

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

CLAIM NO. SKBHCV2019/0043

BETWEEN:

INTERNATIONAL UNIVERSITY OF THE HEALTH SCIENCES LTD

Claimant

and

1. UNIMEDICA INC
2. DR JOHN ABELES
3. INFOMEDICA LTD

Defendants

Appearances:

Ms. Miselle O'Brien for the Claimant

Mr. Brian Barnes for the First and Second Defendants

2019: October 31
(Closing submissions filed on 29 November 2019)
2020: January 27

JUDGMENT

- [1] **VENTOSE, J.:** The Second Defendant on 6 June 2016 filed a claim in the State of Florida in the United States of America in respect of an alleged contract of employment between the Second Defendant and Claimant dated on or about 1 June 2009 (the “**Florida Claim**”). The Second Defendant alleged that he was

employed as a medical consultant and it was agreed between the parties that compensation of US\$9,500.00 a month would be paid to him. The Claimant filed a motion on 11 July 2016 in the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County Florida (the “**Florida Court**”) to dismiss the Florida Claim on the basis that, among other things, the venue is improper. On 31 January 2017, the Florida Court granted the motion to dismiss but gave the Second Defendant fifteen (15) days to file an amended complaint. The Second Defendant filed the amended Florida Claim on 17 February 2017. The Claimant filed on 2 March 2017 a second motion to dismiss the Florida Claim that was dismissed by the Florida Court on 9 November 2019.

[2] In the instant claim, the Claimant seeks against the Defendants the following reliefs (emphasis added):

1. A Declaration as to the number of shares held by InfoMedica Ltd. in International University of the Health Sciences Ltd.
2. A Declaration that the corporate resolution of 8th October 2012 approving the transfer of ownership of International University of the Health Sciences Ltd. from InfoMedica Ltd to UniMedica Inc. is null and void and of no effect.
3. A Declaration that the resolution dated 6th September, 2014 to issue shares in International University of the Health Sciences Ltd. to the following persons, namely; Juliana Furay; Gillian Skerritt; Andrew Merry; Randall John (RJ) Simms; Valarie Anderson; Richard Furay; Gary Piotrowski; Paige Stewart; Clark Kenowitz; Joe Kusek; Freeman Clark; Steven Khan; Neil Shocket; Andrew Holness and Caroline Lawrence was valid.
4. An Injunction restraining Dr. John Abeles, the Second named Defendant, his servants and or agents from making defamatory statements about the International University of the Health Sciences Ltd., its officers and Board of Directors.
5. **A Declaration that any claims made for compensation by the Second Defendant, Dr. John Abeles or any other persons for any alleged breach of contract, between them and the Claimant, should be determined by the courts in the jurisdiction in the Federation of St. Kitts and Nevis.**
6. Such further and or other relief as the court deems fit.
7. Costs

- [3] The Second Defendant on 30 May 2019 filed an application with supporting affidavit for this court to decline to exercise its jurisdiction in this matter with respect to the Second Defendant. The question that arises is whether, having regard to any or all of the reliefs claimed by the Claimant, this court has jurisdiction to entertain the claim.

The Submissions of the Second Defendant

- [4] The Second Defendant submits that, first, the Claimant admits in its statement of claim that there are extant proceedings taking place in the Florida Court which started in 2017 with the Second Defendant as Plaintiff and the Claimant as Defendant. Second, it is an abuse of the process of the court for the Claimant to have commenced suit against the Second Defendant in Saint Christopher while maintaining concurrent proceedings in Florida. Third, the subject matter of the Claimant's claim in Saint Christopher against the Second Defendant, which is the status of the Second Defendant's employment contract, is the same subject matter as in the Florida Claim that gives rise to a multiplicity of proceedings to deal with the same subject matter and circumstances. Fourth, the Florida Court is a court of competent jurisdiction that can determine the issues between the Claimant and the Second Defendant relating to the status of the Second Defendant's employment contract.
- [5] The Second Defendant also contends that the services provided by the Second Defendant to the Claimant were done in Florida. The place where the contract services were commissioned and provided should be taken as evidence that illustrates a prima facie basis for treating Florida as the appropriate jurisdiction. The Second Defendant submits that an employer-employee relationship was formed and performed in Florida. The Second Defendant further submits that the primary connecting factors that make Florida the more appropriate forum are as follows:
- (a) IUHS operates, conducts, engages in, or carries on a business or business venture in Florida or has an office or agency in Florida; (b) IUHS has breached a contract in Florida by failing to perform acts required by the contract to be performed in Florida; and (c) IUHS has engaged in

substantial and not isolated activity within Florida, including business meetings and business operations. ...

IUHS operated, conducted, engaged in or carried on business in Florida ...

IUHS maintained business bank accounts, prepared and stored business records and documents and conducted various board of directors meetings out of the Palm Beach County, Boca Raton home office of registered agent and officer Simms. ... Specifically, IUHS owned and operated bank accounts in Florida at Bank of America and PNC Bank, N.A.

