

IN THE SUPREME COURT OF BELIZE, A.D. 2010

CLAIM NO. 339 of 2009

PROVIDENT BANK & TRUST OF BELIZE LTD. CLAIMANT

AND

**CENTRAL AMERICA HEALTH SCIENCE
UNIVERSITY LTD. (An IB)**

1st DEFENDANT

**CENTRAL AMERICA HEALTH SCIENCE
UNIVERSITY LTD.**

2nd DEFENDANT

RALPH HERNANDEZ

3rd DEFENDANT

JAMES HERNANDEZ

4th DEFENDANT

Hearings

2010

29th June

15th July

20th July

Ms. Darlene Vernon for Claimant.

Ms. Lisa Shoman SC for Defendants.

LEGALL J.

JUDGMENT

1. The claimant granted a loan to the first and second defendants in the sum of US\$1,500,000, and a mortgage debenture dated 2nd December, 2002 was signed by the parties. The Nos. 3 and 4 defendants

guaranteed the loan by signing a guarantee dated 22nd January, 2007. The Nos. 1 and 2 defendants failed to pay the monthly installments, and by the end of March 2009 the total sum owing to the claimant, including interest, was \$1,891,126.01. The claimant therefore issued a claim dated 4th May, 2009 against the defendants for the amount of US\$1,891,126.01 plus interest and costs.

2. The claimant received information that the sum of US\$250,000 was in the possession of the defendants, and being held in an escrow account at the law firm of Glenn Godfrey & Co LLP. On 17th April, 2009 the claimant applied to the court for an injunction to restrain the defendants, servants and agents from in anyway removing or dealing with the said US\$250,000 in the escrow account. On 22nd April, 2009 the exparte application for the injunction was granted by Arana J. The inter partes hearing of the injunction was set before me on 9th June, 2009. At the hearing of this inter partes application for the injunction, the claimant and the defendants through their respective counsel, agreed to a consent order prepared by them and approved by the court. The parties also signed a written agreement on 10th June containing the terms of the consent order.

3. The Consent Order is as follows:

Claim No. 339 of 2009	
Between (Provident Bank	CLAIMANT
(& Trust of Belize Ltd.	
(AND	
(Central America	1 st DEFENDANT
(Health Science	

(University Ltd. (An IBC)
(Central America Health Science
(University Ltd. 2nd DEFENDANT
(Ralph Hernandez 3rd DEFENDANT
(James Hernandez 4th DEFENDANT

CONSENT ORDER

The 10th day of June 2009
BEFORE THE HONOURABLE JUSTICE
LEGALL

UPON THIS MATTER coming up for inter partes hearing in relation to an application for a Freezing Order granted by the Courts in favour of the Claimant/Applicant;

AND UPON Darlene M. Vernon Counsel on behalf of the Claimant/Applicant appearing and Mrs. Ashanti Arthurs, Counsel on behalf of the Defendants appearing;

AND Counsel for the Claimant and Defendants having arrived at an amicable out of Court Agreement, the terms of which are set forth in an agreement which has been duly agreed between the parties:

IT IS HEREBY ORDERED that:

1. The sum of US\$250,000.00 currently held in escrow by Messrs. Glenn Godfrey & Co. will be immediately released to the Claimant and no later than 4:00 p.m. on Wednesday 10th June 2009.

4. On 16th April 2009, a company owned by the wife of Mr. Glenn Godfrey, Marie Limited, filed a Claim No. 336 of 2009 against the first defendant in Claim No. 339, and default judgment was entered on 6th May, 2009 against the said defendant in the sum of US\$59,216.25. Marie Limited then applied for a provisional garnishee order against Glenn Godfrey & Co. Ltd. as garnishee in relation to the US\$250,000, and a provisional order was granted by Hafiz Betram J. on 12th June, 2009. After the granting of the

provisional order, the claimant in Claim 339 of 2009 on 3rd July, 2009 applied to be added as an interested party in Claim No. 336 of 2009 in order to prevent the release of the money to Marie Limited. On 27th July, 2009 Hafiz Bertram J granted the order making the said claimant an interested party to Claim No. 336 of 2009. Glenn Godfrey & Co. LLP was also named in Claim 336 of 2009 as garnishee.

5. On the 31st July, 2009, the Claimant, the Interested Party and the Garnishee in Claim No. 336 of 2009 agreed to an order as follows:

Claim No. 336 of 2009	
Between (Marie Limited	Claimant
(AND	
(Central America	
(Health Science	
(University	Defendant
(Judgment Debtor)
(Glenn D. Godfrey &	
(Co. LLP	Garnishee
(Provident Bank &	
(Trust of Belize Bank	
(Limited	Interested Party

THE 31st day of July 2009

BEFORE THE HON. JUSTICE HAFIZ,
 BY CONSENT between the Claimant, Garnishee and the Interested Party, IT IS HEREBY ORDERED that the Garnishee, GLENN D. GODFREY & CO. LLP shall pay to the Interest Party, PROVIDENT BANK & TRUST OF BELIZE LIMITED, the sum of US\$174,856.00. The balance of US\$75,144.00 shall be held by the garnishee until this matter is finally determined by the Supreme Court.

Cost to be in the cause.

Dated the 3rd day of August, 2009.

