IN THE SUPREME COURT OF BELIZE A.D. 2019

CLAIM NO. 142 OF 2019

BETWEEN

(JOHN BRICENO, leader of the Opposition	FIRST CLAIMANT
(JULIUS ESPAT, Chairman of the Public (Accounts Committee of the House of (Representatives	SECOND CLAIMANT

AND

(DEAN BARROW, Minister of Finance	FIRST DEFENDANT
(JOSEPH WAIGHT, Financial Secretary	SECOND DEFENDANT
(THE ATTORNEY GENERAL	THIRD DEFENDANT

BEFORE THE HONOURABLE MADAM ACTING CHIEF JUSTICE MICHELLE ARANA

Edmund Marshalleck S.C. of Barrow and Co. for the Claimants

Rodwell Williams S.C. of Barrow and Williams for the Defendants

1. **FACTS**

This application is brought by the Claimants to lift a stay and for a post-judgment injunction in a claim for constitutional relief in aid of declarations of the court. The First Claimant, Hon. John Briceno, was at the time of this Claim the Leader of the Opposition and the Second Claimant, Hon. Julius Espat, was the Chairman of the Public Accounts Committee in the House of

Representatives. The First Defendant, Hon. Dean Barrow, was the Prime Minister and Minister of Finance of Belize, the Second Defendant, Mr. Joseph Waight, was the Financial Secretary and the Third Defendant, the Attorney General, was the representative of the State.

The Claimants say that in an oral judgment delivered by Chief Justice Kenneth Benjamin on January 31, 2020, declarations were granted to the Claimants that all supplementary allocations and expenditure raised or received by the State without prior approval of the House of Representative were unconstitutional, unlawful and void. The oral judgment also declared that the retrospective appropriation of monies is inconsistent with the Constitution and the Finance and Audit Reform Act and therefore void and of no effect. The Claimants further say that Chief Justice Benjamin also granted a permanent injunction against the Defendants, but suspended it for six months starting from January 31, 2020; the Chief Justice urged the Defendants to rectify the situation by proposing the requisite amendment to the Constitution to address the first declaration. The Claimants allege that, instead of utilizing the six months period granted by the Chief Justice to amend the Constitution or to take any lawful step to validate the unauthorized expenditure of public monies, the Defendants have instead continued to flout the declarations of the court by continuing the unauthorized and illegal spending of public monies.

Chief Justice Benjamin retired from the Supreme Court in April 2020, the order was never perfected by him, and the parties are in dispute over the terms of that order. The Claimants are now asking this court to confirm the order using the transcript of the proceedings before Chief Justice Benjamin. The Defendants resist this application strenuously, submitting that no other Judge is competent to purport to deliver a ruling on behalf of a retired judge, as it is not for another court to supply an order where none was made or to supply reasons not given by another judge. The Defendants further submit that only a new judge hearing this claim *de novo* on the merits would be in a position to issue an order or judgment in this matter. The Court now considers the arguments for and against this application and gives its ruling.

2. Legal Submissions on behalf of the Claimants/Applicants

Mr. Marshalleck SC submits on behalf of the Claimants/Applicants that this Court is obliged to recognize and settle the terms of the order of Chief Justice Benjamin from the existing court records of the proceedings. He contends that unless the stay is lifted and the Defendants restrained by injunction, the Defendants will continue to deliberately flout the law and will embark on further unlawful spending. Damages are not an adequate remedy because the financial ruin of the State of Belize by the routine unlawful expenditure of public monies and the rule of law is at risk. The court is under a duty to uphold

the Constitution to compel compliance by coercive order to stop the unlawful conduct of the Defendants in the face of the declarations of the court.

3. The Claimants say that the oral judgment delivered by Chief Justice Benjamin on January 31, 2020 is of binding legal effect. Reliance is placed on CPR 42.2 which provides that "A party is bound by the terms of the judgment or order whether or not the judgment or order is served where that party-(a) is present whether in person or by legal practitioner when the judgment was given or order was made…" There can be no doubt that the Defendants were present in court represented by their legal practitioner on the January 31, 2020 when the oral judgment was delivered so the Defendants are bound by the terms of the judgment and orders then made.
4. The Claimants say that the Court adjourned the proceedings on January 31, 2020 without Chief Justice Benjamin having given any direction for the settlement of his orders. To date, the Court has not settled the terms of the order as required by CPR 42.5. Counsel made repeated efforts to offer a draft of the order to Chief Justice Benjamin for his approval; those drafts contained their comments as counsel failed to agree on the terms of the draft order. Chief Justice Benjamin did not approve any of the draft orders submitted and he demitted office without settling the terms of that order. The Claimants argue that this Court continues under a legal obligation to draw the order and must

