IN THE SUPREME COURT OF BELIZE, A.D. 2OO1

ACTION NO. 185

	(PROPHECY GROUP LC	**Plaintiff/Respondent**
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BETWEEN	**(AND**	
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	(SEABREEZE COMPANY LIMITED	**Defendant/Applicant**

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BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Vernon H. Courtenay S.C. with Mr. Derek Courtenay S.C. for the Plaintiff/Respondent.
Mr. Fred Lumor S.C. with Mrs. Robertha Magnus-Usher for the Defendant/Applicant.

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DECISION

The background to the proceedings can be stated as follows:

On 19 April 2001 the respondent, Prophecy Group LC (referred to as Prophecy Group subsequently) as Plaintiff in the action proper took out a specially endorsed writ against the applicant as defendant (referred to as Seabreeze subsequently), claiming against it the sum of US$2,417,273.62 on a judgment of the Circuit Court in Okaloosa County, Florida, U.S.A. dated 4 January 2001. The Prophecy Group claimed as well in its writ interest at the rate of 20% per annum from the date of the judgment.

2. Seabreeze as defendant to this action, filed a Defence on 14 May 2001. On 12 November 2001, Prophecy Group took out a Summons to have the Defence struck out and for judgment to be entered for it on its writ.

3. On 4 March 2002, the Court (Blackman J. in Chambers) refused the application of Prophecy Group but ordered Seabreeze to file an Amended Defence. This they duly did on 25 March 2002.

4. No more progress was evidently made with the case. However, on 3 June 2003, Seabreeze as applicant, took out a Summons praying for an order

that all further proceedings in the action be stayed on the following grounds:

"1) The foreign judgment dated 12th day of September, 2000 awarded by the Circuit Court of Okaloosa County, Florida, U.S.A. in Civil Action Case No. 00-1733-CA was compromised and or settled by the parties in a Deed of Assignment dated 8th January 2001.

2) The foreign debt arising on the aforementioned judgment in the sum of US$1,575,000.00 was novated by the parties in a Deed of Assignment dated the 8th of January, 2001.

3) The aforesaid foreign judgment having been compromised or settled or waived and or discharged the same could not be amended or altered as "Second Amended Default Judgment" in the sum of US$2,417,273.62 and as such the Plaintiff cannot enforce the same.

4) The Second Amended Default Judgment in the sum of US$2,417,273.62 dated the 4th day of January, 2001 was obtained by fraud.

5) The judgment of the Circuit Court of Okaloosa County in the State of Florida, U.S.A. is not "final and conclusive" and cannot be enforced by the Court.

6) The said foreign judgment having been obtained in respect of Agreements that are illegal by virtue of the provisions of the Exchange Control Regulations of Belize, Chapter 43 of the Subsidiary Laws, 1991, the same is contrary to public policy and cannot be enforced, namely –

(a) The foreign judgment is an order made for the repayment of moneys lent or paid in contravention of Section 5(b) of the Exchange Control Regulations.

(b) The foreign judgment is an order made for the repayment of moneys claimed under transactions by way of loans advanced

under an equitable mortgage secured on lands situate in Belize in contravention of Section 40(1) of the Exchange Control Regulations.

7) The Plaintiff is estopped and precluded from maintaining this action on the aforesaid foreign judgment the parties having arrived at terms of compromise or settlement in a Deed of Assignment dated the 8th of January, 2001."

The Judgment

5. It is common ground, at least that much is, between the parties that the Circuit Court in Okaloosa County in the State of Florida, U.S.A., did enter a judgment between the parties on a claim by Prophecy Group as plaintiff in Civil Action No. 00-1733-CA, against Seabreeze as defendant, flowing out of an agreement relating to a loan for the construction of condominiums in San Pedro, Ambergris Caye. The agreement contained an option that allowed Seabreeze to buy back twenty condominium units from Prophecy Group. Seabreeze exercised this option but failed to pay the purchase price of $1,083,000.00 within the stipulated time. The agreement provided that in that event, the option price will increase on the basis of 20% per annum prorated on a daily basis.

6. The agreement between the parties contained the following provision in Clause 16:

Governing Law

"16. This Agreement is being executed and delivered in the State of Florida and shall be governed by and construed and enforced in accordance with the laws of the State of Florida then, as necessary, secondarily by the applicable laws of Belize. (The Parties) consent to venue before the Circuit Court of Okaloosa County, Florida to resolve any and all disputes between them. Any judgment entered pursuant to this Agreement by a court of competent jurisdiction in the State of Florida may be filed on record by the prevailing party in the proper court in Belize and be enforced in Belize according to its terms."

