

IN THE SUPREME COURT OF BELIZE, A.D. 2020

CLAIM NO. 193 OF 2020

LCW INVESTMENTS, LLC

CLAIMANT

AND

BETH CLIFFORD

1st DEFENDANT

MICHAEL FIELDS

2nd DEFENDANT

GREEN DEVELOPMENT PARTNERS, LTD

3rd DEFENDANT

BELTWAY INVESTMENT GROUP, INC

4th DEFENDANT

BEFORE the Honourable Madam Justice Sonya Young

Hearings

2020

29th July and 4th August

Written Submissions:

29th July- Claimant/Respondent

Decision:

4th August

Appearances:

Mr. Allister Jenkins for the Claimant.

Mr. Aldo Reyes for the 2nd Defendant.

ORAL DECISION

Keywords: Civil Procedure - Security for Costs - Claimant Resident Outside Jurisdiction - Beneficial Ownership of Anguillan Company with an Asset Within the Jurisdiction - No Reciprocal Enforcement Arrangements - Quantum of Possible Prescribed Costs - No Proof of Financial Position - No Proof that Claim would be Stifled

1. Michael Fields, the 2nd Defendant herein has applied for security for his cost. He says the Claimant resides outside the jurisdiction (in the USA), has no assets within the jurisdiction and there exists no reciprocal enforcement of judgment arrangements between this jurisdiction and the United States.
2. Therefore, in his view, any cost order granted by the Belize Court cannot be enforced in the USA. He also emphasized the strength of his Defence and the Claimant's neglect to even respond to his pre-application letter requesting that security for costs be provided in the sum of BZ\$100,000.00, which was calculated on the prescribed basis.
3. On the other hand, the Claimant, in resisting the application, says that although it is indeed an overseas company, it does have a beneficial interest in an asset within the jurisdiction (paragraph 11 of the submissions). However, the Claimant pleaded that *“the 3rd Defendant agreed to construct a “Keeping Suite” with four units structure for the Claimant on lot 259.... said to be owned by 5801GOA2015 Inc., a company duly incorporated under the Laws of Anguilla...”* and that *“Under the Order Form, within 10 days of signing this form, that the buyer would be provided with (a) a Lot Purchase Agreement with the Land Company, described*

therein as Corporate Investments Holdings Company Limited, a company duly incorporated under the laws of Anguilla.....”

4. In the affidavit in response to the application, the affiant states that *“By the Order Form, all the shares in 5801GOA2015 Inc., which owns Parcel 5958, were to be transferred to the Claimant”*. It seems then that it is the Anguillan company which actually owns an asset in Belize; a company which is a legal entity unto itself.
5. In the Claim, the Claimant seeks to rescind the contract for misrepresentation or to terminate the contract for a fundamental breach. It insists that even if it is unsuccessful in its Claim, the 3rd Defendant must then specifically perform the contract and the shares in the Anguillan company would have to be transferred to the Claimant.
6. Moreover, simply being resident abroad without assets in the jurisdiction is not sufficient for an order for security for costs to be made. The Applicant must prove that he would have difficulty in enforcing the cost order and he has failed to do so. Any view which he holds personally has not been sufficiently substantiated since he is no expert in the particular area. This, Counsel for the Respondent submits, is fatal to the Application. Finally, the Claimant informs that it has already expended a substantial sum of US\$788,709.00 pursuant to the contract. The request for security for costs is not only excessive but burdensome and unfair.
7. Both sides have provided guidance to the Court in their submissions, which I have considered. They both relied on **Fort Street Tourism Village v**

Suzanne Kilic Civil Appeal No 26 of 2016 (Fort Street), which speaks to the discretionary nature of such an order, the test to be applied and the circumstances which ought to have been considered.

8. Like **Fort Street**, there is no issue in this case that the Claimant is a resident abroad. However, Counsel for the Claimant sought to rely on two Bahamian cases to demonstrate the value of an equitable interest in an asset within the jurisdiction. In **Keyser and Anor v Morrison and others [2015] 1 BHS J. No. 106**, in refusing to grant an order for security for costs, the Court considered the Plaintiff's purported equitable interest in the disputed property which was located within the jurisdiction. It found this to be a sufficient nexus between the Plaintiffs and the Bahamas. So too in **Peter and Anor v Ahmed Maheer Abouelenin [2008] 2BHS J. No. 25**, where the Court felt that the Plaintiffs' substantial financial investment secured, at the very least, an equitable interest in the disputed land situated within the Bahamas.
9. Counsel for the Applicant quickly distinguished those cases from the case at bar. The equitable interests in the Bahamian cases were pleaded as the Plaintiff's. However, in this case, the legal interest in the asset in Belize seems to belong to an Anguillan company. The Claimant has at best an equitable interest in the shares of an Anguillan company (which has not even been pleaded). Counsel for the Applicant considered this as only adding another dimension of difficulty to enforcing security for costs.
10. While Counsel for the Applicant went on to speak about the need to pierce the corporate veil, this Court could find no ground on which to possibly do

so since the cost order would be the Claimant's debt and not that of the Anguillan company, which is no party to this action. The Applicant/Judgment creditor may therefore seek perhaps to enforce against the shares in the Anguilla company.

