

**BRITISH VIRGIN ISLANDS
EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

CLAIM NO: BVIHC 214 of 2011

BETWEEN:

ALEXEY BOBROV

Claimant/Respondent

and

LENTA LTD

Defendant/Applicant

DECISION ON FORM OF ORDER

[2012: 9 February]

- [1] On 31 January 2012 I dismissed an application made on paper by the defendant, Lenta Ltd ('Lenta'), for these proceedings to be transferred from the High Court to the commercial list. My reasons are set out in my judgment of that date, to which the reader is referred. I held that the claim was a commercial claim within the meaning of CPR 69A.1(2), but refused to order transfer.
- [2] In the course of considering the matter, it became apparent that neither party had been paying Court Fees at the rate prescribed by the Commercial Claims (Fees) Order, 2011 ('the Fees Order'). I therefore proposed making an order (1) staying the proceedings until the parties had paid the difference between the fees actually paid and those prescribed by the Fees Order and (2) directing that the file be transferred from the High Court to the Commercial Court Registry. Because this was an order proposed on the Court's own initiative, I offered the parties the opportunity to make further representations about these proposed orders. I received those representations on 8 February 2012. I am grateful to the parties for their assistance and this is my decision as to the form the order will take after considering them.

Stay order

[3] Mr Clifton, for Lenta, does not object to a stay pending payment of the fee differential, which he calculates as US\$2,025 in the case of the Claimant ('Mr Bobrov') and US\$850 in the case of Lenta. I have not checked the figures but assume them to be correct.

[4] Mr Carrington, for Mr Bobrov, however, submits that I have no jurisdiction to order a stay in these circumstances. In this respect he relies upon some wording in section 8 of the Courts of Justice Fees Act (CAP 202), which is the primary legislation under which the Fees Order was made. Section 8 is in these terms:

'Any document which ought to bear a stamp in pursuance of this Act, or any rule or order made thereunder, shall not be received, filed, used, or admissible in evidence, except in criminal trials or inquiries, unless and until it is properly stamped within the time prescribed by the rules under this Act regulating the use of stamps, but if any such document is, through mistake or inadvertence, received, filed, or used without properly stamped, the Court may, if it thinks fit, order that the same be stamped on the payment of a penalty, or otherwise, as in such order may be directed.'

Mr Carrington fastens on the words 'the Court may, if it thinks fit, order that the same be stamped on the payment of a penalty, or otherwise, as in such order may be directed' at the end of the section. He says that it follows from this that the proper order is an order that the documents be properly stamped and that the Court has no jurisdiction to order a stay.

[5] Mr Carrington ignores that part of section 8 which provides that a document which ought to bear a stamp in accordance with (in this case) the Fees Order shall not be received, filed, used or admissible in evidence. That is this case. In my judgment, the proper way for the Court to give effect to this provision when, by inadvertence, improperly stamped documents have been received and filed is to stay further proceedings until the default has been repaired. Until that has been done, the proceedings are, in effect, a nullity, because they are based upon documents which the Court is precluded by the terms of section 8 from entertaining. The Court clearly has jurisdiction to prevent the further prosecution of proceedings that are in this respect an abuse of the process until the defects are corrected.

[6] Mr Carrington also says that for the Court to grant a stay in the present circumstances is both draconian and disproportionate. For the reasons given above, it seems to me to be the least that is

called for in the events which have happened. I will therefore grant the stay as I proposed in my earlier judgment.

Transfer of the Court file

- [7] Mr Carrington says that I have no jurisdiction to direct the transfer of the Court file from the High Court to the Commercial Court Registry. He says that section 60 of the West Indies Associated States Supreme Court Act (CAP 80) ('the Supreme Court Act') provides that the Registrar has custody of all records of the Court and that she shall perform such duties as shall be necessary for the due conduct and discharge of the business of the High Court as the Chief Justice or a Judge authorized by him in that behalf shall direct. I think that Mr Carrington submits that in some way that ousts the Court's jurisdiction in respect of any matter falling within the scope of the Registrar's authority. If that is the submission, then I cannot accept it. The fact that a particular officer has duties which confer on her responsibility for certain matters, administrative or otherwise, does not operate to exclude the Court's jurisdiction. If it did, orders made by Judges to seal Court files, which have been made for decades, would all have been *ultra vires*. So would CPR 3.14(3), providing that documents filed in a court office may not be taken out of it without the leave of the Court.
- [8] Mr Carrington refers me to CPR 2.6(3), providing that the court staff may consult a judge about any proposed step and which provides that in such a case the judge may take the step. On Mr Carrington's construction of section 60 of the Supreme Court Act this rule, too, is *ultra vires*. Be that as it may, this rather obscure rule cannot oust the jurisdiction of the Court, any more than does section 60 of the Supreme Court Act, or mean that it can have jurisdiction only after it has been asked a question by a member of the Court staff.
- [9] Finally, Mr Carrington says that I having decided the application for transfer, I am *functus officio*. That is not right. The order which I proposed to make and which I now will make is made pursuant to my general powers of case management and in and about the application for transfer.

The order

[10] Mr Clifton proposed a form of order, but it fails to deal with the fate of the transfer application. There will be an order, to be drawn up by Walkers and agreed with McWelling Todman & Co incorporating the recitals contained in Mr Clifton's draft and providing that:

1. The Listing Application is dismissed
2. All further proceedings in this claim are stayed until after both parties have paid to the Court the difference between the Court fees actually paid to date by each of them in these proceedings and the Court fees payable pursuant to the Commercial Claims (Fees) Order, 2011, such difference being, in the case of the Applicant, US\$[2,025] and in the case of the Respondent US\$[850]
3. Upon the Registrar being satisfied that paragraph 2 of this Order has been complied with, the Application be listed on the first available date with a time estimate of half a day
4. The Court file for this claim be transferred to the Commercial Court Registry
5. No order as to costs
6. Permission to apply

Commercial Court Judge

9 February 2012