EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA
COMMERCIAL DIVISION

CLAIM NO. SLUHCM2017/ 0031

BETWEEN:

CLICO INVESTMENT BANK LIMITED
[In Compulsory Liquidation]

Claimant/ Respondent

And

BATELIERE INVESTMENT LIMITED

Defendant/ Applicant

Before:

The Hon. Mde. Justice Cadie St Rose-Albertini — High Court Judge

Appearances:

Mr. Deale Lee for the Claimant/ Respondent
Mr. Dexter Theodore QC with Mrs Michelle Anthony-Desir and Ms Shahida Charlemagne for the Defendant/Applicant

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2018: May 30
July 30

Civil Procedure Rules 2000 ("CPR") – Rule 9.7 and 9.7A – challenge to jurisdiction – stay of proceedings – exclusivity of jurisdiction - forum non convenience

DECISION IN CHAMBERS

[1] **ST ROSE-ALBERTINI, J. [Ag]:** The claimant CLICO Investment Bank Limited ("CIBL') has filed a claim against the defendant Bateliere Investment Limited ('BIL"), for recovery of a debt of €12,500,000.00 plus interest and costs[1].

[2] In response BIL has filed an application pursuant to CPR 9.7 & 9.7A disputing the Court's jurisdiction and seeks a declaration to that the Court has no jurisdiction to hear the claim. Alternatively if the court has jurisdiction, it should decline to exercise such jurisdiction. If both grounds fail BIL asks that an extension of time be granted to file its defence.

The Issues

[3] The issues for determination are:-

1. Does the Court have jurisdiction to hear and determine the claim.
2. What is the appropriate test to be applied in determining whether the Court should decline jurisdiction.
3. Should the Court decline jurisdiction to allow fresh proceedings to be filed in another forum.

Backround

[4] CIBL is incorporated under the laws of the Republic of Trinidad and Tobago ("Trinidad") and duly authorized to conduct banking business there and in other jurisdictions within Caricom and the wider Caribbean. The bank has always had its registered office and principal place of business in Trinidad and is currently in compulsory liquidation.

[5] BIL in an international business company incorporated in Saint Lucia with its registered office and headquarters at Coloney House, John Compton Highway, Castries, Saint Lucia. Its parent company is Societe d'Exploitation De La Bateliere ("SEB") a company duly incorporated in Martinique, with an address at Fort-de-France, Martinique.

[1] Filed on 17th December, 2017

[6] Sometime in 2006 CIBL advanced a loan to BIL on terms and conditions contained in the following documents:-

1. Loan Agreement dated 16th November, 2006 between CIBL, BIL and SEB executed in Trinidad.
2. Commercial Mortgage Indicative Term Sheet with an expiry date of 14th July, 2006 executed in Trinidad.
3. Debt Service Reserve Account Agreement executed in Trinidad.
4. Charge of Shares dated 16th November, 2006 between CIBL and SEB creating a charge over shares in BIL, which charge is registered at the Registry of International Business Companies in Saint Lucia on 30th November, 2006.
5. Guarantee provided by SEB for the debts of BIL.
6. Mortgage executed in Martinique on 22nd November, 2006 in accordance with French law, creating a first fixed charge over immovable property in Martinique, which belongs to SEB.

[7] CIBL's claim is that BIL breached of the terms of the Loan Agreement as early as May 2007 when it defaulted on the first payment of interest owed on principal sums. No payment of principal or interest has been made to date despite demands for same and the breach of BIL's contractual obligations continues.

[8] BIL filed an acknowledgement of service as required by CPR 9.7(2) and on 27th February, 2018 proceeded to file an application for extension of time to file its defence. Time was extended to 19th March, 2018. On 16th March, 2018 BIL filed this application challenging the Court's jurisdiction to try the claim and seeking outright dismissal of the claim or a stay of proceedings. No defence has been filed and no further steps have been taken in the action.

