

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

CCJ Appeal No. CV 001 of 2013
BZ Civil Appeal No. 6 of 2011

BETWEEN

BRITISH CARIBBEAN BANK LIMITED APPELLANT

AND

THE ATTORNEY GENERAL OF BELIZE RESPONDENT

JUDGMENT SUMMARY

[1] This case was brought before the Court to assess the jurisdiction of courts of Belize in issuing an injunction to restrain international arbitration proceedings. These arbitration proceedings were initiated by British Caribbean Bank Limited (“BCB”) against the Government of Belize (“GOB”) in accordance with a Bilateral Investment Treaty established 30 April 1982 between the governments of Belize and the United Kingdom. BCB sought to resolve a dispute regarding the compulsory acquisition by GOB of loan and mortgage debenture facilities with a face value of US \$24M owed to BCB by Belize Telemedia Ltd.

[2] Multiple proceedings were initiated in the domestic courts of Belize between GOB and BCB. Further to these proceedings, on 5 May 2010, BCB commenced arbitration proceedings under the BIT. In response, GOB pursued an order from the court to halt the arbitral proceedings and was granted an interlocutory injunction on 16 August 2010. This injunction was upheld by the Belize Court of Appeal with the reasoning that the right to arbitration was dependent on the completion of the proceedings between the two parties in the domestic courts. BCB appealed the matter to the Caribbean Court of Justice.

This summary is not intended to be a substitute for the reasons of the Caribbean Court of Justice or to be used in any later consideration of the Court’s reasons.

- [3] The key question raised by this matter regards the principles of law governing the jurisdiction of the courts in issuing an injunction to halt international arbitration proceedings commenced in accordance with an arbitration clause agreed to by the pertinent parties. In answering this question the CCJ found there were three outstanding issues to be addressed: first, whether the BIT created for BCB an unqualified or indefeasible right to arbitration; second, whether the Court should have determined the merits of the claim for a permanent injunction or should strictly limit its enquiry to whether there was a serious issue to be tried; and third, whether there was sufficient basis for the interlocutory injunction granted to restrain the arbitration.
- [4] Addressing the first of these issues, the CCJ found that BCB was not afforded an *unqualified* or *indefeasible* right insofar as no such right exists. The exertion of one's rights oftentimes trespasses upon the rights of another leaving the courts to decide the appropriate distribution of rights. The CCJ did find, however, that the BIT was binding on Belize under international law, despite not having been incorporated into its domestic laws, and that it afforded BCB the right to arbitration. Specifically, Article 8 of the BIT clearly indicates that private investors have the right to international arbitration in the case of a dispute and that this right is not contingent on any preconditions and requires no permission from any one or state party. Moreover, there is no requirement for the parties to first exhaust any plausible domestic solutions before pursuing international arbitration. It follows that BCB's commencement of arbitration proceedings was well within its rights under the BIT.
- [5] The second issue pertains to the Court's determination of merits of the application. The Court's authority to grant an interlocutory injunction is found in Section 27(1) of the *Belize Supreme Court of Judicature Act*, which states that the court may grant an interlocutory injunction in all cases where it appears to be "just and convenient." A test for the application of this statute was developed in *American Cyanamid Co v Ethicon*, which found that three criteria must be met in granting an interlocutory injunction;
- (i) there is a serious issue to be tried, (ii) the refusal of the interlocutory injunction will result in irreparable injury to the applicant, and (iii) the applicant bears the balance of inconvenience resulting from the granting or denying of the injunction. The Court of
- This summary is not intended to be a substitute for the reasons of the Caribbean Court of Justice or to be used in any later consideration of the Court's reasons.*

Appeal used this test to grant the injunction, but the CCJ found that in so doing, the Court of Appeal erred. *American Cyanamid* is not to be applied to interlocutory injunctions, where there are no material facts in dispute or when the application will dispose of the dispute between the two parties.

- [6] Concerning the third issue, the CCJ assessed whether there was sufficient basis for granting the interlocutory injunction to restrain the arbitration process. The power of the Court to issue injunctions is found in section 106A (8) of the *Supreme Court of Judicature Amendment Act*, which specifically provides for the authority to restrict proceedings that would be oppressive, vexatious, or an abuse of process. The CCJ found the threshold for proceedings meeting these criteria to be higher than the mere frustration of multiple proceedings or an inconvenient location and that on the facts of this case, BCB's pursuit of arbitration was not oppressive, vexatious, or an abuse of process.
- [7] While section 27(1) of the *Supreme Court of Judicature Act of Belize* does provide for the Court's absolute authority to grant injunctions, the CCJ found that restraint ought to be shown in its exercise. Convention would dictate that the application for interlocutory injunctions should only be entertained in the most exceptional of cases. This is further underscored by the existence of a contract between parties which provides for arbitration in the case of a dispute. For this reason, the Court must be particularly cautious in restraining arbitration between the contracting parties, reserving an injunction for only the rarest of instances where the high threshold of the proceedings being oppressive, vexatious, or an abuse of process is met. In the case at hand, the grounds for the claim of the proceedings being vexatious was the multiplicity of domestic proceedings. There is no precedent, however, to support the assertion that these multiple proceedings alone are vexatious or oppressive, making the granting of the interlocutory injunction on these grounds unsound.
- [8] The CCJ upheld the appeal by BCB against GOB, discharging the interlocutory injunction and allowing BCB to continue with the arbitration proceedings against GOB.

This summary is not intended to be a substitute for the reasons of the Caribbean Court of Justice or to be used in any later consideration of the Court's reasons.

The CCJ also held that the order of costs made by the Belize Court of Appeal should be set aside. Furthermore, GOB was ordered to pay the costs of the appeal before the CCJ.

This summary is not intended to be a substitute for the reasons of the Caribbean Court of Justice or to be used in any later consideration of the Court's reasons.