IN THE HIGH COURT OF BELIZE, A.D. 2023

Claim No. 688 of 2021

BETWEEN

ALPHA GAMMA FINANCIAL SERVICES LTD	**CLAIMANT**

AND

SAPPHIRE BEACH BELIZE OWNERS GROUP LTD	**FIRST DEFENDANT**
SALLY ANN REED	**SECOND DEFENDANT**
RALPH COCHRANE	**THIRD DEFENDANT**
EDDIE LEE BARNETT	**FOURTH DEFENDANT**
LANDTRUST LTD	**FIFTH DEFENDANT**

Before the Honourable Madam Justice Geneviève Chabot

Dates of Written Submissions: October 24th, November 11th, and December 2nd, 2022

Appearances

Stacey N. Castillo, for the Claimant

Estevan A. Perera, for the Second Defendant

RULING ON THE SECOND DEFENDANT'S OPPOSITION TO ENTRY OF JUDGMENTS IN DEFAULT

Background

1. Alpha Gamma Financial Services Ltd (the "Claimant") filed on November 4th, 2021 a Claim against the Defendants. The Claimant alleges that it entered into an agreement with Atlantic International Bank Limited (In Liquidation) ("AIBL") for the purchase of loan assets. One of the loan assets purchased was a loan facility granted by AIBL to Sapphire Beach Belize Owners Group Limited (the "Loan Facility").

2. By the Loan Facility, AIBL advanced to the First Defendant the sum of US$1,509,300.00 on the security of several instruments listed in a Letter of Offer. By the Terms and Conditions of the Loan Facility, the Claimant alleges that the First Defendant covenanted to repay the sum of US$1,509,300.00 in five and a half years with six months grace period of interest payments, fifty-nine equal consecutive monthly instalments of US$16,200.00 and one balloon instalment of US$1,243,455.47 including interest. The First Defendant made a promissory note in favour of AIBL for the sum loaned, which was indorsed to the Claimant.

3. The Claimant's claim against the First Defendant is for monies due under the Loan Facility and the promissory note made by the First Defendant in consideration of the Loan Facility.

4. The Second, Third, and Fourth Defendants covenanted with AIBL to guarantee payment on all the sums due or to fall due under the Loan Facility, plus interest. These guarantees were assigned to the Claimant by way of Deeds of Assignment. The Claimant's claim against these Defendants is for monies due under guarantees made in writing in or around April of 2016 whereby these Defendants constituted themselves as guarantor for the payment by the First Defendant of the debts due under the Loan Facility.

5. The Claimant's claim against the Fifth Defendant is for monies due under a guarantee made in writing in or around April of 2016 whereby the Fifth Defendant constituted itself as guarantor for the payment by the First Defendant of the debts due under the Loan Facility. The Claimant also has the benefit of a Debenture granted by the Fifth Defendant as security for repayment of the Loan Facility.

6. The First Defendant has defaulted in repayment of the Loan Facility. The Claimant seeks the following relief in the Claim:

    1. The sum of US$2,163,036.37 being the principal and interest due on the Loan Facility;

    2. The sum of US$1,509,300.00 from the First Defendant, being the sum due under the promissory note, or alternatively, as money due on a loan;

    3. The sum of US$503,100.00 from the Second Defendant, being the amount stated on the Guarantee given by the Second Defendant;

    4. The sum of US$503,100.00 from the Third Defendant, being the amount stated on the Guarantee given by the Third Defendant;

    5. The sum of US$503,100.00 from the Fourth Defendant, being the amount stated on the Guarantee given by the Fourth Defendant;

6. The sum of US$1,509,300.00 from the Fifth Defendant, being the amount stated on the Guarantee given by the Fifth Defendant;

7. Interest pursuant to sections 166 and 167 of the *Supreme Court of Judicature Act*;

8. Costs;

9. Such further or other relief.

7. On June 22nd, 2022, the Claimant filed a Request for Entry of Judgment on Admission against the Second Defendant for the sum of US$526,497.57. The Claimant also filed Requests for Entry of Default Judgments against the First and Fifth Defendants.[1]

