



From the evidence in this case, it is clear that the respondent company, BTL has had a chequered life in terms of its ownership over the course of some years.

First, BTL's majority shares and controlling apparatus were in Carlisle Holdings Ltd., the 3<sup>rd</sup> applicant in this matter before me. Then in 2004 there was a sea change when Carlisle Holdings sold its majority interest in and hence control of BTL to the Government of Belize.

Secondly, the Government of Belize proceeded in the same year, to sell the shares it had acquired from Carlisle to Innovative Communications Company Ltd. (ICC) and Belize Telecom, which is not to be confused with the respondent company despite the evident eponym in their names.

During all this, the respondent company had endured two distinct regimes in terms of its Board of directors, depending on who had the majority of its shares.

It was during the tenure of the Board of Directors put in place by ICC/ Belize Telecom that the present application before me to have an inspector appointed to investigate the affairs of the respondent company, pursuant to section 110 of the Companies Act of Belize was launched.

Thirdly, however, things took a dramatic turn when, during the pendency of the application on the 9<sup>th</sup> February, 2005 the Government of Belize in a Press Release announced that it acquired the shares which it had sold to ICC and Belize Telecom and had therefore taken control of the management of the respondent company. The Government of Belize then proceeded to put in place a new Board of Directors with the Financial Secretary of Belize as the new Chairman of the Board.

Subsequently, in an affidavit dated 2<sup>nd</sup> March, 2005 by Mr. Wilman Black who deposed as Secretary of the new Board of Directors, it was expressly stated that by a resolution of the Board passed on the 22<sup>nd</sup> February, 2005, it was decided that there would be no objection to the appointment of an inspector to investigate the affairs of the respondent company.

It is therefore the position that there is no objection to the application for the appointment of an inspector or inspectors.

Section 110 of the Companies Act, Chapter 250 of the Laws of Belize, R.E. 2000 vests the discretionary power in the Court to appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Court may direct. The applicants themselves fall under para. (b) of subsection 1 of section 110. I need not read it out.

There is therefore a meeting of minds between the applicants and the new Board of the respondent company as to the needs or desirability of the appointment of an inspector or inspectors to investigate the affairs of the respondent company.

What, however, separates them is the scope or the parameters of the inspection.

Ms. Lois Young Barrow, S.C. for the applicants has argued forcefully that the inspection should be limited to the issues stated in the schedule to the motion of the applicants. These relate, among other things, I am not setting them out exhaustively, this relate among other things, to an explanation of some lease agreement dated 16th November, 2004 entered into by the respondent company and why it is in the best interest of the company to enter into direct obligations with third parties to satisfy obligations of ICC. For what it is convenient, for brevity sake, to call the buyout by the respondent company of International Telecommunications Company

(Intelco); the use of the assets of the respondent company as security in transactions involving ICC assuming the balance of Intelco's loan in the amount of US\$9 million; any payment of dividends to some but not all shareholders of the respondent company. The list in the schedule to the applicants' motion is long and I have only attempted to summarize them here.

But Ms. Young Barrow, S.C., argued that the applicants as minority shareholders in the respondent company could not get information on these matters which relate to issues affecting the respondent company from April, 2004 and not before that date. Therefore, she submitted, the scope of any investigation the Court might be minded to order should thus be limited.

Mr. Black in his affidavit I have referred to conceding the need to have the affairs of the respondent company investigated, however, stated that this is on condition that the investigation be done in respect of the period November, 2001 to the 8th February, 2005.

Mr. Lumor, S.C. for the respondent, in argument, conceded, also, the need for an investigation but that it should cover the period stated in Mr. Black's affidavit as this would be in the interest of all the shareholders as a whole, regardless of who was in control of the management of the respondent company.

Ms. Young Barrow, S.C, replied that the request for investigation of the respondent company was to get information on the several issues stated in the schedule to the Motion which the applicants could not, as minority shareholders obtain, whereas the Board of the respondent company, whether under the ICC regime or over the new regime which puts the Government of Belize in control, had all the relevant information. Therefore, she submitted, to order any investigation of the respondent company's affairs to include the period pre April 2004 by the respondent company, that is, November, 2001 to

February, 2005 is to piggy-back on the applicant's application unnecessarily and thereby widening the scope of the investigation.

I turn now to the powers of the Court to Order an investigation of the affairs of a company. This is expressly granted to the Court by section 110 of the Companies Act, subsection one of which provides in terms:

*"(110(1) the Court may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Court directs".*

The section is longer than that, but I just quoted the relevant power given to the Court by the section. This section, however, does not spell out the circumstances when the Court may Order an inspection of a company apart from requiring, as subsection 2 does, that an application for an inquiry into a company shall be supported by such evidence as the Court may require in order to ensure that the applicant have good reasons for requesting the inquiry and not actuated by malicious motives. The Court, however, has discretion whether to order an investigation or not. But, in my view, like all judicial discretion, it must be reasonably informed and guided by the circumstances of the particular case, in order to be a proper or judicious exercise of that discretion.

