**IN THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE**

**ANGUILLA**

**CLAIM NO: AXA HCV 2014 / 0039**

**BETWEEN:**

1. **GLOBAL SKYNET INTERNATIONAL LTD.**
2. **ALEXANDER BLOCH**

**Claimants/Respondents**

**AND**

1. **SKYNET LTD.**
2. **GLORY TRADING HOLDING LTD.**
3. **OLEG DOVBNYA**

**Defendants/Applicants**

4. **BALTHASAR HEFTI**

**4th Defendant**

**Appearances:**
**Tara Carter** of Counsel for the Applicants
**Jean Dyer** of Counsel for the Respondents

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**2014: October 20th**
**2015: February 10th**
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**DECISION AND REASONS**

1. **TAYLOR- ALEXANDER, M**.: The Applicants are First, Second and Third Named Defendants. They have applied pursuant to CPR 2000 Rule 24.2 and 24.3 (g) for security for costs, on the basis that the Claimants are ordinarily resident outside of the jurisdiction.

2. On this application three principal issues arise for consideration:—
   (i) Whether the relevant condition(s) of Part 24.3 of the CPR 2000 is satisfied;
   (ii) Should the court exercise its discretion in favour of making the order?
   (iii) If, so, how much security should be provided.

3. At the beginning of the proceedings, the application was withdrawn in relation to the First Claimant whom it was conceded resided in the jurisdiction. It was also conceded that the Second Claimant is a Swiss National and resides in Switzerland. It was accepted that Anguilla is not a party to the Lugano Convention, such that any order in favour of the defendant including as to costs is presumptively unenforceable in Switzerland.

4. I have considered CPR 24.3 in relation to the particular application. I am guided that the court may make an order for security for costs under CPR 24.2 against the Second Claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that the Claimant is ordinarily resident out of the jurisdiction.

**5.** I am guided further by the dicta of Baptiste J as he then was in **Richard Rowe et al v Administrative Services Limited** SKBHCV2003/0222 where he reasoned the exercise of the court's discretion when considering the effect of ordinary residence out of the jurisdiction. He said thus:—

*" The fact of the claimant being ordinarily resident abroad engages the court's jurisdiction but is not of itself a ground for making the order for security for costs…….Ordinarily resident out of the jurisdiction assumes moment in the context of grounds relating to the difficulties of enforcement. The court has to consider the relevance of the foreign residence in terms of ability of a successful defendant to enforce an award against the foreign claimant.*

*The discretion to award costs against a claimant ordinarily resident out of the jurisdiction is to exercised on objectively justified grounds relating to obstacles or to the burden of enforcement in the context of the particular individual or country concerned. The absence of reciprocal arrangements or legislation providing for enforcement of foreign judgments does not by itself justify an inference that enforcement would not be possible."*

6. The Second Claimant challenges any grant on the basis of evidence provided by Dr. Arthur Baumann, a swiss legal practitioner, that a judgment of a non treaty state is nevertheless enforceable under The New Swiss Private International Law Act (SPILA), provided certain conditions are met, and on the basis that the

Second Claimant is possessed of assets in the jurisdiction. The Second Claimant alleges that he is the beneficial owner of a company called Multiple Consultants International Inc.

7. The Defendants submit for consideration that the Second Claimant has not provided the court with evidence as to the assets he purports are in the jurisdiction; neither does he provide evidence as to his means to satisfy a judgment. There is no evidence in respect of his purported shareholdings, to support his averments that he is the beneficial owner of Multiple Consultants International Inc. In fact, it is a subject of dispute in these proceedings that Multiple Consultant International Inc, was pledged bearer share number 1.

8. The exercise of the power to order security for costs is a balancing process, requiring the doing of justice between the parties. The court must be concern to achieve a balance between the parties ensuring that adequate and fair protection is provided to the Defendants, and to avoid injustice to the Claimant.

