

**Judgment 67/2005**

**Shaham v. Lloyds TSB Offshore Limited and  
Catherine Maureen Fooks (as Administrator of  
Guernsey Estate of Dan Ron) – Royal Court  
(Civil action file 862) – 15 December, 2005**

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**Application by the Bank to be paid its reasonable costs before paying into Court the balance of the funds held by it in the name of Dr Dan Ron and Mrs Ron – directions regarding further proceedings.**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

15<sup>th</sup> day of December, 2005 before Richard John Collas Esquire, Deputy Bailiff; sitting alone

In the matter of:

RACHEL SHAHAM

(Plaintiff)

and

LLOYDS TSB OFFSHORE LIMITED

(Defendant)

and

CATHERINE MAUREEN FOOKS  
(as Administrator of the Guernsey Estate of Dan Ron)

(Intervenor)

Whereas on 15<sup>th</sup> December, 2005, the Deputy Bailiff considered an application by the Defendant that it be paid its reasonable costs and expenses before paying into Court the balance of the funds held by it in the name of Dr Dan Ron and Mrs Ron and heard thereon Advocates A. D. Laws, C. H. Edwards and N. J. Barnes, Counsel for the Plaintiff, the Defendant and Intervenor respectively.

The Deputy Bailiff this day handed down judgment in the terms attached hereto and found that the Defendant was entitled to recover those costs incurred by it in this matter since 8<sup>th</sup> July, 2005 and the Deputy Bailiff

**ORDERED: -**

- a. The Bank's application to recoup the costs and expenses incurred by it prior to 8 July 2004 be adjourned until the conclusion of the hearing of the substantive proceedings;

- b. The Bank shall deduct from the Account the costs and expenses reasonably incurred by it on and after 8 July 2004, the amount to be agreed between Counsel or, failing agreement, determined by taxation.
- c. If the Bank wishes to pay into Court the monies in the Account, it shall do so after retaining sufficient to cover the amount claimed by it in respect of its costs and expenses to date (“the retention”). If in due course the amount of costs and expenses recoverable by the Bank is agreed or held to be less than the retention, the balance of the retention shall then be paid into Court or as the Court may otherwise order.
- d. The Bank shall not participate as a party in the hearing of the substantive application in these proceedings but shall participate in any costs hearings.
- e. Advocate Fooks’ application for security for costs is, by agreement, dismissed on the agreement of the parties that neither of them shall seek to enforce any costs order in the jurisdiction of the Guernsey court.
- f. All three parties shall give discovery by way of list of documents within 28 days and the Bank shall be entitled to recover the reasonable costs and expenses incurred by it in giving discovery from the Account.
- g. A Skeleton Argument shall be lodged by each of Ms Shaham and Advocate Fooks by close of business on Friday 13 January, and each of those parties may lodge a Skeleton Argument in reply by close of business on 27 January. A statement of agreed facts shall be lodged by them by close of business on 27 January.
- h. The substantive hearing estimated to last one day shall take place before me sitting alone on 20 or 21 February 2006, date and time to be confirmed.

S. M. D. ROSS  
Her Majesty’s Deputy Greffier

Approved Text  
**IN THE ROYAL COURT OF  
GUERNSEY  
(Ordinary Division)**

**Between**

**RACHEL SHAHAM**

**Plaintiff**

**-v-**

**LLOYDS TSB OFFSHORE LIMITED**

**Defendant**

**and**

**CATHERINE MAUREEN FOOKS  
(as Administrator of the Guernsey Estate  
of Dan Ron)**

**Intervenor**

**Judgment handed down: 23rd December 2005**

**Before: Richard John COLLAS Esq., Deputy-Bailiff**

**Advocate for Rachel Shaham – A D Laws**

**Advocate for Lloyds TSB Offshore Limited – C H Edwards**

**Advocate for Miss C M Fooks – N J Barnes**

**Cases referred to:**

- 1 *Commerzbank AG v IMB Morgan plc* dated 30 November 2004
- 2 “*The Lycaon*” (1983) 2 *Lloyds Rep* 548

1. This is my Judgment and order on a number of procedural matters raised in these proceedings. The Judgment relates, in particular, to the application by Lloyds TSB Offshore Limited (“the Bank”) to be paid its reasonable costs and expenses before paying into Court the balance of the funds held by it in an Account which originally was in the name of Dr Dan Ron and his mother Mrs Ron.

