

IN THE SUPREME COURT OF BELIZE, A.D. 2008

CLAIM NO. 292 OF 2007

BETWEEN:

BELIZE TELECOM LIMITED	1st
Claimant	
JEFFREY PROSSER	2nd Claimant
BOBBY LUBANA	3rd Claimant
PUBLIC SERVICE UNION	4th Claimant
BELIZE NATIONAL TEACHERS UNION	5th Claimant
AND	
THE ATTORNEY GENERAL OF BELIZE	Defendant
AND	
BELIZE TELEMEDIA LIMITED	Interested Party

Coram: Hon Justice Sir John Muria

30 July 2008

Mr. Eamon Courtenay S.C. for Applicant/Interested Party
Ms Lois Young S.C. for Respondents/Claimants

R U L I N G

NOTICE OF APPLICATION – application for leave to appeal against interlocutory judgment – principles to be applied – discretion of the Court – questions of law of general public interest beyond interest of parties to the case

Muria J.: On 7th December 2007, judgment was delivered on the two applications filed respectively by the defendant and the Interested Party seeking to strike out and to dismiss the claimants' claim in this case. The two applications were heard together and were refused with costs awarded to

the claimants. The formal order of the Court was signed on 16th January, 2008 and leaving aside the recital to the Order, it is in the following terms:

“IT IS THIS DAY ORDERED as follows:

(1) The applications to strike out the Claim are refused.

AND IT IS FURTHER ORDERED as follows:

(2)

(a) That the First Claimant has legal standing to bring a claim alleging violations of sections 3, 13, or 17 of the Belize Constitution; and

(b) That the five Claimants have legal standing under the Belize Constitution to challenge the validity of the Vesting Act.

(3) The Second, Third, Fourth and Fifth Claimants have no legal standing to bring a Claim alleging violations of sections 3, 13 and 17 of the Belize Constitution;

(4) The Claimants shall have their costs in the amount of \$25,000 to be borne by the Defendant and Interested Part jointly and severally.”

The wording of the Order as deposed to in paragraph 3 of the second affidavit of Dean Boyce filed herein, is slightly different, although it contains the substance of what the Order pronounced. This is only an observation and nothing turns on it.

The Interested Party being aggrieved by the said Order of the Court, seeks to appeal to the Court of Appeal. This application is by the Interested Party (the applicant) for leave to appeal against the said order of this Court, save for paragraph 3 thereof, and for stay of proceedings in this matter, pending appeal.

The defendant has not taken any steps to appeal against the judgment or order of the Court. In fact by a letter dated June 2, 2008 addressed to the Court, the defendant advised that he was not seeking leave to appeal and that he neither supported nor opposed the Interested Party's application. We can therefore assume that the defendant does not intend to appeal against the decision of this Court refusing his application to strike out the claimants' claim.

The grounds of the application relied upon by the applicant are:

- 1. The appeal has a real prospect of success on the basis of the intended grounds of appeal as set out in the Second Affidavit of Dean Boyce filed in support of this application, and*
- 2. If this Honourable Court proceeds to the substantive trial of this matter and the claims are dismissed by the Court of Appeal, there will have been a significant waste of the resources of both this Honourable Court and the parties”.*

The application is supported by the second affidavit of Dean Boyce, the Chairman of the Executive Committee of the Board of Directors of the applicant Interested Party, sworn to on 28 January 2008. Attached to Mr. Boyce’s affidavit is the Draft of the proposed Notice of Appeal with the following grounds, set out therein, namely:

“3.1 The Learned Trial Judge erred in law and misdirected himself in finding that the claims of the First Claimant in respect of an alleged violation of sections 3, 13 and 17 of the Belize Constitution and the claims of the First to Fifth Claimants in respect of an alleged violation of the principle of separation of powers of the Belize Constitution (the “Claims”) are not academic and of practical significance.

3.2 The Learned Trial Judge erred in law in failing to have, or

failing to have sufficient regard, to the evidence that the First Claimant's interest in its share in Belize Telemedia Limited (formerly BelizeTelecommunications Limited) were sold by the RBTT Merchant Bank Limited after the commencement of this Claim and to the legal consequence of the sale of the said shares on the standing of the First to Third Claimants to maintain their claim.

