

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2013/0423

BETWEEN:

INDIGENOUS INVESTMENTS LIMITED

Claimant

and

BANKERS INSURANCE COMPANY OF
TRINIDAD AND TOBAGO

Defendant

Appearances:

Ms. Thandiwe Lyle for the Claimant

Ms. Katisha Williams holding for Mr. Asaf Hosein for the Defendant

2014: April 8;
May 29.

REASONS IN ORAL RULING

[1] **MOHAMMED, J.:** By notice of application filed on 7th January 2014 (“the application”), Bankers Insurance Company of Trinidad and Tobago, the Defendant in this matter (“Bankers”), applied for a stay of the proceedings in the substantive matter pending the hearing of the application, for an order that the Court has no jurisdiction to try the claim with an alternative relief that it be granted an extension of time by 42 days from the determination of the application to file its defence.

[2] Bankers relies on five grounds for the application, namely: it does not agree to submit or submits to the jurisdiction of the Court; the proper jurisdiction for the

determination of the issues in the substantive matter is Trinidad and Tobago; the Performance Security and Advance Payment security documents were drafted, executed and issued in Trinidad and Tobago and as such is governed by the laws of Trinidad and Tobago; Bankers is entitled to bring proceedings against a defaulting party, Millenium Holdings Ltd ("Millenium"), which is a company recognized by the Claimant in the substantive matter ("Indigenous") as being registered in Trinidad and Tobago, and even if Indigenous is successful in its action it would still be required to re-file proceedings in Trinidad and Tobago because Bankers is not agreeing to submit to this Court's jurisdiction. In support of the application is an affidavit of Kean Gandalal ("the Gandalal affidavit"), the legal adviser to Bankers, which essentially repeats the grounds sets out in the application.

- [3] Indigenous opposes the application for the following reasons:
- (a) The applicable law in the contract documents expressly state the Laws of Grenada; this was clear to Bankers since it had received such legal advice and it acquiesced to the Laws of Grenada being the applicable law;
 - (b) The contract documents were executed in Grenada and the performance of the contract was to take place in Grenada, and Grenada is the natural forum for the trial since it is the place where the action has the most real and substantial connection.

It has filed two affidavits in opposition, namely an affidavit of Timothy Bubb, the consulting engineer in the project, and Anslem La Touche, its Chairman of the Board of Directors.

- [4] The applicable principles which the Court is guided by in determining the application are found in **Spiliada Maritime Corporation v Cansulex Limited**¹ and more recently in **Commercial Marine Piling Ltd. v Pierse Contracting Ltd**². They are:

¹ (1986) UKHL 10

² (2009) EWHC 2241

- (a) An expressed provision in the contract which sets out the applicable law, which is the applicable law of the Court that has assumed jurisdiction, will weigh in favour of the Claimant.
- (b) The party who has already established jurisdiction carries an advantage since a court that has jurisdiction will not give it up lightly.
- (c) The Court will also look for connecting factors in determining jurisdiction, which include convenience, expense, governing law of the relevant transaction and the place where the parties reside and carry on business.
- (d) A stay of the proceedings will only be granted on the ground of forum non convenient where the Court is satisfied that there is some forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, that is, in which the case may be tried more suitably for the interest of all parties and the ends of justice.
- (e) The burden of proof is on the person applying for the stay.

[5] I dismiss the application for the following reasons:

- (a) The contract documents expressly state that the Law of Grenada is the applicable law. The documents which are exhibited to the affidavit of Timothy Bubb (TB1) form the bundle of documents underlying the dispute between the parties. At paragraph 2.3 under section A - Conditions of Contract - it states that:

"The documents forming the Contract are listed in order of priority of interpretation in the Contract data and include some or all of the following, also listed in order of priority of interpretation:

- (1) Agreement
- (2) Letter of Acceptance
- (3) Form of Tender
- (4) Contract data
- (5) Conditions of Contract
- (6) Specifications
- (7) Drawings
- (8) Bills of Quantities."

Paragraph 2.4 state that “the law governing the Contract is as stated in the Contract Data” and under paragraph 2.4 of the Contract Data the Law expressed law governing the Contract is “the Law of Grenada.”