**Factual Background**

2. Dr Ron and Mrs Ron were nationals of Israel and resident in that country. For a number of years, they had an Account in their joint names at the Bank (“the Account”). Mrs Ron died on 31 August 2002 and by right of survivorship, Dr Ron became the sole owner of the Account.
3. On 4 November 2002, Dr Ron and Ms Shaham attended a meeting in Guernsey with an officer of the Bank. During the course of that meeting, Dr Ron requested that the Account be transferred into the joint names of himself and Ms Shaham. Paul Samman, an officer of the Bank, made a file note of the meeting which is produced to the Court as exhibit PS1 to Mr Samman’s affidavit sworn 29 September 2004. The file note records that before removing Mrs Ron as a party to the Account, Mr Samman requested site of her death certificate which Dr Ron had not brought with him. However, in anticipation of receiving the death certificate, the documents

required to add Ms Shaham to the Account, were completed in Mr Samman's presence. The file note also records that Ms Shaham was to produce a utility bill confirming her residential address, in order to meet the requirements of the Bank's compliance procedures. Advocate Laws, appearing for Ms Shaham, indicated that any factual matters which might be disputed are unlikely to be of any legal significance.

4. Dr Ron died on 3 May 2003. At the date of his death, the Bank had not received either Mrs Ron's death certificate or Ms Shaham's utility bill.
5. The substantive issue the Court will have to determine in due course is whether, following the death of Dr Ron, Ms Shaham is solely entitled to the monies in the Account or whether it is his Estate which is entitled to those monies.
6. Advocate Edwards explained that the Bank had taken special notice of the Account following a telephone conversation on 15 October 2003 from an Amos Sion who claimed to be Dr Ron's lawyer. Mr Sion requested that the Account be closed and 90% of the monies in the Account be distributed to Ms Shaham with the remaining 10% to be given to Mr Samman, the Bank officer with responsibility for the Account. The conversation is deposed to in an affidavit sworn by Richard John Musty, the Island Director of the Bank on 14 July 2004.
7. The Bank regarded it as highly unusual that a Bank officer be offered a percentage of the balance of the Account and considered it might be intended as an inducement to Mr Samman to give effect to the instructions.
8. I was told that Mr Sion has also now passed away.
9. There has been correspondence between lawyers acting on behalf of the Bank and lawyers acting on behalf of Ms Shaham to which I will refer later.

### **Procedural History**

10. Proceedings were issued by Ms Shaham against the Bank seeking a declaration that she was the sole owner of the balance standing to the credit of the Account and an order that the balance of the Account be paid to her. That action first came before the Court on 16 July 2004.
11. In an application dated 14 July 2004, the Bank applied for interpleader relief and for various directions, including in paragraph 2, an order that *"the Applicant is entitled to be paid all their reasonable charges, remuneration and fees and to recover all their reasonable costs and expenses incurred in relation to matters concerning ownership and/or entitlement to the Account from those monies held in the Account and in particular those costs incurred in locating and informing the Estate of Dr Dan Ron (deceased) of this Application"*. The Bank offered an undertaking that upon receiving an order in the terms above, it would attempt to find the persons responsible for the administration of the Estate of Dr Ron.
12. The Bank's application was resisted by counsel for Ms Shaham and the then Deputy Bailiff dealing with the matter did not make any order in respect of paragraph 2 as he was unable, at that stage, to form a view as to whether it was appropriate that the costs be paid out of the customer's money. However, he did encourage the parties to make further enquiries in Israel.
13. The Bank instructed an Israeli Advocate, David Osborne, who in turn instructed a private investigator. As a result of their enquiries and advice, it was established that

Dr Ron's sister, Dafna Dotan (Ron) was the heir to Dr Ron's Estate in the absence of a Will. Mrs Dotan was under guardianship and there then followed a number of adjournments in the Royal Court whilst the necessary procedures were followed which eventually led to the appointment of Advocate Fooks as Attorney Administrator of the Guernsey Estate of Dr Ron. By an application dated 15 June 2005 Advocate Barnes, on behalf of Advocate Fooks, applied for leave for her to intervene and be joined as a party in these proceedings. He also applied for security for costs from Ms Shaham and for a further order, the effect of which would have been to limit the amount of costs that could be recovered against either his client or Ms Shaham. I will return to the costs issues later in this Judgment. Paragraph 1 of Advocate Barnes' application, namely that Advocate Fooks be joined as a party to these proceedings was granted on 17 June 2005.