do so to the extent possible from the transcript of the proceedings and other records available to the Court. In **R v Henry** the CCJ considered and affirmed the binding effect of oral judgments of the court and this Court is bound to follow that decision. The CCJ held that an oral decision or order made by a judge is normally binding from the moment it is delivered. It has legal force and parties are entitled to rely on it. The CCJ also held that the Court retained a residual jurisdiction to vary its earlier decision until the order of the court is recorded or otherwise perfected and that the court is *functus officio* once the order has been recorded or otherwise perfected.

5. In the case at bar, no order has been recorded or perfected therefore the residual discretion to vary the judgment can no longer be exercised because Chief Justice Benjamin has since retired from office so that no judge with the personal knowledge and experience of the trial is available to consider any such application for variation and there is no such application before this Court.

6. The Court has a general jurisdiction by virtue of its case management powers to lift the stay ordered by Chief Justice Benjamin where there has been a material change in circumstances during the period of the stay. The discretionary power of the court to lift the stay is a necessary corollary to the power to order it and is inherent in the Court. In Gulf Hibiscus, the Singapore

High Court recently confirmed that the jurisdiction of the Court to lift a stay is not constrained by, or contingent upon, the conditions of the stay which gave parties liberty to apply for lifting of the stay. The Claimants say that the inability of the Defendants to achieve the required constitutional amendments within the remaining period of the stay and the persistence of the Defendants in the unlawful withdrawal and spending of monies from the Consolidated Revenue Fund in the meantime together require a lifting of the stay if the constitution is to be given the declared effect and the rule of law upheld.

7. If the stay is not to be lifted or the permanent injunction ordered by Chief Justice Benjamin is incapable of being settled in a perfected order from available records, then the Claimants seek a post judgment order in the same terms as that sought before Chief Justice Benjamin pursuant to CPR 17.2(1) (b) This arises out of the exceptional circumstances occasioned by the failure of Chief Justice Benjamin to settle the terms of the permanent injunction that he had ordered in his oral judgment before his retirement and the obvious need to have a similar order enforced in order to give effect to the declarations granted. In **Civil Appeal No. 7 of 2006 The AG et. al. v. Jeffrey Prosser et al** it was held that where a declaration is ignored subsequent proceedings can be taken on the strength of the declaration to procure a coercive order that can be enforced and the subsequent proceedings need not be in a new claim but

can be made in the same proceedings by way of application for post judgment relief. In **R. v Minister of Agriculture ex parte Anastasious (Pissouri) Ltd [1999] 3 CMLR 469** the House of Lords held that it was not necessary to file fresh proceedings for the Respondent to be granted injunctive relief following declaratory relief in circumstances where the requirement for such an injunction arose directly from the declaratory relief already granted. The need for the injunction in this case arises directly from the first declaration already granted by Chief Justice Benjamin so that there is no need for fresh proceedings.

8. In the constitutional context, the Supreme Court of Canada decided that a mandamus and the exercise of supervisory jurisdiction may be necessary to ensure compliance with the constitution in **Doucet-Boudreau v Nova Scotia Minister of Education** [2003] 3 SCR 3. The court has a continuing supervisory jurisdiction in a constitutional claim to ensure compliance with the Constitution. In the case, when Chief Justice Benjamin stayed the permanent injunction for six months, the Court retained a remedial and/or supervisory discretion to reconsider the stay if circumstances changed during that time and to grant the injunction sought. In constitutional cases, the Court has the even more extensive power to fashion new remedies as appropriate to ensure compliance with its declaratory order. To refuse to grant the order now

sought in the circumstances now before the Court would be severely detrimental not only to the interests of the Claimants, but would be completely contrary to public interest and undermine the rule of law.

