IN THE COURT OF APPEAL OF THE REPUBLIC OF VANUATU
(Appellate Jurisdiction)

Civil Appeal Case No. 32 of 2014

BETWEEN: **PUBLIC PROSECUTOR**
First Appellant

AND: **ATTORNEY GENERAL**
Second Appellant

AND: **BENFORD LIMITED**
Third Appellant

AND: **EUROPEAN BANK LIMITED**
Fourth Appellant

AND: **ROBB EVANS**
First Respondent

AND: **BENFORD LIMITED**
Second Respondent

Coram: ***Hon. Chief Justice Vincent Lunabek***
Hon. Justice Bruce Robertson
Hon. Justice Oliver Saksak
Hon. Justice Daniel Fatiaki
Hon. Justice John Mansfield
Hon. Justice Dudley Aru
Hon. Justice Stephen Harrop

Counsel: *Mr. I. Kalsakau and Ms. F. Williams for the Second Appellant*
Mr. D. Thornburgh for the Third Appellant
Mr. G. M. Blake for the Fourth Appellant
Mr. A. Martin SC and Mr. M. Hurley for the First Respondent
Mr. D. Thornburgh for the Second Respondent

Date of Hearing: *4 November 2014*

Date of Judgment: *14 November 2014*

JUDGMENT

Introduction

1. This is an appeal in respect of three decisions dealt with in a combined judgment of Spear J. on 6th May 2014. The case has a long history in the courts of this country and a number of other jurisdictions.

2. Between February and April 1999 a total sum of US$7,527,900 was transferred to the account of the Third Appellant Benford Limited (Benford) with the Fourth Appellant European Bank Limited (European Bank) at Port Vila. The money in question was alleged immediately to be part of the proceeds of the criminal activities of one Kenneth Taves and his wife and associates in the United States of America.

3. The trial judge described the three proceedings as follows:

> ***"Evans v European Bank Ltd & Benford Ltd & Attorney General & Public Prosecutor***
> *Civil Case No. 85 of 1999 (consolidating Company Case 8 of 1999)*
>
> *3. The first proceeding in time is cc 85 of 1999 in which Mr Evans of the USA sought the following orders in respect of the Benford funds:-*
>
> *a. "A declaration that Robb Evans of Robb Evans and Associates as Permanent Receiver of J.K. Publications Inc, MJD Service Corp., TAL Services Inc., and their affiliates and subsidiaries, and as Receiver over the assets of Kenneth Taves and Teresa Taves, appointed in Civil Action No. 99 – 00044 ABC (AJWx) entered on 16 March 1999 in the New United States District Court, Central District of California, Western Division is entitled to receive and to give to European Bank Ltd a good discharge for the receipt of all monies standing to the credit of an account in the name of Benford Limited;*
>
> *b. An order that (Robb Evans) as Permanent Receiver be at liberty to transmit the said money out of the jurisdiction of this Court to the credit of an account in the name of Robb Evans, Receiver of J.K. Publications Inc., et al, and Associates for the Receiver of JK Publications Inc, City National Bank, 8012 Vineland Avenue, Sun Valley, CA 91352, ABA #1222-2943-9, Account # 01075829."*
>
> *4. This claim is opposed only by The Attorney General and the Public Prosecutor and incidental to their subsequent claim on behalf of the State that the Benford funds should be either forfeited to or confiscated by the State.*

5. *European Bank Ltd took no active part in this proceeding other than to assist the Court and to indicate that it would abide the decision of the Court.*

Public Prosecutor v Benford Ltd
Criminal Case No. 5 of 2011

6. *Criminal Case 05/11 is the prosecution of Benford Ltd for an offence under s. 20(1) of the Serious offences (Confiscation of proceeds) Act 1989. The charge is:*

