

**IN THE SUPREME COURT OF BELIZE, A.D. 2008**

**CLAIM NO. 196 OF 2008**

**(THE BELIZE BANK LIMITED                      CLAIMANT**  
**(**  
**BETWEEN(    AND**  
**(**  
**(CENTRAL BANK OF BELIZE                      DEFENDANT**

**Coram: Hon. Justice Sir John Muria**

**Hearing: 10<sup>th</sup> June 2008**

**Ruling: 11<sup>th</sup> June, 2008**

***Ms. Lois Young, S.C., for Applicant/Defendant***

***Mr. Andrew Marshalleck and Mrs. Naima Badillo for Respondent/Claimant***

**RULING**

**MURIA J.:** By its Notice of Application dated 4<sup>th</sup> June, 2008, the Defendant/Applicant has applied to vacate paragraph 2 of the Order of this Court made on 17<sup>th</sup> April, 2008. The said Order is in the following terms:

1. THAT all further proceedings in Claim No. 196 of 2008 be stayed until after a decision of the Appeal Board in any appeal lodged by the Claimant pursuant to the Banks

and Financial Institutions Act, Chapter 263 of the Laws of Belize R.E. 2000 in respect of the two directives issued by the Defendant to the Claimant on the 14<sup>th</sup> March 2008.

2. The Defendant shall refrain from taking enforcement actions on its two directives until the Appeal Board is seized of the Claimant's appeal against the defendant's decisions in this case.
3. Liberty to the parties to apply.

The grounds for seeking to vacate paragraph 2 of the above Order are that the time limit for appealing under the Banks and Financial Institutions Act (Cap. 263) ("BFIA") has expired, and that no appeal has been filed by the Claimant/Respondent to the Banks and Financial Institutions Appeal Board ("Appeal Board") against the applicant's directives, the subject of the controversy between the parties in this case. The applicant, in support of its application, relies on two affidavits of Sydney Campbell, the Governor of the Central Bank of Belize, dated respectively 4<sup>th</sup> June, 2008 and 5<sup>th</sup> June, 2008.

It is now accepted that the Respondent/Claimant has filed an appeal dated 23<sup>rd</sup> May, 2008 to the Appeal Board against the applicant's directives issued on 14<sup>th</sup> March, 2008. The notice of appeal was only served on Applicant/Defendant on 6<sup>th</sup> June, 2008, despite being filed on 23<sup>rd</sup> May 2008.

Somewhat confounded and dismayed, Ms. Lois Young, S.C., made it clear to the Court that the applicant would not have been here in Court pursuing this application had it known in time that the Respondent had filed an appeal. Counsel confirmed that the applicant was only served with the notice of appeal on Friday, 6<sup>th</sup> June, 2008. The Applicant's application was filed on 4<sup>th</sup> June, 2008. Ms. Lois Young, S.C., unreservedly argued that the course of conduct by the Respondent or rather its attorneys is unacceptable. Counsel, nevertheless, proceeded with Applicant's application, and on an amended footing, namely, first that the Appeal Board has now seized of an appeal and so paragraph 2 of the Order of 17<sup>th</sup> April, 2008 should be vacated; and second, if the Respondent wishes to seek further stay on any enforcement, actions on the applicant's directives, it should go to the Appeal Board under section 76 of BFIA.

The Respondent/Claimant opposes the application. In the main, its basic position taken is that the Court cannot sever the orders in paragraphs 1 and 2 of the Order of 17<sup>th</sup> April, 2008. Secondly, an appeal has now been lodged and no enforcement actions should be allowed on the directives made by the applicant on 14<sup>th</sup> March, 2008.

Mr. Marshalleck of Counsel for the Respondent informed the Court, and deposed to in paragraph 12 of Mr. Philip Johnson's affidavit sworn to and filed herein on 9<sup>th</sup> June, 2008, that following filing of its appeal to the Appeal Board, the Respondent has issued proceedings in Claim No. 338 of 2008 to determine certain issues, one of which is the question of whether the Appeal Board is seized of the matter. The appeal to the Appeal Board was filed on a "without prejudice" basis as to the Respondent's right to seek other redress; hence its claim in Claim No. 338 of 2008.

I agree with Ms. Lois Young, S.C., in her suggestion that the matter is now before the Appeal Board. That being the case, the statutory machinery provided for the resolution of the matter under the BFIA must be followed. Thus the order of 17 April, 2008 was designed to achieve that. It is the Court's view, therefore, that any severance of the actions so ordered on 17<sup>th</sup> April, 2008 would defeat the purpose of

that order. I must therefore accept the argument by Mr. Marshalleck that paragraphs 1 and 2 of that Order cannot be severed. Hence it would not be possible to vacate the order contained in paragraph 2 of the Order of 17<sup>th</sup> April, 2008.

There is, however, a more fundamental reason why the Order sought by the Applicant cannot be made. Both parties have accepted for the moment, that the respondent's appeal is now before the Appeal Board, the appeal having been filed on 23<sup>rd</sup> May, 2008. Now, that the appeal is before the Appeal Board, section 76 of the BFIA applies and any further proceedings on the enforcement of applicant's directives, will have to be made to the Appeal Board. In so far as paragraph 2 of the Order of 17<sup>th</sup> April, 2008 is concerned, it has achieved its objective when the appeal is filed with the Appeal Board, at which time that Board is seized of the matter. It would not be permissible for this Court to revisit that Order since this Court is now *functus officio* on this aspect of the case. On this basis, I would also decline to grant the Order sought in this application.

I need only add that the "Liberty to apply" granted in paragraph 3 of the Order of 17<sup>th</sup> April, 2008, could only be invoked by the parties and the Court could only

exercise its power over those matters, when the matters so ordered on 17<sup>th</sup> April 2008 were within the power of this Court to deal with. With the filing of the appeal to the Appeal Board, the machinery available under paragraph 3 of the Order of 17<sup>th</sup> April, 2008 is no longer available to the parties and the Court is *functus officio* to exercise any jurisdiction pursuant to paragraph 3 of that order.

I need further, respectfully, add also that the appeal is now before the Appeal Board which has the jurisdiction to decide any issue regarding the appeal, save for those matters which are outside its scope of jurisdiction to determine.

It has to be said, however, and I have to accept the suggestion by Ms. Lois Young, S.C., that the hearing of this application could have been avoided, but for the manner in which the Respondent/Claimant conducts its case in this dispute. The arguments advanced by Counsel for the Respondent/Claimant together with matters raised in Mr. Philip Johnson's affidavit filed late Monday 9<sup>th</sup> June, 2008 left the Applicant with little option but to attend to these proceedings in this application.

In the circumstances and for the reasons stated, the Court refuses the Applicant/Defendant's application, but the costs of this application must be paid by the Respondent/Claimant.

- Order:
1. Applicant/Defendant's application refused.
  2. Costs of the application to be paid by the Respondent/Claimant in the sum of \$2,000.00.

(Sir John Muria)