By Order,

Deputy Registrar

6. The consent order was entered and perfected on 3rd August, 2009 and is still in force. On 4th August, 2009 attorneys for the Interested Party in Claim No. 336 of 2009 wrote a letter to attorneys representing the garnishee as follows:

Dear Ms. Shoman,

Re: Claim No. 336 of 2009
Marie Limited v. Central America Health Science
University Glenn D. Godfrey & Co. LLP & Provident
Bank & Trust of Belize Ltd.

As you are aware on the 31st July 2009, by Consent, the Court ordered that the Garnishee pays to the Interested Party the sum of US\$174,856.00. A copy of the said Order is enclosed for your ease of reference.

Kindly provide us by the 7th August 2009 with a banker's draft made payable to the Provident bank & Trust of Belize Ltd. for the said sum of US\$174,856.00."

6. Glenn Godfrey Co. LLP, as garnishee, in obedience to the consent order in Claim 336 of 2009 of Hafiz Bertram J made on 31st July, 2009 paid over on 6th August 2009 to the Interested Party in that claim US\$174,856.00; and also in accordance with the said order held the sum of \$75,144.00.
7. The claimant in Claim 339 of 2009, who is the Interested Party in Claim 336 of 2009, though it consented to the order of Hafiz Bertram J made on 31st July, 2009, made an application dated 31st March, 2010

for an order that Glenn Godfrey & Co. LLP, comply with the consent order made by me on 10th June, 2009, and release to the said sum of \$75,144.00, being the balance mentioned in the consent order made by Hafiz Bertram J.

8. Ms. Vernon for the applicant argued that Glenn Godfrey & Co. LLP had to obey my consent order in Claim 339 of 2009, which is valid and subsisting and pay the balance to the claimant. Glenn Godfrey & Co. LLP, it is submitted has no standing in this application, and therefore cannot resist the payment of the said balance to the claimant. I do not think there is much merit in the standing point because the application for the order calls for mandamus against Glenn Godfrey & Co. LLP and requests Glenn Godfrey Co. LLP to comply with the order made by me on 10th June, 2009. Glenn Godfrey & Co., it seems to me, would therefore have, on the basis of the application, standing and a right to be heard.

9. The applicant wants the court to make an order commanding Glenn Godfrey & Co. to hand over the US\$75,144.00 to the claimant, even though the said claimant had consented before Hafiz Bertram J by order dated 31st July, 2009, in Claim 336 of 2009 that the said balance of US\$75,144.00 shall be held by the said Glenn Godfrey Co. LLP until the matter is finally determined by the Supreme Court. The Claim No. 336 of 2009 has not been finally determined, but is only stayed.

10. The learned judge sent me a copy of the page in her notebook where the order staying the matter was recorded. The page states:

Application for discharge of garnishee order
14th December, 2009
Claim No. 336 of 2009
Marie Ltd. v. Central American Health
Science University
Glen Godfrey & Co. LLP – Garnishee
Provident Bank & Trust of Belize Ltd. – IP
Appearances: Mr. Richard Bradley for
Claimant
Ms. Lisa Shoman for Garnishee
Ms. D. Vernon for Provident bank & Trust
Matter stayed until determination of
outcome before Justice Legall.
Cost to be looked at another day.

11. The above order was entered and perfected on 5th July, 2010. But the perfected order is as follows:

Claim No. 336 of 2009	
Between (Marie Limited	Claimant
(AND	
(Central America	
(Health Science	
(University	Defendant
((Judgment Debtor)
(Glenn D. Godfrey &	
(Co. LLP	Garnishee
(Provident Bank &	
(Trust of Belize Bank	
(Limited	Interested Party

ORDER

The 14th day of December, 2009
BEFORE the Honourable Madam Justice
Minnet Hafiz Bertram
Appearances: Mr. Richard Bradley for Claimant

Ms. Lisa M. Shoman S.C. for Garnishee
UPON hearing the parties, the matter is stayed until
determination of outcome of Claim No. 339 of
2009 before Justice Legall.
Costs to be looked at on another date.

DATED the 5th day of July, 2010

BY ORDER,
Deputy Registrar

12. There is a difference between the order entered and perfected and the order in the judge's notebook. The difference may be attributable to a clerical error or accidental slip or omission which can be corrected.
The Claim No. 339 of 2009 itself was not before me: What was before me was the inter partes application for an injunction; and it was during that inter partes application for the injunction, that the consent order on 10th June, 2009 was made.
13. In my view, the claimant in 339 of 2009 who was also a party in Claim 336 of 2009, in which Glenn Godfrey Co. LLP was the garnishee, all of whom consented to the order made by Hafiz Bertram J, in effect varied my order, and they are therefore bound by the later order which in effect varied the consent order made before me. The later order is valid and subsisting, and, in my view, has to be obeyed by Glenn Godfrey & Co. LLP and the parties to it.
14. This court, in my view, cannot properly make an order which in effect would be ordering Glenn Godfrey Co. LLP to disobey a valid, perfected and subsisting order made by Hafiz Bertram J, which in

effect varied my order, when there is no application to vary or set aside the said order by Hafiz Bertram J.

15. The claimant should now, since a decision has now been made in this application before me, consider making an application to hear and determine Claim 336 of 2009, since that claim is stayed and not yet determined.

16. For the above reasons, I make the following orders:
 - (1) The application dated 31st March, 2010 in this matter is dismissed.

 - (2) The claimant to pay costs to the defendants, to be agreed or taxed.

Oswell Legall
JUDGE OF THE SUPREME COURT
20th July, 2010