

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

**CLAIM NO. 354 of 2009**

**WORLDWIDE PROPERTY  
MANAGEMENT LIMITED**

**CLAIMANT**

**AND**

**BELIZE OFFSHORE CENTRE  
LIMITED  
CITY HOLDINGS LIMITED  
IT SOLUTIONS LIMITED**

**DEFENDANT**

**1<sup>st</sup> INTERESTED PARTY  
2<sup>nd</sup> INTERESTED PARTY**

Hearings

2010

2<sup>nd</sup> July

9<sup>th</sup> July

21<sup>st</sup> July

Mrs. Ashanti Arthurs-Martin for the Claimant/Respondent.

Ms. Lisa Shoman SC for the Defendants/Applicants.

LEGALL J.

**RULING**

1. The applicant/defendant in this matter made an application to the court to strike out a claim brought by the claimant as an abuse of the

process of the court in that there were two other claims which, it was submitted, raised the same issues as the claim. On 10<sup>th</sup> March, 2010, I gave a written decision in which I made an order dismissing the application. On 14<sup>th</sup> May, 2010, the said applicants/defendants applied for leave to appeal my interlocutory order dismissing the application, and for a stay pending the outcome of the appeal. Elaborate and extensive grounds of appeal were filed as follows:

### **Grounds of Appeal**

- (1) The learned judge erred when he found that the claimant/respondent's filing of the third claim was not an abuse of the process of the court.
- (2) The learned judge erred when he found that the claimant respondent gave reasons or explanations for the non-appearance by or for its non-appearance and/or that there was a plausible explanation for the same.
- (3) The learned judge was estopped (issue estoppel) from finding that the claimant respondent gave reasons or explanations for the non-appearance by or for its non-appearance and/or that there was a plausible explanation for the same when the issue had already been decided to the contrary in an earlier action between the parties.
- (4) The learned judge erred when he held that a suspicion or likelihood of fraud against the defendant was raised in this matter, and took such suspicion or

likelihood into consideration in coming to a conclusion that “the equitable jurisdiction of the Supreme Court would not allow its discretion to be used in favour of any party against whom there is a suspicion or likelihood of fraud without some form of investigation” and on that basis, held that the case should therefore be decided on its merits, “even though the litigant had committed breaches of the Rules and the orders made at case management” and therefore refused the application.

- (5) The decision of the learned judge was unreasonable and could not be supported having regard to the following:
  - (a) The claimant/respondent had on several occasions failed to comply with the orders of the court and to comply with the Rules and the learned judge agreed that the facts of the case had indeed showed several failures to comply with orders of the court, delays and various breaches of the Rules of Court by the claimant;
  - (b) The claimant/respondent is wholly to blame for the fact that neither the first nor the second claims in this matter were heard on the merits;
  - (c) The claimant/respondent had its second claim struck out or dismissed on 23<sup>rd</sup> October, 2008, (which second claim was the

very same in substance as the third claim), and at the hearing of an application by the attorneys for the claimant to set aside such dismissal, Mr. Justice Awich dismissed that application, and that the claimant never appealed against such dismissal, but instead began a third claim.

- (6) The learned judge erred in law when he failed to give any or sufficiently serious consideration to the court's inherent jurisdiction to dismiss claims for being an abuse of process of court.
- (7) The learned judge took extraneous matter into consideration.
  - (a) The learned judge erred when he gave consideration to the nature of the case between the parties and confessed "some amount of judicial uneasiness or judicial suspicion" as to the "meager price of \$13,500 for which the shares were transferred" and went on to ask "In the light of these issues which raise a suspicion of fraud, would justice and fairness dictate that the claimant be allowed to litigate the issue in court about the transfer of shares?"
  - (b) The learned judge erred when he gave consideration to a determination that the "equitable jurisdiction of the Supreme Court would not allow its discretion to be used in favour of any party against whom there is a suspicion or likelihood of fraud without some form of investigation."

- (7) The decision was such that a court viewing the circumstances reasonably could not properly have so decided.
2. Section 14(2) (b) of the Court of Appeal Act, Chapter 90, states that no appeal shall lie to the Court of Appeal except with leave of the Supreme Court, or if it is refused, with leave of the Court of Appeal. Hence the applicants/ defendants application for leave to appeal.
3. Several well known authorities establish the principles to be applied by the court when considering an application for leave to appeal. “Leave to appeal will be granted if the court is of the view that the appeal has a realistic prospect of succeeding.” See *Addari v. Addari No. 21 of 2005 C.A. Virgin Islands unreported, per Rawlins JA at page 5*. Other principles are (1) “where there is a prima facie case that an error has been made; (2) where the question is one of general principle decided 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”: see *Belize Telemedia v. Belize Telecom Ltd. No. 23 of 2008 Court of Appeal Belize (unreported) per Carey JA at page 3 & 4, quoting Sosa J, as his Lordship then was in Wang v. Atlantic Insurance Co. Ltd. Supreme Court Belize 21<sup>st</sup> July 1998 unreported*.
4. The court has a discretion whether or not to grant leave to appeal, and the applicant for leave to appeal has the burden to show prima facie that an error has been made. For instance, such an error would