8. By letter dated June 30th, 2022 and titled "Error in Application for Default Judgment", the Second Defendant objected to the Request for Entry of Judgment on Admission on three grounds, namely:

   a) Fixed cost on entering Judgment should be BZ$500.00, and not US$500.00.[2]

   b) Default Judgment cannot be granted pursuant to Rule 12.9(b). This is a claim that concerns a single joint loan, and the court must deal with the applications at the same time as it disposes of the claim against all of the other defendants; and

   c) The Claimant is not allowed to claim for an aggregate amount that exceeds the total loan amount. If individual judgments are granted, the sum of all individual judgments will exceed the total loan amount. It is for this reason that a judgment dealing with all defendants is required and specific mention is to be made as to the limited amount guaranteed by each guarantor.

9. At a hearing held on September 29th, 2022, this Court ordered the Claimant and the Second Defendant to provide submissions on grounds b) and c) raised in the Second Defendant's Letter.

[1] The Court notes that although the Second Defendant refers to default judgments against the Third and Fourth Defendants in her submissions, no Requests for Entry of Judgment in Default have been filed against these Defendants.
[2] This was conceded by the Claimant.

Submissions

Claimant's Submissions

10. The Claimant submits that the Second Defendant relies on the wrong rule because the Claimant has not applied for a Default Judgment. As such, Rule 12.9 of the *Supreme Court (Civil Procedure) Rules*, 2005 (the "*Rules*") is inapplicable. The Claimant has applied for a Judgment on Admission. There is no equivalent rule under Part 14 of the *Rules.*

11. If Rule 12.9 is applicable, the Claimant contends that paragraph (2)(a), not paragraph (2)(b) of the Rule is applicable. The claim against the Second Defendant can be dealt with separately from the claims against the other Defendants. The cause of action against the Second Defendant arises from a breach of a personal guarantee for a specific amount, being US$503,100.00, that the Second Defendant gave jointly and severally in consideration of the grant of the Loan Facility to the First Defendant. Citing *Spencer Bower and Handley: Res Judicata*,[3] the Claimant argues that the Request for Entry of Judgment on Admission can be granted, as long as there would be no double recovery.

12. Relying on *Law of Guarantees*[4] and *Halsbury's Laws of England*,[5] the Claimant says that since the guarantee was made jointly and severally, the Claimant can collect from the Second Defendant first, and then seek to collect the outstanding balance from the other Defendants. Equity would interfere to prevent double satisfaction. In *B O Morris Ltd. v Perrott and Bolton*,[6] the Court of Appeal held as much:

> It was objected that this judgment allows the plaintiff to recover in all £10,379 and not only £5,379. The answer is, as pointed out by Bayley J in Morris's case, that equity would interfere to prevent a double satisfaction, and Bankes LJ in *Isaacs' case*, at p 155, said:
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> > 'It is said that, if this is the rule of law, a person may recover a number of judgments against different persons for the same sum of money. I see no great objection to this, having regard to the fact that a plaintiff cannot receive the amount claimed more than once.'
>
> Before the Judicature Act it would not have been possible to sue in one action two defendants against whom there were different causes of action though in respect of the same subject matter, nor indeed until Ord XVI was in its present form. Successive actions would have had to be brought and separate judgments taken:

[3] No specific reference was provided to the Court.
[4] Geraldine Andrews and Richard Millett, *Law of Guarantees*, 7th Ed. at 323-324.
[5] 5th Ed., Deeds and Other Instruments, Vol. 32 at 464.
[6] [1945] 1 All ER 567.

> now the two defendants can be sued in one action and judgment can be given against them according to their several liabilities and the principles which applied to separate judgments in this respect equally apply to a judgment in the present form for the several liabilities. The plaintiff can levy execution against either or both, so however that he does not recover more than the real amount of his claim. Had he been able to recover, say, £2,000 from Perrott he could recover no more than £3,379 from Bolton. Formerly had a plaintiff endeavoured to recover by execution on both judgments more than the real amount the Court of Chancery would have restrained him, exercising the jurisdiction it possessed of restraining proceedings at law.
>
> […]
>
> This jurisdiction can now be exercised by any Division of the High Court, the material section of the Judicature (Consolidation) Act being sect 41, and as execution is a part of the proceedings in an action an application in the action could be made to the court to prevent the plaintiff from executing for more than was really due. In the present case the plaintiffs have no intention of executing for more than £5,379, nor is it in the least likely they could as Perrott is bankrupt and has no assets. But to prevent the same question arising in other actions where such a judgment as we are now considering may be given, the court thinks it desirable that some words should be added making it clear that the plaintiff cannot have double satisfaction. In the present case this can be effected by adding "so however that the plaintiff is not to recover more than £5,379 in all," and the court directs that this should be done.

