

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION



FSD 53 OF 2013 (ASCJ)

BETWEEN CARIBBEAN ISLANDS DEVELOPMENTS
LIMITED (IN LIQUIDATION) PLAINTIFF
AND SIMBA LTD. (T/A RE/MAX CAYMAN ISLANDS) DEFENDANT

IN CHAMBERS
BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE
THE 9TH DAY OF JUNE 2014

APPEARANCES: Mr. Ian Huskisson and Mrs. Charmaine Richter of Travers Thorp
Alberga for the Plaintiff

Mr. Michael Mulligan of Conyers, Dill & Pearman for the Defendant

Mrs. Joanne Verbeison of Walkers for FCIB (watching brief for FCIB)

RULING

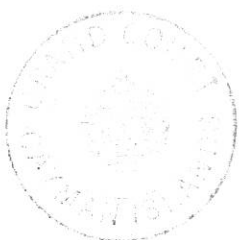
1. The defendant Company applies for security for its costs of defending the Plaintiff's claim. I have carried out the "balancing exercise" advised by the English Court of Appeal in the *Keary Development*¹ case (and adopted and applied before by this Court in a number of cases including *AHAB*.²)
2. I have considered the potential injustice to the plaintiff Company if it were prevented from pursuing a proper claim by an order for security. I have also considered the

¹ Keary Developments Ltd. v Tarmac Construction Ltd. Et al [1993] 2 All E.R. 534

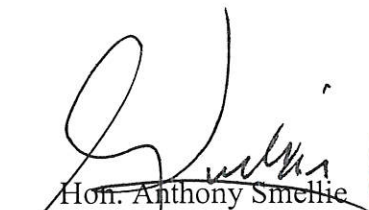
² AHAB v Saad Investments Co. and others – Cause FSD 54 OF 2009; 22, 24Oct.; 15 November 2013

potential injustice to the defendant if no security were ordered and it proved successful in its defence and/or counterclaim.

3. I have concluded that the balance in this case comes down in favour of requiring the Plaintiff Company to provided additional security, albeit not in as large a sum as the Defendant proposes.
4. In coming to that decision, I have in mind that the investors, for whose ultimate benefit as the creditors of the Plaintiff Company the claims are being pursued and having a direct stake in the outcome as well, should be able to provide what would be pro rata, relatively modest further sums to fund the litigation. In this respect, I observe that no evidence has been presented on behalf of the Plaintiff to discharge the evidential burden that the case law places upon it to show that its creditors and assignors of the litigation, are unable to provide further litigation funding as they might be expected to do.
5. I note as well that the Plaintiffs attempt (through its liquidators) to obtain third party litigation funding, if successful, would include funds to provide for security for the Defendant's costs.
6. The question then becomes – what amount of security should be ordered by me now?
7. As one typically finds, the pre-estimates provided by defendants have a gross inbuilt margin of error. That of CI\$750,000 presented here is typical in that regard being on any view, a gross over-estimate of what the costs should be.
8. In my view, CI\$250,000 should be sufficient and that is the amount which I will order. It must be provided in two tranches - \$100,000 to cover costs up to the discovery stage and \$150,000 for the costs of the actual trial.



9. Given that the Plaintiff expects to hear from its litigation funders within 90 days and must approach the investors again in anticipation that the funders will not come through; I order that the first tranche of \$100,000 be paid within 90 days and the second of \$150,000 be paid within 30 days after that.
10. In the meantime, all further steps in the action will be stayed.
11. Costs in the Cause.
12. The further and better particulars which the Defendant now asks me to direct I believe will be covered by the witness statements to be provided.
13. Accordingly, I refuse to make an order for further and better particulars.


Hon. Anthony Smellie
Chief Justice
June 9, 2014