Venue in Palm Beach County is proper because at least one of the IUHS principal offices was or is in Palm Beach County and because the causes of action and the acts which are the subject of this Second Amended Complaint occurred in this county. ...

- [6] The Second Defendant submits that, first, he is resident in Florida; second, a main witness for the Second Defendant, Mr. Randall Simms, is also resident in the United States of America; third, Mr. Edwin Hamilton, deponent and Director of the Claimant, is also resident in the United States of America; and, fourth, it will be costly and inconvenient for those persons to travel to Saint Christopher.
- [7] The Second Defendant concludes that, first, there is no cogent evidence presented by the Claimant to illustrate why this court should not decline to exercise its jurisdiction and or why a stay of further proceedings should not be granted as per the request of the Second Defendant. Second, there is cogent evidence of a real risk of a multiplicity of proceedings, inconvenience and costs from proceeding in Saint Christopher by having litigants and witnesses travel to Saint Christopher. Third, the conduct of the Claimant in attempting to overstep or side-step the Florida Claim by commencing the case at bar in relation to the Second Defendant on the same subject matter is improper and an abuse of process.

The Submissions of the Claimant

- [8] The Claimant submits that the instant claim and the Florida Claim are substantially different save for the relief 5 in the instant claim for a **“Declaration that any claims made for compensation by the Second Defendant, Dr. John Abeles or**

any other persons for any alleged breach of contract, between them and the Claimant, should be determined by the courts in the jurisdiction in the Federation of St. Kitts and Nevis” (“Relief 5”). The Claimant further submits that the instant claim concerns matters of management and ownership of the Claimant and not solely debt, and that, consequently, the scope of the instant claim is much wider than the Florida Claim.

- [9] The Claimant submits that this court is the appropriate forum for the hearing of the instant claim. The Claimant also submits that the two matters vary in terms of the issues which arise, and reliefs being sought. The Claimant is an ordinary company incorporated in Saint Christopher and Nevis and its place of business and registered address is also in Saint Christopher. The Claimant also submits that the Charter which authorizes the Claimant to operate as a University was issued by the Federation of Saint Christopher and Nevis. The Claimant contends that witnesses can give their evidence at trial using videoconferencing, thereby removing the need for witnesses to travel to Saint Christopher for the hearing of the matter avoiding any associated expenses. The Claimant contends that the Florida Claim only deals with one of the matters raised in the instant claim. The Claimant also contends that there is no abuse of process as the claims are substantially different and the Claimant disclosed in the instant claim the existence of the Florida Claim.

The Court’s Considerations

- [10] Before examining the real issue to be determined in this matter, it is first necessary to determine the scope of this application. The Second Defendant seeks a stay of the entire claim for reasons already explored above. The Claimant accepts that, as it relates to Relief 5 in its claim form, “it can be said that the issues pertaining thereto would be similar to that which is to be aired in the Floridian suit” but that Relief 5 “is one of several claims.” It will be remembered that one of the reliefs claimed by the Claimant in its claim form, Relief 5, is for a **“Declaration that any claims made for compensation by the Second Defendant, Dr. John Abeles or any other persons for any alleged breach of contract, between them and the**

Claimant, should be determined by the courts in the jurisdiction in the Federation of St. Kitts and Nevis". The Second Defendant's application, as far as I understand it, is seeking a stay of the **entire claim** on the basis that the Florida Claim is the same subject matter as Relief 5.

[11] CPR 9.7A(1) provides as follows:

A defendant who contends that the court should not exercise its jurisdiction in respect of any proceedings may apply to the court for a stay and a declaration to that effect.

[12] The Claimant unreservedly accepts that Relief 5 is the only subject matter in which the instant claim overlaps with the Florida Claim. The Second Defendant, although applying for a stay of the instant claim in its entirety, did not provide any evidence of similarities with the Florida Claim except for Relief 5. The overlap mentioned above is in a sense superficial. The Claimant does not seek a declaration challenging the validity of the document entitled "UniMedica Board of Directors Resolution" dated 1 June 2009 by which the Second Defendant was appointed as a medical education consultant of the Claimant at a monthly compensation of US\$9,500.00 effective 1 June 2009 (the "**June 2009 Resolution**"). I fail to appreciate why the Claimant would seek Relief 5 when it has not, in the instant claim, challenged the validity of the June 2009 Resolution. If this resolution was challenged, then, it would be clear that the Florida Claim and the instant claim would cover the same subject matter, namely, the validity of the alleged agreement relating to the June 2009 Resolution.

[13] What the Claimant seeks to do in Relief 5 is to raise the same issue in these proceedings that it has effectively raised in the Florida Claim, but which motion was dismissed by the Florida Court on 9 November 2019. The questions raised in these proceedings relate to the validity of two corporate resolutions, the first relating to the transfer of ownership of the Claimant and the second relating to the issuing of shares in the Claimant to various persons. None of these touch and concern the subject matter of the Florida Claim. The only link between the Florida Claim and the instant claim is Relief 5 by which the Claimant seeks to have this

court make a determination on jurisdiction in respect of a matter that is not an issue in the instant claim or being litigated before this court.

