IN THE SUPREME COURT OF BELIZE, A.D. 2012

CLAIM NO. 778 OF 2010

BETWEEN

GLENN TILLETT	**Claimant/Applicant**
AND	
LOIS YOUNG BARROW **NESTOR VASQUEZ** **SOCIAL SECURITY BOARD**	**Defendants/Respondents**
AND	
NATIONAL TRADE UNION CONGRESS OF BELIZE **CHAMBER OF COMMERCE AND INDUSTRY** **BELIZE BUSINESS BUREAU**	**Interested Parties**

In Chambers.

BEFORE: CHIEF JUSTICE KENNETH BENJAMIN

October 26 and November 2, 2012.

Appearances: Mr. E. Andrew Marshalleck, SC for the Applicant/Claimant.
Mr. Nigel Ebanks for the First and Second Defendants/Respondents.
Mrs. Agnes Segura-Gillett for the third Defendant/Respondent.
No appearance for the Interested Parties.

JUDGMENT

[1] By a Fixed Date Claim Form filed on November 9, 2010 pursuant to Part 56 of the Supreme Court (Civil Procedure) Rules 2005, the Claimant commenced suit in his capacity as a contributor to the Social Security Board Fund and an insured

person under the provisions of the Social Security Act. The Defendants against whom the claim is brought are Lois Young Barrow in her capacity as the Chairman of the Third Defendant, the Social Security Board ("the SSB") and Nestor Vasquez in his capacity as the Chairman of the Investment Committee of the SSB. The Claimant seeks declarations and injunction orders arising from the decision of the SSB on November 2, 2010 made pursuant to the recommendation made by way of a decision of the Investment Committee of the SSB to invest $50 million in Belize Telemedia Limited through the purchase of shares from the Government of Belize.

[2] Pursuant to Notices of Application filed by the Defendants, it was ordered on December 15, 2011 by Awich J (as he then was) that the Claim be stayed until judgment of the Court of Appeal in Civil Appeal No. 20 of 2011 is given or the appeal is otherwise determined. These applications arose from a ruling by the said Awich, J refusing to strike out the Fixed Date Claim on the basis that section 3 of the Public Authorities Protection Act, Chapter 31 had not been complied with. It is the said ruling made on April 19, 2011 that gave rise to Civil Appeal No. 20 of 2011.

[3] The Notice of Application presently before this Court was filed on May 25, 2012 and seeks the following orders:

> "(1) An order granting leave to appeal against the order of the Honourable Mr. Justice Awich made herein on the 15th December, 2011 and set forth in perfected order dated 8th May, 2012;
>
> (2) An order lifting the stay of these proceedings and fixing a date for the trial of the claims herein; and
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> (3) An order that the costs of this application be costs in the cause."

By Order of Court made by consent on July 13, 2012 leave was granted to the Claimant to appeal against the Order made on December 15, 2011 by Awich, J and perfected on May 8, 2012. The second limb of the Application seeking the lifting of the stay imposed by the said Order of Court was deferred for re-consideration upon

the rendering by the Court of Appeal of its reasons for the decision in Civil Appeal No. 32 of 2011 – **Froylan Gilharry, Snr. Dba Gilharry's Bus Line v Transport Board et al**.

[4] There is no demur that the purport of the decision of Awich, J on December 15, 2011 was that section 3 of the Public Authorities Protection Act, requiring, inter alia, 30 days' notice to be given by the Claimant, was applicable. His Lordship, however, went on to hold that a letter written by the Claimant and disclosed in the proceedings satisfied the requirements of the said section 3.

[5] It has been represented by learned Senior Counsel for the Claimant that the said letter falls short of the required period of notice. Reliance was also placed upon the reasoned judgment of the Court of Appeal in Civil Appeal No. 32 of 2011. These matters were directed at the Court when the deferred second limb of the application came on for re-consideration in these proceedings.

[6] In essence, it was submitted on behalf of the Claimant that the stay ought to be lifted since the Court of Appeal had decided in the **Gilharry** case that section 3 of the Public Authorities Protection Act does not apply to claims brought pursuant to Part 56 of the Supreme Court (Civil Procedure) Rules and, as a result, there is no legal requirement for notice to be given prior to commencing proceedings such as the present Claim against public authorities. It was said that the purport of the decision is that the appeal against the decision of Awich, J has thereby assumed diminished prospects of success. The Court is being urged to take into account the overriding objective and allow the Claim to proceed to trial.

[7] At this hearing, learned Senior Counsel for the Claimant sought to persuade the Court that, the reasoning of the judgment of Morrison, JA in the **Gilharry** case, is equally applicable to the present claim. It was pointed out to the Court that the issues in the present Claim and in the **Gilharry** case are not dissimilar save for an order of certiorari being sought in the **Gilharry** case.

