

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS
IN THE HIGH COURT OF JUSTICE**

Claim No. BVIHCV 2020/0250

BETWEEN:

**IN THE MATTER OF THE BVI BUSINESS COMPANIES ACT, 2004 AND IN THE MATTER OF
GOLDENSUN ASSETS LIMITED**

BETWEEN:

MICHAEL WILSON & PARTNERS LIMITED

Claimant/Respondent

AND

**[1] THE BVI REGISTRAR OF CORPORATE AFFAIRS
[2] THE BVI FINANCIAL SECRETARY**

Defendants

**[3] KENNETH KRYS
[4] CHARLOTTE CAULFIELD**

Defendants/Applicants

Appearances: Mr. Michael Wilson as the representative of the Claimant who acts in person
Mr. Stephen Grayson with Ms. Dian D. Fahie and Ms. Khiayah Doward for the First named Defendant
Mr. Matthew Brown, Counsel of Conyers for the Third named Defendant/Applicant, who was present, and the Fourth named Defendant/Applicant

2022: September 21
2023: January 31

Civil Practice & Procedure – Security for Costs – Whether Claimant ordinarily resident outside the jurisdiction – Whether just to make an order for security for costs – No assets within the jurisdiction – Obstacles to or difficulties with enforcement - Quantification of security for costs – Applicable costs regime

JUDGMENT

[1] **DYER, J. (Ag):** This is an application for security for costs¹ made by the Third and Fourth named Defendants/Applicants ("**the Applicants**") under CPR 24.2 and 24.3. The Applicants seek to compel the Claimant ("**MWP**") to provide security in the sum of US\$120,000.00 or such other amount or nature of security as the Court thinks fit on the grounds that:-

- (i) MWP is ordinarily resident outside of the jurisdiction;
- (ii) MWP has no business or employees in the BVI;
- (iii) MWP has no assets in the BVI or elsewhere against which any costs award could be enforced. Further, MWP has failed to provide any information in relation to its assets despite the Applicants' request for same before the application at bar was issued;
- (iv) MWP has at least one substantial costs order against it in the BVI that has not been paid and has been outstanding for 2½ years;
- (v) a statutory demand has been served on MWP by an individual who has obtained an arbitration award against MWP in the sum of at least £3,200,000.00 and US\$841,000.00. MWP unsuccessfully applied to the BVI Court to set aside the statutory demand, but it was stayed on 28th November 2018 pending the outcome of an appeal before the English Court of Appeal, which has now been dismissed;
- (vi) at least two (2) security for costs orders have been made against MWP in England and a freezing order has been seemingly made and remains in force against all or at least a substantial amount of MWP's available assets, if any;
- (vii) even if MWP has assets outside the jurisdiction, they are likely to be in Kazakhstan or Azerbaijan and there are no reciprocal provisions between those countries and the BVI and it does not even appear as though it would be possible to enforce a BVI costs orders in those countries at common law; and
- (viii) even if it is possible to enforce any costs award in Kazakhstan or Azerbaijan or elsewhere and MWP is solvent and has assets in those countries, MWP's conduct prior to and since these proceedings commenced, and its conduct and judicial findings in other proceedings, strongly suggests that MWP will take all and any steps available to it, whatever the merits, so as to frustrate, delay and seek to prevent the Applicants from enforcing any costs order. Therefore, there will be substantial obstacles to the Applicants enforcing any costs award against MWP or the enforcement of such costs award will carry an additional burden in terms of costs, and delay.

¹ The Applicants also seek certain other procedural orders. The proceedings were however stayed by Order of Ellis J (as she then was) dated 17th May 2022 pending the determination of this application.