Does this Court have jurisdiction to hear the claim

[9] Counsel for BIL Mr Theodore QC advanced this issue on the premise that the courts in Trinidad have exclusive jurisdiction to hear the claim because the entirety of the relationship between the parties was created there. In addition they agreed that their relationship should be governed by the laws of Trinidad and the courts in Trinidad would have exclusive jurisdiction over disputes arising from the transaction. This, he says, was

stated in clause 20 of the Loan Agreement and clause 19 of the Charge of Shares. The Term Sheet also stated that the laws of Trinidad or France would govern as applicable.

[10] He relied on **SFC Swiss Forfaiting Company Ltd v Swiss Forfaiting Ltd**[2] where the Court of Appeal cited with approval pronouncements made in **Donohue V Armco** in which the House of Lords stated:-

> *"[24]…..But the general rule is clear: where parties have bound themselves by an exclusive jurisdiction clause effect should ordinarily be given to that obligation in the absence of strong reasons for departing from it. Whether a party can show strong reasons, sufficient to displace the other party's prima facie entitlement to enforce the contractual bargain, will depend on all the facts and circumstances of the particular case..."*

[11] The Court of Appeal went on the reiterate that:-

> *"……it is trite law that a party who wishes to rely on a jurisdiction clause must do so on the basis of the existence of a written agreement with clear terms to that effect."*

[12] Mr Theodore QC continued that the above principles are applicable to the instant case as the parties have in clear written terms agreed that their Loan Agreement would be governed and construed in accordance with the laws of Trinidad and by so doing they have bound themselves to a jurisdiction clause. Since the parties have clearly agreed to Trinidad as their choice of governing law and venue, filing the claim in Saint Lucia constitutes a breach of their agreement in relation to exclusivity of jurisdiction.

[13] He agreed that legally there is a difference between a choice of governing law and choice of jurisdiction (venue or forum) clause, but surmised that because all the relevant documents referenced the laws of Trinidad as the governing law and CIBL is resident

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[2] Appeal No. BVIHCMAP2015/0012 , delivered on 4th July, 2016 - unreported

there, it was clearly intended that Trinidad would be the choice of governing law and its courts the choice of venue for disputes.

[14] Additionally Mr Theodore QC says, CIBL has not disputed that Trinidad is available as an appropriate forum for settling disputes and since the subject-matter of the action is a dispute which by the terms of the contracts is to be decided in accordance with the laws of Trinidad and by a court there, it should not be heard by this Court. CIBL has not provided sufficiently strong reasons to justify the denial of BIL's entitlement to enforce its contractual bargain regarding exclusivity of jurisdiction. On that basis the Court was invited to find that it was without jurisdiction to try the claim or alternatively since the parties have chosen Trinidad law for resolution of disputes, jurisdiction to hear the claim should be declined.

[15] Counsel for CIBL Mr Lee in response argued that there is a stark difference between choice of governing law and choice of jurisdiction. The parties have decided that their bargain is to be interpreted in accordance with the laws of Trinidad but they have not stated that the choice of venue for determining disputes is exclusively given to the courts in Trinidad. He submits further that the documents are silent on the issue of exclusivity for litigation of claims.

[16] He contends that the intention of the parties is to be garnered from the expressed language in the contracts and cited **Attorney General of Belize v Belize Telecom Limited**[3] as authority for the proposition that intention is to be gleaned from construing all the relevant documents together and as a whole. He went on to say that Clause 20.2 of the Loan Agreement only establishes that the courts of Trinidad are to have a non-exclusive jurisdiction thereby permitting other competent courts to try disputes arising from the contracts. Further the effect of clause 20.3 is that BIL cannot object if CIBL brings a claim in Trinidad but not that CIBL is compelled to pursue its claims in Trinidad.

[17] Mr Lee argued further that the expressed intent that other courts are to have jurisdiction can be gleaned from clause 19.3 of the Charge of Shares and in that regard the parties did not agree that the courts in Trinidad were to have exclusive jurisdiction. Taken together the

[3] (2009) UKPC 10

documents did not establish exclusivity of jurisdiction; neither did they seek to delimit in any way the jurisdictions which are competent to hear disputes between the parties. The business relations between the parties must be interpreted from the wording of the documents, which have shown that choice of jurisdiction is not exclusive to Trinidad.