> *"Benford Ltd, being a body corporate registered and incorporated in the Republic of Vanuatu, between 1st January, 1999 and 31st May, 1999 received and brought into Vanuatu the sum of seven million (five) hundred thousand United States of America Dollars (US $ 7,500,000) which money is reasonably suspected of being proceeds of crime, namely conspired or arranged with Kenneth Howard Taves, Gretchen Buck, citizens of the United States of America and others to transfer the said sum which had been derived from a fraud conducted in the United States of America and elsewhere into the European Bank Ltd, Vanuatu, Account No. 8901-1161 to the credit of Benford Ltd".*

7. *Benford pleaded guilty to this charge on 24 March 2011. Sentencing submissions were presented at that time. However, it was agreed by the relevant parties at that time that the determination and imposition of the sentence should be deferred until resolution of both cc 85 of 1999 and an intended application by the State for the forfeiture or confiscation of the funds as the proceeds of crime.*

Public Prosecutor v Benford Ltd
Proceeds of Crime Case No. 01 of 2011

8. *Within POCA Case 001 of 2011, the Attorney General sought the following orders:-*

   a. *That the Benford funds be **forfeited** to the State - pursuant to s. 15 (1) (a) and 90 of the Proceeds of Crimes Act [CAP 284];*

alternatively

*b. That the Benford funds be **confiscated** by the State as the proceeds of crime - pursuant to s. 2 of the Serious Offences (Confiscation of Proceeds) Act No. 50 of 1989.*

9. Unsurprisingly, this claim was defended by Mr Evans in his capacity as receiver of Benford.

Background

4. Dr. Kenneth Taves is a citizen of the USA. He committed a substantial fraud. Having obtained details of about nine hundred thousand credit cards he took small payments from those cards each month. This money was paid into different corporate accounts which he controlled. It is said that the total amount involved was in the vicinity of US$47,500,000. He has been sentenced to 12 years imprisonment.

5. On 6 January 1999 on the application of the US Federal Trade Commission (FTC) the First Respondent Robb Evans and Associates (Robb Evans) was appointed as permanent receiver over the assets of Dr. Taves, his wife and associated entities by the US District Court Central District of California Western Division. In the meantime Dr. Taves and his associates were endeavouring to remove funds from reach. With the unwitting assistance of a person holding joint USA and British citizenship (Vanessa Clyde) the sum referred to in paragraph 2 was lodged in this country by Benford in the European Bank in several payments early in 1999.

6. Steps in the meantime were being taken in the USA on the basis that the funds were tainted. By order of our Supreme Court of 28th July 1999 European Bank (where the funds were deposited) was restrained from releasing or otherwise dealing with any funds standing to the credit of Benford.

7. On 25th August 1999 there was an order freezing all Benford's accounts with European Bank.

8. On the 21st September 1999 the civil proceeding was commenced. Later that year the US District Court amended its orders to specifically include Benford in the receivership.

9. There were various other processes which are adequately summarized in the judgment under appeal. Suffice to say that from late 1999 the subject funds were frozen in Vanuatu but there was for some years no action in the courts of Vanuatu although proceedings continued in the United States and particularly in New South Wales (Australia). The Australian proceedings were unsuccessful but while they were in train there was no movement in the courts of Vanuatu.

10. On 12 February 2009 Juris Ozols then acting for Robb Evans forwarded to the Court a copy of an application which had been filed on 3 October 2005 but not been dealt with which relevantly provided:

> *"That the previous restraining orders made by the Supreme Court in this matter be lifted.*
>
> *That European Bank Ltd. account to Robb Evans for the monies held on behalf of Benford Ltd.*
>
> *Such further and other orders as the Court deem fit."*

11. Counsel for Robb Evans filed an application dated 12 February 2009 in identical terms.

12. There was a hearing before the Supreme Court on 16 April 2009 about future progress following which the matter was before the this Court on 30 April 2009. A memorandum was issued by the Court noting the significant delays which had occurred. The Court recorded that all counsel had requested that the appeal for leave to appeal out of time should be adjourned to the July sitting of this Court but meantime steps were to be taken in respect of timetabling matters in the Supreme Court.

13. Progress was not fast and on 8 July 2009 a further application was filed in the Supreme Court which in its operative terms provided:

> *"1. That the stay of proceedings in Case No. 85 of 1999 made by order of Mr. Justice Saksak on 2 December 1999*

based on the application of the Public Prosecutor in Case No. 754 of 1999 be lifted.

