

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF NEVIS**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. NEVHCV2015/0103

BETWEEN:

**HYCARBEX ASIA PTE, LTD. (IN LIQUIDATION)
(by its Liquidators Mr. Bob Yap Cheng Ghee,
Mr. Chay Fook Yuen and Mr. Tay Puay Cheng)**

Claimant

and

HYCARBEX-AMERICAN ENERGY. INC

Defendant

Appearances:

Ms. Rayana Dowden for the Claimant
Ms. Midge Morton for the Defendant

2016: November 14;
January 19.

JUDGMENT

- [1] **ACTIE M:** The claimant filed a claim form and statement of claim against the defendant for the payment of an outstanding debt in the sum of USD\$11,639,408.00. The sum claimed represents interest due and owing on certain loan agreements between the parties. The claimant avers that the defendant repaid the principal sums loaned but has failed to pay the interest despite many requests to do so.
- [2] The defendant filed a defence denying the debt and alleging that the purported debts are void ab initio on account of fraud and misrepresentation.

- [3] On 30th September 2016, the claimant filed an application that the claim be valued in the sum of US\$874,190.00 (EC\$2,350,000) for the purpose of calculating prescribed costs estimated to be in the sum of USD\$49,940.00.
- [4] The defendant's had previously, on 24th June 2016, applied for security for costs and challenges the timing of the claimant's application. The defendant avers that the application was filed in response to its application for security for costs
- [5] The defendant's application for security for costs being filed first in time has already been determined and an order made directing the claimant to deposit security for costs.

Law and Analysis

- [6] **CPR 2000 Part 65.6** allows applications to determine the value of a claim for the purpose of the prescribed costs regime as follows:
- “65.6 (1) A party may apply to the court at any time before trial – (a) To determine the value to be placed on a case which has no monetary value; or (b) Where the “likely” value is known, to direct that the prescribed costs to be calculated on the basis of some higher or lower value.”
- [7] **Rule 65.6** makes provisions for applications to determine the value of claim for the purpose of prescribed costs for two separate cases. Firstly, for cases without a monetary value and secondly where the “likely” value is known and the party wishes to have prescribed costs calculated at a higher or lower value. The first provision is not applicable to the case before this court. The second provision is for claims where a “likely” value may be determined. The word “likely” value denotes probable value and suggests an estimation of the value of the claim.
- [8] The claim before this court is for an exact fixed amount. The claimant claims interest on loans purportedly granted to the defendant. The claimant avers that the defendant repaid the loan but failed to repay the interest on the loan. The interest appears to have been calculated on the agreed rate in the purported loan agreements.

[9] In **Astian Group Inc et al v Alfa Petroleum Holdings Ltd**¹, Barrow JA considered whether a separate and actual valuation of a claim had to be undertaken in circumstances where the appellants had asserted the value of their claim not only to the High Court but also to the Court of Appeal. Barrow JA said:

“6. There was no need for an application to stipulate or determine a value when the Claimants themselves stated to the court what was the value of their claim. It is simply not open to the appellants now to say that the value of their claim was never determined.”

[10] I am of the view that the Part 65.6 does not assist the claimant in the scenario in this claim as a specified sum has been pleaded. Where a party to a claim for a specified amount wishes to place a lower value to the specified amount claimed, then that party should consider making an application for budgeted costs.

[11] Also, it is to be noted that the defendant against whom the claimant seeks the repayment of the specified sum as interest, has taken the brave step of seeking security for costs on the value of the claim. If the claim is determined in favour of the claimant then the defendant is at the peril of paying prescribed costs on the stated value of the claim.

[12] Accordingly, and for the reasons given above, I will dismiss the application to determine the value of the claim with costs in the sum of \$750.00 to the defendant.

ORDER

[13] For the foregoing reasons, I make the following order:-

(1) The application to value the claim is dismissed.

(2) Costs to the defendant in the sum of \$750.00

Agnes Actie
Master

¹ BVI Civil Appeals No. 11 and 17 of 2004.