[18] In concluding this point Mr Lee submitted that the principles relied on in **SFC Swiss Forfaiting Company Ltd** are not applicable to the facts at hand, as it was clear from a reading of the documents that there is an absence of any clearly expressed exclusive jurisdiction clause(s). BIL is incorporated in Saint Lucia, it is the principal borrower charged with responsibility for repayment of the debt and in the absence of clearly expressed exclusivity there can be no doubt that this Court has jurisdiction to hear and determine the claim.

The Relevant Clauses

[19] The clauses to be construed in relation to governing law and jurisdiction are found in the Loan Agreement and the Charge of Shares and they are reproduced below for convenience:-

1. Loan Agreement

"20. <u>Governing Law and Jurisdiction</u>

20.1 This Agreement shall be governed by, and construed in accordance with the laws of the Republic of Trinidad and Tobago.

20.2 The parties agree that the Trinidad and Tobago courts shall have the non-exclusive jurisdiction to hear and determine (i) applications for orders for interim relief which may remain in effect until the hearing of the substantive dispute by the arbitrators as set out in Clause 21 herein, (ii) applications for the discharge or variation of such orders and (iii) appeals therefrom.

20.3 Each of the parties hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objections which it may now or hereafter have to the laying of venue or any proceedings in any court referred to in Clause 20.2. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law' the defense of an inconvenient forum to the maintenance of any proceedings in any such court."

2. Charge of Shares:-

"*19. Law and Jurisdiction*

19.1 This Charge is governed by and shall be construed in accordance with the laws of Trinidad and Tobago

19.2 ***The Chargor irrevocably agrees for the exclusive benefit of the Chargee that the courts of Trinidad and Tobago shall have jurisdiction to hear and determine any suit action or proceedings and to settle any dispute which may arise out of or in connection with this Charge and for such purposes irrevocably submits to the jurisdiction of such courts****.*

19.3 ***Nothing contained in this Clause shall limit the right of the Chargee to take proceedings against the Chargor in any other court of competent jurisdiction nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not (unless precluded by applicable law)***

19.4 The Chargor irrevocably waives any objection which it may have now or in the future to the courts of Trinidad and Tobago being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum." [Emphasis mine]

[20] On page 3 of the Term Sheet it was also stated that the governing law shall be the laws of Trinidad or France as applicable.

[21] It is trite law that a governing law clause and a jurisdiction clause deal with separate matters. The former concerns the law to be applied when interpreting the provisions of a contract in resolving disputes arising from the contract, whereas the latter deals with the selection of a court in a named country for the purpose of adjudicating over disputes arising from the contract. Hence it is a jurisdiction clause which invariably forms the basis for exclusivity of jurisdiction. It should be noted here that where the term non-exclusive jurisdiction is used it simply means that a court can hear disputed but the parties are not precluded from litigating in other courts if considered appropriate to do so.

[22] I do not believe there is need for strenuous interpretation of these clauses, save applying the plain and ordinary meaning of the words used to arrive at the expressed intention of the parties. Upon closer examination I have come to the following conclusions:-

(1) The Term Sheet contained a typical governing law clause but did not contain a jurisdiction clause.

(2) Similarly the loan agreement contained a typical governing law clause but did not contain an exclusive jurisdiction clause. Clause 20.2 merely agreed non-exclusive jurisdiction to the courts in Trinidad in relation to applications for interim relief orders and the variation or appeal of such orders. At clause 20.3 the parties irrevocably waived their right to raise the defence of inconvenient forum in any court where an application was made pursuant to clause 20.2. Aside from this nothing else is said about choice of jurisdiction.

(3) The Charge of Shares which is between CIBL and SEB contained a typical governing law clause and endeavored to address jurisdiction at clauses 19.2 and 19.3. In 19.2 SEB agreed for the exclusive benefit of CIBL that the courts in Trinidad would have jurisdiction to settle disputes arising from the Charge and that there would be no challenge on the basis of inconvenient or inappropriate forum, to proceedings invoked in Trinidad. At 19.3 SEB agreed further that nothing would preclude CIBL from initiating proceedings in any other court of competent jurisdiction, whether concurrently or otherwise, unless such course is precluded by applicable law.