2. *That the Orders of the United States District Court appointing the applicant as Receiver of Kenneth Taves, JK Publications, MJD, TAL Services Inc., Discreet Bill and Benford Limited be recognized by this Court.*

3. *That the freezing Order made by Mr. Justice Saksak in respect of the Benford Limited funds held at European Bank Limited be dissolved as of 31 July 2009 unless the Public Prosecutor initiates fresh proceedings for the confiscation of those funds."*

For completeness we note that applications 1 and 3 were withdrawn on 3 August 2009.

14. There were conferences in 2010 and 2011 but the substantive hearing did not commence until 16 August 2011. Regrettably the judgment was not delivered until 6 May 2014.

15. In a pre-hearing management conference it was agreed that the first issue to be determined in the Supreme Court was the criminal case.

The Criminal Charge and Confiscation or Forfeiture

16. Benford was charged under section 20 of the Serious Offence (Confiscation of Proceeds) Act 1989 which provides:

"20. (1) A person who, after the commencement of this Act, receives, possesses, conceals, disposes of or brings into Vanuatu any money, or other property, that may reasonably be suspected of being proceeds of crime is guilty of an offence punishable, upon conviction, by -

(a) if the offender is a natural person, a fine not exceeding 2 million vatu or imprisonment for a period not exceeding 5 years, or both; or

(b) *if the offender is a body corporate, a fine not exceeding 50 million vatu.*

(2) *Where a person is charged with an offence against subsection (1), it is a defence to the charge if the person satisfies the court that he had no reasonable grounds for suspecting that the property referred to in the charge was derived or realized, directly or indirectly, from some form of unlawful activity.*

The information laid against Benford stated:

> *"Possession etc of Property suspected of being Proceeds of Crime contrary to Section 20(1) of the Serious offences (Confiscation of Proceeds) Act 1989*
>
> ***Particulars of Offence***
>
> *Benford Ltd being a body corporate registered and incorporated in the Republic of Vanuatu, between 1st January, 1999 and 31st May, 1999 received and brought into Vanuatu the sum of seven million five hundred thousand United States of America Dollars (US$7,500,000), which money is reasonably suspected of being proceeds of crime, namely conspired or arranged with Kenneth Howard Taves, Gretchen Buck, citizens of the United States of America and others to transfer of the said sum which had been derived from a fraud conducted in the United States of America and elsewhere, into the European Bank Limited, Vanuatu Account No. 8907-1161 to the Credit of Benford Limited"* (emphasis added)

17. The defence provided in Section 20(2) was never in issue. Benford pleaded guilty to the charge on 24th March 2011. In the judgment under appeal Benford was fined VT25, 000, 000. The Public Prosecutor appealed that sentence on the basis that the sentence was manifestly inadequate but shortly before this appeal was to be heard this was withdrawn. The conviction and fine stand unchallenged.

18. Before us it was contended that the charge to which the plea of guilty was entered was a charge of possession of "tainted property" which was an ongoing offence from 1999 down to the present time.

19. The relevance of this was that if the offending took place after the coming into force of the Proceeds of Crime Act [CAP. 208] (which was on 3 February 2003) the Court could have considered making a confiscation order. In other words it was argued that there was a continuing offence so long as the possession existed.

20. The argument advanced was unsuccessful in the Supreme Court and is unsustainable. The particulars of the offence cannot be ignored. They are essential in informing what is alleged and has to be answered. The particulars have to be considered and assessed in determining what Benford pleaded guilty to. Benford did not plead guilty to some vague, non-identified, untimed and general offence of possession of property suspected of being proceeds of crime. Benford pleaded guilty to the offence as particularized in the document.