13. The Claimant therefore asserts that the Second Defendant's concern can be addressed by including in the Order that the Claimant cannot recover more than US$2,163,036.37 against all Defendants.

Second Defendant's Submissions

14. The Second Defendant argues that the Claim at hand falls under Rule 12.9. The Claimant is seeking orders against five defendants to satisfy the total principal and interest due on the Loan Facility borrowed by the First Defendant. The Second, Third, and Fourth Defendants each covenanted to guarantee "up to" US$503,100.00 each for the Loan Facility. The Fifth Defendant covenanted to guarantee up to US$1,509,300.00. The First Defendant signed a promissory note promising to repay the sum of US$1,509,300.00. If all of the orders sought by the Claimant are granted, the Claimant will receive a total sum of US$5,351,478.44.

15. The nature of the Claim is one that demands one judgment to be made. If one sum is granted against a Defendant, there would be implications on the sums which would be

needed from the other Defendants to satisfy the Loan Facility. In accordance with Rule 12.9(2)(b), the Court may not enter judgment against the Second Defendant as the claim against the Second Defendant, or any other of the Defendants, is not one that can be dealt with separately from the claims against the other Defendants.

16. The Second Defendant distinguishes *B O Morris Ltd. v Perrott and Bolton*, on which the Claimant relies, on the basis that in that case the court dealt with a situation where there was an error in the way in which the claimant had brought the claim. Equity was called upon to cure that pre-existing error and prevent double satisfaction.

17. The Second Respondent resists the Claimant's suggestion that this Court includes in the Order that the Claimant cannot recover more than US$2,163,036.37 against all Defendants. In the Second Defendant's view, a wholesome and detailed judgment is a better approach as it will ensure proper and definitive terms to prevent double satisfaction or any confusion. This statement would not indicate who is responsible for what amount, nor does it provide methods in which the Court will ensure that the Claimant only recovers US$2,163,036.37 and no more.

18. The Second Defendant notes that the Claimant's suggestion that a statement be included in the Order amounts to a concession to the fact that specific words must be added to the judgment granted by this Court against all other Defendants, and the existing requests for Default Judgments and Judgment on Admission should not be granted as they are in their current form. In the Second Defendant's view, this solidifies that the nature of the claim against the Second Defendant is not one that can be dealt with separately from that of the other claims.

Claimant's Reply

19. The Claimant notes that the Second Defendant has admitted the claim against her in the sum of US$503,100.00, based on a guarantee she signed in a joint and several capacity. There is no utility in waiting for the entire Claim to be determined before a judgment is entered against the Second Defendant.

20. There is no guarantee that the Claimant will be able to collect the entire sums that were guaranteed by the respective Defendants. This is why the Claimant should be given judgments against each Defendant for the respective sums guaranteed, with the safeguard that the Claimant cannot collect a sum exceeding the sum owed to it by the First Defendant.

Analysis

21. Although the Claimant submits that Rule 12.9 is not applicable because the Claimant is seeking a Judgment on Admission against the Second Defendant, and not a Default Judgment, I do not understand the Second Defendant to be objecting to the Entry of the Judgment on Admission. Rather, the question at issue is whether this Court should enter the Judgment on Admission and the Default Judgments against the First and Fifth Defendants at this time. Rule 12.9 applies to this question.

22. I agree with the Claimant that paragraph (a) of Rule 12.9(2) applies, not paragraph (b). Rule 12.9 provides as follows:

> 12.9 (1) A claimant may apply for default judgment on a claim for money or a claim for delivery of goods against one of two or more defendants and proceed with the claim against the other defendants.
>
> (2) Where a claimant applies for a default judgment against one of two or more defendants –
>
> (a) if the claim can be dealt with separately from the claim against the other defendants –
>
> (i) the court may enter judgment against that defendant; and
>
> (ii) the claimant may continue the proceedings against the other defendants; or
>
> (b) if the claim cannot be dealt with separately from the claim against the other defendants –
>
> (i) the court may not enter judgment against that defendant; and
>
> (ii) the court must deal with the application at the same time as it disposes of the claim against the other defendants.