include, where the judge in the exercise of his discretion, “made a mistake in law, disregarded principle, misapprehended the facts, took into account irrelevant material, ignored relevant material or failed to exercise his discretion”: see *Addari v. Addari* above at page 5.

5. In relation to an application for leave to appeal interlocutory orders, Practice Note (Court of Appeal Procedure) 1999 1 All – E.R. 186 ought to be considered. It states:

“An interlocutory order is an order which does not entirely determine the proceedings. Where the application is for leave to appeal from an interlocutory order, additional conditions arise: (a) the point may not be of sufficient significance to justify the costs of an appeal; (b) the procedural consequence of an appeal (e.g. loss of trial date) may outweigh the significance of the interlocutory issue; (c) it may be more convenient to determine the point at or after the trial. In all such cases leave to appeal should be refused.”

6. I think the burden is on the applicant for the leave to appeal to satisfy anyone of the principles or categories mentioned in *Belize Telemedia Ltd. v. Belize Telecoms*, and *Wang v. Atlantic Insurance Co. Ltd.* above. There seems to me, in the submissions of the applicant, a lack of legal authorities showing errors on the part of the judge with respect to the grounds of appeal, or to support the first category of *Wang*. The applicant says that it would be just to grant leave, but of

why it would be just, seem to me to be lacking. The applicant contends, that the appeal raised the issue of “what constitutes abuse of process in the sense of bringing multiple claims in respect of the same matter” and therefore the appeal comes within the second category in *Wang*, namely that the question to be appealed is one of general principle, decided for the first time; and therefore leave to appeal should be granted.

7. But I do not think that the issue of abuse of process, in the context of multiple claims, is a question decided for the first time. The common law has laid down for decades legal principles relevant for deciding whether or not an abuse of process had occurred, in the context of multiple claims, some of the legal principles I alluded to in the written decision given on 10<sup>th</sup> March, 2010 referred to above. I do not find that the abuse of process in the context of multiple claims as a general principle, is to be decided for the first time.
8. The applicant also hinged the application for leave to appeal on the third category of *Wang*, that the appeal raises a question of importance upon which a decision of the Court of Appeal would be to the public advantage. It may be argued with some justification that all matters before the Court of Appeal are of importance, but I am not satisfied, and the burden is on the applicant that a decision on the issue of abuse of process, in the context of multiple claims, principles of which have been pronounced by the courts decades ago, would be to the public advantage.

9. The grounds of appeal are clearly formulated; but it seems to me that there ought to have been some supporting or legal authority to prima facie suggest errors in relation to the grounds of appeal, or to support the first category of *Wang*. It seems that the satisfaction of one or other of the categories of *Wang* and if none of the conditions of the Practice Note above applies, that would be enough to grant leave to appeal in this case. But I am not satisfied, that the applicant has established any of the categories in *Wang*, and I believe the applicant failed to establish that conditions (a) or (b) of the Practice Note do not apply. In fact, I am of the view that both (a) and (b) of the Practice Note apply for the reasons mentioned above. I therefore refuse leave to appeal.
  
10. The applicant also applied for a stay of proceedings on the claim pending the appeal. I have a discretion to grant or dismiss an application for a stay on the grounds of forum non conveniens. In this application, since I have refused leave to appeal, I think for the convenience of the parties to the claim and the witnesses, that the claim in this matter should proceed. I think it is just and convenient that the claim should proceed. I am therefore unable to grant the stay applied for.
  
11. As the interlocutory order was made by me, I enquired of counsel on both sides whether they had any objection to my hearing the application for leave to appeal the order. They consented and had no objection.

12. I therefore made the following orders:

- (1) The applications for leave to appeal and for a stay are dismissed.
- (2) A further case management conference with respect to this claim, No. 354 of 2009, is fixed for 16<sup>th</sup> September, 2010 at 9:00 a.m.
- (3) Applicant/Defendant to pay to the claimant costs, to be agreed or taxed.

Oswell Legall  
JUDGE OF THE SUPREME COURT  
21<sup>st</sup> July, 2010