21. We respectfully adopt the reasoning of Justice Kirby in KRM v. R: [2001] 206 CLR 221:

> *"The normal rule is that a person, accused of a criminal offence, is entitled to be informed not only of the 'legal nature of the offence with which he is charged but also of the particular act, matter or thing alleged as the foundation of the charge'. Unlike some other systems of criminal trial, that of the common law is disinclined to permit the conviction of an accused person upon 'inexact proofs, indefinite testimony, or indirect inferences'".*

22. The only available conclusion is that the offence of which Benford was convicted occurred prior to 2003 and that the Proceeds of Crime (Confiscation of Proceeds) Act could not apply. We agree with Spear J. that the transitional provisions do not alter the position.

23. There was a more muted argument advanced by the Attorney-General with regard to the possibility of forfeiture under Section 15.1(a) of the Proceeds of Crime Act. For the reasons canvassed by the judge in the Supreme Court we are satisfied that this was not in the circumstances an available alternative.

24. We also adopt the reasoning of the trial judge that what must have been intended to be caught by these various provisions does not arise in the circumstances of this case. In the exercise of discretion no order would have been made in any event. The money under consideration was unquestionably funds illegitimately siphoned by Dr. Taves and his associates from innocent victims. In the circumstances it makes no sense for the Republic to acquire these funds at the expense of those who had been unlawfully swindled. Taking this money would do nothing to deter people like Dr. Taves who may use this country to try and hide stolen property. Accordingly we are satisfied that the appeals in respect of the failure to make orders for forfeiture and confiscation are unsustainable.

The Civil Case – status in Vanuatu

25. At the beginning of this saga Robb Evans filed an application which sought to grant it recognition by the Courts of Vanuatu claiming to be the suitable entity to act for and on behalf of those who had suffered at the hands of Dr. Taves and his associates. He held that status in the USA.

26. Having obtained the freezing orders here, Robb Evans decided to go off and pursue the funds in the Courts of Australia. Although that was wholly unsuccessful, it is not a step which we are prepared to criticize. European Bank where the funds had been initially deposited in Port Vila had in turn placed them in Citibank in Australia and going there was an understandable course of action.

27. One cannot review this file without acknowledging that there have been several factors which have been unfortunate and with unsatisfactory consequences. First, this is another case which has been affected by the catastrophic Courthouse fire in 2007. Secondly, one of the critical counsel in the case, Mr. Ozols, became ill and died. Finally, it is impossible to overlook the fact that there has been an inordinate and very regrettable delay in the delivery of judgment.

28. A number of the appellants raised delay as a ground of appeal. Delay can be relevant but there is nothing axiomatic about it. There must be a real connection between the delay and demonstrated errors in the judgment: *Dawson v. Public Prosecutor* [2010] VUCA 10. [The errors must in some way be attributable to the delay].

29. Mr. Kane was cross-examined by the Attorney-General to test the extent to which the funds held in Vanuatu would be returned to the victims of Dr. Taves' fraud. It is fair to say (based on the notes of that cross-examination) that no precise picture emerged. The written evidence showed clearly the appointments of Robb Evans and its general arrangements. It was required to make regular reports to the US District Court, and is confined to its reasonable fees as approved by that Court. There is no evidence to suggest that did not occur.

30. The Attorney-General submitted that the delay in judgment had caused prejudice through an inaccurate recollection of the evidence of Brick Kane (the principal of Robb Evans) in relation to this matter about the likelihood that the funds recovered by Robb Evans would go to the victims of the Taves fraud. Secondly, it was submitted that there had been erroneous applications of Australian law in a manner that contradicted the Constitution of the Republic of Vanuatu.

31. On this question of recognition of a foreign receiver, Robb Evans correctly noted first that the challenge now mounted by the Attorney-General (and perhaps to an extent by Benford) was not raised at trial. At the trial the Attorney-General's pleading was that there should be forfeiture and/or confiscation.

32. Mr. Martin is undoubtedly correct in that submission. However it is clear from the nature of the cross-examination of Mr. Kane in the Supreme Court that although the primary focus was on the State receiving the funds itself it was an inevitable and necessary corollary that there was challenge to the appropriateness of Robb Evans being treated by this Court as the best representative of the parties who had been defrauded by Dr. Taves and his associates in respect of the money in Vanuatu.

