

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

CLAIM NO. 145 of 2011

BETWEEN

BELIZE TELEMEDIA LIMITED

Claimant

AND

| | |
|--|--------------------|
| 1. KEITH ARNOLD | First Defendant |
| 2. PHILIP ZUNIGA | Second Defendant |
| 3. SHIRE HOLDINGS LIMITED | Third Defendant |
| 4. ROCKY REEF VENTURES LIMITED | Fourth Defendant |
| 5. IBIS INVESTMENTS LIMITED | Fifth Defendant |
| 6. SCARLET VENTURES LIMITED | Sixth Defendant |
| 7. SEASCAPE HOLDINGS LIMITED | Seventh Defendant |
| 8. CHANNEL OVERSEAS INVESTMENTS LIMITED | Eighth Defendant |
| 9. THAMES VENTURES LIMITED | Ninth Defendant |
| 10. GREAT BELIZE PRODUCTIONS LIMITED | Tenth Defendant |
| 11. KATALYST DEVELOPMENTS LIMITED | Eleventh Defendant |

Mr. Michael Young SC and Mrs. Pamela Watson for the claimant.

Mr. Godfrey Smith SC for the eighth to the eleventh defendants.

Mrs. Magali Marin Young for the Interested Party.

AWICH Chief Justice (Ag)

24.5.2011

DECISION

1. Notes: *Civil Procedure and Practice; - Service outside jurisdiction of claim form, interim injunction order made without notice the application and supporting affidavit.*

2. On 30.3.2011, Belize Telemedia Ltd., the claimant, applied without notice to the eleven defendants, for several and various interim injunction orders against each of the eleven defendants. I shall refer to Belize Telemedia Ltd. as BTL. The application included applications for permissions, to serve the claim form, the interim injunction order, the application and affidavit outside jurisdiction in respect of the eleventh defendant, and to serve the processes in a particular manner of service on Channel Overseas Investment Limited, the eighth defendant. I shall refer to Channel Overseas Investment Limited as Channel Overseas. The manner requested in regard to service on Channel Overseas was service at No. 212 North Front Street, P.O. Box 1764, Belize City, Belize, by registered mail and by publication of notice of the Claim Form and order in two consecutive issues of a newspaper circulating in Belize.
3. The orders applied for were granted on the same day, 30.3.2011, when the application was made. The return date of the order made without notice was 29.4.2011. The date was extended twice until today, 24.5.2011, so that certain applications filed since 30.3.2011, could be dealt with first leading to the hearing of the application of BTL on notice for an order continuing the order made on 30.3.2011.
4. This is decision in one of the applications made since 30.3.2011. Channel Overseas applies by notice of application dated 13.5.2011, for an order that:

- “1. Paragraph 3 of the order of Awich CJ dated 27th April 2011 be set aside;
2. Service of proceedings in the claim against the Applicant/Eighth Defendant by the method specified in the order of Awich CJ dated 27th April 2011 is ineffective, the court lacking jurisdiction over the Eighth Defendant
3. The court does not have jurisdiction to try the claim against the Applicant/Eighth Defendant.
4. The Respondent/claimant do pay the Applicant/eighth Defendant’s cost of the application.”
5. The grounds of the application are that: (1) Channel Overseas is resident outside this jurisdiction, at Juris Building, Charlestown, Nevis; (2) service of claim form must be by court permission and when conditions given in the Supreme Court (Civil Procedure) Rules 2005 at 7.3 and 7.4 are met, the court has not given permission; and (3) “the court does not have jurisdiction to try the claim against the applicant.”
6. According to affidavit of Mr. Dean Boyce, Channel Overseas is resident in Nevis. That must be accepted at this stage without going behind the affidavit. On the other hand, the court also accepts that at the time that BTL made its application on 30.3.2011, it was not aware that Channel

Overseas was resident at Juris Building, Charlestown, Nevis. BTL had information that Channel Overseas had been removed from company registry in another country, British Virgin Island, and the only address of Channel Overseas, that BTL had was No. 212 North Front Street, P.O. Box 1764, Belize City, Belize. That address had been given by Channel Overseas itself in an agreement concerning a different matter. Given that BTL did not know how to trace Channel Overseas, BTL was entitled to use the last known address given by Channel Overseas; and the court was entitled to order service at that address, pursuant to R 5.14. Indeed the manner of service ordered and carried out produced the desired result; Channel Overseas has attended court by an attorney.

7. Now that BTL has been given an address, it must use that address from the time of notification, and with all the convenience to Channel Overseas that may be derived from that address. The order of the court as to service no longer serves a useful purpose, and may be withdrawn by court.
8. I do not consider that because BTL did not know the correct address of Channel Overseas, the interim injunction order it obtained on 30.3.2011, should be set aside. That application was made without notice, and court decided at the time that it was suitable to be made without notice to the defendants. The address was only necessary subsequently for service of the order, the application and affidavit after

the order had been granted. Now that the correct address is known, this court varies the order made on 30.3.2011, by deleting the manner of service. The rest of the interim order remains in force until the application on notice for its continuation is determined.

9. As regards service outside jurisdiction on Channel Overseas, BTL may make an application for service of the claim form, the interim injunction order, the application dated 11.3.2011, and affidavit, to be made in Nevis. According to the Rules, that application is made without notice. I am aware of the majority decision in **Lauro Resende v Compania Siderurgia Nacional and Another, Civil Appeal No. 23 of 2009**. This case is different.

10. The application by Channel Overseas challenging jurisdiction to try the claim is premature. It is required to file acknowledgement of service first and may challenge jurisdiction within 28 days after – see R. 9.6 and 9.7. At the end of reading this decision, I was informed that Channel Overseas had filed acknowledgement of service of the claim form. That makes this application objecting to service of the interim order and the application without notice on which it was obtained academic. It is proper however, that I grant permission to Channel Overseas to repeat its application challenging jurisdiction, on the adjourned return date of the interim injunction order made on 30.3.2011.

11. The application of Channel Overseas Investment Ltd., dated 13th day of May 2011, is allowed to the extent that paragraph 3 of the order of this court made on 30th day of March 2011 is deleted from the order. The rest of the order remains enforceable except that the return date is extended again to Friday 27th day of May 2011. The application is also granted that service according to paragraph 3 of the order made on 30.3.2011, is now regarded as insufficient; although it seems this is now academic.

12. Because BTL did not know the address of Channel Overseas Investment Ltd., and used an address given earlier by Channel Overseas Investment Ltd. for another purpose, no order for costs of this application is made against BTL.

13. **Delivered this Tuesday the 24th day of May 2011**
At the Supreme Court
Belize City

SAM LUNGOLE AWICH
Acting Chief Justice
Supreme Court