- (b) The centre of gravity and the close connection of the substantive issues do not displace the expressly stated jurisdiction, Grenada, but rather reinforces it. Indigenous claim against Bankers is for specific performance of its obligations under a Performance Security given to the Claimant on 21st December 2010 and under an Advance Security dated 2nd February 2011, damages for breach of undertakings under the said securities, interest and costs. The pleaded facts which give rise to the substantive claim is Indigenous owned land in St. David, Grenada (“the property”) and wished to develop it as an upscale residential community. It entered into an agreement with Millennium to deliver certain infrastructural work on the property. One of the terms of the contract was for Millennium to provide security for the performance of the contract which were in the form of the Performance Security and the Advanced Security. The said security was provided by Bankers for Millienium. Indigenous claims that there has not been proper performance of the contract by Millennium and Bankers is therefore entitled to perform its obligations under the Performance Security and Advance security to pay to Indigenous the balance due from Millenuim under the Advanced Security in the sum of \$382,350.18 and the full sum of \$815,469.58 under the Performance security totaling EC \$1,197,819.76.

It is not in dispute that Bankers does not normally do business in Grenada and that it is not domiciled in Grenada. However, the place the documents were drafted, executed and issued are in dispute. Bankers stated that this was done in Trinidad and Tobago³ and Indigenous states that it was drafted by Timothy Bubb and all that was necessary was for Millennium was to fill in the details of the name and address of the contractor, the amount of security to be afforded, the finance institutions and with the signature of the

³ Paragraph 9 of the Gandalal affidavit

executing parties and the witnesses. I accept Timothy Bubb's position since he prepared the documents and there is no proper basis set out in the Gandalal affidavit to support his assertion.

It is clear on the face of the contract documents that:

- (i) Bankers was well aware that the work was being done in Grenada,;
- (ii) The Performance Security and Advanced Security were part of the entire package of the contract documents;
- (iii) Bankers was giving a guarantee in the said documents for work being performed in Grenada. Further, it has not denied that the expressed law for the contract documents is the law of Grenada. For these reasons, I am satisfied that the place of residence of Bankers has been displaced by the close connection of the issues in the substantive matter to Grenada.

(c) Bankers conduct has demonstrated that it has submitted to the jurisdiction of Grenada. Firstly, it has not denied any knowledge of the legal advice obtained by Millennium that once the form of the bond complies with the Bills of Exchange Act of Grenada it is valid and enforceable in Grenada. Secondly, although the application is with respect to the jurisdiction of this Court, at pages 7 to 18 of its written submissions filed on 24th April 2014, it addresses the merits of the Respondent's substantive claim.

(d) If Indigenous is successful against Bankers the judgment can be enforced in Trinidad and Tobago, if necessary. The Judgment Extensions Act of Trinidad and Tobago makes provisions for the registration and enforcement of judgments obtained in any Commonwealth jurisdiction. I therefore agree with Counsel for Indigenous that it will be able to enforce, in Trinidad and Tobago, any judgment obtained in the substantive matter in Grenada once this Court has acted with jurisdiction. Further, Bankers having submitted voluntarily to this Court to dispute jurisdiction, having voluntarily made submissions disputing the merits of the substantive action and this Court having found that it has such jurisdiction, on the authority of **Henry v**

Geoproscos International Ltd⁴, Bankers will not be able to further raise this Court's jurisdiction at enforcement proceedings.

(e) Although there is no expressed place for payment of the guaranteed sums in the contract documents in the substantive matter, the general rule is the debtor, Indigenous, in the substantive matter is entitled to seek out its creditor, in this case Bankers. (Para 44 of judgment of Ramsey J in **Commercial Marine Piling Limited v Pierse Contracting Limited**⁵).

(f) The trial of the instant action does not stop or prejudice the applicant if it chooses to institute proceedings against Millienium.

[6] I therefore dismiss the application filed 4th January 2014 and order Bankers to pay Indigenous costs of the application which is assessed in the sum of \$1,000.00. Bankers is granted a period of 14 days from the date of this order to file and serve its defence.

Margaret Y. Mohammed
High Court Judge

⁴ [1973] 3 WLR 620

⁵ [2009] EWHC 2241