

IN THE HIGH COURT OF JUSTICE
COLONY OF MONTSERRAT
A.D. 1996



SUIT NO 101/95

BETWEEN STERLING OVERSEAS BANK LIMITED Plaintiff
AND ATTORNEY GENERAL First Defendant
 REGISTRAR OF COMPANIES Second Defendant

Mr David S Brandt for the Plaintiff
Miss Esco Henry for the Defendants

JUDGMENT

Sterling Overseas Bank Limited (hereinafter called "the company") was incorporated and registered in this Colony on the 2nd May 1980. It was later granted a licence to carry on the business of banking which business it appeared to have engaged in until July, 1987 when its banking licence was revoked for the non-payment of fee:

Somehow or other, the company was also struck off the Register of Companies at or about the same time. Although there ought not to be any uncertainty about the time of the striking off register of the company Noris Conti who described himself as a director of Wisetyn S.A. which was the sole director of the company, deponed inter alia in an affidavit that the company's "licence was revoked by the Government of Montserrat on the 30th day of July, 1987" and the said date the company was struck off the Register of Companies contrary to the provisions of the Companies Act particularly sections 199-201."

In another affidavit filed on the 12th December, 1995 Lyndell Greer the Assistant Secretary in the Financial Services Department of the Government of Montserrat swore, also inter alia, that "our records reflect that Sterling Overseas Bank Limited was incorporated on May 2, 1980 and duly licensed under the Banking Ordinance 1978 The banking licence was revoked on July 21, 1987. The company was also struck off the company's register on 20 1987 in accordance with the provisions of section 18 (1) 2) of the Offshore Banking Ordinance 1991

Notwithstanding the apparent confusion in the dates it is evident that Sterling Overseas Bank Limited was removed from the Register of Companies and the company does not now appear as an active and legitimate organization And that removal of the company from the Register of Companies was notified to the persons interested in the company from as long ago as when it did happen in 1987. The company was not wound up

The company has now come to the court on an originating summons seeking "a declaration that the striking off of the Plaintiff's Company from the Register of Companies was null and void and of no effect and that the Registrar of Companies be ordered to immediately restore the said Company to the Register

In the affidavit sworn to support the company's application, the said Noris Conti deponed that "the company was carrying on business other than banking business at the time of the striking off and "that the striking off of the Company has greatly inconvenienced the Company." In opposing the company's application, the said Lyndell Greer swore that "on studying the Memorandum of Association of the said company I note that much of the other business which the company is empowered by its objects to engage in violate the provisions of section 13 of the Banking Ordinance 1978 and also the Offshore Banking Ordinance 1991"

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It has been suggested that the company was struck off "the company's register in accordance with the provisions of section 18 (1) (2) of the Offshore Banking Ordinance, 1991" This must surely be an oversight It would not have been possible in 1987 to use a procedure which may only have become available in 1991 even though I cannot be sure of how active and extraordinary the telepathic powers of the Registrar of Joint Stock Companies were in 1987

In the circumstances I should have to find that the Registrar of Joint Stock Companies ought not to have struck the company off the Register of Companies and that if he did so as it now seems accepted that he did, it would not have been proper and effective

Through the originating summons the company has asked the court to declare the striking off null and void and to order its immediate restoration to the Register By section 203 of the Act it is provided as follows

203 If any company or member thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section, the company or member may apply to the Court; and the Court, if satisfied that the company was, at the time of the striking off, carrying on business or in operation, and that it is just so to do, may order the name of the company to be restored to the register, and thereupon the Company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the Court may, by the order, give such directions, and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had never been struck off.

I confess that I do not readily grasp the true effect of what is stated in the first sentence of the provision but I shall assume that it refers to a striking off under sections 199 to 202 If so what is provided there would not permit me to use section 203 to order restoration of the name of the company to the register; and I should refrain from doing so, using those provisions The Registrar's action was such as could open the way for me to take

the almost fictional position that the name of the company was not in truth removed and say that as a matter of law even if not of fact the name has remained on the register all along. Section 203 of the Act contemplates the Court being able to place "a company and all other persons in the same position, as nearly as may be as if the name of the company had never been struck off." To assume that fictional stance is therefore not novel

To hold that the name of the company ought to have been on the register as if it had never been struck off would mean that the company might be required to do such things as it ought to have done over the years from 1987. One of those things would have been to pay annual registration fees. Filing annual returns with the Registrar of Joint Stock Companies would have been another. It was the wrongful act of the Registrar of Joint Stock Companies however which would have caused those things not to have been done; and the company ought not to be required to pay for registration from which it was denied the opportunity of benefiting.

I could order that the company be allowed to have its name on the Register from 1987 without the break that did occur but that would mean sanctioning a registration and conduct ostensibly against the provisions of section 18 of the Offshore Banking Ordinance, 1991. The court could not do that; and I should not therefore make an order that would have that effect. Section 18 of the Offshore Banking Ordinance, 1991 provides as follows:

18. (1) Except with the approval of the Governor, no person, other than a licensee, shall:

(a) use or continue to use the words "bank", "trust", "trust company", "trust corporation", "savings" or "savings and loan" or any of their derivatives, either in English or in any other language, in the description or title under which such person is carrying on business from within Montserrat, or offshore;

(b) make or continue to make any representation in any billhead, letter, letterhead, circular,

paper, notice, advertisement or in any other manner whatsoever that such persons is carrying on banking business or trust business;

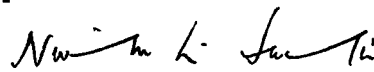
(2) Except with the approval of the Governor, no company shall be registered, or continue to be registered, by a name which contains the words "bank", "trust", "trust company", "trust corporation", "savings" or "savings and loan" or any of their derivatives, either in English or in any other language, in the description of title under which such company is carrying on business from within Montserrat or offshore.

In light of the foregoing I now, in dealing with what is asked in the originating summons, declare that the removal of the name of Sterling Overseas Bank Limited from the Register of Companies in July 1987 was improper and unlawful and should not have been done

I would order that the name of the company is to appear on the Register of Companies as if the same had not been left off after 1987 provided that the said Sterling Overseas Bank Limited pay to the Registrar of Joint Stock Companies such fees as would have been required for registration up to 1987, for 1987, 1991, 1995 and 1996 and file such documents as are necessary to show that the company may be registered. It may only do this however if within 28 days of the date of this ruling the company can change its name and does have its name changed so that the word "Bank" or any other word prohibited by section 18 of the Offshore Banking Ordinance 1991 does not appear in the name or in its documents

The company has also asked the court to award it costs; but should not do so in light of the fact that the company was the author of much of what has caused its existence to be interfered with as it was and it took too long to come to the court for redress

Dated the 28th day of March, 1996


Neville L Smith

Judge