

IN THE SUPREME COURT OF BELIZE, A.D. 2009

CLAIM NO. 1042 OF 2009

BETWEEN

ATTORNEY GENERAL

Claimant

AND

1. JOSE ALPUCHE	First Defendant
2. KEITH ARNOLD	Second Defendant
3. LORD ASHCROFT, KCMG	Third Defendant
4. DEAN BOYCE	Fourth Defendant
5. ALLAN FORREST	Fifth Defendant
6. PETER GAZE	Sixth Defendant
7. PHILLIP OSBORNE	Seventh Defendant
8. EDIBERTO TESUCUM	Eighth Defendant
9. PHILIP ZUNIGA	Ninth Defendant
10. DUNKELD INTERNATIONAL INVESTMENT LIMITED	Tenth Defendant

Mr. Denys Barrow SC; Ms. Lois Young SC; and Miss Magali M. Perdomo, for the claimant.

Mr. Nigel Pleming QC; Mr. Eamon Courtenay SC; and Mrs. Ashanti A. Martin, for the tenth defendant.

**AWICH** Chief Justice (Ag)

10.5.2011

**DECISION**

1. *Notes:* *Civil Procedure and Practice – application for court order setting aside service of claim form outside jurisdiction - territorial jurisdiction; subject matter jurisdiction – whether jurisdiction of court is excluded because subject matter is subject of arbitration; application for stay of proceedings in favour of international arbitration proceedings–whether*

*both applications were made when the applicant was in contempt of an order of the court, and if so, the consequence to the applications. Application for interim injunction order in restraint of international arbitration proceedings, i.e. injunction order against a party in an international arbitration in a foreign country; power of court when it is just and convenient to grant interim injunction order; the grounds of vexatious, oppressive and unconscionable.*

2. This is yet another decision in interlocutory applications in this claim, No. 1042 of 2009. The decision is a composite in three applications. One of them is by the Attorney General, the claimant. The other two are by Dunkeld International Investments Ltd., - Dunkeld, the tenth defendant. All three applications were presented at the hearing on 1<sup>st</sup> to 5<sup>th</sup> April, 2011.
  
3. First in time is the application dated 2.9.2010; it is by the Attorney General. It is for an interim injunction order restraining Dunkeld, by itself, officers, servants, agents, subsidiaries, assignees, attorneys, advisors or others, from taking any or any further steps in the continuation or prosecution of the arbitration proceedings commenced by Dunkeld by Notice of Arbitration dated 26 July 2010, under the Arbitration Rules of the United Nations Commission on International Trade Law 1977, and pursuant to an agreement, the 1982 Agreement Between the Government of Great Britain and Northern Ireland and the Government of Belize, for the Promotion and Protection of Investments. The notice of arbitration mentioned in the application had been given by Dunkeld arising out of or in relation to compulsory

acquisition by the Government of Belize of shares in a company known as Belize Telemedia Limited, in short BTL. Dunkeld opposes the application.

4. The second application is an amended application dated 20.12.2010, by Dunkeld. It amended an earlier application dated 5.10.2010, which was for an order discharging an interim injunction order dated 10.2.2010 (made on 5.2.2010), by the Hon. Justice Samuel Lungole Awich – myself. That order restrained Dunkeld (and the nine other defendants) from continuing to participate in arbitration proceedings commenced by Dunkeld by Notice of Arbitration dated 4.12.2009. However, seven of the defendants appealed successfully against the injunction order, on the ground that there was no evidence connecting them to Dunkeld who had commenced the arbitration. The order remains in force to date against only three defendants: Dunkeld, Allan Forrest and Peter Gaze. This amended application simply added to order requested earlier a request “for an order setting aside the service of the claim form dated 23<sup>rd</sup> December 2009, on Dunkeld International Investments Limited.” An important ground for this application is that this court “does not have jurisdiction over Dunkeld, which is a company registered in the Turks and Caicos.” Attorney General opposes the application.
5. The third application is dated 28.2.2011, by Dunkeld again. It asks for: “an order pursuant to Rule 26.1(2)(e) of the Supreme Court (Civil

Procedure) Rules, 2005, and section 26(1) of the Arbitration Act, Cap. 125, staying this claim brought by the Fixed Date Claim Form filed by the claimant on 23<sup>rd</sup> December 2009.” Attorney General opposes this application also.

6. The subject matter of the substantive claim is compulsory acquisition on 25.8.2009 and 4.12.2009, by the Government of Belize, of shares in BTL. The contentions of the parties are, in the end, about compensation resulting from the acquisition. The material transactions and disagreements leading to the claim in which these applications were made were recounted in my decision of 5.2.2010, in which I made the interim injunction order against all ten defendants, restraining them from taking any or any further steps in the continuation of UNCITRAL arbitration commenced by Notice of Arbitration dated 4.12.2009. Since that decision, parties have taken further steps in the subject matter of the case and so there are more to recount.
7. Parties have also filed more interlocutory applications; and I have rendered a decision in one of them. This is the third decision. Too much time has been taken up by interlocutory applications. Parties have also had further exchanges about the transactions that they disagree over.
- 8 Attorney General represents the Government of Belize under the Crown Proceedings Act, Cap. 169. The transactions in issue were

carried out by the Minister of Finance and the Minister for Telecommunications. Dunkeld International Investments Limited is a company not registered in Belize. In the first affidavit of Mr. Gian Gandhi for the Attorney General, he says that Dunkeld was incorporated in the British Virgin Islands and continued in Turks and Caicos Islands. Mr. Llewellyn Austen for Dunkeld, deposed that Dunkeld was incorporated in Turks and Caicos Islands and had always been resident in Turks and Caicos Islands, but in a later affidavit he corrected that statement, and confirmed what Mr. Gandhi had deposed. Mr. Austen is one of two directors of Dunkeld, the other is Ms. Angela McCarville also known as Ms. Ertwistle.

9 From the evidence so far made available, Dunkeld did not own shares in BTL; but it is said that it had beneficial interests in about 69% or 71% of the shares in BTL held by other companies, or held by companies which held shares for other companies which held the shares for the benefit of Dunkeld.

10. ***The Facts***

Since my decision on 5.2.2010, Dunkeld has served another Notice of Arbitration, dated 26.7.2010, on the Government of Belize, for commencing another international arbitration proceedings, UNCITRAL arbitration proceedings, between Dunkeld and the Government of Belize. It is about the same compulsory acquisition of BTL shares by

the Government of Belize. Attorney General has responded by his interlocutory application dated 2.9.2010, referred to above, for another interim injunction order restraining Dunkeld from proceeding with the second arbitration.

11. As expected, the facts of the claim have expanded since my decision on 5.2.2010. It is convenient to recap again the material facts so far, on which the substantive claim and the incidental applications have been made.
  