- [2] The background to the application at bar, which is opposed by MWP², is that MWP (who is said to be the sole creditor of Goldensun and had sought its liquidation having issued a statutory demand to it on 31st May 2012) is by the substantive proceedings (which were issued on 8th December 2020) seeking the restoration of Goldensun Assets Limited ("**Goldensun**") to the register of companies and the appointment of John N Greenwood as its liquidator. The Applicants, who are former liquidators of Goldensun, had successfully sought the termination of Goldensun's liquidation ("**the termination application**") on the basis that there was no prospect of making recoveries for the benefit of MWP as its sole creditor. This application was not served on MWP although the Fourth Defendant had deposed in the evidence in support of the termination application that service had been effected on MWP.
- [3] MWP has made several serious allegations in the substantive proceedings against the Applicants in relation to their alleged conduct whilst they were in office as the liquidators of Goldensun. The Applicants say that these allegations are largely irrelevant to the issues that this Court will have to determine and are very likely to be dismissed with cost consequences. Nonetheless, they were joined as parties to the proceedings in June 2021 pursuant to an Order of the Court although according to them no substantive relief is sought against them save for a claim for the costs of the proceedings themselves on an indemnity basis. MWP says that the Applicants' joinder was at the instance of the First named Defendant ("**the Registrar of Corporate Affairs**"). This is seemingly disputed by the Registrar of Corporate Affairs, but nothing turns on this.
- [4] The application for the restoration of Goldensun had already been listed for hearing when the Applicants issued the security application on 30th November 2021.

Applicable Principles

- [5] It is well settled that this Court has the discretion under CPR 24 to order MWP to put up security for the Applicants' costs. This discretion to order security, once one or more of the conditions in CPR 24.3 have been satisfied, is broadly described in CPR 24.3 as whether "... *having regard to all the*

² At the hearing, Mr. Wilson unsuccessfully sought to rely on Skeleton Arguments in Opposition which according to him had been lodged with the court office before the hearing but in respect of which the filing fees had not been paid.

circumstances of the case, that it is just to make such an order..." The Applicants must satisfy the following two-pronged test:-

- (i) firstly, whether any of the conditions set out in CPR 24.3(a) to (g) has been satisfied; and (if they cross any of the threshold conditions).
- (ii) secondly, whether it is just in the circumstances of the instant case to grant the application at bar.

DISPOSITION

CPR 24.3(g) - Ordinarily resident out of the jurisdiction

- [6] The Applicants contend that there is overwhelming evidence which proves that MWP is ordinarily resident outside of the jurisdiction and has little connection to the BVI save for the mere fact of its incorporation in the BVI. Ms. Jevgenija Fedotova ("**Ms. Fedotova**") who gave evidence in support of the security application deposed:-

*"[i]t is clear from its website that the Claimant carries on business as a law firm in Kazakhstan and Azerbaijan (not in the BVI). There is certainly no suggestion that it has any business in the BVI. In fact, the Claimant's BVI registered office does not even appear on its website (the only addresses being addresses in Kazakhstan and Azerbaijan). Further, the Claimant's founder, director (possibly sole director) and (it is inferred from its name) its beneficial owner, Mr. Michael Wilson ("**Mr. Wilson**"), is also resident (or ordinarily resident) outside of the BVI, as evidenced by his affidavits and his witness statement, all of which contain a Kazakhstani address at the top ... I am told by Mr. Brown, that Mr. Wilson also informed the Court at the CMC that he is based in Kazakhstan.*

11. It is also inferred from the matters set out in the paragraph above. That the place where the Claimant's management is carried out, where its books are kept and where its administrative work is done, is Kazakhstan, where Mr. Wilson resides (but in any event, not the BVI)..." (Emphasis added)

- [7] MWP challenged the admissibility of Ms. Fedotova's evidence on the basis that *inter alia* "**Mr. Brown is speaking through Ms. Fedotova's mouth**".³ It also disputes that it is ordinarily resident out of the jurisdiction. Mr. Michael Wilson ("**Mr. Wilson**") who gave evidence in opposition to the security application on its behalf deposed "*MWP is and has always been a BVI business company with its registered address, registered agent and headquarters in the BVI. MWP's s[ea]t of incorporation is*