[14] In **IPOC International Growth Fund Limited v LV Finance Group Limited et al** (Civil Appeal Nos. 20 of 2003 & 1 of 2004 dated 19 September 2005), the Court of Appeal explained as follows:

[27] This jurisdiction has frequently had to deal with the principles that a trial judge should apply in exercising a discretion whether to stay proceedings on the grounds of forum non conveniens. As always the starting point is *Spiliada Maritime Corporation v Cansulex Limited* [1987] 1 A.C. 460, a decision of the House of Lords, the learning within which has on more than one occasion been accepted by this Court. In the lead judgment, Lord Goff of Chieveley summarised the law in the following way, and I take the liberty of paraphrasing the learned Law Lord:

(i) The starting point, or basic principle, is that a stay on the grounds of forum non conveniens will only be granted where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action. In this context, appropriate means more suitable for the interests of all of the parties and the ends of justice.

(ii) The burden of proof is on the defendant who seeks the stay to persuade the court to exercise its discretion in favour of a stay. Once the defendant has discharged that burden, the burden shifts to the claimant to show any special circumstances by reason of which justice requires that the trial should nevertheless take place in this jurisdiction. Lord Goff opined that there was no presumption, or extra weight in the balance, in favour of a claimant where the claimant has founded jurisdiction as of right in this jurisdiction, save that “where there can be pointers to a number of different jurisdictions” there is no reason why a court of this jurisdiction should not refuse a stay. In other words, the burden on the defendant is two-fold: firstly, to show that there is an alternate available jurisdiction, and, secondly, to show that that alternate jurisdiction is clearly or distinctly more appropriate than this jurisdiction.

(iii) When considering whether to grant a stay or not, the court will look to what is the “natural forum” as was described by Lord Keith of Kinkel in *The Abidin Daver* [1984] A.C. 398, “that with which the action has the most real and substantial connection”. In this connection the court will be mindful of the availability of witnesses, the likely languages that they speak, the law governing the transactions or to which the fructification of the transactions

might be subject, in the case of actions in tort where it is alleged that the tort took place and the places where the parties reside and carry on business. The list of factors is by no means meant to be exhaustive but rather indicative of the kinds of considerations a court should have in exercising its discretion.

(iv) If the court determines that there is some other available and prima facie more appropriate forum then ordinarily a stay will be granted unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted. Such a circumstance might be that the claimant will not obtain justice in the appropriate forum. Lord Diplock in the *Abidin Daver* made it very clear that the burden of proof to establish such a circumstance was on the claimant and that cogent and objective evidence is a requirement.

[15] I do not accept, as the Second Defendant submits, that the subject matter of the instant claim is the same as the Florida Claim. What the Claimant seeks in Relief 5 is an order from this court that any claims made for compensation by the Second Defendant or any other persons for any alleged breach of contract should be determined by the court in Saint Christopher and Nevis. It is not for this court to assert jurisdiction in respect of a matter that is not currently before it. It is for the Florida Court to determine whether or not it has jurisdiction to determine the Florida Claim. The Claimant's affidavit in opposition to the application for a stay mentions the existence of the Florida Claim and that its second motion dated 2 March 2017 to dismiss the Florida Claim, which at the filing of the instant claim, had not yet been determined by the Florida Court. However, since the hearing of the application on 31 October 2019, the Florida Court on 9 November 2019 dismissed the Claimant's second motion to dismiss the Florida Claim.

[16] Relief 5 is not related to any other relief that the Claimant seeks in its claim form or statement of claim. As mentioned above, the Claimant has not challenged the June 2009 Resolution that underpins the Second Defendant's Florida Claim. If this were the case, then, the issue of the validity of the June 2009 Resolution and the alleged agreement would be a matter to be decided by both this court and the Florida Court. The subject matter of the Florida Claim and Relief 5 are different. The Florida Claim seeks substantive relief in respect of the alleged consultancy agreement whereas Relief 5 relates to a declaration as to the jurisdiction of this

court in respect of the substantive relief claimed in the Florida Court. I agree that the substance of the motion to dismiss the Florida Claim and Relief 5 are essentially the same – both seek a determination concerning jurisdiction in respect of the subject matter of the Florida Claim.

- [17] There is nothing in the instant claim that overlaps with the Florida Claim except that Relief 5 covers the same subject matter as the motion to dismiss filed by the Claimant in the Florida Claim. That motion, having been dismissed by the Florida Court on 9 November 2019, means that there is no longer any overlap between the subject matter of Relief 5 (the jurisdiction point) and the Florida Claim (the substantive claim). Consequently, while I agree that Relief 5 should be stayed, I do not agree with the Second Defendant that the entire claim should be stayed.

Disposition

- [18] For the reasons explained above, I make the following orders:
- (1) The aspects of the claim form and statement of claim relating to the subject matter in and Relief 5 are stayed sine die.
 - (2) Costs in the sum of \$1,500.00 to the Second Defendant to be paid by the Claimant within 14 days of today's date.
 - (3) The matter shall proceed in accordance with the CPR 2000.

Eddy D. Ventose
High Court Judge

By the Court

Registrar