12. According to the first affidavit sworn by Mr. Joseph Waight, Financial Secretary, for the Attorney General's case, and the first affidavit sworn by Mr. Llewellyn Austen for Dunkeld, the transactions that led to disagreement between the parties in this claim are traceable to a certain accommodation agreement in 2003, and subsequent transactions. They deposed that in 2003, the Government agreed to buy BTL shares held by Carlisle Holdings Ltd, and to immediately sell them together with BTL shares that the Government owned or controlled, to a Mr. Jeffrey Prosser. He was to be given 45 days to pay for the shares. The Government and Carlisle also agreed in a separate agreement that if Prosser failed to pay for the shares, Carlisle had the option to buy all the shares. Prosser failed to pay, Mr. Waight says, the shares were then resold to Carlisle. Mr. Austen says that he heard that by agreement some other companies became the shareholders.

13. According to Mr. Waight, Carlisle was “owned or controlled” by Lord Michael Ashcroft. Carlisle became BB Holdings Limited, and is now BCB Holdings Ltd. It is a holding company with many subsidiaries. Dunkeld is said to be a beneficial owner of shares in some of the subsidiaries in the group.
  
14. Mr. Waight further says, when Carlisle exercised its option to repurchase the BTL shares, it carried out the repurchase through several companies in the group, such as BCB Holdings Limited, Ecom Limited, Mercury Communications Limited, New Horizons Limited, Thiermon Limited, Sunshine Holdings Limited and Hayward Charitable Belize Trust. He says further that, BCB Holdings Limited, the final holding company in the group is controlled by Lord Ashcroft who ultimately owns the majority shares.
  
15. According to Mr. Austen, he heard that Carlisle did not itself buy back the shares that Prosser had failed to pay for; but that, “the dispute was settled on terms which did not involve the reacquisition of shares.” He says that, BCB Holdings Limited, Ecom Limited, Mercury Communications Limited, New Horizons Inc., Thiermon Limited and Sunshine Holdings Limited held the BTL shares, but “on trust for Hayward Charitable Belize Trust and Dunkeld.” He explains that, “the relevant shares were held for the benefit of Dunkeld which is ultimately owned by the Hayward Charitable Belize Trust (Hayward).”

16. Mr. Waight also deposes that “there was public turmoil”, about BTL after the change in shareholding from Prosser to Carlisle, owned by Ashcroft, concerning concessions, including tax concessions granted by the government to BTL.
17. In 2008, there was a change in Government. In 2009, the new Government decided to acquire control of BTL. On 25.8.2009, the National Assembly of Belize enacted the Belize Telecommunications (Amendment) Act, No. 9 of 2009. The Act authorised the Minister responsible to acquire, for public purpose, property to enable the Government of Belize “*to take possession of and to assume control over telecommunications.*” The acquisition was to be by Order in the form of a Statutory Instrument published in the Government Gazette.
18. Pursuant to s: 63 of the Act (No. 9 of 2009), the Minister published two Orders by Statutory Instruments in the Gazette on 25.8.2009 and 14.12.2009, and compulsorily acquired shares in BTL and other properties.
19. On 27.8.2009, two days after the first Acquisition Order was published, Allen & Overy, Solicitors/Attorneys in London, UK, wrote to Attorney General informing him that they, “[acted] for Hayward Charitable Belize Trust, the beneficiaries of which [were] charitable causes, and Dunkeld International Investments Limited (Dunkeld).” They asserted that Act No. 9 of 2009, and the two Acquisition Orders were made by the



Government of Belize in violation of an agreement, namely, the 1982 Agreement Between the Government of Great Britain and Northern Ireland and the Government of Belize for the Promotion and Protection of Investments. The solicitors went on to assert that Hayward Trust and Dunkeld had the protection of the 1982 Treaty. They informed Attorney General to treat the letter as a formal notification of a claim and that Dunkeld intended to refer the “dispute” to international arbitration unless settled amicably.

20. Attorney General did not reply to the letter, however, in accordance with s: 64 of Act, No. 9 of 2009, the Financial Secretary proceeded to invite by Notice published in the Gazette, claimants for compensation to submit their claims. By identical letters dated 14.10.2009, identical claims were submitted for, “reasonable compensation within a reasonable time”, by five persons through Mr. Eamon Courtenay SC, their attorney. He is learned counsel in court today for Dunkeld. The claims were for shares in BTL that had been acquired. Mr. Courtenay did not quantify the claims. The claims were the following:

- (1) BCB Holdings Limited claimed for 1,234,859 shares (but share certificates in the name of BB Holdings Limited were attached);
- (2) ECOM Limited claimed for 15,178,488 shares;

- (3) Mercury communications Limited claimed for 4,786,230 shares;
  - (4) New Horizons Inc. claimed for 20,581 shares; and
  - (5) Thiermon Limited claimed for 12,886,959 shares.
21. Neither Hayward Trust nor Dunkeld submitted claim, but each of the five claimants for compensation stated that it held the shares, “for the benefit of Dunkeld International Limited (Dunkeld) and the Hayward Charitable Belize Trust (Hayward)”.
22. In each letter of claim attorney notified the Financial Secretary that the claim was made, “strictly without prejudice”, to any claim that Hayward and Dunkeld may make under a treaty, any claim under the Constitution of Belize, and any claim to enforce the rights of the shareholders.
23. By separate letters dated 19.10.2009, to the five claimants, the Financial Secretary responded to each letter of claim by requesting certain particulars for verification of the claimant and claim. Attorney for the claimants resisted, contending that the items of information requested were not required. The Financial Secretary answered that the particulars were necessary because he would be obliged to compensate only persons registered as shareholders of BTL under the

Companies Act, Cap. 250, and that notice of trust was not registerable under s: 28 of the Act.

24. By Notice of Arbitration dated 4.12.2009, Dunkeld commenced UNCITRAL Arbitration by referring the “dispute” to arbitration. It nominated an arbitrator and invited the Government to nominate one. The Government did not, and generally has not participated in the arbitration.

25. On 23.12.2009, Attorney General filed the Fixed Date Claim Form herein, dated the same day. The claim was against the ten defendants including Dunkeld, cited above. The reliefs claimed were the following:

“1. A declaration that the Supreme Court of Belize is the proper forum for the determination of all claims to compensation and other matters arising out of or relating to the acquisition of certain property by the Government of Belize under the Belize Telecommunications (Assumption of Control Over Belize Telemedia Limited) Order, 2009 (S.I. No. 104 of 2009), as amended by the Belize Telecommunications (Assumption of Control Over Belize Telemedia Limited) (Amendment) Order, 2009 (S.I. No. 130 of 2009) (hereinafter collectively referred to as the “**Acquisition Orders**”).