[23] It is usually the case that governing law and jurisdiction clauses are poorly drafted and misunderstood in commercial contracts. The recommendation is that drafters should not attempt to deal with both matters in the same wording. The two concepts are different and the contract should address them separately, expressly and clearly. Though they may conveniently be placed together under the heading 'Governing Law and Dispute Resolution' clause.[4] they should be as separate sub-paragraphs.

[24] A properly drafted jurisdiction clause must clearly state that the parties submit all their disputes arising out of or in connection with the contract to the exclusive jurisdiction of the nominated court(s), without further qualification. In my view the clauses above were not in any way akin to what could be considered as exclusive jurisdiction clauses. Clause 20 was silent on exclusivity and 19.3 completely eroded any notion of exclusivity to the courts in Trinidad. The combined effect is that CIBL was left with the ability to institute proceedings in Trinidad as well as any other competent jurisdiction (unless prohibited by applicable law).

[25] The position is that the courts in Trinidad have jurisdiction to hear and determine claims arising from the contracts, such jurisdiction is not exclusive and CIBL has the ability to institute proceedings in any other competent court. I note that no evidence was adduced by BIL which pointed to any law precluding CIBL from instituting a claim in Saint Lucia.

[26] BIL is incorporated in this jurisdiction and has its registered office here. Additionally it is the entity responsible for repayment of the loan which is the subject of the claim and its shares form part of the security for the loan. For the reasons stated I conclude that this Court has jurisdiction to hear and determine the claim.

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[4] "Governing Law" and "Jurisdiction" Clauses - Alastair Henderson & Surapol Srangsomwong, Herbert Smith Freehills LLP -June 30, 2008

What is the test to be applied in determining whether the Court should decline jurisdiction

[27] BIL advanced a segue approach to this issue. It started out with the "strong reasons" test outlined in **The Eleftheria**[5] and reiterated in **SFC Swiss Forfaiting Company Ltd**[6] whereby if the Court should find that exclusivity of jurisdiction prevailed it would then consider certain factors in determining whether to decline jurisdiction. In that scenario the presumption is usually strong that a stay should be granted and the burden of satisfying the Court of the existence of strong reasons for breaking the contract would fall to the claimant (CIBL in this case).

[28] BIL's submissions then transitioned into a discussion on forum non convenience and the test for determining the more appropriate and convenient forum for trial of the claim. Counsel relied on the principles outlined in **Spiliada Maritime Corporation v Cansulex Ltd**[7] and applied by this court in **Bankcroft Life & Casualty ICC Ltd v Telebrands Insurance Company IC Limited**[8] for granting a stay of proceedings in favour of concurrent litigation between the respective parties, before a court in New Jersey.

[29] CIBL in answer accepted that the Court of Appeal in **SFC Swiss Forfaiting Company Ltd** noted that should an exclusivity clause exist the courts will give effect to it except where there are strong reasons to justify not doing so. But the Court also asserted that should there be no expressed exclusivity the appropriate test for determining whether to decline jurisdiction is as laid out in **Spiliada.**

[30] CIBL argued further that in applying this test the court must determine which forum is clearly and distinctly more appropriate for trial of the claim, upon examining several connecting factors. The burden would then fall to BIL to persuade the Court based on these factors, that jurisdiction should be declined in favour of a more convenient court.

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[5] Owners of Cargo Laden on Board Ship or vessel Eleftheria v Owners of Ship or Vessel Eleftheria [1969] 2 ALL ER 641
[6] Supra n. 2
[7] [1987] AC 460
[8] SLUHCV2015/0992 , delivered on 3rd May, 2016 (unreported)

[31] CIBL drew the Court's attention to an extract from the text titled **Caribbean Private International Law**[9] in which the learned author Justice Winston Anderson of the CCJ[10] explained that:-

> *"……the heart of the matter is to locate trial in the forum that was most convenient for the litigation of the dispute…….. a stay will only be granted where the court is satisfied that there is some other available forum having competent jurisdiction, which is the appropriate forum for the trial of the action……The real assignment is to isolate that forum which from a quantitative and qualitative assessment comprise the "center of gravity" of the dispute. The whole factual and legal matrix of the case must therefore be considered"*

[32] The Court was urged to reject the strong reasons test in **The Eleftheria** and apply the **Spiliada** test, as in reality the matter concerned appropriate forum rather than exclusivity of jurisdiction.