9. Legal Submissions on behalf of the Defendants/Respondents

Resisting the Application

The Defendants resist the Claimants' Application to Lift Stay and For Post Judgment Injunction in Claim for Constitutional Relief in Aid of Declaration of the Court (**Application**) on the following basis:

a. the learned Chief Justice Kenneth Benjamin failed to deliver a clear, binding, and enforceable order though he purported to deliver an oral judgment and order;

b. that upon the retirement of the Chief Justice that no other judge is competent to deliver and perfect a vague and unsettled order;

c. that a declaratory order is unenforceable;

d. since June 26, 2020 the House of Representatives passed a General Revenue Supplementary Appropriation Bill (2012/2013) Bill, 2020, and to grant and or perfect an injunction order will serve no useful purpose in the instant matter; and

e. that the purported order for permanent injunction would provide a remedy to the Claimants that is coercive, wide, ambiguous, and in breach of the separation of powers doctrine.

10. No Order Made - Abortive Order – *R v Henry* Distinguishable

This Application concerns a grave and weighty matter which touches upon the jurisdiction of this Court, the separation of powers doctrine, and issues that may flow from the purported oral judgment issued by the then Chief Justice especially where there is a claim to seek enforcement of a Judgment Order which Claimants admit does not exist. The Defendants submit that it is a sacrosanct principle of law that the Court will only make an order if it is clear to the Defendant from the terms of the order what he must do, or refrain from doing. Enforcement of a coercive order must only follow where a clear order was made. Further, any order must clearly specify whether it is to take place immediately or from a certain date.

Rule 42 certainly bears out that learning. Rule 42.4(2) requires that every order must be signed by the Registrar, sealed by the Court, and bear the date on which it is given or made. Further, Rule 42.5(1) mandates that every judgment or order must be drawn by the Court unless the Court directs a party to draft it, a party with the permission of the Court agrees to draft it, or the Court dispenses with the need to do so. Where the Court directs a party to

draft the order, the said party must file the said order no later than 7 days from the date of direction. **None of the above was done**. Rule 42.8 is anodyne and no issue is taken with its interpretation. The Defendants submit however that no order was made and as such, there is no order to be enforced, and thus Rule 42.8 is not engaged.

11. Particularly, the Defendants submit that the oral transcript cannot satisfy the requirements of certainty. A review of the transcript would reveal that the then Chief Justice for the greater rehearsed the parties' positions and hastily concluded without providing much reasons. Further, his utterings on the "permanent injunction" is even more sparse. The then Chief Justice stated:

> "*I've decided that I would grant the order for the permanent injunction but I will order that the permanent injunction be stayed for a period of six months. In this regard, the Defendants are urged to rectify the situation by proposing the requisite amendment to the Constitution to address the first declaration. That is the Order of the Court*".

12. Even more so, when one considers that the "order" made by the then Chief Justice has been unperfected even after the then Chief Justice purported to clarify his oral ruling, in Chambers, it is clear that the true nature and terms of the order that the Chief Justice intended to make is left wanting and

unknown to the parties and from the records as existed. The Defendants submit that no reliance can be had on the purported clarification given by the then Chief Justice as there is no recorded or written record of the actual terms of the discussion and it is patent that the parties understood the "clarification" differently. If any, it is not disclosed in the record or transcript. This Court cannot make any findings and can place no reliance on the disputed affidavit evidence.

13. Particularly, in reference to the "Stay" that the Claimants rely upon, it is not clear as to when the period begins or ends. It is also unclear as to what the actual terms of prohibition that was purported to be made including as to whether it operated against all Defendants. Further, it is clear from the Claimants' own submissions that there is a substantial dispute as to what breach the then Chief Justice purported to find. It would be one thing to say a breach of section 114 of the Constitution was found as opposed to a breach of Section 2, 68, 115, 116, and 117 of the Constitution.

14. The Claimants rely upon the ***R v Henry*** to bolster their position. However, the Defendants submit that the case of ***Henry*** must be put in context. In that case, the Caribbean Court of Justice was considering a criminal appeal from the Court of Appeal of Belize and made no pronouncements on the Civil Procedure Rules.

Secondly, even if ***Henry*** applies to civil proceedings, the case is distinguishable and of no assistance to the Claimants. The Caribbean Court of Justice found that the Court of Appeal was wrong to have departed from their previous oral order by a later subsequent decision. Paragraph 8 of ***Henry*** makes it clear that the Court of Appeal issued a clear oral order with reasons to follow. The Court of Appeal unambiguously found that:

> "*[T]he Appeal is dismissed; the conviction for the offence of Causing Dangerous Harm contrary to the section of the Criminal Code charged in the second count is affirmed; and three, the sentence of five years below is affirmed…the reasons and decisions and orders shall be given on a date to be notified by the Registrar*."