33. Spear J. was clearly impressed by the reasoning of Spigelman CJ in the New South Wales Court of Appeal phase of this case and the connection between the appointment of Robb Evans and the matters which were the fundamental in this litigation.

34. A good deal of effort has gone into consideration of high legal theory. The simple issue was whether, this money having ended up in Vanuatu, and Vanuatu properly and responsibly being concerned to see, to the extent it is possible to do so, that the funds were returned to those who had lost them,

Robb Evans, who had precisely such a task in another jurisdiction, was the appropriate person to be appointed here.

35. It was uncontested before the primary judge that Robb Evans had been properly and legitimately appointed first as a temporary receiver by the Federal Court of the Federal District Court of the United States in California and later in a permanent role. That was where Dr. Taves had defrauded people, where he was resident and where Robb Evans had been vested with the power of recovering what could be recovered at the behest of the Federal Trade Commission. But what was appropriate here.

36. It would have been preferable and appropriate if in the Vanuatu proceeding Robb Evans had set out in bullet point summary the basis of its appointment in the USA, detailed the manner in which it would account to the US District Court and the Federal Trade Commission in respect of money which he obtained and which was eventually to be distributed at those who had suffered at the hands of Dr. Taves. The concern of the Attorney-General of Vanuatu about terms, conditions and general arrangements was not unreasonable. One can understand the apprehension of authorities in a small jurisdiction such as this, as to just how much would in fact be taken by the receiver as its fee and what control there would be over the costs and expenses which might be incurred in that process. Specifically concern was expressed about the costs of the unsuccessful Australian litigation and how it was being funded.

37. We are satisfied that the Attorney-General was concerned, and properly concerned, to ensure that to the greatest extent possible the money which was in the name of Benford in the European Bank should be available to the victims. We do not consider that the contention is adequately covered by Spear J's findings that he found Mr. Kane an honest and reliable witness. The problem was that neither Mr. Kane nor anyone else on behalf of Robb Evans provided to the Court in this country the salient details about its engagement which it was not unreasonable to have expected. Even when we sought detail from the bench during the appeal hearing no simple response was forthcoming.

38. It was submitted by Robb Evans that the judge was satisfied about the terms of its appointment as receiver and the statutory regime which would apply. We do not accept the full thrust of that submission because a judge cannot be satisfied when there is inadequate evidence presented to reach a conclusion.

39. However it is essential that the Court balance the competing interests as they currently exist. It is now fifteen years since the freeze orders were first put in place in this country. No one else has sought to act for and on behalf of the victims of the Taves fraud in Vanuatu. All the money which came in to European Bank in the name of Benford was fraudulently obtained by Dr. Taves. It is not suggested that there are any victims of the fraud in Vanuatu.

40. We do not overlook an argument advanced by Mr. Thornburgh that there may have been a greater recovery than the amount which had been lost by the victims. We find that unconvincing. Whether Mr. Thornburgh or his client was specifically a party to the "*agreed statement of facts*" which existed in the Supreme Court, there has never been any credible evidence that there were any legitimate funds deposited in the name of Benford at European Bank. Even if there were, and they were to become vested in Robb Evans. They would be subject to the supervision of the US District Court in California and the eventual responsibility back to the FTC. If this suggested US$10 million surplus were to exist (and we can find no plausible evidence of it) it would have to be dealt with under the US receivership. Benford was an artifice created by and on behalf of Dr. Taves and his interests. Nothing held to the credit of Benford could possibly go anywhere but into the Taves receivership.

41. The problem for us is that if we were to send this civil aspect of the case back for further consideration in the Supreme Court of Vanuatu there would be even more delay and there is no realistic suggestion that a different outcome might sensibly result.

42. The factual position is that there is sitting in an account in European Bank a substantial sum of money in the name of Benford. Benford is, and never has been anything other than, a front by Dr. Taves and his associates to try and avoid and circumvent orders in the US Courts. The money is part of what was obtained in a scam from innocent victims.