2. A declaration that pursuant to section 28 of the Companies Act, Chapter 250 of the Laws of Belize, or otherwise, the Government of Belize would be entitled to disregard any trust in respect of the acquired shares and to treat the registered holders of the shares as the only persons entitled to compensation for the acquisition of such shares.
3. A declaration that none of the Defendants has any locus to bring any legal or arbitral proceedings against the Government of Belize, whether under the Constitution and the laws of Belize or under any bilateral or multilateral treaty, in respect of the acquisition of certain property by the Government of Belize under the Acquisition Orders.
4. A declaration that the action of the Defendants, particularly of the 10<sup>th</sup> Defendant, in commencing arbitration proceedings against the Government of Belize by Notice of Arbitration dated 4 December 2009, under the Arbitration Rules of the United Nations Commission on International Trade Law 1977, and the 1982 Agreement between the government of the United Kingdom of Great Britain and Northern Ireland and the Government of Belize for the Promotion and Protection of

Investments is oppressive, unconscionable and an abuse of the arbitral process.

5. An order restraining the Defendants, whether by themselves or by their servants, agents, subsidiaries, assignees, or other persons and bodies under their control, from taking any or any further steps in the continuation or prosecution of the arbitration proceedings commenced by the 10<sup>th</sup> Defendant by Notice of Arbitration dated 4 December, 2009, in respect of or relating to the acquisition of certain properties by the Government of Belize under the Acquisition Orders.
  6. Further or other relief.
  7. Costs.”
26. Attorney General’s claim was filed together with an urgent application without notice to the defendants/respondents, for an interim injunction order restraining the defendants from taking any or any further steps in the arbitration commenced by Notice dated 4.12.2009, and for permission to Attorney General to serve the claim on Dunkeld outside this jurisdiction. The application was granted on 29.12.2009, an interim injunction order was made, and permission to serve process on Dunkeld outside this jurisdiction was granted. The interim injunction

order was continued by an order made on 5.2.2010, upon hearing on notice.

27. Seven of the defendants appealed successfully against the continued interim injunction order; the Court of Appeal held that there was no evidence connecting the seven to Dunkeld, the defendant who commenced the arbitration proceedings. As the result, the Attorney General discontinued the claim against the seven. The Court of Appeal, however, confirmed that part of my order which gave permission to Dunkeld, Allan Forrest and Peter Gaze to apply for court order discharging the interim injunction order made on 5.2.2010. Further evidence made available since suggests that three or four of the original defendants had connection to Hayward Trust and therefore to Dunkeld.
28. The fixed date claim dated 23.12.2009, the application without notice, for interim injunction order; the interim order made on 29.12.2009, granting interim injunction, and permission to serve the processes outside this jurisdiction, were served on Dunkeld between 7.1.2010 and 8.2.2010.
29. Dunkeld took the view that it was not subject to the jurisdiction of courts of Belize, and was not subject to the interim injunction order made on 5.2.2010. In response to inquiries by the Secretary General of the Permanent Court of Arbitration in the Hague, The Netherlands, and to

arbitrators, Dunkeld wrote on 19.2.2010 and 12.3.2010 to the Secretary General, and on 26.3.2010, to arbitrators that, they should disregard the interim injunction order made by the Supreme Court of Belize, “because [they] were not amenable to the jurisdiction of Belize courts in respect of the matter before [them].”

30. On 31.3.2010, the Supreme Court of Judicature (Amendment) Act, No. 18 of 2010 of the National Assembly of Belize was passed. It made contempt of court orders of injunction a criminal offence punishable with high fine. The Act came into force on 1.4.2010.
  
31. On 26.7.2010, Dunkeld applied without notice to the High Court of Judicature, Queens Bench Division - Commercial (England), for an interim injunction order restraining the Government of Belize, from commencing, pursuing or taking any steps in any claim in courts of Belize or elsewhere to enjoin or restrain Dunkeld in regard to an intended arbitration proceedings in respect of claims of Dunkeld under the 1982 Treaty, and in regard to the arbitration already commenced by Notice of Arbitration dated 4.12.2009. The application was without notice to the Attorney General of Belize. It was granted. The order of the High Court of Judicature (England) was served on the Government of Belize by a faxed letter dated 27.7.2010, together with another Notice of Arbitration dated 26.7.2010; the same date as the order of the High Court (England). I shall refer to this arbitration as the second arbitration. A copy of the claim filed at the High Court of Judicature

(England), on which the application was based has not been made available to this court.

32. By a letter dated the same day, 27.7.2010, the same date when the order of the High Court of Judicature (England) was sent by fax, attorneys for Dunkeld informed the arbitrators that: “Dunkeld is unable to take any steps in these proceedings due to the combined effect of the injunction against it issued by the Supreme Court of Belize on 10.2.2010, and the Supreme Court of Judicature (Amendment) Act, 2010.” The arbitration proceedings referred to were the first ones commenced by Notice of Arbitration dated 4.12.2009. The attendance was in regard to a scheduled arbitration preparatory hearing. The arbitration panel for the second arbitration commenced by Notice dated 26.7.2010, has not yet been constituted.
33. On 2.9.2010 Attorney General applied to this court, on notice to Dunkeld, for an interim injunction order restraining Dunkeld from taking any or any further steps in the arbitration proceedings commenced by Dunkeld by Notice of Arbitration dated 26.7.2010 (the second arbitration). It is this application referred to earlier as the first application, and now under consideration.
34. Thereafter, Dunkeld filed several applications including the three applications herein dated, 5.10.2010, 20.12.2010 and 29.2.2011. On 1.4.2011, it filed an acknowledgement of service of the Claim Form



dated 23.12.2009. That was the first day of the hearing of these applications.

35 In the meantime, the Financial Secretary proceeded to quantify the claims for compensation demanded. He says that attorneys for the claimants had, “persistently declined to quantify their claims.” He made offers for compensation totalling BZ \$81,600,551.88 to the five companies that Dunkeld claims beneficial interests in shares they held in BTL, as follows:

1. Ecom Limited	BZ \$22,160,592.48
2. Thiermon Limited	BZ \$18,814,960.14
3. Mercury Communications Limited	BZ \$6,987,895.80
4. New Horizons Inc.	BZ \$30,048.26
5. BCB Holdings Limited	BZ \$1,802,894.14
6. Dean Boyce and Trustees of Belize Telecommunications Limited Employees Trust	BZ \$33,804.261.06.