7. At first, on 12 September 2000, Prophecy Group obtained a default judgment against Seabreeze in the sum of US$1,575,963.62. On 11 December 2000, Prophecy Group obtained an Amended Default Judgment. Subsequently, on 4th January 2001, Prophecy Group obtained what is headed **Second Amended Judgment** for the sum of US$2,417,273.62 in the same cause.

8. It is this judgment Prophecy Group now seeks to enforce by way of an action on the judgment by its specially endorsed writ, in these proceedings. This is the foreign judgment that is the subject of these proceedings.

9. Against this, Seabreeze now seeks a stay for the reasons stated in its Summons.

Reasons for the prayer to stay by the Applicant

10. I think in essence, the reasons Seabreeze has advanced for the order to stay further proceedings can be summarized thus:

First, that the judgment of the Circuit Court of Okaloosa County in Florida, U.S.A. was not final and conclusive and therefore not enforceable by this Court.

Secondly, that by a Deed of Assignment between the parties dated 8th January 2001, the foreign judgment of the Okaloosa Circuit Court for "US$1,575,000.00" was compromised and or settled or novated or discharged by the said Deed of Assignment and that it could not therefore be amended or altered as "Second Amended Default Judgment" in the sum of US$2,417,273.62, and therefore Prophecy Group cannot enforce the same as it is estopped or precluded from maintaining this action on the said judgment as a result of the Deed of Assignment.

Thirdly, that the foreign judgment Prophecy Group seeks to enforce was obtained in respect of agreements that were illegal by virtue of the provisions of the Exchange Control Regulations – Chapter 43 of the Subsidiary Laws of Belize, 1991, and was therefore contrary to public policy and therefore unenforceable.

11. In the body of the Summons, Seabreeze had additionally asked for the stay of proceedings on the grounds that the Second Amended Default

Judgment of 4 January 2001 was obtained by fraud. However, Mr. Fred Lumor S.C. for Seabreeze, conceded that he would not press this ground on the Court.

12. I now turn to an examination of the several grounds Seabreeze has urged why further proceedings in this action should be stayed.

First – that the Foreign Judgment was not final and conclusive

13. There is no treaty in force between Belize and the U.S.A. for the reciprocal enforcement of judgments obtained in the Courts of either country. I am not aware of any order made under section 8 of the Reciprocal Enforcement of Judgment Act – Chapter 171 of 2000 Rev. Ed. of the Laws of Belize extending Part II thereof to judgments of the Courts of the U.S.A. But this has not however stood in the way of the Courts at least in Belize, from enforcing foreign judgments obtained, for example, from Courts in the U.S.A. However, enforcement of such foreign judgments is done not by direct execution of the foreign judgment but by bringing an action in the Courts in Belize on the foreign judgment. This position is derived from the common law that the judgment of a court of competent jurisdiction of a foreign country can be enforced by an action on the judgment. Blackburn J. stated the principle as follows in **Goodard v Gray (1870) L.R. 6 QB 139** at p. 149-150 and in **Schibbsby v Westenholz (1870) L.R. 6 QB 155**:

> *"… the true principle on which the judgments of foreign tribunals are enforced (in England) is … that the judgment of a court of competent jurisdiction over the defendant imposes a duty or obligation on the defendant to pay the sum for which the judgment is given, which the courts of this country are bound to enforce".* See Dicey and Morris, **The Conflict of Laws 12th Ed. Vol. 1**, Rules 34 and 35.

14. It is this common law foundation of the enforcement of foreign judgments by an action on the judgment that has enabled the Courts in Belize to entertain foreign judgments sued upon here for enforcement – **Supreme Court Action No. 118 of 1990 British American Cattle Company v Alfred Edwards** (unreported).

15. The principle that a foreign judgment is enforceable by an action on the judgment is however subject to certain exceptions namely, that the foreign

judgment was obtained by **fraud**, or that the foreign judgment is **contrary to public policy**, or that it was obtained **contrary to natural justice** or that it is for taxes or penalties.

Halsbury's Laws of England Vol. 3 4th Ed. states the principle thus at paragraph 725:

> *"Subject to three exceptions a judgment in personam of a foreign court of competent jurisdiction which is final and conclusive on the merits is conclusive … between the parties and privies as to any issue upon which it adjudicates. It is not impeachable or examinable on the merits, whether for error of fact or of law."*

16. Mr. Lumor S.C. for Seabreeze resiled from the issue of fraud and did not urge this on the Court. He contends however that the judgment Prophecy Group is seeking to enforce is not a final and conclusive judgment. This is so, because he argued, the judgment was originally obtained for US$1,575,963.62 with interest on 12 September 2000 and that Prophecy Group obtained on the 11th December 2000 an "Amended Default Judgment" for US$1,575,963.62, and finally obtained on 4th January 2001 another judgment headed "Second Amended Default Judgment" for the sum of US$2,417,273.62 with interest. It is this change in computation of the sum due on the judgment that is at the heart of Mr. Lumor's contention that the judgment is not final or conclusive.