15. In the case at bar, the then Chief Justice delivered an oral judgment and reasons without fully settling and addressing the actual terms of the order as opposed to the Court of Appeal in ***Henry*** that issued a clear and coherent order. Secondly, if ***Henry*** applies to civil proceedings then it is the case that the then Chief Justice had the continuing power to vary and amend the oral judgment. Therefore, it is submitted that the then Chief Justice failed to provide a clear and enforceable order which has been compounded by the failed "in chambers clarification", which in any event, was an attempt by the

Court to vary the oral order made. This dysfunction has only been heightened by the ultimate failure to provide a completed and perfected order.

16. No Power in this Court to Perfect the Order

The Defendants submit that the Court has no jurisdiction to draw the order. The Defendants submit that no other judge is competent to purport to deliver a ruling and order on behalf of a retired justice. It is not for another Court to supply an order where none was made nor supply reasons not given by another judge. This Court cannot step into the shoes of the then Chief Justice and seek to right what was not done. It is also the case that the then Chief Justice did not continue in that capacity to enable him to deliver a perfected order.

The Defendants submit that only a new judge after hearing this claim on the merits would be able to be in a position to issue an order or judgment in this matter.

17. The Claimants are asking this Court not to hear the claim, but to arrive at a conclusion on the matter and grant a permanent injunction against the Defendants. The Claimants admit that there is no perfected Order so that the purported orders (if any) made on January 31, 2020, are not enforceable by sequestration or committal. Nevertheless, the Claimants seek to lift a stay pertaining to a non-existent and unperfected order that is utterly incapable of being perfected without a retrial and hearing of the claim.

18. The purported judgment or orders of January 31, 2020, by the then Chief Justice are unclear since both parties are at dispute as to what exactly is the judgment or order. Per the Claimants' Notice of Application, they now seek to only use the "Record", incomplete at that, to purport to come to some conclusion as to what the then Chief Justice intended to do and have the Acting Chief Justice grant a permanent injunction against the Defendants.

19. The Applicants' application is to remove the "stay" of the purported permanent injunction and have this Honorable Court grant an Order in like terms of the unperfected and unclear purported orders made on January 31, 2020, as a prelude to enforcement against the Defendants.

20. The Defendants' submit that in the circumstances of this matter, where the Claimants seek to enforce an injunction against the Defendants by execution, sequestration, or imprisonment, is a grave and weighty matter concerning the liberty of the subject citizens. The proper procedure must be followed by this Honorable Court. Any such procedure should entail a retrial of the claim and/or bringing of an entirely new claim. The Claimants admit that the purported judgment or order does not exist as to the injunction, and the Defendants say that the judgment or order in these circumstances does not exist in law at all.

21. No Appeal – Defendants Disadvantaged

The Claimants alone are not disadvantaged by this unfortunate circumstance and the Defendants sympathize with the Claimants as the Defendants themselves are without a route to appeal at this stage, there admittedly being no perfected order. However, it would be wrong in law to proceed as the Claimants purport to do.

22. Assuming an Enforceable Order Declaratory Order Not Enforceable

Assuming, without admitting that a valid declaratory order and permanent injunction was made, the Defendants submit that the Claimants have added a gloss to the ***Attorney General et. al. v Jeffrey J Prosser et. al.*** to the effect that a separate action need not be taken to enforce a declaratory order. Reliance was placed on ***R v Minister of Agriculture, Fisheries, and Food ex parte Anastasiou (Pissouri) Limited*** [1998] Lexis Citation 4192. However, a review of that case would dictate that this matter was not seriously argued nor was considered by the Court and given summary treatment.

In any event, the Court of Appeal ruling in ***Prosser*** is binding upon this Court. Sosa JA (as he then was) relied upon the Agbaje J and quoted that a "*declaratory judgment may be the ground of subsequent proceedings in which the right having been violated, receives enforcement*."

23. The Defendants submit that firstly no right has been violated, as if there was an order, which is denied, the then Chief Justice suspended the effect of the injunction for a period of six months, assuming then that he had intended that the order should take effect from the January 31, 2020. Secondly, there would also be the need to undertake subsequent proceedings to enforce the declaratory order. This was not done.

24. "**Lifting Stay**" – **Variation of a Final Judgment of a Court of Coordinate Jurisdiction**

The Defendants submit that the Claimants are mischaracterizing what the then Chief Justice purported to have done, assuming he made a valid order. The Chief Justice granted an injunction but suspended its effect for six months from some unspecified period.