36. The claimants for compensation have rejected the offers. As the result the Financial Secretary has filed a claim, No. 194 of 2011, in the

Supreme Court of Belize against the claimants for compensation, pursuant to ss: 65 and 66 of Act No. 9 of 2009. He asks the Supreme Court to determine compensation payable to each of the claimants for compensation for their BTL shares compulsorily acquired by the Government.

37. ***Determination***

*The two applications of Dunkeld*

This court refuses to entertain the amended application dated 20.10.2010, of Dunkeld, for an order discharging the interim injunction order made by this court on 5.2.2010, and for an order setting aside service of the Claim Form dated 23.12.2009, of the Attorney General. The court further refuses to entertain the application dated 28.2.1010, of Dunkeld for an order staying the claim by the Fixed Date Claim Form dated 23.12.2009. The refusal is for the reason that Dunkeld disobeyed the interim injunction order that he is now seeking to have set aside, and has not purged the contempt. The injunction order is now enforceable against only Dunkeld, Allan Forrest and Peter Gaze, it having been quashed against the seven other defendants.

38. I acknowledge however, that the court will be obliged to consider some of the submissions made on behalf of Dunkeld, provided that the submissions can be regarded as “defences”, that is, as points of facts

and law raised to oppose the application, of the Attorney General. For instance, a major head of the claim and a major ground in the application of the Attorney General is exclusive jurisdiction of this court in this claim; I shall certainly consider the submission by Dunkeld in that connection, that this court has no jurisdiction in the subject matter of this claim and cannot grant interim injunction order against Dunkeld. Should my decision be that this court has no jurisdiction in the claim, then my refusal to hear Dunkeld in its two applications will become meaningless because the application of the Attorney General will be dismissed. However, the point must be made, and the rule that a person in contempt of a court order should not be heard in his application in the same cause should be applied in the circumstances of the applications made by Dunkeld.

39. *Disobedience to the interim injunction order made on 5.2.2010*

The evidence assembled so far proves that Dunkeld deliberately chose to disobey the interim injunction order made on 5.2.2010, instead of to apply to this court for an order to discharge the interim order; or to appeal the order of the Court of Appeal made on 4.10.2010, to the extent that it confirmed that the interim injunction order would remain in force against Dunkeld and two others, but that they had liberty to apply for an order discharging the interim order. Mr. Austen states that Dunkeld received the court order on 8.2.2010. Dunkeld was therefore in contempt of the order from that date.

40. Despite being aware of the interim injunction order of this court made on 5.2.2010, Dunkeld's solicitors wrote to the Secretary General of the Permanent Court of Arbitration in The Hague, urging the PCA to disregard the order. On 12.3.2010, the solicitors wrote to the court urging the appointing authority to disregard the order and to proceed to appoint arbitrators. On 26.3.2010, the solicitors again wrote urging the two arbitrators already appointed, to disregard the order and to proceed to appoint the third arbitrator.
41. The general rule is that a party who disobeys a court order and is in contempt, cannot be heard or take proceedings in the same cause until he has purged his contempt, nor can he appeal from an order made in the cause. That is the rule in, **Hadkinson v Hadkinson [1952] 2 All E R 1952**. It was a divorce case. In the case, a court order was made in England granting custody of the child of the marriage to the wife, and that the child should not be removed from the jurisdiction. The mother remarried and removed the child to Australia. On application by the father, the Court ordered that the child be returned to the jurisdiction. On appeal by the mother, it was held that it was plain and unqualified obligation of every person against whom an order has been made by a court of competent jurisdiction to obey it unless and until it was discharged; disobedience to such an order, would as a general rule, result in the person disobeying being in contempt and punishable by committal or attachment, and in any application to the court by him not being entertained until he had purged his contempt.

42. **Melanie Slade v Paul Anthony Slade [2009] EWCA Civ. 748** is another case of contempt of court order, and a recent one, in which disobedience to court order had consequences. The wife was imprisoned for disobeying court order, although the sentence was reduced on appeal. She was heard on her appeal because the hearing was merely about the contempt of the court order.
43. There will be circumstances in which court will exercise discretion and not hold the party who has disobeyed court order to answer strictly for the disobedience. The exceptions to the general rule not to hear the person in contempt of court order until he has purged the contempt is based on the principle that, if the disobedience to the court order impedes the course of justice, then court will exercise discretion not to hear the party who has disobeyed the court order. Guided by this principle, courts have usually exercised discretion and heard the party in contempt of a court order, if the matters he would have raised in his own application or appeal may be regarded as a defence to an application or appeal by the other party. **Fry v Ernest (1863) 12 W.L. 97**, is authority for that exception. **Gordon v Gordon and Gordon [1904] P. 163** is another case in which that exception applied.
44. I am aware that Dunkeld's solicitors eventually ceased participation in the first arbitration. But that is partial purging of the contempt. Partial compliance with court order is regarded as non-compliance. That is

the rule in **Bird v Hadkinson [1999] BPIR 653**, and **Lloyd's TSB Commercial Finance Ltd v Melia & Others [2009] EWHC 1114 (QB)**.

45. There were three reasons for concluding that when Dunkeld stopped participating in the arbitration, it was partial purging of the contempt. First, Dunkeld's application to the High Court of Judicature (England) renders the action taken by it to cease taking part in the first arbitration merely partial purging of the contempt. Although when Dunkeld made the application to the High Court of Judicature (England) for an interim anti-suit injunction order against the Attorney General of Belize no order of this court was in place expressly restraining Dunkeld from commencing or continuing claims in courts globally or in England or in Belize or elsewhere, or from commencing other arbitration proceedings, regarding the subject matter herein, Dunkeld must have known that if the interim order it sought was granted by the High Court of Judicature (England), it would have the effect of circumventing and frustrating the effect of the interim injunction order of this court made earlier on 5.2.2010. It does not matter whether the subjective purpose of Dunkeld was to enforce Dunkeld's right to arbitration, his disregard of the earlier interim order was contempt.

46. The application was granted. The order obtained in England restrained Attorney General on behalf of the Government of Belize, "from commencing, pursuing, progressing or taking any steps before *the courts of Belize or elsewhere*" to enjoin or restrain Dunkeld from

commencing or taking any steps in an anticipated arbitration against the Government of Belize, or in the arbitration already commenced by Notice of 4.12.2009. The interim order made by the High Court of Judicature (England) restrains the Attorney General from even taking part in these present proceedings; it impedes the course of justice in these proceedings. Dunkeld must take responsibility for that. In the circumstances of the evidence so far, the conclusion must be that making the application to the High Court of Judicature (England) was an act to achieve disobedience to the interim order made by this court on 5.2.2010.