17. The question therefore is: Is the judgment Prophecy Group is seeking to enforce final and conclusive? It is settled law that the foreign judgment which is sought to be enforced must finally and conclusively determine the rights and liabilities of the parties so as to be res judicata in the country, in this case, Florida, U.S.A., where it was pronounced – **Halsbury's Laws** ibid at paragraph 734.

18. As Lord Herschell stated on the question of finality or conclusiveness of foreign judgment in **Gustave Nouvion v Freeman and Another (1889) 15 App. Cas. 1** at page 8:

> *"… in order to establish that such a judgment has been pronounced it must be shown that in the court by which it was pronounced it conclusively, finally, and for ever established the existence of the debt of which it is sought to be made*

conclusive evidence in this country, so as to make it res judicata between the parties. If it is not conclusive in the same court which pronounced it, so that notwithstanding such a judgment the existence of the debt may between the same parties be afterwards contested in that Court, and upon proper proceedings being taken and such contest being adjudicated upon, it may be declared that there existed no obligation to pay the bet at all, then I do not think that a judgment which is of that character can be regarded as finally and conclusively evidencing the debt, as so entitling the person who has obtained the judgment to claim a decree from our Courts for the payment of that debt."

Also in **Colt Industries Inc v Searlie (No. 2) (1966) 1 WLR 1287**, Russell L.J. stated at 1293:

"… on the question whether a judgment lacks finality or conclusiveness for lack of enforceability, regard can only be had to the system of law applied by the court whose foreign judgment is in question …"

19. I am therefore not persuaded that the judgment Prophecy Group is seeking to enforce by its writ in this action is not a final and conclusive judgment notwithstanding what is said about the alteration of the quantum of the judgment of the Okaloosa Circuit Court. What is started in the writ in the action on that judgment is for a definite sum in the amount of US$2,417,273.62. The foreign judgment must be for a definite sum. A sum is sufficiently certain for this purpose if it can be ascertained by a simple arithmetical process – **Halsbury's Laws ibid** at para. 732.

20. I am therefore satisfied that in this case the sum is definite and certain in the foreign judgment sought to be enforced and that whatever change might have been done in the computation of the sum done under the judgment is not a variation such as to make it indeterminate or variable or inconclusive. I am prepared to hold and do hold that any change in arriving at the sum stated in the writ was as a result of the operation of the slip rule in order to correct and state the actual sum owed by Seabreeze in virtue of the judgment in default against it, but the judgment finally and conclusively determined Seabreeze's indebtedness or liability to Prophecy Group on their agreements.

21. I do not think that because the final judgment of the Okaloosa Circuit Court was entered **nunc pro tunc** to the date when the first default judgment was entered makes any difference. A Court has the power where an order has been drawn up but not entered and an omission is later discovered even after some lapse of time, to order that the order be redrawn or entered **nunc pro tunc** – see **White Book 1995 Ed. Vol. 1** at para. 42/3/4 and the case of **Re Jones (1891) 39 WR 16**, and at para. 20/11 on amendment of judgments and orders, and **Re Inchcape (1942) Ch. 394**, where orders were corrected by inserting a direction that certain costs which counsel had accidentally omitted to ask for a the hearing, should be included in the costs allowed.

22. I am therefore satisfied that in this case the sum is definite and certain in the foreign judgment sought to be enforced and that whatever change might have been done in the computation of the sum due under the judgment is not a variation such as to make it indeterminate or variable or inconclusive. I am prepared to hold and do hold that any change in arriving at the sum stated in the writ was as a result of the operation of the slip rule in order to correct and state the actual sum owed by Seabreeze. The judgment, I find, finally and conclusively determined Seabreeze's liability to Prophecy Group. From its date, that is, 4 January 2001, it became res judicata as between their privies.

23. In any event, Prophecy Group by its writ is seeking to enforce the judgment of the Okaloosa Circuit Court given on 4th January 2001 for the sum of US$2,417,273.62. It cannot be argued that this did not settle Seabreeze's liability to Prophecy Group in the light of their agreement and it thereby becomes between them, **res judicata**.