I have sifted through the voluminous affidavit evidence in this case and I find the picture presented to be one of a struggle for the control and management of the respondent company. In this struggle, scant, if any regard seems to have been paid to the interest of the minority shareholders of the company.

The respondent company, BTL, is arguably one of the most profitable

companies in Belize, if not the most profitable. So the titanic battle, as it were, as manifested from the evidence is understandable.

But the respondent company is also vital and necessary to the welfare of Belize, given the fact that it is the sole provider (at least up until now of telephonic communications for the country). Attempts to provide competition to the respondent or more access to the public of telephone facilities by Intelco, foundered for one reason or the other. And the buyout of the hulk or wreck of Intelco by the respondent company looms large as part of the reasons for the applicants seeking an investigations of its affairs.

From the evidence, I am satisfied that a convincing case has been made out for the appointment of an investigation of the affairs of BTL, the respondent company.

The very dubiety surrounding the ownership of the majority shares in the respondent company is in itself a cause for alarm.

The applicants have raised important issues that need to be investigated. In this regard I am fortified by the concession made by the respondent company itself that an investigation could be ordered with an expanded period for the inquiry.

It is my considered view that the opinion of Lord Denning, MR in the case of Norwest Holst Ltd. v The Department of Trade [1978] 3 All E.R. on the background of this power granted to the Court to order an investigation of the affairs of a company is important. In that case, the Court of Appeal in England considered statutory provisions in the English Companies Acts from which, no doubt, section 110 of the Belize Companies Act originated. Lord Denning said in this respect:

*"It is important to know the background of the legislation. It sometimes happens*

*that public companies are conducted in a way which is beyond the control of the ordinary shareholders. The majority of the shares are in the hands of two or three individuals. These have control of the company's affairs. The other shareholders know little and are told little. They receive the glossy annual reports. Most of them throw them into the waste paper basket. There is an Annual General Meeting, but few of the shareholders attend. The whole management and control is in the hands of the directors. They are a self-perpetuating oligarchy and are virtually unaccountable. Seeing that directors are the guardians of the company, the question is asked: quis custodiet ipsos custodes? Who will guard the guards themselves? ... It is because companies are beyond the reach of ordinary individuals that this legislation has been passed so as to enable ... the appointment of inspectors to investigate the affairs of a company."*

In the circumstances of this case before me, it is, I think, salutary as well, to recall the reference, again by Lord Denning, in the **Norwest case of Wallersteiner v Moir (1974) 3 All E.R. 217** at page 217, where he stated:

*"This case discloses grave breaches of company law. Dr. Wallersteimer obtained control of a public company Hartley Bind Ltd. by means which were quite unlawful. He acquired 80 percent of the shares by using its own money, (that is the company's money). He paid nothing himself. He operated by means of puppet concerns of his own making, Puppet Trust in Liechtenstein. A puppet finance company in the Bahamas. A puppet banking company in the City of London. All these were brought into his service to further his unworthy ends. Much of it took place twelve years ago in 1962. His solicitors refused to act further for him but still he went on. He has managed to keep it from the light until now. But nemesis has overtaken him. The Board of Trade has ordered an inquiry under the Companies Act 1948. The liquidator ... has brought*

*proceedings against him. In this case the judge has condemned him. I would affirm his condemnation".*

Suffice it for me to say, however, that I neither condemn nor condone anyone in these proceedings, including the Board of Directors of the respondent company. But what I do say is that from the evidence, a case has been made out to order, pursuant to section 110 of the Companies Act, an investigation into the affairs of BTL, the respondent company.

From the evidence, in particular, the second affidavit of Mr. Gaspar Aguilar, dated 2nd March, 2,005 and Exhibit GA 3 attached thereto, I think there is need to have the investigation cover the period from April, 2001 to 8th February, 2005.

It is necessary that the investigation covers this period because within this time frame the management and control of the company has changed at least three times as I have tried to recount earlier.

I should make it clear that the purpose of the appointment of the inspector(s) is to investigate the company in order to find out what has been going on, in other words, to find out facts.

It is for this reason as well, that I set the period the investigation should encompass. At such inquiry, the respondent company and its officers, including its Board of Directors, at the material time, will be asked to answer the allegations or complaints against them if there are any, and give any explanations which they wish to give. (see the statement of Ormnod LJ in Norwest case on this point.)

I must emphasize, that of course, the investigation is not, and I repeat, not a witch hunt or an occasion to grandstand for whatever purpose.



At the conclusion of the investigation the inspector or inspectors shall report their opinion to this Court and a copy of the report shall be forwarded by the Registrar to the registered office of the respondent company and if so requested, a further copy of the report shall be delivered to the applicants in this matter.

Accordingly therefore, I order that:

- (a) Pursuant to section 110 of the Companies Act, an investigation into the affairs of BTL, the respondent company, covering the period April, 2001 through to the 8th February, 2005. The investigation shall include, as well, any lease agreement or agreements entered into by BTL;
- (b) The buyout of assets of Intelco now in receivership by BTL, including the assumption of Intelco's debt with the Social Security Board by BTL in the amount of US\$9,806,546;
- (c) the use of BTL's assets as security for any purpose;
- (d) the payment of management and/or licence fees by BTL, and
- (e) the payment of dividends by BTL to some but not all shareholders and any other transaction by BTL which the inspector or inspectors consider relevant to the proper conduct of the investigation.