³ CPR 30.3(2)(b) permits Ms. Fedotova's affidavit to contain statements of information and belief if it is for use in an interlocutory application provided that it indicates which statements are from her own knowledge and which are matters of information or belief and the source of any matters of information and belief. Ms. Fedotova's affidavit satisfies these requirements and as such her evidence as to matters of information and belief is admissible herein.

the BVI, and has always been". Mr. Wilson also denied that he is the founder, sole director or beneficial owner of MWP. Mr. Wilson deposed that "MWP's sole shareholder is a Liechtenstein Anstalt, itself owned by a foundation. I am merely an employee and director of MWP". MWP did not adduce any corporate records to prove the bald statements that were made by Mr. Wilson to counter the cogent evidence adduced by the Applicants. This is perhaps because it took the view that "[t]here is no concept of "residence" or "ordinary residence" of a company such as MWP, as such concepts apply to individuals, and not companies. Mr. Brown seems horribly confused".

[8] Contrary to Mr. Wilson's assertion, the concept of ordinary residence of companies is well-known to the law. In **Surfside Trading Ltd. v Landsome Inc**⁴ George-Creque J (as she then was), addressing the issue of whether a claimant company is ordinarily resident out of the jurisdiction, stated thus at paragraph 3:

"I think it appropriate, therefore, to deal with the question as to whether the Claimant may be said to be ordinarily resident out of the jurisdiction... Both sides agree that the test to be applied for the purpose of making this determination of fact is the central management and control test as enunciated in the case of DeBeers Consolidated Mines Ltd. v Howe and further propounded in the case Re Little Olympian Each Way Limited⁴. Lindsay J. in Little Olympian at page 568–569 considered the following factors relevant in determining whether a company was ordinarily resident:

- (a) the objects clause;*
- (b) the place of incorporation;*
- (c) where the company's real trade or business is carried on;*
- (d) where the company's books are kept;*
- (e) where its administrative work is done;*
- (f) where its directors meet or reside;*
- (g) where it 'keeps house';*
- (h) where its chief office is situate; and*
- (i) where its secretary resides".*

⁴ Claim No. AXAHCV2005/0016.

- [9] The central management and control test, which is relied on by the Applicants, has also been approved by our Court of Appeal for determining residency for the purposes of an application for security for costs: see **Ultramarine (Antigua) Ltd. V. Sunsail (Antigua) Ltd**⁵. As Gonsalves JA noted in that case, “[t]he central management and control is normally exercised by the company's board of directors and so the residence is normally determined by the place where the board of directors meets”.
- [10] In this case, MWP is incorporated in and has its registered office in the BVI. Whilst Mr. Wilson denies that he is MWP's sole director, no evidence was adduced as to the identity of the other director(s) and where they usually meet. The irresistible inference to be drawn from this omission is that, if MWP has other directors, they do not reside and/or meet in the BVI. On the evidence, Mr. Wilson also does not reside in the BVI. What's more, Mr. Wilson purported to give evidence from the bar that MWP does not provide legal services in the BVI. As in the **Surfside case**, save for its incorporation coupled with its obligatory requirement of maintaining a registered office in the BVI, no other meaningful nexus to the BVI has been established by MWP. Given these factors, it is reasonable to infer that MWP's directing mind and control is outside the BVI. If there was material which pointed to MWP being resident in the BVI, the evidential burden was on it to adduce such positive evidence. It has failed to do so. I accordingly hold that MWP is ordinarily resident outside of the jurisdiction. The Applicants have accordingly crossed the threshold in CPR 24.3(g).

Is it just in all the circumstances to make an order for security for costs?