23. The claims against each Defendants can be dealt with separately. Joint and several liability means that a claimant has the option of suing the parties separately, that is, to commence an action against one defendant without the necessity of joining other defendants.[7] It also

[7] *Fairway Farms Ltd. v. SPI Marketing Group Inc.*, 2008 SKQB 169 at para. 35. See also *Bryanston Fin. v de Vries*, [1975] 2 All E.R. 609 at 625.

means that the Claimant has the option of which surety to pursue first, unless the contract provides otherwise.[8]

24. Each Defendant in this Claim could have been sued in separate claims. While this is not what the Claimant has elected to do, this does not make Rule 12.9(2)(b) applicable. Rule 12.9(2)(a) applies because the claim against each Defendant could have been dealt with separately from the claim against the other Defendants. As a result, there is nothing to prevent this Court from entering default judgments against the First and Fifth Defendants as requested by the Claimant.

25. As to the issue of "double satisfaction", the Claimant is not entitled to recover more than the principal and interest due on the Loan Facility, or US$2,163,036.37. Recovery of sums beyond that amount can be pleaded by a Defendant in opposition to a claim for payment. As explained by Lord Diplock in *Bryanston Fin. v de Vries*,[9] cited in *Const. Scarmar Ltée v Geddes Contr. Co.*:[10]

> … but in *King v. Hoare*, a case on a joint contract, Parke B explained it as being based on the doctrine that a joint tort gave rise to but a single cause of action, even though each tortfeasor was severally as well as jointly liable for it, and that this cause of action was merged in the judgment first given; see also *Brinsmead v. Harrison*. The doctrine was not based on election; it was not the mere commencement of proceedings against one joint tortfeasor without the other that brought the rule into operation, it was only the entering of judgment against one joint tortfeasor without the other. Because their liability was several as well as joint, the rule did not prevent separate actions being brought concurrently against the individual joint tortfeasors; but a judgment against one of them gave rise to a 'plea in bar' in favour of each of the others, whether the judgment was entered in separate proceedings in which one joint tortfeasor was sued alone or was entered in proceedings in which both joint tortfeasors were sued together [emphasis added].

26. Although the *Bryanston* decision was rendered in a tort action, the same principle applies in a contractual dispute.

27. While in the normal course, a defendant can plead a judgment against another defendant in bar of a claim against them, in the present matter two of the Defendants have failed to enter appearances. These Defendants are not entitled to plead any judgment in defence of the Claimant's enforcement action against them. To prevent double satisfaction, this Court will

[8] Geraldine Andrews and Richard Millett, *Law of Guarantees*, 7th Ed. at 323-324.
[9] *Supra.*
[10] [1990] 1 WWR 39 at para. 10 ("*Geddes*").

exercise its power of supervision by directing the Claimant to keep the Court apprised of the outcome of its enforcement actions as they become known. The Court will also include in its Order the language suggested by the Claimant to ensure that the Claimant can recover no more than US$2,163,036.37.

IT IS HEREBY ORDERED

(1) Judgment on Admission is entered against the Second Defendant for the sum of US$503,100.00 plus costs. The fixed cost on entering Judgment shall be BZ$500 and not US$500;

(2) Judgment in Default is entered against the First Defendant for the sum of US$2,163,036.37 plus costs;

(3) Judgment in Default is entered against the Fifth Defendant for the sum of US$1,509,300.00 plus costs;

(4) The Claimant is restrained from cumulatively collecting an amount in excess of US$2,163,036.37, being the amount owed on the credit facility granted by Atlantic International Bank Limited to the First Defendant and subsequently assigned to the Claimant.

(5) The Claimant shall report in writing to the Court on the outcome of any enforcement action, and update the Court as to the total sum recovered through these enforcement actions to date.

Dated January 6th, 2023

Geneviève Chabot
Justice of the High Court