Such an order cannot be characterized as a stay. Therefore, there is no jurisdiction to lift the stay. The orders sought by the Claimants in effect invite this Court to vary the final decision of the then Chief Justice. This is impermissible. A judge of coordinate jurisdiction cannot vary the decision of another judge. Only an appellate court can do so.

25. If this Court finds that it has the power to "lift the stay" and vary the final judgment made by the then Chief Justice, the Defendants submit that there must be good or proper grounds to suggest that a stay of proceedings would

cause injustice or prejudice. The Defendants submit that no injustice or prejudice has been shown as there is currently no pending supplementary appropriation bill before the House.

26. **Post Judgment Injunction in Aid of Declarations – Interim Injunction Useless – No Threatened Harm**

The Claimants submit the Court can make an interim injunction order in aid of Declarations. The Defendants submit that the Court must not make an order where there is no threatened harm or risk of harm or where the injunction would serve no useful purpose or where repetition is unlikely. The Defendants submit that there are no supplementary appropriation bills before the House of Representatives and that the Claimants have failed to show that repetition is likely in the circumstances.

27. The Defendants also submit that the Claimants are guilty of inordinate delay and have failed to make an application with alacrity and have acquiesced and lost the right to now apply for an injunction.

Injunction Against the State & The Separation of Powers Doctrine

28. The Defendants submit that even if the then Chief Justice purported to order a permanent injunction against the Defendants (which we do not admit), in

the circumstances the said order cannot stand nor can injunctive relief be issued per the Claimants' Notice of Application for the following reasons.

29. In the case at bar, the purported order for permanent injunction[1] would provide a remedy to the Claimants that is coercive, wide, ambiguous, and in breach of the separation of powers doctrine. The purported injunctive order in effect seeks to bind the State. Assuming though not admitting that a declaratory order was made on January 31, 2020, granting an injunction in this matter would in effect cause this Honorable Court to abrogate unto itself endless powers to supervise and usurp the function of the legislature. One must also consider that the instant case is a weighty matter where non-compliance attaches grave sanctions such as committal or sequestration.

30. This approach of granting an injunction against ministers or other public officials is inimical to position expressed in ***Gairy v Attorney General[2] which states that:***

> *[M]andatory orders to which there attaches a sanction (whether explicit or implicit), such as committal, for non-compliance. Such orders, regularly made against private individuals, are not made against ministers and public officials. There is no need. Experience*

[1]Purportedly made on January 31st 2020.
[2] Privy Council Appeal No. 29 of 2000 *Gairy v Attorney General para 23* **[Tab 11].**

shows that if such orders are made there is compliance, at any rate in the absence of most compelling reasons for non-compliance.

31. In the premises, the Defendants humbly submit that there is no need for an injunction in this matter. Further, the Defendants' contentions to the purported orders of January 31, 2020, prove significant concerning the issue of whether injunctive relief may be properly issued against them in law. For reasons discussed above, the Defendants dispute the entire existence of the purported judgment or orders. Further or in the alternative, on a proper review of the transcript in this matter, the Defendants also contend that on January 31, 2020, no declaration was made by the then Chief Justice Kenneth Benjamin declaring a breach of sections 2, 68, 115, 116 and 117 of the Constitution by the Defendants for purported retrospective appropriation of monies from the Consolidated Revenue Fund as alleged by the Claimants in their Fixed Date Claim Form and in their Notice of Application in this matter. [3]

32. Assuming, though not admitting that a purported breach of section 114 of the Constitution[4] and section 3(2) of Finance and Audit (Reform) Act[5]was indeed found by the then Chief Justice only, this does not warrant the fashioning of a

[3] The third Declaration sought by the Claimants in their Fixed Date Claim Form and the Notice of Application at ground 6 ii.
[4] Belize Constitution Act, R.E. 2011, cap 4, s 114**[Tab 12].**
[5] Finance and Audit (Reform) Act, R.E. 2011, cap 15, s 3(2)**[Tab 13].**

coercive remedy against the Defendants that wholly abrogates the power of the executive and legislative branch of government and is in utter breach of the separation of powers doctrine.