9. I have considered the evidence filed; the submissions of the parties and my obligations under the CPR 2000, and having regard to the common law principles. I am satisfied that the application for security was made without delay. I am also satisfied that there are real issues concerning the ownership and beneficial ownership of the shares of Multiple Consultants International Inc. It is unreasonable and risky in my view, to rely on the share at the heart of the dispute between the parties, to support the Second Claimant's contention that he owns assets in the jurisdiction. I place little reliance on that contention in assessing the means of the Second Claimant to satisfy any order that may be made adverse to him. In any event the Second Claimant has not given any financial statements about the asset on which he relies or its value.

10. The Second Claimant submits that despite Anguilla not being a party to the Lugano Convention, a decision of the court of Anguilla is nevertheless enforceable in Switzerland. Reliance was placed on the evidence of Dr. Baumann. His evidence sets out very broad conditions to be satisfied before a judgment from an Anguillian court can be enforced in Switzerland. What he does state in paragraph 9 is that "once the foreign decision is recognized, it is enforced…" but he does not explain the basis or criteria determinative of whether a decision would be recognized. This is a fundamental concern, if any reliance is to be placed on the fact of what Dr. Baumann's evidence was submitted to prove. The relevant section of SPILA is Section 5: Articles 25 – 29. The scope for refusing a judgment is quite wide and there is no automatic right of enforcement of an Anguillian judgment in a Swiss court. In fact in the procedure for an application for enforcement it is stated that such application can be contested and evidence could be required (see article 29). This too can be a very costly and lengthy process.

11. I found Dr. Baumann's evidence to be unhelpful. Dr, Baumann although a lawyer by profession, is not a practitioner and other than what he knows the law to be, he was unable to offer a reasoned practical application of the particular provisions, so as to convince me of the relative ease or ability to enforce an Anguillian judgment.

12. Despite his contention, there are real concerns about enforcement in Switzerland. There are language differences. The costs involved given the procedure referred to above certain add to the costs of recovery, and the process is seemingly lengthy. In any event, the fact that a judgment is capable of execution in an overseas jurisdiction is not a basis for refusing security for costs. All factors must be weighed. In consideration of the balance to the claimant, little evidence was provided by the claimant as to inconvenience to him. Importantly the Second Claimant has not averred that an order for security for costs would impact his ability to continue their claim. I have already indicated my thoughts on the second claimant's contention of possession of assets in this jurisdiction.

13. Having considered the stated factors, the interest of justice weighs in favour of the Defendants' application and I find that the Defendants' are entitled to security for costs.

**Amount of security**

14. The Second Claimant rightly pointed out that the sum requested as security appears to have been arbitrarily determined. On such an application this too should be established. This can usually be proven by affidavit from a practitioner or firm or by an assessment or a general estimate from the firm or practitioner with reasons. The failure to justify the amount of security is not in my view a reason to refuse the application where the court concludes that there are grounds for an order for security. The court can also adjourn to allow for evidence satisfactory to convince the court of an appropriate award. The court is also capable of arriving at an estimate of likely costs. I have had the opportunity to review the pleadings in their initial stages; I am guided by the number of litigants each of whom, have played a different role in the context of the filed case. I note that the transactions may well involve multiple jurisdictions from which documents are to be solicited and certainly the discovery stage may have its attendant cost. Whether the parties attend personally for trial or arrangements are made to receive their evidence are also relevant considerations. I anticipate unusual costs in relation to the trial because the parties are resident outside of Anguilla. All of these factors if present may cause the costs to exceed the sum requested. I therefore find

that security in the sum of US$20,000.00 is not unreasonable even as an estimate of the likely costs, I have no difficulty making such an award.

**Conclusion**

15. I hereby grant a stay of all proceedings in this claim brought against the Defendants until such time or in any event no later than the 12th March 2015 as there is provided security for the costs of the Defendants, to be paid to the Registrar of the High Court of Anguilla, to be held in escrow, and for settlement of any costs that may be ordered paid by the Second Claimant. I further award the Defendants their costs of this application summarily assessed in the sum of $750.00.

**V. GEORGIS TAYLOR-ALEXANDER**

**HIGH COURT MASTER**