

**IN THE SUPREME COURT OF BELIZE, A.D. 2011**

**CLAIM NO. 815 OF 2011**

**BETWEEN:**

**IRISH BANK RESOLUTION  
CORPORATION LIMITED**

**First Claimant**

**QUINN FINANCE**

**Second Claimant**

**QUINN HOTELS PRAHA, a.s.**

**Third Claimant**

**AND**

**GALFIS OVERSEAS LIMITED**

**First Defendant**

**DEMESNE INVESTMENTS LIMITED**

**Second Defendant**

**BEFORE: Hon. Chief Justice Kenneth Benjamin (In Chambers).**

February 24 and 28, 2012.

(Reissued on this 19<sup>th</sup> day of March, 2012 with para. 14 corrected to read "July 2011" for and instead of "July 2010.")

Appearances: Mr. Rodwell Williams, SC for the Applicant, Iaroslav F. Gurniak.  
Mr. Eamon Courtenay SC, Mrs. Ashanti Martin and Ms. Priscilla Banner with him, for the Claimants.

**JUDGMENT**

[1] The Applicant, Iaroslav F. Gurniak of the Ukraine, has applied to the Court for an order that he be joined as an interested party to the present suit with consequential directions. The application also seeks an order for the immediate revocation of the appointment by the Court of Mark Hulse as the Receiver of the First Defendant, Galfis Overseas Limited ('Galfis') and the filing of a report of the conduct of the receivership.

[2] Upon the application made on behalf of the Claimants, the Court ordered that Mr. Gurniak appear to be cross-examined upon the affidavit sworn to by him and filed on his behalf in support of the application. The reasoning behind the order for cross-examination is embodied in the judgment of the Court. In sum, the Court is in search of satisfactory evidence as to the asserted beneficial ownership by Mr. Gurniak of Galfis. For convenience, further orders were made to facilitate the cross-examination. In this regard, the Court received evidence by video conference from a designated location in Moscow in the Russian Federation.

[3] The cross-examination commenced on Thursday, February 23, 2012 and progressed for two hours with one short interruption. After two hours and approximately ten minutes, the link was again interrupted and reconnection was not possible. An attempt to relocate the video-conference hosting site proved ineffectual as the Applicant and his Attorneys-at-Law did not attend. The Court ordered that the cross-examination resume on Friday, February 24, 2012 at an alternative site located at the offices of the Claimants' Solicitors. The Applicant did not appear and the Court was informed by Mr. Williams that the Applicant would not be appearing as he had been approached and his family threatened by Attorneys-at-Law appearing for the Claimants. Notwithstanding the assurances of the Court relayed through Mr. Williams, the examination ended precipitously.

[4] Aside from the representations of learned Senior Counsel, which the Court accepts as having been faithfully relayed based on instructions, there was no affidavit or other evidence adduced to support the alleged threats. In the event, the Court cannot give credence to the allegation and the application must be dealt with on the basis of what is thus far before the Court as evidence. This would include the answers given in the truncated examination.

[5] On behalf of the Applicant, it was urged that on a balance of probabilities, the only evidence before the Court as to the legal and beneficial ownership of Galfis ought to be accepted, there being no evidence to the contrary. The Court was asked to conclude that this was sufficient to ground the Application and for the Applicant to be added as a party to the Claim.

[6] It was further contended on the Applicant's behalf that in the light of the Claimants being aware that Galfis had entered into agreements for the re-assignment of the loan agreement since November 26, 2011, prior to the granting of the freezing order and the appointment of the Receiver, the Claimants ought to have known that Galfis' role was then functus; yet, the continuation of the freezing order and the appointment of the Receiver had been pursued. The Applicant also complained that Galfis would be prevented from being represented in the litigation afoot in other jurisdictions.

[6] The arguments of the Applicant are in conflict with each other as, if Galfis is to be treated as 'functus', on account of the reassignment of the loan agreements, then the question of representation ought not to arise. Be that as it may, it is to be noted that the Receiver is empowered to and has taken steps to ensure that Galfis is represented in Russia as well as in Northern Ireland in the bankruptcy arbitration and court proceedings respectively. In addition, it is the Claimants' position that the reassignments are not valid and are open to challenge.

[7] Learned Senior Counsel for the Claimant urged the Court to apply Rule 30.1(5) of the Supreme Court (Civil Procedure) Rules, 2005 and to disallow reliance upon the affidavit of Iaroslav Gurniak. The said Rule reads:

"If the deponent does not attend as required by the court order, the affidavit may not be used as evidence unless the court permits."

This power is within the discretion of the Court. In this case, the Applicant did appear and submit himself to cross-examination, although when the video link was interrupted the examination did not resume and the cross-examination stands incomplete. Having read the affidavit and heard the answers given in cross-examination, the Court considers itself suitably equipped to deal with the application on the evidence presented.