3.3 The Learned Trial Judge erred in law, or alternatively misdirected himself in exercising his discretion to hear the Claims in the event that they are academic and of no practical significance because they deal with issues of "public importance".

3.4 The Learned Trial Judge misdirected himself in holding that the claims of the Claimants are not academic for the reason that there is a live controversy before the Court, viz, the validity of the Vesting Act.

3.5 The Learned Trial Judge erred in law and misdirected himself in finding that the Fourth and Fifth Claimants had standing to bring a claim in respect of an alleged violation of the principle of separation of powers.

3.6 The Learned Trial Judge erred in law and misdirected himself in finding that the Claimants had standing to bring a claim in respect of an alleged violation of the principle of

separation of powers and that permission had been given to bring judicial review proceedings in this regard.

3.7 The Learned Trial Judge erred in law and misdirected himself in finding that the Claims should not be struck out pursuant to Rule 26.3 of the Supreme Court (Civil Procedure) Rules, 2005.”

It is the applicant’s submission that leave to appeal should be granted to the applicant for the following reasons, namely, first, there is a real prospect of the appeal succeeding; second, the appeal raises very important points of constitutional and procedural law which are likely to be determinative of the proceedings in this claim, and third, the interest of justice will be served to have the Court of Appeal determined the issues raised on appeal.

Principles to be applied

The principles governing the grant of leave to appeal can be found both in statute and case law authorities. In Belize the starting point is section 14(2) (b) of the Court of Appeal Act (Cap. 90) which provides that leave to appeal must be obtained from the Supreme Court or the Court of Appeal itself, if the Supreme Court refuses to grant leave.

Secondly, leave is always a matter of discretion of the Court: *Birgit Wallraf etal -v- John C. Roberson etal* (19 October 2000) CA of Belize Civil Appeal 8 of 2000; Third, the issue raised is of public importance thereby justifying leave to be granted: *Christine Perriott v Belize Telecommunications Limited* (11 December 2007) Supreme Court of Belize Claim No. 142 of 2007; *Bacongo -v- Department of the Environment and Belize Electric Company Limited* (13 August 2003) Privy Council, Privy Council Appeal No. 47 of 2003 (Appeal from the Court of Appeal of Belize). This is not simply general issue of public concern, but one that is legitimately of public interest in having the issue determined by the Court of Appeal. Fourth, the appeal itself stands a real prospect of success.

To buttress the applicant's case, Mr. Courtenay S.C. referred to the case of *James Wang v Atlantic Insurance Co. Ltd.* (21 July, 1998) Supreme Court Action No. 114 of 1998 which discusses the three circumstances in which leave would be granted, namely:

1. *Where they see a prima facie case that an error has been made;*
2. *Where the question is one of general principle, decided for the first time; and*

3. Where the question is one of importance upon which further argument and a decision of the Court of Appeal would be to the public advantage.

I feel it is important to note that all the case law authorities have not shy away from the principle that leave to appeal is always a matter for the Court's discretion taking into account the circumstances of a particular case.

Consideration and determination

In his written submission, Mr. Courtenay S.C. raised three issues which learned Senior Counsel says are needed to be considered by the Court of Appeal as a matter of general public interest. These issues are set out in paragraph 9 Counsel's written submission, and they are:

9.1. The Court's proper approach to how, and when, to exercise its discretion to hear claims which are academic or of no practical significance where they raise issues of "public importance". No decision has been made by the Belize Supreme Court in respect of this issue previously.

9.2. Deciding that the Claimants are entitled to pursue a Constitutional challenge other than through a claim pursuant to section 20 of the constitution. The question of the right of a the Claimants to maintain their claim otherwise than by way of a section 20 is a matter of great public importance and it would be to the public advantage for the Court of Appeal to determine now whether this is permissible under the Belizean Constitution.

9.3. Additionally, and assuming without admitting, that it is permissible, whether the test adumbrated by Mr. Justice Muria of “sufficient interest” is the proper test in order to bring such a claim. As with the issue highlighted in paragraph 9.1, this raises a question of general principle which has been decided for the first time.

I accept that the determination of these issues by the Court of Appeal are important as any other issues of law placed before that Court for further determination and clarification. It does not, of course, necessarily follow that such issues, when raised, are of “general public interest” to justify granting leave to appeal.

