

**THE SUPREME COURT OF BELIZE, A.D. 2019**

**CLAIM NO. 16 OF 2019**

**MICHAEL VOGEL**

**CLAIMANT**

**AND**

**MARCO CARUSO**

**1<sup>st</sup> DEFENDANT**

**THE PLACENCIA MARINA LIMITED**

**2<sup>nd</sup> DEFENDANT**

**BEFORE the Honourable Madam Justice Sonya Young**

Hearing and Decision

2020

8<sup>th</sup> July

Written Submissions:

7<sup>th</sup> July - Claimant/Respondent

8<sup>th</sup> July - 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants

**Appearances:**

Mr. Gavin Courtenay, Counsel for the Claimant/ Respondent.

Mr. Adler Waight, Counsel for the Defendants/ Applicants.

**ORAL DECISION**

**Keywords: Civil Procedure - Security for Costs - Claimant Resident Outside Jurisdiction - No Assets Within Jurisdiction - No Reciprocal Enforcement Arrangements - Quantum of Possible Prescribed Costs - No Proof of Impecuniosity - No Proof that Claim would be Stifled**

1. This Court has considered all the circumstances of this case. There are the Defendants who ask for security for their cost because the Claimant resides outside the jurisdiction (in Canada), has no assets within the jurisdiction and there exists no reciprocal enforcement of judgment arrangements between this jurisdiction and Canada. They say they will have difficulty and suffer delay in getting costs if they were successful at trial and an order in that regard was to be made in their favor. They ask the Court to also consider the quantum when assessed on the prescribed basis.
2. On the other hand, the Claimant says he has a genuine claim with reasonable prospects of success. If he is asked to provide security for cost, his Claim would be stifled as he is impecunious. He has provided no evidence of his impecuniosity. But he says that equally so the Defendants have provided no evidence that it would be impossible to recover their cost. This he says is fatal to their application.
3. Both sides have provided guidance to the Court in their submissions, which I have also considered.
4. The Court is called upon to perform a balancing exercise. A possible weapon versus a possible evasion. The proper test, as I find it to be in **Fort Street Tourism Village V Suzanne Kilic Civil Appeal No. 26 of 2016**, is that of real risk. So while it is accepted that the Claimant resides outside the jurisdiction, has no assets here, I also accept that there will be a real risk that the Defendants might not be able to recover their costs. Not simply because

they would have to endure the extra burden of seeking to enforce abroad, but the potential quantum is quite compelling.

5. I am also aware through the pleadings that the Claimant claims to have lost a considerable amount in his dealings with the Defendants. He seeks to recover same in this Claim. I make no statement here as to the strength or weakness of his Claim but find that there is definitely substance to it. I also give consideration to the nature of this Claim.
6. In the affidavit, in objection to this application, it is stated that the Claimant has borrowed against his house and that he is gainfully employed. He has therefore admitted to an asset, the extent to which it is encumbered remains only in the knowledge of the Claimant. He also has a steady income. On a balance of probability he has certainly not convinced this Court that he is in any way impecunious or that this case would be stifled if a security for costs order was made.
7. I, therefore, find it just in all of the circumstances to exercise my discretion in favour of the Applicants and order that security be paid for their costs in the sum of \$60,000.00 BZD being just under 50% of the calculated prescribed costs. These proceedings are stayed until the security for costs is paid. Cost will be in the sum of \$1500.00 as agreed. That is the order of the Court.

**SONYA YOUNG**  
**SUPREME COURT JUDGE**