43. A mechanism is urgently required to get that money back to the victims.

44. A good deal of time and effort has been expended on the application or not of the exclusionary rule where under private international law steps will not be taken to enforce penal or revenue law of a foreign state. But that is not what has ever been contemplated here. It has added a degree of complication which is not justified in the circumstances.

45. It might have been more helpful if the trial judge had articulated to a greater extent his own reasoning rather than adopting that of Judges hearing aspects of the case in another jurisdiction. However what in the final analysis has to be determined is what is the best way to get this money to those people who have suffered loss. Although the receivership authorized by the US District Court may be an expensive process no alternative has been advanced and certainly not one which at this stage in all the circumstances could be less expensive or effective.

46. We are satisfied on the basis of the pleadings together with the evidence which is available, that if the money is paid to Robb Evans then there is oversight by a relevant court and eventual accountability to the FTC.

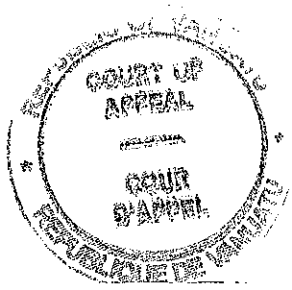
47. In those circumstances we conclude that it is appropriate to uphold the order made appointing Robb Evans to receive the Benford funds. That decision in the Supreme Court has not been shown to have been in error.

European Bank appeal and ancillary matters

48. There is a separate appeal by European Bank because the judge allowed it only standard costs with an enhanced hourly rate and an auditing function by Mr. Hurley, one of the counsel for Robb Evans. The European Bank submits that it should have received full indemnity costs.

49. Robb Evans is correct in its submission that there has been no specific identification of an error which had been made by the trial judge in exercising his discretion as to costs, but there is on the other hand no reasoning as to why or how he did so.

50. Given the delay in judgment we are not persuaded that the trial judge properly considered the respective positions in the absence of such reasoning. Consequently this Court is forced to consider the matter afresh to determine the point. It is clear (and it may be because of the unfortunate effluxion of time) that the judge had misunderstood the position of European Bank. We accept it contended that it was nothing more than the holder of the funds and should not be out of pocket in any way as a result of its being forced to participate in the proceeding.



51. There is a respectable argument which can advanced in that regard but it is not necessarily conclusive. We see no option but to return that matter to the Supreme Court for further argument and decision if the parties are unable to reach an accommodation.

52. Secondly European Bank complained of the passage at para. 88 of the Supreme Court judgment where the trial judge said:

> *"I cannot ignore the history of this matter which essentially came about because European Bank helped to facilitate the fraudster Taves through a "relaxed" approach to the establishment of the account. That was the consistent assessment of the various courts in Australia who have dealt with this matter. ...."*

53. European Bank took great exception to this. It contends that without any proper evidential base the Court attacked the integrity of the bank's system. This is another situation where there is a passage in what was called the agreed statement of facts which is consistent with that comment. However but we are forced to conclude that the agreed statement of facts was an agreement only between the prosecution and Benford and that no one else was bound by it and probably had little input into it.

54. We have to say that it appears that European Bank is being particularly sensitive about this point. The reality is that in 1999 it was not difficult for someone like Dr. Taves and his advisors and associates to create a vehicle like Benford in Vanuatu and open a bank account in this jurisdiction. To that extent there was facilitation. At a very common sense level the comment had validity but whether with the passage of time the perceived insult and negative insinuation is justified we cannot decide. There are some other matters which will have to be dealt with in the Supreme Court. If European Bank are of the view that a comment about an approach 15 years ago is worth revisiting (especially in light of some comments made in the Australian judgments) it will have the opportunity to apply for recall and reconsideration in the Supreme Court.

55. Finally there was filed in this Court an application on behalf of Robb Evans against the European Bank for an accounting by it in respect of all income earned on the funds during the past fifteen years and the charges and expenses which have been made against those funds. Many requests have

been made for this detailed information without success. The point was not subject to any consideration in the Supreme Court and the matter should appropriately be dealt with there in the first place.

56. As each of these three matters is of relevance only to European Bank and Robb Evans there will be no need for any other party to be involved in any conference or hearing in the Supreme Court.