- [11] The Applicants accept that where an application for security for costs is grounded on the sole basis that a claimant is not ordinarily resident in the jurisdiction, it is no longer an inflexible rule that security will be ordered as a matter of course. Residence abroad is thus the starting point which in effect, gives this Court the jurisdiction to make an order for security for costs. It is not the end point. As such the Court must go on to consider the overarching condition of whether it is just to make the order, having regard to all the circumstances of the case: see **Dr. Martin Didier and others v. Royal Caribbean Cruises Ltd**⁶. Relevant circumstances include but are not limited to:- (i) what difficulties,

⁵ ANUHCVP 2017/0051 at paragraph 69

⁶ At paragraph 10

extra costs or delay a successful defendant may encounter or incur in seeking to enforce an award of costs in the foreign jurisdiction where the claimant is ordinarily resident or his assets located⁷; (ii) while the existence of a relevant treaty or Convention between the country where the claim has been brought and the other jurisdiction where the claimant's assets may be located is of some relevance in the exercise of the court's discretion, the absence of such treaty or Convention is not itself a ground for ordering security⁸; (iii) the costs and inconvenience of enforcement of a costs award at common law by suing on the judgment in the foreign court, are not intrinsically likely to be more than the costs and inconvenience of making an application to register the judgment in the foreign jurisdiction⁹.

No assets within the jurisdiction

[12] MWP disputes that it has no assets in the BVI or elsewhere against which any costs award could be enforced as contended by the Applicants. Mr. Wilson who gave evidence on its behalf deposed that it "*has very significant assets*" which are owned directly by MWP and not by the branch or representative office in Kazakhstan and Azerbaijan respectively. MWP has however failed to adduce any evidence as to the location and/or value of such assets. In particular, the evidence in opposition contains no information to suggest that MWP has any assets in the BVI¹⁰. Mr. Wilson simply points to certain foreign judgments and costs orders¹¹ and assets of third parties¹² including Goldensun which he says that MWP is entitled to.

[13] As the Applicants rightly note MWP has adduced no corroborating material, including as to their recoverability and the status or financial position of the judgment/award debtors. To make matters worse, (as Mr. Brown pointed out at the hearing) the extract of the Ernst & Young Independent Auditor's Report for the period ended 31 December 2015 which is relied on by MWP as proof of its significant assets states that:-

⁷ Wang Zhongyong and Others v. Union Zone Management Ltd Claim No. BVIHC (COM) 0126 of 2011.

⁸ *Ibid.*

⁹ *Supra* at 3.

¹⁰ In *Michael James v Tasman Gaming Inc. and another Civil Appeal No. 6 of 2006* the Court of Appeal (as he then was) ordered the Appellant, Mr. James to enter security for their costs for the prosecution of the appeal in circumstances where he resided out of the jurisdiction and the evidence in opposition contained no information to suggest that Mr. James had any assets within the jurisdiction. As Rawlins JA (as he then was) noted, it in fact, erroneously suggested that the burden is on Tasman and Betcorp to provide information that Mr. James does not have assets within the jurisdiction.

¹¹ As the Applicants point out an arbitral award on costs is over 12 years old and no evidence was adduced in relation to the award debtor's status or financial position.

¹² The Applicants say that two (2) of these companies appear to have been dissolved several years ago.

"...in prior years, the Temujin Partnership received assets with a value of USD 68,882,182. As the owner of 66.67% of the Temujin Partnership. MWP is entitled to disclosure, an inquiry into and an account of all of the Temujin Partnership's worldwide assets and revenues, including a proprietary right to follow and trace into whatever became of such assets, though no value to MWP's 66.67% Temujin Partnership interest has currently been attributed in these consolidated financial statements and, further, such Temujin Partnership interest does not constitute a contingent asset". (Emphasis added)