Finally, to paraphrase, with respect, Russell L.J. in the **Colt** case **supra** there is no doubt that in any ordinary sense of the phrase Prophecy Group's judgment in this case was and is final in quality – it established Seabreeze's liability under the foreign judgment for a definite sum.

Was the Foreign Judgment compromised, settled or novated by a Deed of Assignment and thereby estopping Prophecy Group from proceeding on it?

24. I now turn to the other reasons advanced by Seabreeze why the foreign judgment obtained by Prophecy Group should be stayed.

Mr. Lumor S.C. for Seabreeze argued forcefully that because of a Deed of Assignment dated 8 January 2001 the foreign judgment was compromised, satisfied or discharged or novated and that Prophecy Group's proceedings to enforce that judgment here by an action on it should be stopped as it is estopped from doing so.

25. The Deed of Assignment is therefore crucial to this submission on behalf of Seabreeze. I must however confess to some difficulties about this instrument and its effect on the foreign judgment in favour of Prophecy Group.

This Deed of Assignment was made on 8th January 2001. It expressly states that it was made between one Seferino Paz Jr. of the first part and Prophecy Group for the second part and St. Matthew's University School of Medicine. Seabreeze as such is not a party to this deed. Bu by the provisions of the deed Mr. Seferino Paz who is therein described as the "Assignor" agreed to assign to Prophecy Group his interests in some shares and monies due him under some admittedly convoluted arrangement involving one Harrier Investment Inc. and one M.A.H. Trust involving some principal agreement. Mr. Paz is described as the director and a shareholder of Seabreeze. It was in this capacity evidently that Mr. Paz as "assignor" assigned those interest said to total US$896,201.00 to Prophecy Group in satisfaction of the foreign judgment which is stated in the deed to be US US$1,575,000.00 with no further sum of principal or interest accruing on it.

26. I listened careful to Mr. Lumor's submissions on these issues of compromise, satisfaction, discharge of the foreign debt by the Deed of Assignment. I find his written submissions helpful as well. But in principle and on the authorities, I am not satisfied or convinced that the Deed of Assignment had the effect and operation contended for by Mr. Lumor.

27. In the first place, Seabreeze was not a party to the Deed, although Mr. Paz the "assignor" is described in it as the director and a shareholder of Seabreeze. Also, the Deed itself is signed by Mr. Paz in his individual personal capacity and not for or on behalf of Seabreeze. Moreover, Harrier Investment Inc. 50% of whose shares represented the monetized figure of US$896,201.00 which Mr. Paz agreed to assign to Prophecy Group in satisfaction is not a party to the Deed of Assignment.

28. In law, equity and good conscience a party to a compromise should not be allowed to resile from it without good reason. The effect of a compromise is thus stated in **Chitty on Contracts 27th Ed.** at paras. 22-012:

> *"Once a valid compromise has been reached, it is not open to the party agreeing when the claim is made to avoid the compromise on the ground that the claim was in fact invalid, provided that the claim was made in good faith and was reasonably believed to be valid by the party asserting it. Conversely, the claimant cannot avoid the compromise on the ground that there was in fact no defence to the claim, provided that the other party bona fide and reasonably believed that he had a good defence either as to liability or as to amount. In order to establish a valid compromise, it must be shown that there has been an agreement (accord) which is complete and certain in its terms, and the consideration (satisfaction) has been given or promised in return for the promised or actual forbearance to pursue the claim".* (emphasis added)

I therefore find it difficult to accept that the Deed of Assignment (whose terms are not very clear as to who is owed what and by whom) and to which Seabreeze was not even a party, was a compromise in the accepted sense or could have the effect of one as contended for by Mr. Lumor S.C.

29. On the question of novation, Mr. Lumor S.C. also plausibly argued that Prophecy Group's foreign judgment (which is really a simple contract debt) was novated by the Deed of Assignment. The insuperable difficulty with this argument of course, is that like with those advanced on the alleged satisfaction, compromise or discharge of the foreign debt, Seabreeze was not a party, though, of course, for a valid novation, the substituted contract need not be between the same parties as to the original contract, but the consideration must be between the original parties. It is also clear from the authorities that the discharge of the original debt or contract is necessary – it is the discharge that is in fact the consideration. There is no evidence that Seabreeze, an original party, if I may say so, together with Prophecy Group, was a party to the Deed of Assignment or that it agreed that its obligation to Prophecy Group under the foreign judgment would be substituted for by the payment which Mr. Paz purportedly agreed to make.

"Novation … is an act whereby, with the consent of all parties, a new contract is substituted for an existing contract and the latter is discharged"

– **Halsbury's Laws of England, 4th Ed, Vol. 9(1)** at para. 1036 and para. 1041.