57. It is not disputed that the costs that European Bank is entitled to receive should come out of the funds it holds for Benford. The quantum of that fund requires consideration and certainly there is an urgent and overwhelming need for a proper accounting in respect of the funds during the time that this matter has been unresolved. It will not be difficult to consider the nature of costs for the Supreme Court case in 2011 at the same time.

Costs

58. Spear J. dealt with costs in the following way:-

> *"81. The Attorney General, Mr Napuati for Benford Ltd and Mr Blake for European Bank are all entitled to standard costs for these proceedings at an enhanced hourly rate of VT25,000 per hour in respect to be agreed or taxed. All bills of costs in taxable form should be provided to Mr Hurley by 31 May 2014. In the event that Mr Hurley confirms agreement with any individual bill of costs, the appropriate deduction and payment may be made out of the funds held by European Bank for Benford. If no agreement is reached then the bill(s) of costs will need to be taxed in the usual manner.*
>
> *82. Mr Blake also sought European Bank's award arising out of the Australian Court proceedings also to be paid out of the Benford funds. As previously mentioned, the High Court of Australia confirmed that Mr Evans was required to compensate European Bank in the sum of AUD 1,251,088.33 plus interest and legal costs. The total amount claimed by European Bank which appears to be both in respect of the Australian costs and the Vanuatu costs is AUD 2,571,463.28 made up of:-*
>
> *a. The damages awarded and confirmed by the High Court of Australia.*
>
> *b. The legal costs incidental to the Vanuatu proceedings.*

c. *Other out of pocket costs.*
d. *Interest on the compensation award."*

59. There was no appeal against that orders for costs awarded to the Attorney-General in the Supreme Court on that formula and we do not interfere with that exercise of discretion. We trust that the application and implementation of the regime will not be problematic.

60. As far as the appeal to this Court is concerned the Attorney General has been unsuccessful. There is no reason why there should be any award of costs in his favour nor in the circumstances against him.

61. There was no appeal in respect of the costs in favour of Benford in the Supreme Court so it does not require our attention.

62. We are at a loss to understand why Benford became involved in these appeal proceedings. The arguments which were advanced became impossible of comprehension in light of the total history of the matter. There is no order for costs in Benford's favour in this Court.

63. As far as claims which have been made by Robb Evans for costs in respect of any part of the proceedings we consider they are better dealt with in the US District Court. The full picture is not before the Courts in this country. It is essential that any court making costs orders should have the full circumstances available to assess and evaluate. We therefore refrain from making any costs orders as against the funds in the name of Benford in favour of Robb Evans but only because we consider that should occur in the US and not here.

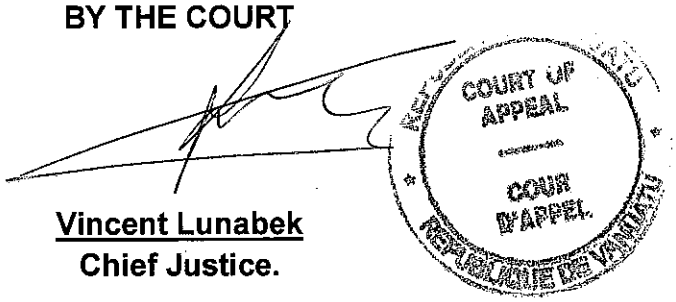
64. We confirm that all balance funds are to be released to Robb Evans to be treated as part of the funds it has recovered under its appointment in the USA. It is proper that any claim for or against it for damages or costs in respect of the proceedings in Australia or here should be under the supervision of the USA Courts. We specifically defer to the USA Courts the determination of whether the damages and costs to be paid by Robb Evans arising from the Australian litigation comes from the Benford money or is otherwise the responsibility of Robb Evans.

Result

65. The appeals are substantively dismissed apart from the three discrete issues affecting European Bank which are remitted to the Supreme Court for further consideration if necessary.

DATED at Port Vila, this 14th day of November 2014.

BY THE COURT



Vincent Lunabek
Chief Justice.