47. Secondly, the Notice of Arbitration dated 26.7.2010, commencing the second arbitration did refer to arbitration substantially the same questions that arose between Dunkeld and the Government in the first arbitration and in the present proceedings. At international forum the dispute is under the 1982 Treaty between the same parties, and is about expropriation/acquisition on the same dates of shares in BTL that Dunkeld claims interest in; and about Dunkeld's entitlement to just and equitable compensation; and further, about measures that Dunkeld says the Government has taken to deny to Dunkeld rights under the agreement. The last issue is merely incidental to the dispute. In my view, the second arbitration has the effect of sidestepping the intention of the interim injunction order made on 5.2.2010.

48. Thirdly, viewed from the municipal court forum, the second arbitration as well as the first are between the same parties or their proxies or associates, as the parties, their proxies or associates in the municipal court; this court. The issues in the two arbitrations, namely the expropriation/acquisition and compensation are the same as in this court, although the claim of the Attorney General in this court is not based on the 1982 Treaty; it is based on municipal legislation. In the circumstances I also regard the Notice of the second arbitration as an act aimed at circumventing and disobeying the interim order made on 5.2.2010.

49. So, as long as Dunkeld continues to disobey the interim order made on 5.2.2010; it cannot be heard in its own applications in these proceedings until it has fully purged its contempt of the order. The court, however, will entertain Dunkeld's submissions to the extent that they are relevant to opposing the application of the Attorney General.

50. *The application of the Attorney General*

The application of the Attorney General was for three orders as follows:

- "1. An interim injunction restraining the 10<sup>th</sup> Defendant, Dunkeld International Investment Limited ("**Dunkeld**"), whether by itself or by its officers, servants, agents, subsidiaries, assignees, attorneys, advisors, or other



persons and bodies under its control, or in any way, from taking any or any further steps in the continuation or prosecution of the arbitration proceedings commenced by Dunkeld by Notice of Arbitration dated 26 July 2010, purportedly under the Arbitration Rules of the United Nations Commission on International Trade Law 1977 and the 1982 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Belize for the Promotion and Protection of Investments (“**the Treaty**”), arising out of and/or in relation to the alleged ‘expropriation’ of Dunkeld’s right to pursue its claims against the Government of Belize by virtue of the injunction of an arbitration claim brought by Dunkeld against the Government of Belize dated 4 December 2009 and the introduction of the Supreme Court of Judicature (Amendment) Act, 2010, or from commencing or continuing any other arbitral proceedings arising out of or relating to the same or substantially the same facts.”

2. The Court grant an early date for the hearing of this application. The notice of application for injunction together with the supporting affidavits will be served **by courier** on Dunkeld at its registered office at Box 97, No. 1 Caribbean Place, Leeward Highway, Providenciales,

Turks and Caicos Islands, and also on Dunkeld's attorneys, Allen & Overy LLP, One Bishops Square, London, E1 6AD, United Kingdom; and in this context, the Court takes judicial notice of the provisions of subsection (9) of section 106A of the Supreme Court of Judicature Act (CAP. 91), as amended by the Supreme Court of Judicature (Amendment) Act 2010 (No. 18 of 2010), which provide, inter alia, that no leave of the Court for serving the notice of application for injunction outside Belize shall be required notwithstanding anything to the contrary in any other law or rule of practice.

3. The costs of the application be costs in the cause.

AND ANY FURTHER or other orders as may be just, including the orders sought in the draft order.

51. Only the first proposed order was canvassed. That is because the extent of what is left of Act No. 18 of 2010, after the judgment of Sir Muria J striking down some of the provisions of the Act will only be known when the Court of Appeal has decided the appeal against the judgment. The third and fourth orders are just usual formal requests.

52. The grounds for the application for the order were stated as follows:

- “1. The commencement of new arbitration proceedings by the 10<sup>th</sup> Defendant, Dunkeld International Investment Ltd (“**Dunkeld**”) by Notice of Arbitration dated 26 July 2010, is no more than a crude, disingenuous and contemptuous attempt by Dunkeld to circumvent the injunction granted by this Court on 5<sup>th</sup> February 2010, which had restrained Dunkeld from taking any or any further steps in the continuation or prosecution of the arbitration proceedings commenced by Dunkeld by Notice of Arbitration dated 4 December 2009.
  
2. The said action of the 10<sup>th</sup> Defendant, **Dunkeld**, is oppressive, vexatious, inequitable and an abuse of the arbitral process, as shown in the second affidavit of Gian C. Gandhi filed in support of this application.
  
3. The proper forum for challenging the said injunction granted by this Court on 5 February 2010, or impugning the Supreme Court of Judicature (Amendment) Act, 2010, is the Supreme Court of Belize, and Dunkeld has so far taken no steps to have the injunction set aside.
  
4. The underlying subject-matter of the second arbitration commenced on 26 July 2010 is essentially the same as that of the first arbitration commenced on 4 December

2009, namely, the acquisition of certain property by the Government of Belize under the Belize Telecommunications (Assumption of Control Over Belize Telemedia Limited) Order, 2009 (S.I. No. 104 of 2009), as amended by S.I. No. 130 of 2009, and as such, the commencement of second arbitration by Dunkeld to re-agitate the same issues by a devious and circuitous route constitutes a gross and egregious abuse of the arbitral process.

5. The Treaty relied upon by Dunkeld to commence arbitration proceedings is not a part of the law of Belize as it was never transformed into municipal law by enabling legislation and, accordingly, there is no arbitration agreement between Dunkeld and the Government of Belize, to refer any disputes to international arbitration.
  
6. Even assuming (without admitting) that the Treaty applied, Dunkeld has no locus to invoke Treaty for the reasons already given in para 24(1), (2) and (3) of the first affidavit of Gian C. Gandhi dated 22 December 2009, filed in this claim.

7. The Court has subject matter jurisdiction as the underlying property is situate in Belize.
  8. The Court has specific jurisdiction to grant an anti-arbitration injunction under section 106(A) (8) (i) of the Supreme Court of Judicature Act (CAP. 91), as amended by the Supreme Court of Judicature (Amendment) Act 2010 (No. 18 of 2010), in addition to the jurisdiction founded on common law.
  9. The case is of considerable public importance as it involves a substantial amount of money.
  10. This is an urgent application as Dunkeld is proceeding post-haste with the second arbitration; it has already appointed its own arbitrator and has asked the Secretary General of the Permanent Court of Arbitration to designate an appointing authority to appoint the second arbitrator.”
53. Let me mention at this point in connection with the interim injunction order applied for, that it was common ground that a municipal court has jurisdiction in a proper case, to grant an interim injunction order in regard to arbitration proceedings that is relevant to a proceeding in the municipal court, whether the arbitration is a domestic or an

international one. Such an injunction order is generally described as being in aid of or in restraint of arbitration. The expression is not strictly correct because such an injunction usually issues against parties not against the arbitral tribunal, although in some jurisdictions orders have occasionally been issued against arbitral tribunals.