30. Moreover, there is no evidence at all that there was any agreement between Prophecy Group and Seabreeze, the only parties to the foreign judgment, that the monies, shares or interest owed to Mr. Paz Jr. should be substituted for the foreign judgment. The Deed of Assignment for what it is worth, was between Mr. Paz (as I pointed out in his personal individual capacity and not representative), Prophecy Group and St. Matthew's University School of Medicine. And the terms of what was owed to whom by whom are far from clear.

It is manifest that Prophecy Group did not get any satisfaction from the Deed of Assignment. But it is no answer to its claim on the foreign judgment that it had been satisfied, compromised or discharged or novated by the Deed of Assignment, for which Seabreeze, the party actually indebted under the foreign judgment, was not a party nor did it provide any consideration. The Deed of Assignment itself, I hold, is no discharge, satisfaction or novation of the sum of US$2,417,273.62 due and owing under the foreign judgment from Seabreeze.

31. For all these reasons, I am unable to hold that Prophecy Group is estopped from proceeding on the foreign judgment entered in its favour by the Circuit Court in Okaloosa, Florida, U.S.A.

Was Contract between the Parties illegal?

32. I now turn to the issue of the alleged illegality of the contract between Seabreeze and Prophecy Group and therefore contrary to public policy.

Was the Agreement between Prophecy Group and Seabreeze by which the former advanced monies to the latter for the construction of the condominiums in San Pedro Ambergris Caye tainted with illegality so as to disentitle Prophecy Group to avail itself of the courts in Belize to get satisfaction on a foreign judgment in its favour for breach of that agreement?

33. I must say to his credit, Mr. Lumor S.C. for Seabreeze did not put much store on this – this is reflected in my notes at the hearing. However on behalf of Seabreeze a full frontal attack was mounted in the written submissions by its attorneys to the effect that the agreement between

Prophecy Group and Seabreeze involved the payment or transfer of money to Seabreeze in violation of the Foreign Exchange Act and Regulations. Therefore, it is contended, the agreement was contrary to public policy and the Courts of Belize should not lend their help to a party seeking to enforce a judgment flowing from such an agreement.

34. In my view, to say the least, such a line of argument, I find, is too self-serving and, the situation is not helped by the consideration that, if that were so, both Prophecy Group and Seabreeze would be *par delictum*. Although this would put Seabreeze as defendant in the stronger position, I do not think however that the argument is correct or can be pressed home in the instant case.

35. I find the decision of the majority of the Court of Appeal in the case of **Leslie Frank Sharp v Belize Cemcol Ltd. – Civil Appeal No. 30 of 2000** (unreported) more helpful as a guide here. In that case, the same issues regarding the operation or effect of the Exchange Control Regulations on the legality of a contract and its enforceability was in issue. Carey J.A. delivering the judgment of the majority held at paragraphs 9 and 10:

> *"9. What is proscribed is not the payment of foreign currency to any person resident in Belize or to any person outside the country simpliciter, but rather it is the failure to obtain the permission of the Controller for such disbursements which will constitute a breach of the law.*
>
> *10. It follows that a contract which provides for the payment of funds to an employee as to a portion within Belize and the remainder outside, is not, ipso facto, illegal. It can only … offend the statute, if such payment was made without the permission of the Controller or that was the purpose of the contract. But this contract could be performed without breaching the law. It was not a contract to do a thing which could not be performed without violating the law."*

36. In the instant case before me, I think it would be fanciful in the extreme, to imagine that the arrangement between Prophecy Group and Seabreeze, had as its purpose to flout the Foreign Exchange Regulations or laws of Belize. Here was a foreign company with foreign currency and resident

outside of Belize and willing to finance a Belizean company to build or develop real estate in Belize. I do not think for one moment, that the intention was to flout the foreign exchange laws of the country. Otherwise this line of reasoning will put a crimp on development finance arrangements between Belizean companies and their foreign counterparts, it may even result in a chill on foreign investment in the country.

37. In any event, I am not persuaded that the Exchange Control Act nor its Regulations deal with foreign judgments, one such of which is the subject of the action by Prophecy Group. I do not find anything that would be contrary to public policy in making the Courts of Belize available to Prophecy Group to enforce the judgment in its favour granted by the Okaloosa Circuit Court against Seabreeze.

38. It is for all these seasons that I find myself unable to accede to the objections of Seabreeze and to order a stay of further proceedings.

39. I order costs in the cause if and when the plaintiff proceeds to enter judgment.

A. O. CONTEH
Chief Justice

DATED: 5th March, 2004.