumstances.
  
11. The central issue is whether this is a debt of CIB, which the liquidator should admit.
  
12. The first hurdle to be crossed is whether it can be said that the liquidator has made a decision which in effect is that the debt has not been proved. In my view it has. The liquidator called for more evidence. Certain documents were supplied. The liquidator asked for more evidence. Brizzard clearly told the liquidator that they have no further proof to provide. After that a decision ought to have been made in a reasonable time. The fact that the debt has not been admitted can be taken as a decision that the debt has not been proved. In my view a reasonable time has passed. To hold otherwise would mean that the liquidator could simply stymie the process by requesting further information. Brizzard had clearly said they have no further information to give.

13. The next issue is whether the INC was sufficient proof of the debt. In these circumstances I conclude it was. The liquidator has accepted that € 17 million was paid to CIB. This was on the basis that CIB received this sum. Brizzard has provided both documentary and first hand evidence from Mr Trotman that the monies were received and directed. The evidence of the liquidator has not been able to dispute that. Mr Trotman has been able to give first-hand evidence about his recollection of the transaction. It was a significant investment. It is not difficult to accept that he would recall it. The liquidator, on the other hand, understandably does not have first-hand knowledge and must rely on what documents are available.

14. The liquidator has advanced a handwritten note from Mala Ghandi to Mr Trotman seeking confirmation that the two payments of € 17 million and € 8 million were received from CMMB. However that said note also stated something about the € 8 million sent directly to Angostura. In fact, there appears to be a tacit acceptance that the money went elsewhere. The liquidator says there is no proof it went to CIB's books. However, in my view, that is not the correct question to ask. The more appropriate question is whether CIB received it and acknowledged receiving it. Even if it did not go onto CIB's books it was directed by an authorised person from CIB elsewhere. It therefore amounts to a debt owed to the depositor.

15. An analogy may be helpful. A person takes money to a teller in the bank and hands it over and receives a receipt in the proper form. Whether the teller deposits the money into the account, there is a debt owed to the depositor. If the bank were to show the depositor and the teller worked together in a fraudulent way to defraud the bank, then no debt would arise. But on the face of it, in the absence of fraud, the depositor is entitled to recover the money he has tendered and has received a receipt for.

16. There is no evidence in this case that Brizzard and CIB or any other entity has been involved in any suspicious, corrupt or fraudulent transaction. Mr Benjamin pointed to annual Reports from Angostura Holdings Limited which suggested some acquisition of Brizzard and its predecessor by Angostura. But that in itself does not raise any suspicions about whether the transaction did in fact take place.

17. Etherton J in **Dawodu v American Express Bank [2001] WL 542130** at p. 8 said:

“...what is required before the court is prepared to investigate a judgment debt, in the absence of an outstanding appeal or an application to set it aside, is some **fraud, collusion or miscarriage of justice**. The latter phrase is of course capable of wide application according to the

particular circumstances of the case. What in my judgment is required is that the court be shown something from which it can conclude that had there been a properly conducted judicial process it would have been found, or very likely would have been found, that nothing was in fact due to the Claimant” (emphasis added).

**18. In *Re Van Luan Ex Parte Pattullo* (1906) 1KB 155 at 163 Bigham said:**

"The trustees' right and duty when examining a proof is to require some satisfactory evidence that the debt which the proof is founded is a real debt."

19. Proof of debt does not in my view equate with proof of deposit in CIB. Once CIB received it, the debt arose. Received in this sense equates with proof of tender of the money and / or an acknowledgement as having been received. The investment was tendered and received by CIB. It ought to have “hit the books” as contended by the liquidator. But that is not, in my respectful view, essential in these circumstances as far as the creditor is concerned. CIB may have had other processes for money received within its group or related companies. We may even raise eyebrows about that. But what CIB did with the money after that was not the investor’s concern as far as an entitlement to recovery goes.