- [14] In **Dr. Martin Didier et al v. Royal Caribbean Cruises Ltd**¹³ Webster JA made the point that "[a] typical example of when the court will order a claimant who is ordinarily resident outside the jurisdiction to put up security, is when he does not have assets in the jurisdiction. The combination of residence abroad and no assets within the jurisdiction increases the risk that a costs order may be difficult to enforce, or be unenforceable, and the court will be more inclined to make an order in these circumstances". This principle was also applied in **Globe-X Canadiana Limited et al v. Clifford Johnson et al**¹⁴ where Gordon JA observed that one of two things of relevance in the context of the security for costs application was the fact that *"there is no evidence of Silicon Isle Ltd. having any assets within the jurisdiction of Anguilla other than the shares of the Companies [which were in liquidation]*. Similarly, in **Astian Group Limited et al v. TNK Industrial Holdings Limited et al**¹⁵ one of the factors considered by Gordon JA (at para. 8) was the uncontroverted evidence adduced that the intended Appellant companies did not have assets within the BVI. It follows that the lack of assets in the BVI in circumstances where MWP (as the court has found) is ordinarily resident outside of the jurisdiction is thus a weighty, decisive, and standalone reason that security can be ordered in this case even if there are indeed various foreign judgments and orders in MWP's favour. The Applicants have however grounded their application on other factors which I will address out of deference to the full submissions of Mr. Brown.

MWP's Financial Position is unknown

- [15] The Applicants contend that MWP's asset position is deliberately unclear such that it is not discernible whether it has assets of value against which a costs order could be enforced. According to the Applicants, MWP has failed to adduce a summary of its assets and liabilities including their nature and/or value despite being invited to do so before the application at bar was issued. MWP contends

¹³ SLUHCVP2017/0051 at paragraph 11.

¹⁴ Civil Appeal No. 4 of 2003.

¹⁵ Civil Appeal No. 22 of 2003.

in answer that it is and has always been solvent and has always had very significant assets and "headroom". According to Mr. Wilson, MWP's financial position has been vouched, verified, and audited by its auditors, Messrs Ernst & Young LLP who gave a clean, clear and unqualified report. Mr. Wilson also points to three (3) judgments, the latest being in November 2020, which he says confirms MWP's financial position.

- [16] The evidence which is relied on by MWP to establish its financial position is somewhat dated. Contrary to Mr. Wilson's contention, the Ernst & Young Independent auditor's report whilst dated 27 April 2020 expressly states that its MWP's Consolidated financial statements "[f]or the year ended 31 December 2015."¹⁶ To make matters worse, only an extract of the report was adduced in these proceedings. No explanation was provided for the failure to adduce the entire report. In the circumstances, the Court is unable to give any weight to same and is unable to find that MWP has funds to satisfy a costs order of this Court as urged by Mr. Wilson.

Residence Abroad - Obstacles to or difficulties with Enforcement

- [17] The Applicants aver that even if MWP has assets outside the jurisdiction, they are likely to be in Kazakhstan or possibly Azerbaijan and there are no reciprocal provisions between those countries and the BVI. Further, Kazakhstan and Azerbaijan are not common law countries and as far as the Applicants are aware do not have any legal process for the enforcement of BVI costs orders. The Applicants rely on two (2) Court of Appeal decisions and a High Court decision which identify the difficulties with enforcement in Kazakhstan. According to them, it is of note that Kazakhstan was recently described by an English High Court judge (in a case in which security for costs was ordered against MWP) as "*notorious as a state which does not recognize English judgments*". They rely on the case of **Nasser v. United Bank of Kuwait**¹⁷ and ask the Court to infer the same in relation to Azerbaijan in the absence of any evidence from MWP.
- [18] The *onus* is on the Applicants to show some basis for concluding that enforcement would be impossible, or that they will face substantial obstacles in enforcing to warrant an order for security for costs. The cases establish that such grounds exist where there is a real risk of "*substantial obstacles*

¹⁶ See Exhibit "MEW-5" at 143.