[8] The central issue of the cross-examination was to determine the credibility of the Applicant and by extension the accuracy of his affidavit. In this regard, the true position of Iaroslav Gurniak vis-à-vis Galfis loomed large as a determinant of whether or not he is the true legal and beneficial owner of Galfis. At the outset, in the fourth affidavit of Daphne McFadzean in support of the application for the Applicant to be cross-examined, the stated occupation of Iaroslav Gurniak was called into question. Indeed,

a substantial portion of the cross-examination was focused on the Applicant's true vocation.

[9] Iaroslav Gurniak swore in para. 5 of his affidavit as follows:

“I am a reputable Ukrainian businessman specialising in company re-organisations and restructuring. I have over twenty years' experience in this business.”

In response to questions put, Mr. Gurniak gave details of his level of education and of his entry into the army in 1987 after attending university from 1983 to 1987. He remained in the army until 1989 but could not recall which unit he was in although he said he rose to Senior Sergeant in a unit which took care of prisoners. Thereafter, he worked for a state railway from 1990 to 2000. He then became self-employed as a businessman involved in the construction field. This sequence of employment collided with the sworn assertion that Mr. Gurniak had spent the last twenty years as a businessman involved in the restructuring and reorganisation of companies. It was of some note that he was unable to explain the distinction between restructuring and reorganising of a company. When pressed on this matter, the Applicant claimed to have forgotten through nervousness. He then told the Court that he was a specialist in construction and not in law. He tried to explain his role by saying that he gave the approval and the money for the lawyers to take action. He was unable to remember the name of the last company he had restructured although he said he had been responsible for restructuring 'more or less' ten companies. He refused to disclose the names of any of the companies. He then volunteered the name of one company – Avrova – which he said he restructured in 2011. He was asked whether he owned that company personally, at which point his lawyer, Artur Zafarov, blurted out the answer. Upon Mr. Zafarov being instructed by the Court to leave the room, the video-feed terminated.

[10] When he was cross-examined as to details of his stated occupation as a businessman, Mr. Gurniak became evasive and non-cooperative. It was plain to the Court that he was not knowledgeable about the business in which he claimed to be involved. Under questioning, Mr. Gurniak resiled into his comfort zone of being involved in construction.

[11] Mr. Gurniak was asked about the preparation of his affidavit. He said in response to questions that he had not read but was informed of the contents of the affidavits of Richard Woodhouse, Robert Dix, Michael McCord, Ashanti Martin, Daphne McFadzean and Dmitri Dyakin. At one stage, he volunteered that he could not remember which of his lawyers told him of the details of the Woodhouse affidavit because it took place in December. This answer does not fit with the purport of Mr. Gurniak's affidavit to the effect that he was not made aware of the proceedings before this Court until January 24, 2012 (see paras. 13 and 14).

[12] In his affidavit, Mr. Gurniak swore in para. 4 that the aforementioned affidavits "contain numerous inaccuracies, omissions and untruths." He told the Court that his lawyer had informed him of the inaccuracies. Here again, Mr. Gurniak displayed a hopeless lack of knowledge of matters related to the present proceedings involving Galfis.

[13] As to the source of the information in his affidavit, Mr. Gurniak at first said it was his partners who supplied the information. When asked to name his partners he refused. He then said the source of the information was his lawyers. The affidavit, on its face, was subscribed to before a male solicitor but Mr. Gurniak testified that it was sworn before a female notary public in the presence of an interpreter and his lawyer, Mr. Zafarov.

[14] On behalf of the Claimants, two further points were made. Firstly, attention was drawn to the statement in para. 7 of Mr. Gurniak's affidavit that Galfis had been incorporated at his request; but, the disclosed information revealed that Galfis was a shelf company incorporated by Aleman and purchased by Senat in July 2011. Let me at once say that I do not wish to lay any great emphasis on this matter.

[15] Secondly, the Claimants challenged the Applicant's statement in para. 8 of his affidavit that Galfis was procured through Senat AG of Wichtenstein as the service provider. The challenge is that Senat AG of Wichtenstein has denied having any such dealings. Similarly, this point has peripheral effect on the findings of the Court.

[16] As previously iterated, the purpose of the order for cross-examination of Mr. Gurniak was to allay the concerns of the Court as to the bona fides of the Applicant as the legal and beneficial owner of Galfis. The assistance sought in exploring the affidavit

has left the Applicant coming up short of persuading the Court that it is more likely than not that he is the legal and beneficial owner of Galfis. From the answers given in cross-examination coupled with the demeanour of Iaroslav Gurniak, the Court is unable to conclude that he is the legal and beneficial owner of Galfis. In the premises, the Applicant cannot be added as a party. Since the application for the revocation of the Order appointing the Receiver is predicated upon the ascertaining of the true legal and beneficial ownership of Galfis this application must also fail.

[17] It is ordered that the Application be refused in its entirety with costs to the Claimants to be paid by Mr. Gurniak personally.

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KENNETH A. BENJAMIN  
Chief Justice