14. Pursuant to directions given by the Bailiff on 17 June 2005, Advocate Barnes (on behalf of Adv Fooks and Dr Ron's Estate) filed a defence to Ms Shaham's substantive action in July 2005.
15. On 11 July 2005, Advocate Barnes lodged an application for discovery against the Bank.
16. By application dated 25 July 2005, the Bank sought orders that:
  - i. The Bank provide discovery by list of documents within 28 days.
  - ii. Within 28 days thereafter the balance of the Account be paid into Court after deducting the Bank's "*reasonable costs and expenses of these proceedings and the related interpleader proceedings*".
  - iii. Thereafter the Bank be removed as a party from these proceedings.
17. At a directions hearing on 18 November 2005, when the matter came before me for the first time, I gave an indication of my preliminary views on the outstanding matters. Counsel indicated that agreement would not be reached on these issues and hence a hearing was required. The matter next came before me for hearing on Thursday 15 December 2005.

#### **The Bank's Application for Costs**

18. The principal issue for me to determine concerned the Bank's costs and expenses which it had claimed both in paragraph 2 of its application dated 14 July 2004 and, by inference, in paragraph 2 of its application dated 25 July 2005.
19. The Bank does not claim to have an entitlement to recover these costs and expenses under the terms of its mandate. It has no contractual right to recover costs and expenses. The Bank seeks their recovery as an exercise of my judicial discretion.
20. All parties were agreed that the Bank is in the position of an interpleader and that as a matter of general principle an interpleader should be entitled to recover its costs out of the disputed funds.
21. Advocate Edwards relied upon the decision of Lawrence Collins J in the High Court of Justice Chancery Division in *Commerzbank AG v IMB Morgan plc* dated 30 November 2004.
22. The London branch of Commerzbank operated a correspondent bank account for IMB Morgan, a Nigerian stockbroker. A key feature of the operation of a correspondent account is that receipts into the account from a number of sources are all intermingled. The account relationship between Commerzbank and IMB Morgan was terminated after Commerzbank was informed that the account might have been used for money laundering and that funds in the account might include funds received

from victims of fraudulent activity. Commerzbank had to establish who might have a proprietary right to funds in the account and instructed a firm of London solicitors to assist. On their advice, Commerzbank filed an application seeking relief by way of interpleader and notice of the proceedings was served on approximately 100 potential interpleader claimants. The Judgment of 30<sup>th</sup> November 2004 to which Mr Edwards referred me, sets out the basis upon which Collins J apportioned the balance of the account between the claimants. In the course of the Judgment he recites that at an earlier hearing he had ordered that the funds held in the account be paid into Court after the deduction of Commerzbank's costs which he had summarily assessed. He had also directed that Commerzbank's solicitors costs be paid from the account. He does not explain the legal basis or his reasoning for making those costs orders. The Judgment therefore does not assist me other than by giving an illustration of an order made by a Judge on the particular facts of that case.

23. Advocate Laws, on behalf of Ms Shaham, argued that the Commerzbank case is not in point. He states that when Ms Shaham issued her proceedings, the only person with a claim to the Account was Ms Shaham. Furthermore he says that her entitlement to the money is so clear cut that the Bank need have no realistic concern that any other party might have a claim to the money. He argues that there was no need to issue proceedings, and no need to involve Dr Ron's Estate. If the Bank required legal advice in order to establish the ownership of the Account, then it should bear the cost of that legal advice as one of the ordinary incidents of its banking business and should not expect the customer to have to pay.
24. Advocate Laws invited me to follow the decision of Lloyd J in "*The Lycaon*" (1983) 2 *Lloyds Rep* 548 from which he drew the following propositions:
  - i. That the general rule is that a person granted interpleader relief recovers his costs and charges out of the fund.
  - ii. That notwithstanding the general rule, the Court retains a complete discretion on the issue of costs to be applied in the particular circumstances of the case.
  - iii. That in an appropriate case, this discretion may be exercised so as to deny the party granted interpleader relief any of his costs.

On the facts of the *Lycaon* case, Lloyd J said he should exercise his costs discretion in the following way "*if at the end of the hearing of the issue, it emerges that the need for interpleader relief arose out of the applicant's own default, then it may be necessary for the Court to reconsider the question of costs*".

25. When seeking to find fault with the Bank's conduct, Advocate Laws does not criticise any action taken, or not taken, by the Bank as a result of its meeting with Dr Ron and Ms Shaham on 4 November 2002.
26. The conduct of the Bank criticised by Advocate Laws is, as I have said, in taking legal advice and then issuing these proceedings. More particularly, Advocate Laws criticised the Bank for not initially taking a neutral position. He criticised what he called the 'attitude' of the Bank, who, through its Advocates, had stated in writing that Ms Shaham had no entitlement to the money and had refused to accept that Ms Shaham's arguments might be correct. He also argued that the bank incorrectly analysed that the relationship between the Bank and the owner of the Account was a Trustee relationship rather than a debtor/creditor relationship. He said the Bank's position eventually thawed when on 8 July 2004 its Advocates wrote in a tone very different from their previous correspondence. The Court proceedings commenced almost immediately thereafter.

