

IN THE SUPREME COURT OF BELIZE, A.D. 2007

CLAIM NO. 78 OF 2007

**ANTONIO NOVELO
DAVID NOVELO**

Claimants

BETWEEN AND

**MARK HULSE
MERLENE BAILEY MARTINEZ
HERBERT LORD
COMMISSION OF DEVELOPMENT
FINANCE CORPORATION
(D.F.C.) INQUIRY**

Defendants

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Hubert Elrington for the claimants.
Mrs. Magali Marin Young for Mark Hulse.
Ms. Lois Young Barrow for 1st Commissioner.

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DECISION

I have spent the best part of the day listening to this application. On reflection, and having carefully listened to Mr. Elrington the learned counsel for the applicants and Ms. Lois Young Barrow S.C. and Mrs. Magali Marin Young, counsel for the defendants/respondents, I am left with the inescapable conclusion that this application is misconceived and mischievous.

2. The brunt of the application is to have me order the D.F.C. Commission of Inquiry to have the 1st Respondent/Defendant removed forthwith as Forensic Auditor to the Commission or in the alternative, to have him restrict his investigations to a period outside the timeframe when the D.F.C. had relationship with Novelo Ltd. and to have me order a restraint on the 1st Defendant from investigating and or reporting on transaction between Novelo Ltd. and D.F.C. for the period under investigation by the Commission of Inquiry.
3. In the first place, though the applicants may bear the same name in their surname as Novelo Ltd. they are not Novelo Ltd. on the Solomon v Solomon principle.
4. In the second place, Novelo Ltd. is in receivership. It is trite law that in the circumstances any action on its behalf or concerning it must be instituted by and or with the consent of the Receiver and none has been shown to me in this application.
5. The applicants have in the third place failed to establish how, if any, alleged bias on the part of the 1st Defendant/Respondent could conceivably hurt them. On the evidence I am not in any event satisfied that any semblance of bias has been or could be made out against the 1st Defendant/Respondent.
6. Finally, the present application in my considered view is a stratagem by the applicants to launch a collateral attack on the Commission of Inquiry set up to investigate the affairs of the D.F.C. But I find the stratagem in this instance, like most stratagems, without any merit.

7. The grounds advanced by the applicants for their application I find are without any merit whatsoever.
8. If, as they contend, the Commission of Inquiry is functus and has been since 22nd January 2007, I don't see what conceivable harm this can do to them.
9. Also, the applicants have not advanced any shadow of support or substantiation for their contention that the appointment of the 1st Defendant/Respondent as the Forensic Auditor to the Commission of Inquiry was unlawful. Even if this were so for the sake of argument, I have not been persuaded that this in anyway prejudices the applicants whatsoever.
10. For all these reasons, I must dismiss the application.
11. Costs in the sum of \$2,000.00 are awarded to each Defendant/Respondent.

A. O. CONTEH
Chief Justice

DATED: 20th February 2007.