

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

ACTION NO. 571 of 2009

PORT OF BELIZE LIMITED

CLAIMANT

AND

CHRISTIAN WORKERS UNION

DEFENDANT

Hearings

2010

8th June

16th June

Mrs. Ashanti Arthurs-Martin for the Claimant.

Mr. Hubert Elrington SC for the Defendant.

LEGALL J.

RULING

1. This is an application dated 7th May, 2010 to vary an order made by the court on 12th November, 2009, and entered and perfected on 26th November, 2009. The order, before being entered and perfected, was agreed by counsel for both parties who were present in court, and was approved by the court. The terms of the order are as follows:

ORDER

“The 12th day of November 2009.

BEFORE the Honorable Justice Legall

UPON HEARING Mr. Eamon Courtenay
S.C. of Counsel for the Claimant and Mr.
Hubert Elrington of Counsel for the
Defendants;

AND UPON the Claimant and the
Defendant agreeing to enter into good faith
negotiations with a view to entering a
Collective Agreement within 3 months;

IT IS HEREBY ORDERED that:

1. Upon the Defendant by its Counsel accepting that there is no binding Collective Agreement between the parties, the trial of this claim is adjourned to the 11th day of February 2010 at 9 a.m.

2. The application to vary the above order sought to insert in the order immediately after the words “9 a.m.” the words “for the parties to make their legal submissions to the Court.” The adjourned date stated in the order was for the parties to inform the court as to the progress of the negotiations referred to in the second paragraph of the order; and for that reason the adjourned date was fixed at the expiration of the three month period mentioned in the order.

3. The substantive claim in this matter requested certain reliefs as follows:

Relief Sought

“(1) A declaration that the Collective

Agreement entered between the defendant and Belize Waterfront Employees Association on the 28th day of April 2004 is not binding upon the claimant.

- (2) Any further or other relief.
- (3) Costs.”

4. The specific relief, which the claimant was seeking, is as stated at (1) above. The defendant, by its counsel, as shown in the order, accepted in open court in the presence of his clients, that there was no binding collective agreement between the parties. By so accepting or agreeing, the defendant in effect, in my view, was accepting the claim of the claimant that the collective agreement was not binding on the claimant. The defendant accepted and agreed, as stated in the order, that there was no collective agreement binding on the parties; and the claimant was a party to the proceedings.
5. Because of the acceptance and agreement by the defendant, there is no other specific relief to be tried by the court, and therefore to grant the application to vary the order “for the parties to make legal submissions to the court,” to use the words of the application to vary the order, would be to ask the court to act in vain, and as is well known the “court does not act in vain.” There is nothing to make legal submissions on, when the defendant accepts the claim of the claimant that, in effect, the collective agreement is not binding on the claimant, and certainly the defendant’s application, in my view, was not to make legal submission as to costs.

6. The court has power to vary orders with respect to default judgments and with respect to judgments for payment of sums of money, as to time and method of payment: see Rules 13.3(2) and 47.2 of the Supreme Court (Civil Procedure) Rules 2005. The court may also vary or correct an order perfected where there was a clerical mistake in the order, or an error arising in the order by accidental slip or omission: see Rule 42.10. There was no clerical mistake or accidental slip or omission in the order, and Rules 13 3(2) and 47(2) do not apply to the application.
7. Since the order has been perfected with the approval and agreement of the parties, I do not think it would be just to vary the order on the application of one of the parties, where, as in this case, the other party has objected to the variation.
8. For all of the above reasons I refuse the application to vary the order made on 12th November, 2009.
9. I therefore make the following orders in this matter:
 1. The application in this matter dated 7th May, 2010 is dismissed.

2. The defendant shall pay costs to the claimant in the sum of \$500.00.

Oswell Legall
JUDGE OF THE SUPREME COURT
16th June, 2010