27. On behalf of the Estate of Dr Ron, Advocate Barnes adopted a more neutral approach. He, along with Advocate Laws, encouraged me to await the outcome of the substantive hearing before taking any view as to the conduct of the Bank. Of course, Advocate Barnes cannot agree with Advocate Laws' argument that Ms Shaham's case is so clearcut that legal proceedings are not required.
28. Both Advocate Laws and Advocate Barnes take issue with the quantum of the expenses claimed by the Bank, especially with the size of Ozannes' bills. I am not concerned in any way with quantum. If I make a costs order in favour of the Bank, it will be on the basis that the parties are to agree the costs or, failing agreement, they will be submitted to taxation.

### **Conclusion**

29. I adopt the general principles of English Law set out in the *Lycaon* case and summarised above as being applicable under Guernsey Law.
31. At this stage in the proceedings, I draw a distinction between the costs and expenses incurred by the Bank before 8 July 2004 and those incurred after 8 July 2004, the date when the Bank appears to have changed its attitude to Ms Shaham's claim. Ms Shaham's substantive proceedings were issued soon after that date. Since that time, the Bank has been in the hands of the Court having to attend several adjournments that have been ordered; it has had to deal with the procedural issues raised and; in particular, the Bank has incurred costs and expense in doing what has been requested (if not expressly ordered) of it by the Court especially in making enquiries in Israel that led to the identification of Mrs Dotan as the heir to Dr Ron's Estate. The Royal Court has not taken the view that Ms Shaham's case is so clear cut that proceedings are unnecessary. Quite the contrary, the Royal Court encouraged the Bank to investigate and locate the beneficiary of Dr Ron's Estate so that she can participate as a party in these proceedings. Consequently, I do not consider that the Bank's conduct or attitude since 8 July 2004 has been such that it should be deprived of the costs which it would normally be entitled to recover out of the funds in the Account.
32. With regard to the costs incurred by the Bank prior to 8 July 2004, I wish to retain an open mind pending the hearing of the case. That it is not to be interpreted as an indication that I am minded to disallow those costs. Following the telephone call from Mr Sion the Bank may well have had grounds for proceeding with extra care and it is possible that it was entirely reasonable for them to take legal advice before paying out the funds to Ms Shaham. At the conclusion of the substantive hearing I will be in a position to decide whether the facts of this case are such that the Bank should be ordered to pay those costs out of its own resources. I merely state that my preliminary thoughts are that I will need to be persuaded not only that the Bank's conduct or attitude has been incorrect, but also that unnecessary expenditure has been incurred as a result.
33. During the course of argument Advocate Edwards confirmed that the Bank is not seeking to recover any costs in respect of the time spent by the Bank's management and staff in dealing with this matter. The costs and expenses to be recovered are therefore only the disbursements that the Bank has incurred in instructing lawyers, counsel and agents to act on its behalf.
34. The amount to be recovered is to be agreed between the parties or, failing agreement, to be determined by taxation.

## Orders

35. As a result of this decision and other matters agreed between the parties, I order that:
- a. the Bank's application to recoup the costs and expenses incurred by it prior to 8 July 2004 be adjourned until the conclusion of the hearing of the substantive proceedings;
  - b. the Bank shall deduct from the Account the costs and expenses reasonably incurred by it on and after 8 July 2004, the amount to be agreed between Counsel or, failing agreement, determined by taxation.
  - c. If the Bank wishes to pay into Court the monies in the Account, it shall do so after retaining sufficient to cover the amount claimed by it in respect of its costs and expenses to date ("the retention"). If in due course the amount of costs and expenses recoverable by the Bank is agreed or held to be less than the retention, the balance of the retention shall then be paid into Court or as the Court may otherwise order.
  - d. The Bank shall not participate as a party in the hearing of the substantive application in these proceedings but shall participate in any costs hearings.
  - e. Adv Fooks application for security for costs is, by agreement, dismissed on the agreement of the parties that neither of them shall seek to enforce any costs order in the jurisdiction of the Guernsey court.
  - f. All three parties shall give discovery by way of list of documents within 28 days and the Bank shall be entitled to recover the reasonable costs and expenses incurred by it in giving discovery from the Account.
  - g. A Skeleton Argument shall be lodged by each of Ms Shaham and Advocate Fookes by close of business on Friday 13 January, and each of those parties may lodge a Skeleton Argument in reply by close of business on 27 January. A statement of agreed facts shall be lodged by them by close of business on 27 January.
  - h. The substantive hearing estimated to last one day shall take place before me sitting alone on 20 or 21 February 2006, date and time to be confirmed.