[33] The factors to be considered when applying the 'strong reasons' test are somewhat similar to those to be assessed on an application for a stay on the ground of forum non conveniens. But in reality it is understood that the former is intended to keep the parties bound to the jurisdiction which they have chosen unless there are cogent reasons for not doing so, while the latter is geared towards placing the claim in the most convenient forum for litigation, sometimes irrespective of exclusivity. The courts have however warned that the two tests are separate and should not be conflated.[11]

[34] Having already determined that the relevant clauses did not grant exclusive jurisdiction to the courts in Trinidad it is my considered opinion that there was no breach of a jurisdiction clause to warrant application of the rules in **The Eleftheria** and the correct application should be the forum non conveniens test as obtains in **Spiliaida.**

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[9] 2nd edition Chapter 4 at para 9-006 – 9-008
[10] Caribbean Court of Justice
[11] Halsbury's Laws of England - Volume 19 (2011) at para 408

Should the court decline jurisdiction to allow fresh proceedings before the courts in Trinidad

[35] The following matters must be considered in determining whether to grant or refuse a stay:-

(1) The Court must be satisfied that the courts in Trinidad are competent and evidently more appropriate and convenient, for trial of the claim. They must be best suited to serve the interests of all the parties and the ends of justice. To this end BIL must demonstrate that Trinidad is not merely a forum of "practical convenience" but one of distinctive appropriateness, which must be clearly discernible on the facts.

(2) The Court must find where the natural forum lies by examining which forum has closer ties and substantial connection to the parties and the issues to be tried. Factors such as availability of witnesses, the place where the parties and witnesses reside and carry on business, availability of documents to be produced in evidence, the place where the transactions on which the claim is premised took place and the governing law of these transactions will be considered. The list is by no means exhaustive.

(3) It is the responsibility of BIL to discharge the initial burden of proving that Trinidad is the more appropriate forum. If successful the burden shifts to CIBL to demonstrate that quite apart from this Court having jurisdiction, special circumstances exist wherein the due dispensation of justice requires that the trial should nevertheless be held in Saint Lucia.

(4) Finally the court must be satisfied that CIBL will not be denied a fair trial if the claim is litigated in Trinidad or be deprived of some legitimate juridical advantage to be derived only in Saint Lucia.

[36] The reasons advanced by BIL for granting a stay are:-

(1) The transaction is wholly and substantially connected to Trinidad because the Loan Agreement and Charge of Shares were executed there and they are governed by the laws

of that jurisdiction. Not only were the contracts subject to the laws of Trinidad but the parties substantially performed their contractual obligations there and in Martinique, and had no dealings in Saint Lucia.

(2) CIBL as the claimant is duly registered in Trinidad; has its headquarters and operates its core business there. The evidence on the issues of fact is believed to be situated and more readily available there and the witnesses for CBIL are also there. There may even be greater hardship to CBIL which is in compulsory liquidation, by having to incur additional cost for witnesses to travel to Saint Lucia.

(3) The cause of action is grounded in contract law for breach of obligations under the Loan Agreement and although like Trinidad contract law in Saint Lucia is construed in accordance with the English law, there are nuances in contract law in Saint Lucia in situations where Article 917A of the Civil Code[12] require that certain Articles of the Code should apply. It would be an onerous and time-consuming task for the Court to apply, interpret or construe the laws of Trinidad where applicable and there may be instances where foreign expert evidence is required. Notwithstanding that the Court may decide on questions of foreign law by receiving expert evidence, it would be more satisfactory for the laws of a nominated country to be decided by the Courts of that country and aside from authority, this would be a matter of common sense[13].