11. Although no evidence whatsoever was provided as to the risk associated with enforcing a Belizean judgment in Anguilla, the Applicant was swift to highlight that the Claimant had really approached the Court in order to avoid or terminate the contract. It sought damages or restitution. In those circumstances, they ought not to be allowed to use the shares at their own convenience.
12. Furthermore, the Claimant could possibly win in their Claim against the other Defendants but lose against the Applicant. This would mean that there would be no asset, even in Anguilla, against which he could seek to enforce. Counsel for the Claimant in rebuttal explained that if the Claimant was successful against the other Defendants then there would be a judgment debt owing, which the 2nd Defendant could always enforce against.

Discussion:

13. The Court agrees with Counsel for the Claimant that where the Claimant resides overseas and has no assets within the jurisdiction, the Court's discretion is invoked. The Court is then called upon to perform that balancing exercise between possible weapon and possible evasion.
14. The proper test, as I find it to be in **Fort Street** is that of a "*real risk*" of an *obstacle or burden of enforcement or "likelihood" of such an obstacle or burden of*

enforcement.” This is certainly a lower threshold than demanding expert evidence as to substantial obstacles and certain burdens which Counsel for the Claimant seems to be demanding.

15. It is important to note that the trial judge in **Fort Street** also found that there *“was no evidence from Tourism Village that they would face any difficulties in seeking to enforce a judgment against Ms. Kilic in the Bahamas, the place of her residence”* (**Fort Street paragraph 21; see also paragraph 46**); but the Court of Appeal still found it just to make a security for cost order. This is because all of the circumstances must be considered, weighed and measured.
16. In this case, the Claimant has admitted to existing overseas. There is no reciprocal enforcement of judgment arrangements between Belize and the USA so understandably there will be some difficulty, delay and cost associated with having a Belizean judgment enforced there. There is always an extra burden of seeking to enforce abroad.
17. Secondly, the Claimant has not proven any assets within the jurisdiction. Although it may have an equitable interest in an asset in Anguilla, its pleadings seek to put as much distance as possible from the enforcement of any contract. It certainly seeks no order of specific performance. While arguably it may be easier to enforce a judgment in Anguilla than in the USA, it is still outside the jurisdiction and the Court cannot overlook this.
18. The submission about enforcing against a potential judgment debt owing from the other three Defendants needs little discussion. This argument makes the assumption that the other Defendants are in a position to

immediately meet the judgment debt notwithstanding that the Claimant has already pleaded otherwise. The 1st Defendant was at the material time the Managing Director of the 3rd and 4th Defendants. The 3rd Defendant, the party to the agreement *“is cash strapped”* and has *“been using the proceeds of sale from purchasers in the “Mahogany Bay Village Resort,” development for the financing of the purchase of the underlying land known as “Mahogany Bay Village Resort” a fact which was not disclosed to purchasers, including the Claimant.”*

19. I am also aware through the pleadings that the Claimant has expended a considerable amount in his dealings with the 3rd Defendants. He seeks to recover same in this Claim. I make no statement here as to the strength or weakness of his Claim as it is heavily evidence based and has not been tested.
20. As to the Respondent’s financial position otherwise, Counsel for the Applicant submitted that the Claimant in its first affidavit, in objection to the Application, stated absolutely nothing. Thus, there is an uncertainty as to whether it would be able to meet a cost order if one is eventually made. This, he says and the Court agrees, must also be taken into consideration.
21. The Claimant speaks about a security for cost order being burdensome or unfair but stops just short of saying it would stifle the Claim or render it incapable of meeting its other obligations. This too is worthy of measure.
22. The Court cannot simply disregard the absence of financial evidence and its own consequential ignorance of any assets (other than shares outside the jurisdiction), which the Claimant may have in its place of residence or

otherwise. This leaves the Court in a very difficult position when making an assessment particularly because of the quantum of the possible prescribed costs, which is calculated to be around \$100,000.00. In the Court's estimation, this evidences a real risk that the Defendants might not be able to recover their costs.

23. I, therefore, find it just in all of the circumstances to exercise my discretion in favour of the Applicants and order that security be paid for their costs in the sum of \$60,000.00 BZD being just over 50% of the calculated prescribed costs. These proceedings are stayed until the security for costs is paid. Cost will be in the sum of \$1500.00 to the applicant. That is the order of the Court.

SONYA YOUNG
SUPREME COURT JUDGE