20. The liquidator has not put before the court any sufficient evidence to justify the court looking behind the INC in this case. The court can have some sympathy for the liquidator here. The liquidator has a role in law to safeguard the interests of the company and to act in an appropriate manner to pay such debts as can be justified. If it does not have a record of the money being put into CIB's accounts, then that may raise concerns. Here, however, we do have first-hand evidence as to what occurred with the money. This evidence has not on affidavit been challenged. The liquidator could hardly do so because the staff of the liquidator has no first-hand experience to speak of. They are acting based on records. However, the evidence of Mr Trotman is entirely consistent with the documents available.

21. Authentic records of a company must be given significant weight by a court. In many cases, the contemporary documentary evidence is the best and most reliable evidence available. It may often be more reliable than the unaided recollections of individuals who are subject to fading memories with the passing of time. Where a document such as an INC or a fixed deposit certificate is presented to the court and nothing is suggested to show it is not genuine, the court is entitled to give it some weight. In the absence of a smoking gun related to the Certificate it ought generally to be accepted for what it says. In this instance we do have the benefit of a live witness to the events to back it up and explain how it came about.

22. We also have some other documentary evidence which is consistent with a sum of € 25 million being sent to CIB to be invested via CMMB. We also do not have contrary evidence that money was not received. What we do have is the reality that the money was directed to another part of the group. What is also important to note is that Brizzard sent money to be invested. CIB undertook to invest the money and provide a return. There was no agreement that the money either had to be retained in or received into CIB. In this case it was directed elsewhere. There is proof that it was received on behalf of CIB and therefore a debt followed from this.

23. The liquidator's Legal Counsel, Ms Ingrid White-Wilson, had written to Brizzard on 20 September 2016 conditionally admitting the debt. She wrote that while the records support a substantive claim owed to Brizzard's predecessor, "the liquidator is at variance with the amount claimed which may relate to the interest". Further, an email dated 24 November 2016 of Ms Yvette Peters, Project Manager of the Liquidator, had also made reference to a review which was focused on interest. In fairness to her, she did say it was subject to further review and analysis of additional information they had recently obtained. However, nothing was put before the court by way of information or documents which could override the relatively categorical statement by Ms White-Wilson.

24. What follows from this is that the liquidator does not have contradictory evidence or information before the court to upset the clear evidence of the documents and evidence presented by Brizzard.
25. The liquidator submitted that Brizzard should have made a claim against CLF based on the evidence showing that CIB did not receive the money but that the money went to elsewhere in the CLF group. I do not agree. The debt was that of CIB. They accepted the investment and contracted to invest it for a period of time at a particular rate of interest. Brizzard had no arrangement with any other entity in the CLF group. A creditor cannot be made to go searching for where money went. That could easily result in abuse.
26. Submissions were made and a draft order attached setting out certain reliefs being claimed by Brizzard. This included the court making orders with respect to interest and ordering the liquidator to pay specified sums by a particular date. I am not persuaded that it is open to the court to make such orders. The court's role is to consider whether the liquidator's decision should be affirmed, reversed or varied. The liquidator has knowledge of the assets and the rank of claims and when it can appropriately make payments and how much. There are also prior orders of the court affecting creditors. The applicant here cannot be provided with any different or favoured treatment by the court. The evidence is that dividends have been paid on the € 17 million. It can best

be left to the liquidator to make such payments as arise in accordance with prior orders of the court and consistent with the other payments being made.

27. In the circumstances, the order of the court is that the decision of the liquidator by letter dated 10 May 2019 is reversed or varied to the extent that the debt of € 8 million is proved and ought to be admitted.

28. The CPR regime does not apply to costs in these matters. Costs in these matters are an exception to the rule. If there are any brief submissions on costs, the parties may submit them by email to the court's JSO and copied to all parties on or before 20 April 2020. If there are no submissions, the court's order will be that the parties are to bear their own costs. I am grateful to both Senior Counsel for their very erudite submissions.

Ronnie Boodoosingh

Judge