¹⁷ [2002] 1 ALL ER 401

to enforcement" or of an additional burden in terms of cost or delay. Indeed, as was stated by Baptiste J in **Richard Rowe et al v Administrative Services Limited et al**¹⁸:

*"The discretion to award costs against a claimant ordinarily resident out of the jurisdiction is to be exercised on objectively justified grounds relating to obstacles or to the burden of enforcement in the context of the particular individual or country concerned. The absence of reciprocal arrangements or legislation providing for enforcement of foreign judgments does not by itself justify an inference that enforcement would not be possible."*²⁶

This dictum was cited with approval by our Court of Appeal in **Jorg "Stanley" Dornieden and another v Millhawke Holdings (Bequia) Ltd and others**¹⁹ where it was held that there ought to be an examination within the context of the particular individual or country concerned.

[19] MWP takes issue with the quality of the evidence adduced by the Applicants and submit that they have not discharged the burden on them to show that enforcement of a BVI costs order will be problematic. MWP, whilst not disputing that there are no treaty reciprocal enforcement provisions between the BVI and Kazakhstan and/or Azerbaijan, alleges that foreign judgments including BVI judgments and orders are enforceable in Kazakhstan under the Civil Code and the Civil Procedure Code, as well as the law and rules of the AIFC. MWP however did not adduce the statutes on which it relies to counter the Applicants submissions on this point. Mr. Wilson accepted (at the hearing) that MWP ought to have adduced the Code. According to him it failed to do so because he was concerned as to its size. I am unable to accept Mr. Wilson's bald statements on this issue particularly given the pronouncements of the English Courts.

[20] The Applicants further contend that even if it is possible to enforce any costs award in Kazakhstan or Azerbaijan or elsewhere and MWP is solvent and has assets in those countries, MWP's conduct prior to and since these proceedings commenced, and its conduct and judicial findings in other proceedings, strongly suggests that MWP will take all and any steps available to it, whatever the merits, so as to frustrate, delay and seek to prevent the Applicants from enforcing any costs order. The suggestion that MWP will not satisfy a costs order, even if it has the funds to do so, stems from *inter alia* the allegation that it has failed and/or refused to comply with a judgment and several outstanding costs orders against it in the BVI in favour of Michael Fay KC which exceed US\$55,400.

¹⁸ SKBHCV2003/0222

¹⁹ SVGHCVAP2014/0007

I would have been prepared on the evidence before me to draw an adverse inference against MWP that it is likely to deliberately avoid paying an adverse costs order in this matter and to take steps to frustrate and/or delay enforcement. I have however found that MWP is resident outside of the jurisdiction and has no assets in the BVI.

Amount of the security

[21] I am satisfied that the scales of justice tip in favour of making an order for security for costs in this case where MWP is non-resident and has no assets in the jurisdiction. Having so found, my next task is to determine the amount of security to be ordered. The Applicants seek an order for payment of security in the sum of US\$170,000.00 on the ground that their costs have significantly increased because of prosecuting the application at bar and additional work on the claim itself²⁰. MWP contends that this amount is grossly disproportionate and excessive and unparticularized in some respects. The Applicants being faced with MWP's objection took the position that a payment of US\$170,000.00 is not an unreasonable one given:- (i) MWP's and/or Mr. Wilson's conduct and the likelihood of that conduct continuing; and (ii) that the prescribed costs regime does not apply to the quantification of the amount of security for costs to be ordered as the costs of standalone applications are expressly excluded from that costs regime under CPR 65.57(2). At the hearing, Mr. Brown accepted that the prescribed costs regime applies to the quantification of the amount of security for costs but urged the court to disapply it.

[22] Mr. Brown quite rightly conceded the point as the authorities establish that "*as a general principle, the amount of security ordered on an application for security for costs is fixed by reference to the probable costs of the action. A calculation of the probable costs of the action is dependent on the applicable costs regime. In awarding security for costs a judge must exercise his or her discretion within the parameters of the applicable costs regime. The applicable costs regime must mean the specific regime that applies to the case at the date of the application - not any of the alternative regimes that might have otherwise applied had an application been made to apply any one of them*".²¹ It would appear that in following the United Kingdom practice of submitting a schedule of costs in

²⁰ See paragraph 61 of their Skeleton Arguments filed herein on 15th September 2022.

