



IN THE HIGH COURT OF BELIZE

CLAIM No.319 of 2022

BETWEEN

DANIEL JAY DYKGRAAF 1<sup>st</sup> Claimant

LL CAYE CAULKER COMPANY LIMITED 2<sup>nd</sup> Claimant

AND

NEIDY RODRIGUEZ 1<sup>st</sup> Defendant

*As Adminsitratrix Ad Colligenda Bona  
of the Estate of James Lynskey*

THE SPLIT HOLDINGS LIMITED 2<sup>nd</sup> Defendant

**Appearances:**

Ms. P. Banner for the Applicants  
Mr. D. Barrow SC for the Respondents

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2024: July 2  
August 15  
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**DECISION**

**PRACTICE & PROCEDURE: Appointment of Expert to examine disputed loan documents – Application opposed – Availability of direct evidence through attesting witnesses – Admissibility of expert testimony – Whether appointment to be made in the circumstances of the case – Rules 29.1 & 32.6 of the Civil Procedure Rules 2005**

[1] **Mansoor J:** This is an application filed on 6 December 2023 for the appointment of an expert under rule 32.6 of the Supreme Court (Civil Procedure) Rules 2005. The applicants seek leave to appoint Mr. John Michael Weldon of Weldon & Associates, a forensic document examiner, as an expert witness. The documents sought to be

examined are two loan agreements, a document containing the charge and the memorandum accompanying the charge dated 19 July 2019 and a corporate resolution dated 11 July 2016. The respondents oppose the application. The present proceeding follows a consolidation of three actions; all of which relate, in different ways, to two disputed loan agreements which the parties identify as the “Dykgraaf Loan Agreement” and the “Lynskey Loan Agreement”. The disputes have given rise to three actions between the parties: 66 of 2022, 84 of 2022 and 319 of 2022.

- [2] The applicants are the defendant in claim 66 of 2022, the claimants in claim 84 of 2022 and the defendants in claim 319 of 2022. The application was supported by an affidavit by Neidy Rodriguez, the first claimant in 84 of 2022. The respondents are the claimant in 66 of 2022, the defendants in 84 of 2022 and the claimants in 319 of 2022. The respondents did not file an affidavit opposing the application. The details in the differences of the positions taken by the parties in their substantive claims need not be enumerated for the disposal of this application.
- [3] The loan agreements allegedly refer to a loan by Mr. Dykgraaf to Split Holdings Limited and to Mr. James Lynskey. The company resolution, the charge and the memorandum accompanying the charge are also said to contain Mr. Lynskey’s signature. Both loan agreements are dated 16 July 2019. Mr. James Lynskey died in January 2020. His widow, Neidy Rodriguez, is the *Adminsitatrix Ad Colligenda Bona* of the Estate of James Lynskey.
- [4] The applicants state that the Dykgraaf Loan Agreement is null and void as it has not been validly executed. The expert’s evidence, it is asserted, will assist the court to determine whether the signature appearing on the documents is Mr. James Lynskey’s true signature or whether it is otherwise a forgery or electronic manipulation of his signature. The applicants have tendered Mr. Michael Weldon’s *curriculum vitae* and state that he is an experienced forensic document examiner, having been certified by the Board of Forensic Document Examiners in 2004.
- [5] The respondents resist the appointment of an expert to give evidence on the two loan agreements. Their contention is that expert evidence will not be necessary as direct evidence will be available from the witnesses who signed the respective loan agreements, and that the parties are free to produce relevant evidence on the authenticity of the loan documents, which is in issue. Quoting from ***Phipson on Evidence*** and ***Halsbury***, the respondents submit that using evidence other than that of an attesting witness violates the best evidence rule. They submit that in terms of rule 29.1 of the Supreme Court (Civil Procedure) Rules 2005, the court may control the evidence to be given at any trial or hearing by giving appropriate

directions as to the issues on which it requires evidence and the way in which any matter is to be proved.

- [6] In support of their contention, the respondents cited the decision in **Bennet v Williams Jr**<sup>1</sup>: in that case, the court set out general principles governing the appointment of an expert. The rules provide that a party may not call an expert witness or put in an expert's report without the court's permission<sup>2</sup>. When permitted, expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly<sup>3</sup>.
- [7] The court may have regard to the overall circumstances when considering whether an expert should be summoned to give evidence. The court must be able to conveniently, properly and justly dispose all matters that are in issue. If the court is of opinion that an expert could shed light in a case, there should be no restraint on the court to allow a party to summon an expert to give testimony, where it is reasonable to do so. In this case, the court is being called upon to make important findings of fact after hearing witnesses at the trial, particularly on the authenticity of the alleged loan documents.
- [8] In **Garton v Hunter**<sup>4</sup>, which neither party referred to, Lord Denning stated, "It is plain that Scott LJ had in mind the old rule that a party must produce the best evidence that the nature of the case will allow, and that any less good evidence is to be excluded. That old rule has gone by the board long ago. The only remaining instance of it that I know is that if an original document is available in your hands, you must produce it. You cannot give secondary evidence by producing a copy. Nowadays we do not confine ourselves to the best evidence. We admit all relevant evidence. The goodness or badness of it goes only to weight, and not to admissibility". The passage refers to Scott L. J's dictum in **Robinson Brothers (Brewers) Ltd v Houghton and Chester-le-street Assessment Committee**<sup>5</sup>, which was not followed.
- [9] I agree with the respondents that an application at this stage to appoint an expert witness will cause some inconvenience and that it entails expenses. The action was filed in 2022, and was followed by several applications, which have been dealt with. The parties knew their respective cases and this application could have been made earlier. Allowing expert testimony to be led at the trial of the consolidated action will

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<sup>1</sup> Claim No.91 of 2020

<sup>2</sup> Rule 32.6 (1), Supreme Court (Civil Procedure) Rules 2005

<sup>3</sup> Rule 32.2 *ibid*

<sup>4</sup> [1969] 2 Q.B 37 at page 44

<sup>5</sup> [1937] 2 K.B 445

not detract from the overall objectives enshrined in the civil procedure rules or cause serious prejudice to the respondents. The case hinges on two sets of documentation, with allegations and counter allegations. The expert's evidence, the court is of the view, will be useful in shedding light on the questions to be answered after hearing the witnesses at the trial.

**ORDER**

- A. The application to appoint an expert is allowed.
- B. The parties will bear their respective costs.

**M. Javed Mansoor**

Judge