54. The power of the court was regarded in the Common Law as part of its inherent power. We no longer have to be so general about it; the power of the Supreme Court of Belize is now in **s: 27 of the Supreme Court of Judicature Act, Cap. 91**. It states:

“27(1) Subject to rules of court, the court may grant mandamus or injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the court to be just and convenient to do so.”

55. This section was applied in **Attorney General of Belize v Carlisle Holdings Limited, Claim No. 15 of 2005, Supreme Court of Belize**. Notable English cases regarding the power of court to issue injunction order in regard to arbitration are **Kitts v Moore [1895] 1 Q.B. 253**; **Siskina (Owners of Cargo Lately Laden on Board) and Others v Distos Compania Naviera SA [1979] AC 210**, and more recently, **Channel Tunnel Group Ltd and others v Balfour Beatty Construction Ltd and Others [1993] AC 334**.

56. Enhanced power of the Supreme Court of Belize to grant injunction order against any party, and even against arbitrators in arbitration in Belize or outside Belize was recently introduced in s: 106A (8) of the Supreme Court of Judicature Act, by an amendment Act, No. 18 of 2010. Several provisions in the amendment Act have been struck down by Sir Muria J. in his judgment in, **Philip Zuniga, Dean Boyce, Keith Arnold, Michael Ashcroft, Jose Alpuche, Philip Osborne and Ediberto Tesucum v Attorney General, Claim No. 274 of 2010**. The judgment has been appealed. Whereas it is desirable to wait for the decision of the Court of Appeal, so as to assess the effect and extent of the Amendment Act, it is my view that s: 27 of Cap. 91 gives this court adequate power to grant interim injunction order in regard to arbitration when it is “*just and convenient.*”
57. The right of parties to refer their disagreement to arbitration instead of bringing it to court to determine is a contractual right which court will not interfere with unless the referral to arbitration is plainly baseless, vexatious, abusive or oppressive. This general principle has been explained in, **Associated Bulk Carriers Ltd v Koch Shipping Inc [1978] 1 Lloyd Rep. 24**, and in **Fiona Trust and Holding Corporation and Others v Privalov and Others 40 [2007] Lloyds LR 1**. It has been accepted in Belize in, **the Attorney General v Carlisle** case above.

58. Where it is just and convenient for court to grant an interim injunction order in regard to arbitration proceedings, court must exercise caution not to interfere with the agreement of the parties to submit to arbitration. That means court will exercise caution not to interfere with the subject matter, the dispute referable to arbitration. In regard to arbitration in a foreign country, additional caution must be taken to also avoid interference with the sovereignty of the foreign state or its courts – see **Compagnie Nouvelle France Navigation, SA v Compagnie Navale Afrique du Nord [1966] 1 Lloyd Rep. 477**, known as “**The Oranie and The Tunisie**; **Black Clawson International Ltd. v Papierwerke Waldhof-Aschaffenburg AG [1981] 2 Lloyd’s Report Rep. 446**; and **A v B [2007] 1 Lloyd’s Rep. 237**.
59. Both the Attorney General and Dunkeld accept the law as I have just explained above. However, Dunkeld contends that because it is not a company resident in Belize and its claim against the Government of Belize is based on a treaty between sovereign states, this court, the Supreme Court of Belize, has no jurisdiction at all in any aspect of this matter; the court had no jurisdiction to issue the interim injunction order made on 5.2.2010, and has no jurisdiction now to grant the present application of the Attorney General for an order restraining Dunkeld from pursuing its second claim at the UNCITRAL arbitration, commenced by Notice of 26 July 2010.



60. Attorney General on the other hand urges on the court that this court alone has jurisdiction in the subject matter, the compulsory acquisition of shares of a company registered in Belize, and that the acquisition and compensation are matters under the Constitution of Belize and Act No. 9 of 2009.
61. These opposing contentions are not made in an application by the Attorney General or Dunkeld *in limine*, for a decision on a preliminary issue under **R. 26.12 (2)(j) of the Supreme Court (Civil Procedure) Rules, 2005**, or on an application under **R. 15** entitled, “Summary Judgment”, in particular under **R. 15.1, 15.2 and 15.6 (1)** for the determination of an issue in a case. The Attorney General’s submission on jurisdiction is merely to show that his claim for a declaration that this court has jurisdiction, has been established as an arguable issue on which the application for interim injunction order can be based. Dunkeld’s contention has been deemed to have been made in answer to the application of the Attorney General because the court has refused to hear Dunkeld in its own applications.
62. Had the court entertained the two applications of Dunkeld, still the court would have taken into consideration that the question of jurisdiction of this court was not the subject matter of those applications. Jurisdiction of this court was presented by counsel for Dunkeld merely as a ground in the two applications. In the written submission for Dunkeld, at paragraphs 3(a), (b) and (c), the two applications of Dunkeld and the

application of the Attorney General were clearly stated as the only applications before court. Then it was stated at paragraph 4 that: “Dunkeld appears in these proceedings to dispute the jurisdiction of the Belize Supreme Court.” That statement does not elevate the question of jurisdiction as a ground of the applications, to the direct subject matter of the two applications.

63. Dunkeld preferred to use jurisdiction as a ground for an application for an order to discharge the order made on 5.2.2010, and for an order to stay these present proceedings. It did not put forward jurisdiction as an issue on which this claim should be struck out. I think that is because Dunkeld recognised the procedural obstacles attendant to an application he would make directly challenging jurisdiction. The point was well made by learned counsel Mr. Denys Barrow SC, for the Attorney General.

64. To make an application disputing jurisdiction of this court or for an order that the court should not exercise jurisdiction in a case, a defendant is required to proceed under **R 9.7** which states:

“(1) A defendant who -

(a) disputes the court’s jurisdiction to try the claim; or

(b) argues that the court should not exercise its jurisdiction,

may apply to the court for a declaration to that effect.

(2) A defendant who wishes to make an application under paragraph (1) must first file an acknowledgement of service.

(3) An application under this rule must be made within the period for filing defence.”

65. If Dunkeld regards its two applications as applications disputing jurisdiction of this court, or applications requesting that the court should not exercise jurisdiction in this claim, then Dunkeld has failed to comply with **R 9.7**. It accepts that it received on 8.2.2010, the claim, the application for the interim injunction order granted on 29.12.2009 and continued on 5.2.2010, and the accompanying affidavit. It filed acknowledgement of service on 1.4.2011, over thirteen months later. Dunkeld would have to first apply under R 26 for relief from sanction for non compliance with R 9.7, and for an order to extend time to file acknowledgement of service. It would seem these were the obstacles in the way to making a direct application challenging jurisdiction.