In this case, I do not lose sight of the importance of the right of the defendant and interested party to rely on the law passed by legislature,

namely, the Vesting Act 2007. Equally the Court cannot overlook the right of the claimants to challenge the validity of the law that has the effect of depriving them of their rights under the Constitution. The order that accords the claimants the standing to challenge the validity of the Vesting Act is rooted in the Constitution. That being the case, the applicant needs to do more than showing that an error (if any) has been made by the trial judge. Rather, the applicant has to satisfy the Court that the decision was so palpably wrong, unfair and unjust to allow it to stand at this interlocutory stage.

The argument based on the question of law of public interest, is sometime, but not often, a convenient tool for an aggrieved party for lodging an appeal on the ground of issues of public importance. Almost all legal issues raised for the Court's determination are of public importance. If it were not, then the Court's would only function for the benefits of the parties before it. But issues that have been decided upon, and an aggrieved party seeks to take it further on the ground of general public interest, must be one that goes beyond the immediate interest of the parties themselves. In *Christine Perriott –v- Belize Telecommunications Limited* (11 December 2007) Supreme Court of Belize Claim 142 of 2007, the Court had to deal with the

defendant's application for leave to appeal. The issue of concern was the proper interpretation of section 11 of the *Trade Unions and Employers Organisation (Registration, Recognition and Status) Act* which affects, not only Christine Perriott but all other employees in Belize. The Court had this to say:

“The only question in the present application is whether the issue of proper construction and interpretation of the Trade Unions and Employers’ Organization (Registration, Recognition and Status) Act can be said to be a matter of public importance in the circumstances of the dispute between the parties now before the court. Accepting Mr. Marshalleck’s intimation that section 11 of the Act had not been judicially interpreted except in the present judgment now sought to be appealed against, there is weight in Counsel’s argument that the public importance in the further determination of the true construction of the said provisions of the Act may have to be tested further up the ladder. Its significance is not only to the parties in the present case, but other employers and employees as well as the labour industry in Belize.”

In the present case, the crux of the applicant's case for seeking leave to appeal, is to attack the standing accorded to the claimants to bring their

claim, challenging the validity of the Vesting Act 2007. This is obvious from the grounds in support of the application. In determining the standing of the claimants to bring the claim against the Government (defendant) in particular, the Court had to consider whether the claimants have “sufficient interest” to challenge the validity of the Act and whether the issues raised in their claim were academic or not. The Court concluded that the claimants had standing to challenge the validity of the Vesting Act on the basis that they have “sufficient interest” in the matter to do so, that the issues raised were not academic and that there was a live issue still before the Court, namely the validity of the Vesting Act 2007. Any grievance against the granting of standing to the claimants in this case can only be a matter of direct interest to the claimants, the Government (defendant) and the Interested Party who are the parties to this case.

The claimants have succeeded in establishing that the implementation of the questioned Act would undoubtedly have prejudicial impact on them, thereby giving them standing to challenge its validity. I do not see how question of the legal standing of the claimants and the other issues relating to that standing can be termed as a matter of general public interest at large in this case. It cannot be so.

There may well be important questions of law also that are in issue here.

However, I am not convinced that, in the circumstances of this case, those issues can justify granting leave to appeal as sought. It has been pointed out by the Supreme Court of Canada in *Vanderlaan et al v Edinburgh developments Ltd* [1976] 1 S.C.R. 294 that the fact that important questions of law are in issue is not in itself sufficient to persuade the Court to grant leave to appeal in an interlocutory matter.

The case of *James Wang v Atlantic Insurance Co. Ltd.* (above) referred to by Mr. Courtenay S.C., has helpfully discussed the circumstances in which leave would be granted. Accepting those criteria and applying them to the circumstances of this case, I am inclined to accept the submission by Ms Lois Young S.C. that those criteria have not been satisfied in the present case. Thus, I am not persuaded that there is a realistic prospect of success in the proposed appeal. See *Swain v Hillman and Another* [2001] 1 All E.R. 91.

For the reasons given above, and despite the forceful argument ably advanced by Mr. Courtenay S.C. for the applicant, I am unable to find that

this is a proper case for leave to be granted. The application for leave to appeal is refused.

Leave to appeal having been refused, it follows that a stay pending appeal must also be refused.

The costs of this application to be paid by the applicant/Interested Party to the respondents/claimants, less the costs to the applicant occasioned by the adjournment on 2 June 2008.

(Sir John Muria)