²¹ Per Gonsalves JA in *Ultramarine (Antigua) Ltd. V. Sunsail (Antigua) Ltd* ANUHCVP 2016/0004 (which incidentally was cited on by the Applicants) at para. 49 [Emphasis added].

support of its application, the Applicants did not consider the particular costs regime within which they were operating. As Gonsalves JA noted in the **Ultramarine case** the position taken by our Court of Appeal in **Next Level Engineering Services Ltd. v. The Attorney General et al**²² is apposite. At paragraphs 13 and 14 of the judgment Barrow JA had this to say:

"13. In that light, what would be an appropriate amount to order for security for costs, assuming without deciding that it would be appropriate to order security for costs? It seems fairly clear that counsel did not think about the amount of security by reference to the value of the claim on appeal. The affidavit filed in support of the application by the fourth respondent simply stated that the fourth respondent had spent some US\$75,000.00 as legal fees for the High Court proceedings and that figures would climb in view of the appeal. Because the regime of prescribed cost is such a distinct feature of our CPR 2000 the concentration of our courts, when considering the amount in which security for costs should be ordered, has to be on the amount in which prescribed costs are likely to be quantified at the end of the trial or appeal, and not nearly as much (if at all) on the costs actually incurred by a party.

14. The amount that the fourth respondent spent on the High Court proceedings, therefore, provides no assistance for the purpose of quantifying the likely costs that could be awarded on the appeal. Indeed, even if the fourth respondent had estimated the costs it will incur in resisting the appeal that would not have provided much, if any, assistance. As suggested above, what would provide definitive assistance would be the amount in which costs of the High Court proceedings are awarded ..."

[23] In this case, at the time of the security for costs application, the applicable costs regime for the substantive claim was undoubtedly the prescribed costs regime as stipulated by CPR 65.5(1) as there has been no application to either stipulate or determine the value of MWP's claim under CPR 65.6(1). Pursuant to rule 65.5 (2)(b) this court must as in the **Next Level Engineering** case treat MWP's non-monetary claim as having a value of US\$50,000.00. Utilising the figure of US\$50,000.00 as the value of the substantive claim, the resultant prescribed costs would be US\$7,500.00.

[24] The Applicants rely on the **Dr. Martin Didier case**²³ and contend that there are exceptional circumstances which warrant a departure from the prescribed costs regime. They further contend that their oral application is not caught by the stay as it falls within the catch all prayer in their security for costs application for "any further relief". The short answer is that CPR 11.7(1)(b) states that an application **must** state what order an applicant is seeking. CPR 11.13 states further that an applicant

²² ANUHCVP 2007/0017.

²³ SLUHCVP2017/0051 at para. 31

may not ask at any hearing for an order which was not sought in the application unless the court gives permission. Our Court of Appeal in interpreting CPR 11.7(1)(b) has held that it is pellucid that in absence of any permission given by the court to pursue an order which did not feature in the application sought, the applicant may not ask the court for such an order²⁴. No such permission was sought or obtained by the Applicants. In any case, I would not have been minded in the circumstances of this case to grant any such permission.

Conclusion

[25] In all the circumstances, my order is as follows:-

- (i) Security for the Third and Fourth named Defendants' costs is ordered in the sum of US\$7,500.00 to be provided by the Claimant within 30 days of this judgment by deposit of funds in Court;
- (ii) In the event the security for costs is not provided in the amount, in the manner and by the time ordered these proceedings shall stand dismissed; and
- (iii) Costs are awarded to the Third and Fourth Defendants, which are to be assessed if not agreed within 21 days.

Jean M. Dyer
High Court Judge (Ag.)

By the Court


Registrar

²⁴ Claudette Joseph v. Dr. Keith C. Mitchell GDAHCVAP2021/0006 at para. 14.