66. Given that the submissions for jurisdiction has been made as a ground for applications for other orders, and that the submissions on behalf of Dunkeld must now be heard as “a defence”, a ground for opposing the application of the Attorney General for an interim injunction order, the question of jurisdiction need not be established by the Attorney General beyond the standard of an arguable question with prospects of success.

67. *Arguable questions with prospects of success*

An application for an interim injunction order must be based on a substantive claim, and the claim must, of course, be based on a legal or equitable right or interest which is enforceable in court – see **the Siskina case**, and also **the Channel Tunnel case** above, which modified the rule in **the Siskina** by the statement that: “*A claim to an interlocutory injunction was incidental to and dependent on the enforcement of a substantive right, and could not exist in isolation, [and] although the substantive right usually took the form of a cause of action, it was not a necessary condition of the grant of such an injunction that it should be ancillary to a claim for relief to be granted by [a court].*”

68. So to succeed in his application for an interim injunction order to restrain Dunkeld from participating in the second arbitration, and in securing the continuation of the interim injunction order made on

5.2.2010, Attorney General is required to establish by the affidavits filed that, his substantive claim raises an arguable question or questions with prospects of success at the final trial; and establish that the grounds for his application for interim injunction order disclose that it is just and convenient for an interim injunction order to be made against Dunkeld in the second arbitration; and disclose that it is just and convenient to maintain the interim injunction order made on 5.2.2010. That the interim injunction orders would be incidental and dependant on the claim herein was not a subject of contention.

69. **American Cyanamid Co v Ethicon Co Ltd [1975] 2 W.L.R. 316**, continues to be the main authority for the requirement of an arguable question with prospects of success, and that an arguable case is not as high as a *prima facie* case. In addition see **Zocholl Group Ltd v Mercury Communications Ltd [1998] F.S.R. 354 CA**, and **Nottingham Building Society v Eurodynamics Systems [1993] F.S.R. 468**.

70. The submissions for both parties regarding the strength or otherwise of the claim were subsumed in their submissions on the grounds for or against the application for an interim injunction order, and for or against continuing or discharging the interim injunction order made on 5.2.2010. Moreover, both parties concentrated on the question of jurisdiction of this court in the claim made by the Attorney General.

71. In his claim Attorney General raised exclusive jurisdiction as a relief he sought against Dunkeld. He stated that he claimed: “a declaration that the Supreme Court of Belize is the proper forum for the determination of all claims to compensation and other matters arising out of or relating to the acquisition of certain property by the Government of Belize under the Belize Telecommunications (Assumption of Control Over Belize Telemedia Limited) Order 2009 (S.I. No. 104 of 2009) as amended ...”. He repeated the question of jurisdiction in ground 3 of his application. Dunkeld would wish the entire claim dismissed for lack of jurisdiction of this court.
72. It is correct that when a municipal court considers rights and duties of parties before it, municipal court does not regard matters agreed in a treaty between nation states as part of the law of the country. Those matters do not create rights and duties for the parties unless and until the matters in the treaty have been adopted in legislation. The joint judgment of the House of Lords in the three related appeal cases cited by learned counsel Ms. Lois Young SC, for the Attorney General, is authority for that law. The appeal cases are: **J. H. Rayner (Mincing Lane) Ltd v Department of Trade and Industry and Others**; **Maclaine Watson & Co Ltd v Department of Trade and Industry**; and **Maclaine Watson & Co Ltd v International Tin Council [1990] C.A. 419 HL**.

73. Briefly, the cases arose from a 1956 treaty, the Sixth International Tin Agreement – the “ITA 6”, between several nation states, including the United Kingdom, by which they formed International Tin Council. It was for the purpose of adjusting the production and consumption of tin thereby controlling excessive fluctuation of price of tin. By headquarters agreement the ITC headquarters was SITUATED in London, UK. By a Statutory Order, the ITC (Immunities and Privileges) Order 1972 of the United Kingdom, the ITC was granted certain immunities and legal and corporate personality, and could enter contracts. The ITC ran out of money and could not pay its debts. In the first claim the creditor obtained an arbitration award and issued proceedings by a writ of summons in court in the UK against the Department of Trade and Industry representing the UK Government, claiming that each member state was jointly and severally liable to pay the arbitration award. In the second claim a broker also having obtained an arbitration award, issued similar proceedings against all member states. In the third claim six bankers (creditors) issued proceedings against the member states. Later a creditor applied for an order to appoint a receiver of certain assets.

74. The Department of Trade and Industry applied successfully for an order that, the claim be struck out on the ground that it disclosed no reasonable ground; and that service of the writ be set aside because the matter was not justiceable in courts of England. The other member states made similar applications. In the application for appointment of

a receiver, the ITC applied for the motion to be struck out on the ground that the court had no jurisdiction to determine the matter because it had no jurisdiction over member states.

75. In the House of Lords it was held: that municipal courts were not competent to adjudicate upon or enforce rights arising from agreement between sovereign states on the international law plane; that treaties did not alter domestic law or rights of individuals without the intervention of Parliament; and further that a treaty was not part of English law (municipal law) unless and until it had been incorporated into it by legislation. Further still: that the ITC was made a legal corporate person by a local statutory order not by **ITC6**; that the Tin Council, and not member states, was liable for the debts; that whether the Tin Council was an agent of the member states was not justiciable in courts of England. The orders of the trial judge striking out the claims were upheld. Other relevant cases are: **Cook v Sprigg [1899 A.C. 572**, and **Blackburn v Attorney General [1971] 1 W.L.R. 1037 C.A.**

76. In this claim the provisions of the 1982 Treaty were never adopted into legislation by the National Assembly of Belize. It is a strong arguable case that those rights and obligations under the 1982 Treaty may not be enforced in courts of Belize. But the claim of the Attorney General is made under Act No. 9 of 2009, and so this court should have



jurisdiction. I accept the submission by Ms. Young on the point and some of the cases she cited.

77. It is also a principle in Public International law that violation of a treaty provision although it may involve state responsibility on an international level, does not invalidate a domestic law – see **Costa Ente Nazionale per L'Energia Electrica** Case No. 14/1964 before Court of Justice of the European Community. So it is also a good arguable question that it is not within the jurisdiction of UNCITRAL, an international arbitration, to decide the validity of Act No. 9 of 2009, or even No, 18 of 2010; and whether the questions raised in this claim are not within the jurisdiction of this court. However, UNCITRAL has jurisdiction to decide the scope of its own jurisdiction.
78. On the other hand, I accept the submission of learned counsel Mr. Nigel Fleming SC, for Dunkeld, that the fact that a party has brought a claim in Municipal Court does not stop the other party seeking his right at international arbitration. That, however, does not mean that municipal court ceases to have jurisdiction in some aspects of the matter that is within municipal court jurisdiction. The question to consider would be, as it is in this application, whether or not it is just and convenient to stay one of the set of proceedings or to restrain a party from pursuing the two sets of proceedings concurrently.