(4) The overriding objective of the Civil Procedure Rules 2000 ("CPR") as specified in Rule 1.1, is to ensure that cases are dealt with justly by taking into account, inter alia, saving expense, the amount of money involved and ensuring that the matter is dealt with expeditiously. The facts and circumstances of this case are such that the Court should take into consideration whether, in exercising its jurisdiction, the overriding objectives of the CPR would be fulfilled. Instituting the proceedings in Trinidad would not cause a significant delay, since the matter has not progressed beyond the mere filing of the claim and may prove to be more cost effective to CIBL.

[12] Cap 4.10 of the Revised Edition of the Laws of Saint Lucia
[13] Brandon J in The Elefthria (supra) at page 246

(5) CIBL would not be prejudiced by having to sue in Trinidad because it would not be deprived of any legitimate advantage or the ability to enforce a judgment obtained there, in Saint Lucia or Martinique.

(6) In **Telebrands v Bancroft**[14] this Court took into account similar factors when granting a stay in favour of ongoing litigation before a court in New Jersey, which court was of competent jurisdiction and clearly and distinctly more appropriate and convenient for trial of the claim. There is no authority for the position that a stay ought not to be granted in the absence of concurrent proceedings in another jurisdiction. Judicial authorities have not considered this point and it is simply a matter of weighting the factors where there are no competing proceedings.

(7) On the facts it cannot be said that Saint Lucia is the most appropriate forum as Trinidad and Martinique are also appropriate jurisdictions. The claim is not a simple one because CIBL is in liquidation which creates other issues that may be germane to the claim. The default allegedly occurred in 2007 and the claim was only filed in 2017. It is for CIBL to show that there is some juridical advantage in Saint Lucia of which it would be deprived or that it would not obtain justice or a fair trial in Trinidad. No such circumstances have been shown to justify the claim not being litigated in Trinidad.

[37] For these reasons BIL invited the Court to decline to exercise jurisdiction on the basis that a court in Trinidad would undoubtedly be most appropriate for trial of the claim.

[38] CIBL in answer made the following submissions:-

(1) The burden is on BIL to satisfy the Court that the courts in Trinidad are clearly and distinctively more appropriate for trial of the claim. In so doing BIL must show that Trinidad is "the natural forum" in the sense of being the country with which the claim has the most

[14] Supra n. 8

real and substantial connection. The assessment of the connection is based on both quantitative and qualitative factors and Court must identify and assess these factors.

(2) CIBL is incorporated in Trinidad and has its principal place of business there. BIL is an international business company incorporated in Saint Lucia. Its parent company SEB is a French company incorporated in Martinique. It is arguable that there are territorial connections to both Trinidad and Saint Lucia based on the domicile of the parties to the claim, who are CIBL and BIL. However CBIL has elected to file the claim in the jurisdiction where the defendant BIL has its presence. BIL relies primarily on the fact that CIBL is a Trinidadian company and the various agreements, save for the mortgage were executed there and are to be governed and interpreted in accordance with the laws of that jurisdiction. However the cross-jurisdictional nature of the parties and the transaction must be recognized. BIL has no ties to Trinidad. It owns no property or assets there and the shares over which the charge has been given are in Saint Lucia. The funds advanced were not used in Trinidad. Additionally, the guarantor of BIL's debt is SEB which is a company from Martinique, which has no ties or connection to Trinidad. The mortgaged property is situated in Martinique. There will be need for the parties to travel where ever the proceedings are held. CIBL has made a conscious decision to file the claim in Saint Lucia and the question of affordability does not arise. It is cheaper for the opposing parties to travel to Saint Lucia from Martinique when compared Trinidad.

(3) There is no greater hardship to BIL in defending the claim in Saint Lucia and no evidence has been adduced on the need for witnesses or disclosure that can take place only or more advantageously in Trinidad. Thus territorial connections are not determinative of the issue of natural forum.

(4) There is currently no action pending before the courts in Trinidad or any other court in relation to the debt and re-filing the claim in Trinidad will only serve to increase cost to CIBL, while adding significant delay to the litigation process. Additionally, it is the shares in BIL which are the subject of the charge and enforcement would have to be undertaken post judgment. Thus by litigating the claim in Saint Lucia the same court will have jurisdiction for determining liability and subsequent enforcement.

