

IN THE SUPREME COURT OF BELIZE, A.D. 2013

CLAIM NO. 808 OF 2011

**BRITISH CARIBBEAN BANK
INTERNATIONAL LIMITED**

**Claimant/Defendant to the
Counterclaim**

AND

**SHEILA McCAFFREY
LIFE VENTURES LIMITED
SM LIFE VENTURES LLC**

**Defendants/Counterclaimants/
Ancillary Claimants**

AND

**CHRISTOPHER COYE
COYE & CO.
COURTENAY COYE LLP**

Ancillary Defendants

BEFORE: Hon. Chief Justice Kenneth Benjamin.

January 25 and February 6, 2013.

Appearances: Mr. E. Andrew Marshalleck, SC for the Claimant.
Mr. Darrell Bradley for the Defendants/Ancillary Claimants.
Mr. Denys Barrow SC, Ms. Naima Barrow with him, for the
Ancillary Defendants.

JUDGMENT

[1] Before the Court is a Notice of Application seeking an order striking out the Amended Ancillary Claim Form and Amended Ancillary Statement of Claim pursuant to the court's case management powers set out in Rule 26.3(1) of the Supreme Court (Civil Procedure) Rules, 2005.

[2] This application stemmed from an order made by the Court at case management conference on October 18, 2012. On that occasion, the Ancillary Claimants were ordered to deliver to the Ancillary Defendants certain further information that the Court found to have been properly requested. In addition, other directions were given by order of Court for the filing of pleadings. It is important to note that the order did not include permission for the Ancillary Claimants to file an amended statement of case.

[3] The record reflects that the order to furnish the further information was not complied with. Instead, the Ancillary Claimants purported to file an Amended Ancillary Claim Form and an Amended Statement of Claim on November 16, 2012. Indeed, by a letter dated November 16, 2012 addressed to the Attorneys-at-Law for the Ancillary Defendants, it was further stated that the order compelling a reply to the request for further information was being complied with by the filing of an Amended Ancillary Claim and Statement of Claim.

[4] The plain fact is that the amended ancillary statement of case was filed without the permission of the court. Such permission ought to have been sought and obtained at or before the first case management conference or thereafter, only upon the party wishing to make the change satisfying the court that there has been some change in circumstances that became known after the date of the first case management conference. The Ancillary Claimants have not urged that there has been a change of circumstances. A perusal of the order of court dated October 18, 2012 turns up a recital that the said order was being made at the first case management conference.

[5] In addition to the submission based on the breach of Rule 20.1(3), the Ancillary Defendants have protested in their grounds of the Notice of Application that the filing of the amended ancillary statement of case is an abuse of process given that the Ancillary Claimants have chosen to amend after having the Defence of the Ancillary Defendants has been filed.

[6] It is plain that the Ancillary Defendants are in breach of Rule 20.1(3) and the Amended Ancillary Statement of case ought to be struck out. The learning is clear that, in the absence of a change of circumstances that became known after the first

case management conference, a party is not allowed to amend a statement of case, see: **Boyea et al v Caribbean Flour Millis, Ltd. - High Court Civil Appeal No. 3 of 2004** (St. Vincent and the Grenadines).

[7] Learned Senior Counsel for the Ancillary Defendants has posited that the Ancillary Claimants seek to address a factual dilemma on the pleadings in that the Credit Facility Agreement as well as the Contract of Guarantee, Mortgage Debenture, Charge and Memorandum of Accompanying Charge upon which the original Claimant relies in its claim, are dated prior to the existence of Coye & Co. and Courtenay Coye LLC. This was put in the context of the certificate of truth as being disingenuous relative to the assertion that the subsequent entities are liable for the acts of Christopher Coye.

[8] At this stage of the proceedings the court must be astute not to make any findings of fact or draw any inferences save those that are plain and obvious on the face of the pleadings. Accordingly, I decline to take this matter into account.

[9] The net result is that in seeking to sidestep the order for further information, Claimants have failed to comply with the order of court made on October 18, 2012 in a timely manner, that is to say, by November 16, 2012. The Court is therefore empowered to strike out the original ancillary claim form and statement of claim.

[10] The Ancillary Defendants contended that the first case management conference has not occurred or alternatively that permission was sought to amend the Ancillary Claim and Statement of Claim. Neither of these contentions are supported by the text of the order of Court dated October 18, 2012. Similarly the learning does not support a general discretion residing in the Court to permit an amendment of a statement of case.

[11] In the premises, the original Ancillary Claim Form and the Ancillary Statement of Claim as well as the Amended Ancillary Claim Form and Ancillary Amended Statement of Claim are struck out.

[12] The Ancillary Defendants have urged that costs be prescribed costs with reference to the stage to which the proceedings have progressed and based upon the liability to which the Ancillary Claimants are exposed under the principal claim.

In addition, it was asserted that the present application is a discrete one attracting a separate award of costs in its own right. Bills of costs were laid over quantifying costs for both scenarios amounting to \$80,208.40 in respect of the entire ancillary claim and \$17,100.00 in respect of the application to strike out the amended statement of case. The Ancillary Claimants have made a simple response submitting that costs ought to be in the cause.

[13] Rule 64.11 countenances the payment of costs upon the making of an application at case management conference. The bill of costs reflects in my view, an inordinately large sum. I would award costs in the sum of \$3,500.00 to the Ancillary Defendants to be paid by the Ancillary Claimants on or before 1st March 2013.

[14] The assessment of costs at 55% of the value of the principal claim has not been disputed. I have no difficulty awarding costs as per the scale of prescribed costs calculated in the sum of \$80,208.40 to be paid in any event to the Ancillary Defendants before any further proceedings are commenced.

KENNETH A. BENJAMIN
Chief Justice