I will now hear counsel on the appointment of competent inspectors.

**A. O. CONTEH**  
**Chief Justice**

**DATED: 3<sup>rd</sup> March, 2005.**

MS. YOUNG: My Lord, the list of the terms of reference for the

inspector are those that Your Lordship has just enumerated? Will we be able to get a copy of the list?

THE COURT: Indeed, when there is a transcript of my notes. These are my handwritten notes and it is difficult for me even to read.

MS. YOUNG: We would need to have that very urgently. On the question of who the inspector is, I would like to consult with the client. I have not gotten the curriculum vitae of anyone in particular and perhaps Your Lordship could afford us perhaps ten days to come back with that.

THE COURT: Very well. I realize this is the second case that has come in this jurisdiction appointing inspectors. There was an earlier one, I think seven years ago. So it is almost a case of first impression, *prima impersonis* but I am sure the practice will settle down. The court has not got a list of people ready to be appointed as inspectors.

MS. YOUNG: We would give the court the relevant information to make a decision.

THE COURT: Very well. Mr. Lumor?

MR. LUMOR: My Lord, my position is that if the parties cannot agree on any person to be appointed, we can submit names with the background of the individuals to the Court for the court to do the appointment.

THE COURT: The appointment is the Court's to make but I

want to afford both parties the opportunity to do that and I expect some amount of cooperation between the parties, really, in the conduct of the investigation by the inspectors.

MR. LUMOR: I accept that the ten days is a reasonable time for us to come up with names.

THE COURT: Ten days for both sides to come up with a CV of the proposed inspectors. I would order consequential orders to be made as to the period of the investigation, the costs of the investigation.

MS. YOUNG: The costs, My Lord, will that be determined now?

That is a major consideration now because, My Lord, this is actually a much longer period and - -

THE COURT: No doubt there will be voluminous documents, Board Meetings, Minutes and things which the inspectors would want to go into covering the period.

MS. YOUNG: Well, the inspector is going to be guided by the scope that Your Lordship has set out, that you have outlined but on the costs of the investigation, we believe that since the scope has been widen by some three years, 2001 April, by three years, that these costs should be borne by the respondent. We asked specifically in our application, just for specific transactions. Three transactions, the lease agreement, the Intelco buyout, and the decision to issue that first notice of 1<sup>st</sup> October.

THE COURT: I thought it was non-payment of dividends to some shareholders.

MS. YOUNG: Yes, that is one of the details. So our costs would have been significantly less. Significantly, less than for going back in terms of time, three years.

THE COURT: You want to put a figure on it as your own contribution to the costs?

MS. YOUNG: A percentage, yes, a quarter, 25 percent. It is a quarter of the time. It is not a funny thing. It is a quarter of the time. One year, that is a quarter.

MR. LUMOR: My Lord, I was expecting that we could have shared the costs equally.

THE COURT: Lets put it this way. Whatever costs are borne by the respondent's company it is dipping into the dividends available to the shareholders of whom your applicants are and therefore I will order that the respondent bears the costs. Really, that is how it works out. It would be dipping into the dividends to the applicants. The respondent company shall bear the costs pf the investigation. Do you think one or two would do, the inspectors? I would like to have somebody with some legal background and some accountancy and company affairs. Yes, accountancy and legal. Some experience or expertise in company law.

MS. YOUNG: My Lord, one person would be enough simply because there are audits for each of those years except this one.

THE COURT: The practice is to appoint a senior silk. That is how they do it. It is a silk, a Q.C. who is normally

appointed to do the investigation. It is a two tier process there, the inspectors and then the Secretary of the Board of Trade.

MRS. YOUNG: I don't know about that.

THE COURT: Do we have anybody here? I am sure at the Bar we have - -

MRS. YOUNG: I would not even venture to say anything about any such person at this point. I would have to think well about that and consult, of course. We have the Unions to consult, I have Mr. Vasquez to consult.

MR. BARROW: All members of the Bar seem to be involved either centrally or peripherally in this case.

MRS. YOUNG: So we may not be able to go in that direction, My Lord, but certainly - -

THE COURT: Including Mr. Marshalleck?

MR. BARROW: He is here holding brief.

MR. MARSHALLECK: Just to look, observe and report, My Lord.

MR. LUMOR: My Lord, on the person to be appointed, the applicants were asking for somebody who is an international person of accounting background or financial background. My Lord, it is difficult for us now to tie ourselves down to certain qualifications but since the issue is that the respondent is going to bear the costs, definitely it might be now, in the interest of all, that one individual be appointed in order to keep down the costs of the inspection.

THE COURT: But forward me the names you have in contemplation then we will do that in the next ten

days.

The transcript will be available maybe by lunch time tomorrow, I hope. It depends on the pressure. Well, she has it. My secretary will transcribe my own handwriting as well. I want to thank both sides for your assistance.

The Court stands adjourn.

Adjourned at 4:00 p.m.