(5) Since Trinidad is a common law jurisdiction it is unlikely that the applicable laws would differ greatly from the laws of Saint Lucia. No evidence was adduced on differences in Trinidad laws and Article 917A which incorporates English in relation to contracts in Saint Lucia. There is likely to be little difference between the law of Trinidad and Saint Lucia in relation to the substantive claim. The claim is a debt collection matter on the basis of money borrowed which has not been repaid and does not require tremendous legal discourse or analysis of Trinidad law. The Court already has most of the documents before it, consequently there is unlikely to be much need for expert evidence. In the circumstances the reference to and application of Trinidadian law would not create an obstacle to hearing the claim.

(6) Beyond relying on the governing law clause and the place where the contract was executed, BIL has not proffered any evidence to show that the courts of Trinidad are clearly and distinctly the more appropriate forum. If the Court were to grant a stay it would mean that CIBL would be forced to restart the proceedings in Trinidad with the attendant increase in cost and delay in having the matter come to trial. These factors clearly favour continuation of the claim before the Court in Saint Lucia.

(7) The Court must also be satisfied that the courts in Trinidad will be most appropriate for ensuring that justice will best be served between the parties. The factual matrix in **Bankroft v Telebrands** distinguishes it from the instant case because there were a myriad of connecting factors which pointed to New Jersey as the most appropriate and natural forum from a quantitative and qualitative stance. In relation to qualitative factors they are ambivalent as between Trinidad and Saint Lucia and there is nothing which points to Trinidad as being clearly and distinctly more appropriate. In the circumstances, this court having already been seized of jurisdiction should not decline to hear the matter, as it is a commercial court set up specifically for hearing commercial matters of this nature, in an expedient manner. To restart the matters before the civil courts in Trinidad will no doubt introduce delay into the proceedings and not aid in the speedy resolution of a relatively simple claim.

(8 In essence what the defendant is asking is for this court to decline to exercise jurisdiction to hear the claim where it has already been seized of the matter. It is well established that a court will not decline jurisdiction which has been properly founded except in the clearest of circumstances and where necessary for the ends of justice to best be served.

(9) It is only where the Court is satisfied upon assessing the qualitative and quantitative factors that Trinidad is better suited that it must then go on to assess whether special circumstances exist to necessitate trial of the claim in Saint Lucia. The evidence has not shown that this Court is not the most convenient forum for trial of the claim and as such CIBL is under no obligation to show special circumstances.

[39] Accordingly CIBL says that BIL has failed to discharge the burden of satisfying the Court that Trinidad is the more appropriate and convenient forum and the application must fail.

The Court's Findings

[40] *Competence:* The parties do not dispute that the courts in both Trinidad and Saint Lucia are of competent jurisdiction.

[41] *Territorial Connection:* CIBL is the only party having connection to Trinidad and is also the party that has chosen to file the claim in Saint Lucia. It must be presumed that the liquidator or its directing minds would have counted the cost of litigating the action here. This would encompass the ease of producing documents, witnesses and experts if necessary. It is clear that BIL has no connection to Trinidad. The hotel resort for which the loan was granted is located in Martinique and not Trinidad. The loan funds were not utilized in Trinidad. The shares over which the charge is held are in Saint Lucia. Thus the secured assets are located in Saint Lucia and Martinique and there is nothing to be recovered in Trinidad. If the claim is litigated in Trinidad and CIBL is successful there is the added consideration of CIBL having to initiate proceedings for enforcement of a foreign judgment in two jurisdictions (Saint Lucia and Martinique). Conversely if the claim is litigated in Saint Lucia and the CIBL is successful enforcement against BIL will follow in the

natural and ordinary course, with enforcement a foreign judgment in only one other jurisdiction (Martinique). These factors appear to make it equally suitable or perhaps more appropriate and convenient for the claim to be tried in Saint Lucia.