33. The ***Gairy***[6] decision is instructive on the point that the Courts should not abrogate the powers of the legislature. In ***Gairy***, the appellant having obtained a money judgment of EC$2,792,540.10 against the respondent sought thereafter to obtain full payment by way of a claim for constitutional relief. The Board in allowing the appeal, ordered that:

> "*the Minister of Finance shall take **all steps necessary** to procure the payment be made to the appellant forthwith of EC$ 2,792,540.10 plus interest at the rate of 6 percentum per annum…"*

34. Assuming though not admitting that the Claimants may only have a purported declaratory against the Defendants' order and do not have a money judgment as in ***Gairy***, the fashioning of such a coercive order in the terms sought by the Claimants is totally unreasonable and unwarranted. It must also be considered that there is no risk that supplementary allocations, withdrawals and/or expenditures by the First and Second Defendants without prior approval of the National Assembly of Belize may recur.

[6] Privy Council Appeal No. 29 of 2000 *Gairy v Attorney General para 31***[Tab 11].**

35. Further, the Claimants placed reliance on ***Doucet-Boudreau v Nova Scotia (Minister of Education)*** and specifically upon the majority opinion written by Iacobucci and Arbour JJ to the effect that a judge has a free hand to fashion an appropriate remedy to vindicate the constitutional right infringed. Similarly, the Caribbean Court of Justice has found that Section 20 of the Constitution provides "a broad discretion to fashion effective remedies to secure the enforcement of constitutional rights."

36. However, as the Dissenters in Doucet-Boudreau noted. The Court must not abrogate unto itself endless powers to supervise and usurp the function of the legislature. Such an attempt would be in breach of the separation of powers doctrine.

> "*Courts should not unduly encroach on areas which should remain the responsibility of public administration and should avoid turning themselves into managers of the public service. Judicial interventions should end when and where the case of which a judge is seized is brought to a close*[7]"

37. The order sought by the Claimants is in effect asking this Court to unduly encroach on areas which should remain the responsibility of public

administration; this Court ought not to become a manager of public service especially when one considers the position of ***Gairy*** above.

Conclusion

38. In the premises, the Defendants submit that the Application ought to be dismissed with costs to be assessed if not agreed.

39.RULING

I am grateful to both counsel for their submissions on this Application. With respect, I find that the Application is wholly misconceived. This Application should have been made to then Chief Justice Benjamin as he was the original arbiter of fact and law in this claim who purportedly delivered the oral judgment on January 31, 2020. As the Claimants concede in their submissions on this application, Chief Justice Benjamin is the only judge with the experience of the trial to vary the order, if in fact an order was made. There was no perfection of the order, and the terms of the order itself are bitterly disputed by the parties. It follows that Chief Justice Benjamin is the only judge who can grant the application sought. The Claimants admit in their own submissions that the parties attempted to have Chief Justice Benjamin approve the draft order, with written comments provided by counsel for each party because the parties were unable to agree on the terms of the order. Yet Chief

Justice Benjamin, having received the draft and despite being the original arbiter of the facts and the law in this case, failed to settle the order. An order was never perfected, the terms are highly contentious, and therefore no one knows exactly what was the order made by Chief Justice Benjamin. This is vastly different from the authorities such as the CCJ case of **R. v Henry** cited by the Claimants, where there was no doubt as to the terms of the order made. To seek to have this court, a court of concomitant jurisdiction, rely on the transcript of the case to infer the terms of the order, and lift a stay which may or may not exist, and give effect to an order that is ambiguous and perhaps non-existent is preposterous. Let me be clear in saying that this decision is in no way an abdication of this court's role in guarding the Constitution and upholding the Rule of Law; the Court is a jealous guardian of both. The Court is not a football to be kicked around by opportunists of any political party; it is hoped that the grave ill complained of, that is, the bringing of supplementary allocations and expenditure raised or received by the State without first seeking approval of the House of Representatives, as well as the retrospective appropriation of monies contrary to the provisions of the Constitution and the Finance and Audit Reform Act has now ceased, since the parties before the court in this Claim are now wearing different hats. It is no part of this court's function to seek to give effect to an order when this court has not had the

benefit of hearing arguments and considering evidence which gave rise to the oral judgment, where the evidence of affidavits in support of the Application are contentious, and where the original arbiter of the facts and the law has failed to settle the order despite receiving drafts for approval submitted by counsel. The situation is completely different where there is no contention between the parties as to whether an order was made and where there is no dispute as to what were the exact terms of that order.

For these reasons, the Application is dismissed with costs to the Respondents to be agreed or assessed.

Dated this 3rd day of March 2022

Michelle Arana
Chief Justice (Ag.)
Supreme Court of Belize