[8] Learned Counsel for all three defendants opposed the lifting of the stay and differed in their analysis of the **Gilharry** judgment. It was submitted that the **Gilharry**

decision was not decisive of the issue raised in the appeal from the decision of Awich, J in the present case.

[9] The power to stay proceedings on a discretionary basis arises from the inherent jurisdiction of the court. Such power is recognised by the Supreme Court (Civil Procedure) Rules, 2005 in its listing of the Court's general case management powers. Rule 26.1(2)(e) provides:

> "(2) Except where these Rules provide otherwise, the court may –
>
> (e) stay the whole or part of any proceedings generally or until a specified date or event."

In its application of this Rule and the exercise of the power to stay proceedings, the Court must be mindful of the overarching presence of the overriding objective in Rule 1.1 of the Rules. Such is the task of the Court in its consideration of the present application.

[10] The only matter argued before this Court on the application to revisit the Order by Awich, J and to lift the stay of proceedings was the prospects of the appeal succeeding. In this regard, the only issue would appear to be whether notice was required under the Public Authorities Protection Act, as the issue of whether the latter operated to give the requisite notice seems to have fallen away.

[11] This Court must determine whether there has been a change in the Defendants' prospects of succeeding in Appeal No. 20 of 2011 since the decision and reasoned judgment of the Court of Appeal in **Gilharry's** case. The Defendants assert that the latter decision is not determinative of and/or fatal to its prospects in Appeal No. 20 of 2011. The Claimant is adamant that the said decision has determined the issue and there is no hope of success by the Defendants.

[12] At the crux of the opposing positions of learned Counsel on both sides is the question of whether the present proceedings can be categorized as proceedings for judicial review as in the **Gilharry** case. Neither side denies that the First Defendant

is a public authority for the purposes of the Public Authorities Protection Act. Further, it cannot be gainsaid that the present case is a claim brought in public law. The Claimant did not apply for leave to bring the claim by fixed date claim form and this has not been challenged by the Defendants for the plain reason that no remedy is sought by way of judicial review within the definition of the term set out in Rule 56.1(3); that is to say, the Claimant does not seek any of the prerogative orders of certiorari, mandamus or prohibition.

[13] As earlier iterated, the Claimant seeks declarations against and orders restraining the Defendants. Taking advantage of the narrow ratio decidendi of the **Gilharry** case, learned Senior Counsel for the Claimant submitted that the present Claim is substantially an application for judicial review and therefore, the Public Authorities Protection Act does not apply; ergo, no notice is required under section 3 of the said Act. It was contended that judicial review can be pursued for the purpose of obtaining a declaration and there is no difference in substance between such a claim and a claim seeking a prerogative order as there was the common object of seeking a review of the decision of a public authority.

[14] Learned Counsel for the first Defendant submitted that the **Gilharry** case does not resolve the issue raised in Appeal No. 20 of 2011. In this regard, he highlighted the distinction between judicial review proceedings and applications for administrative orders including declarations. The following dictum of Morrison, JA in the **Gilharry** case was cited in support of the Defendants' position:

> "[55] Despite the superficial appearance generated by the reference in particular to 'illegality', it is important to note that, as Mr Lumor was careful to point out, **Eurocaribe Shipping Services Ltd dba Michael Colin Gallery Duty Free Shop v The Attorney General et al – Claim No. 287 of 2009**, judgment delivered on 15 May 2009, was not a judicial review case. It was in fact an application under rule 56.7(1)(c) for a declaration, which is a species of administrative order specifically made available by Rule 56.1(1)(c) on a free-standing basis. Like **Castillo v Corozal Town Board and another (1983) 37 WIR 86**,

> **Eurocaribe** is therefore not an authority on the applicability of the PAP Act to judicial review proceedings."

I might add that in the penultimate paragraph of the judgment, His Lordship stated with finality (paragraph 75):

> "… In Belize, neither **Castillo** or **Eurocaribe** is authority to the contrary, since neither of them was a case of judicial review."

In the course of argument, it became apparent that Counsel on each side disagreed as to the effect of the **Gilharry** case upon the **Eurocaribe** decision,

[15] As I see it, it falls to the Court of Appeal in Appeal No. 20 of 2011 to determine whether the present case is one of judicial review and by extension whether the **Eurocaribe** decision is still good law. I find myself unable to side with learned Senior Counsel for the Claimant in accepting that the Defendants' prospects of success have diminished. This inevitably leads to a conclusion that the circumstances extant when the stay of proceedings was ordered have not altered to warrant a variation of the Order of December 15, 2011.

[16] In the premises, the application for reconsideration of the Order of Awich, J staying the proceedings in the present claim is refused. The costs of this application shall be in the cause.

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KENNETH A. BENJAMIN
Chief Justice