79. My observation is that the threshold for arguable question of jurisdiction in this claim is far more sound than in **the Siskina** case. In the case, the only connection with the jurisdiction of courts of England was that the ship, the Siskina, which sank in Greek waters had been insured in London, England. It was a Panamanian ship managed by Greek nationals. It was chartered to ship goods from Italy to Saudi Arabia. Because of disagreement the goods were unloaded in Limasol, Cyprus. Thereafter the ship sank in Greek waters. The charter was subject to Italian law. The proceeds of insurance would be paid out of London, and that was the only connection that the case had to the jurisdiction of court in England.

80. Perhaps I did not need to consider all the above points about jurisdiction. It would be sufficient in my respectful view, to simply point out that by making an application in the High Court of Judicature in England, Dunkeld acknowledged that the issues raised in the disagreement between the Attorney General and Dunkeld were sufficient to give rise to jurisdiction to a municipal court. The evidence shows that the only connection that the UK had to the subject matter of the disagreement is that the UK and Belize signed the 1982 Treaty. Dunkeld was not incorporated in the UK; BTL shares were of a company not incorporated in the UK; the owners of the shares were not incorporated in the UK and never carried on business there; and the compulsory acquisition of BTL shares never took place in the UK. The substantive claim on which the application to the High Court (England)

was made was not provided to this court. It is obvious that jurisdiction of the Supreme Court of Belize compares better.

81. The claim of the Attorney General regarding jurisdiction certainly meets the standard of an arguable question.

82. It is also a serious question that Dunkeld has no standing in an arbitration under the Treaty. It is not a direct shareholder in BTL: on what basis is it an investor? It is also not a baseless argument that Dunkeld got itself to Turks and Caicos after it had knowledge of disagreement between the government and BTL. Learned counsel Mr. Courtenay for Dunkeld cited cases to support the proposition that the question of locus should be left to arbitral tribunal. But there are cases to the contrary in as far as the rights in municipal courts are concerned. It is not just a matter of Dunkeld declaring intention to proceed to arbitration. Moreover, it is a sound submission that the Government is entitled to regard only registered shareholders as claimants for compensation. It is a good arguable question that the claim of Dunkeld depends on the claims of the five direct shareholders. How it claims beneficial interest has not been disclosed. This question is also a serious question to go to trial.

83. It is not necessary to consider all serious questions that are proper for trial, and all baseless questions. The above serious questions are sufficient to cause the court to proceed to consider whether it is just

and convenient to grant an interim injunction order restraining Dunkeld in the second arbitration, and to maintain the interim injunction order made 5.2.2010.

84. *The question of just and convenient*

This is a municipal court. It does not claim jurisdiction to decide rights under the 1982 Treaty. But in its municipal jurisdiction it has a duty to save expenses in proceedings. It has become apparent from the further evidence that Dunkeld was part of a conglomerate of thirteen companies, including BTL. All the companies in the group may have derived benefit from BTL. On the evidence available now, some of the seven defendants removed from this case seem to have connection to Hayward Trust and through it, to Dunkeld. Some of them have brought claims in courts in Belize concerning the acquisition of BTL shares. Whereas each of the remaining twelve companies in the group may each fight one battle or a joint battle about the acquisition of the shares in BTL, against the Attorney General as a defendant or as a claimant, Attorney General fights the entire war alone. His expenses justify describing bringing all or many of the claims concurrently as oppressive. The claims are about the same subject matter.

85. The evidence now is that the Government of Belize has offered \$81,600,551.88 as compensation to the five companies that Dunkeld claims under. The companies have rejected the offer, but they or

Dunkeld have not presented in evidence their own valuation of compensation. Attorney General has brought a Supreme Court claim for court determination of the appropriate compensation. It is unconscionable, vexatious and oppressive to be pressing on with arbitration in the circumstances.

86. It is also my view that, the issues in the two arbitrations are the same as in this claim, No. 1042 of 2009, and in Claim No. 588 of 2010 proceeding in the court of Legall J. Further, the constitutional questions raised in at least three court cases by several persons in the group of companies also arise in the arbitration although in regard to treaty rights. Some of those questions have been answered adversely to the view of Dunkeld although appeals are pending in them. Much evidence has already been laid before this court and the court of Legall J. and other judges of the Supreme Court. It seems to me vexatious and unconscionable to proceed to lay the same evidence before the arbitral tribunal concurrently, and before this case is concluded.

87. I have to conclude that: it is just and convenient to continue against Dunkeld International Investments Limited the interim injunction order made on 5.2.2011; and it is just and convenient to grant the application of the Attorney General dated 2<sup>nd</sup> September 2010, for an interim injunction order in the terms set out in paragraph 1 of the draft order. Service of the order shall be on the local attorneys who represent Dunkeld in this application, unless and until they notify Attorney

General that they no longer represent Dunkeld, and have confirmed the new address of Dunkeld, if that shall be the case, to the Attorney General.

88. Application of the Attorney General dated 2.9.2010, is granted. Applications of Dunkeld dated 20.12.2010 and 28.2.1011 are dismissed.
89. No order is made against Allan Forrest and Peter Gaze; they are not parties to the three applications. The interim injunction order made on 5.2.2010, continues as before against them. The claimant or defendants may apply for a trial date.
90. Attorney General asked for costs of his application to be in the cause; that is granted. But costs of the two applications by Dunkeld International Investments Ltd. shall be paid by it to the Attorney General.
91. Had I not declined to hear the applications of Dunkeld, I would have decided on the evidence available, to refuse both applications. I do not accept the submission by Mr. Courtenay in regard to R. 7.3(2)(c)(ii). When the application for permission for service of the claim form on Dunkeld outside jurisdiction was made, there had not already been a claim against the resident defendants, and the claimant subsequently wished to serve the claim on Dunkeld who was outside the jurisdiction.

Dunkeld was joined with the other defendants right from the start of the claim. If R. 7.3(2)(c)(ii) was wrongly cited, court could act under the correct rule, namely, R.7(5). Note that notice is not required for an application for permission to serve claim form outside jurisdiction. All that was required was that the court satisfy itself that the claim had a realistic prospect of success. On the affidavit evidence, this was established.

92. **Delivered this Tuesday the 10<sup>th</sup> day of May 2011**

**At the Supreme Court**

**Belize City**

**SAM LUNGOLE AWICH  
Acting Chief Justice  
Supreme Court**