[42] *Evidence and Witnesses:* The nub of BIL's argument is that it would not be cost effective for CBIL to litigate the claim in Saint Lucia because (1) it is incorporated in Trinidad and operates its business there, (2) it has all its agents and employees who are likely to be witnesses located there, (3) all the documents to be relied on in evidence (save for the mortgage) were executed there and (4) Trinidad law governs the transaction. While it appears that these factor may point to Trinidad as a natural forum there are other factors which warrants consideration such as the multi-jurisdictional nature of the parties to the claim, location of the assets held as security for the loan, the ability to readily enforcement judgment and expedient resolution of the claim.

[43] CIBL has elected to file the claim here and is not precluded from doing so by any known laws. It has indicated that the cost of making documentary evidence and witnesses available is not an issue. The evidence is substantially contained in documentary material some of which is already before the Court, on this application. They are standard lending agreements, the contents of which can be readily distilled.

[44] BIL has its registered office here and does not have to incur the cost of having to travel to Trinidad to engage in litigation. It is accepted that the cost of travel to Saint Lucia would be less for related parties who may have to travel from Martinique where the parent company is located. The immovable property which is in Martinique is in closer proximity to Saint Lucia, than Trinidad, in the event of any dealings for the purposes of the claim.

[45] BIL has not said that its cost to defend the claim here would be prohibitive. Instead they say that it would be costly for CIBL to bring its evidence and witnesses to this jurisdiction. This, to my mind, is not a justifiable inconvenience to BIL as what is to be shown is the hardship and inconvenience to BIL if the matter is to be litigated here vis-à-vis the ease with which it may be done in Trinidad. From all appearances the cost outlay to BIL to litigate the claim in Saint Lucia would be significantly less than Trinidad. In the

circumstances BIL has not shown that any of these factors are an inconvenience to it, if the claim is litigated here.

[46] *Governing Law:* The parties have accepted that contract law in Trinidad and Saint Lucia are substantially the same by virtue of Article 917A of the Civil Code which allows reception of English contract law in Saint Lucia. Consequently the Court would not be unfamiliar with the laws and the legal principles applicable to the substantive claim. In that regard inconvenience in relation to the governing law of the contracts has not been shown to be a real or substantial issue. Whereas governing law is a strong factor in determining natural forum it is not determinative on its own and must be considered against all other relevant factors.

[47] Having examined the connecting factor pertinent to this case it cannot be said conclusively that Trinidad comprises the center of gravity of the dispute and is the most appropriate forum. It may equally be Saint Lucia or even Martinique because while certain aspects of the transaction are connected to Trinidad, there are equally important aspects connected to Saint Lucia and Martinique.

[48] I agree that the facts in **Bankroft** are to be distinguished from the instant case. In that case concurrent litigation was already afoot before a competent court in New Jersey, in circumstances where the governing laws of the transactions in issue were completely foreign to this jurisdiction and all of the connecting factors weighed heavily in favour of the New Jersey Court. A stay was necessary for economy, expediency and to avoid conflicting outcomes on the same issues of fact and law by different courts. These elements are simply not present in the instant case, in the manner and extent to which they impacted the decision in **Bankcroft.**

[49] I am not persuaded on the totality of the evidence that the connecting factors weigh more heavily in favour of Trinidad as the more appropriate and convenient forum. As such BIL has not discharged the initial burden of showing that Trinidad is in all respects more convenient for litigating the claim. The matter is one to be litigated expeditiously and for the reasons already stated it would not be consonant with the overriding objectives of the CPR to have the claim discontinued and re-filed in Trinidad.

[50] I have to agree with Mr Lee that since BIL has not discharged the initial burden, it is not necessary for CIBL to address the final limb of the test concerning special circumstances.

[51] In the absence of concurrent proceedings in any other jurisdiction and having found this Court to also be appropriate and convenient, for trial of the claim, the Court will refuse to decline jurisdiction.

Conclusion

[52] I therefore make the following order:-

1. The application is refused.
2. The defendant will file and serve its defence within 21 days of the date of this decision.
3. The claimant will file and serve its reply within 14 days of date of service of defence.
4. The cost of this application in the sum of $1,500.00 is awarded to the claimant to be paid within 21 days of the date of this decision.

Cadie St Rose-Albertini
High Court Judge

By the Court

[SEAL]

Registrar