

IN THE SUPREME COURT OF BELIZE A.D. 2009

CLAIM NO. 317 OF 2009

BETWEEN

THE ATTORNEY GENERAL OF BELIZE

CLAIMANT

AND

**BELIZE TELEMEDIA LIMITED
BELIZE SOCIAL DEVELOPMENT LTD.**

**1st DEFENDANT
2nd DEFENDANT**

1. Mr. Michael Young S.C. and Ms. Deshawn Arzu, for Attorney General.
2. Ms. Lois Young SC, for Btl, first Defendant.
3. Mr. Godfrey Smith SC, for applicant Mr. Dean Boyce, intending party.
No appearance by or for Belize Social Development Ltd., second Defendant.

AWICH Ag CJ

1.3.2011

RULING

1. *Notes: Application by a new person for court order to add himself to the proceedings as an interested party; whether the claim discloses an issue between existing party and the intended party; whether there is an issue involving the new party which is connected to the matters in dispute; whether it is desirable to add the new party – R. 19.2 and 19.3 of Supreme Court (Civil Procedures) Rules, 2005..*

2. This is a ruling in the application dated 8 February 2011, by Mr. Dean Boyce for a court order allowing him to join in these proceedings commenced by a fixed date claim dated 6.4.2009. Mr. Boyce wishes to join in the proceedings as an interested party. The application has been made under R 19.2(3) and 19.3, of the Supreme Court (Civil Procedure) Rules, 2005.

3. R. 19.2(3)(a) and (b) allow for joinder of a party if: “(a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings”; or “(b) there is an issue involving the new party, which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve the issue.”

4. The issue that Mr. Boyce has raised, which he requests to be dealt with as part of this case is in ground 6 of the application, and paragraphs 5 to 12 of his affidavit sworn on 8 February 2011. It is that when the Government compulsorily acquired 94% of shares in Btl; 23% of the shares belonged indirectly to Btl Employees Trust; and Mr. Boyce is one of two trustees of Btl Employees Trust. He contends that the acquisition of the shares was unconstitutional. On that contention he had brought a claim, No. 1018 of 2009 in the Supreme Court. He was not successful. He has appealed (Appeal case No. 31 of 2010). He hopes to be successful, and if so, he will get back the 23% shares belonging to Btl Employees Trust.

5. This claim is between the Attorney General of Belize as claimant, and Btl, the first defendant, and Belize Social Development Ltd., the second defendant. It is about an arbitration award issued on 18.3.2009, by the London Court of International Arbitration (LCIA) in a dispute between the Government of Belize and Btl. The award was made before the Government compulsorily acquired the 94% of the shares in Btl. The award is BZ\$38,527,083.87. It was made in a dispute arising from an agreement, described in the application papers simply as "Accommodation Agreement".

6. Assuming for a moment that the challenge to the compulsory acquisition of the shares is part of or is relevant to the arbitration award, allowing Mr. Boyce to join in this claim, owners of 71% of the shares acquired will still not be part of the claim. My guess is that all the matters in dispute will not be resolved because the owners of 71% shares will not be parties to this claim.

7. The main difficulty with the application however, is that the claim of the Attorney General for a declaration among others that, the enforcement of the LCIA award of 18.3.2009, would be contrary to s:114 of the Constitution, s:3 of the Finance and Audit Act and ss: 106, 109 and 110 of the Income and Business Tax Act, does not as of necessity, invite the question whether the compulsory acquisition of Btl shares was unconstitutional. The arbitration award was made before the compulsory acquisition. The applicant would in fact be bringing into the case a

completely new issue in which the other owners of the shares acquired might wish to join. It could lead to a rather too wide an extension of this claim with the attendant costs. It is not desirable in my respectful view to extend this claim that far, rather it is advisable that the applicant may bring a separate claim if he wishes.

8. I accept the submission of learned counsel Mr. Michael Young SC, for the Attorney General, that it is not desirable to join a new party when the claimant has not raised in his claim an issue which involves the new party. The case law in, ***Umm Qarn Management Co. Ltd. v Valerie Ann Bunting and Esteemed Bloodstock Ltd. [2001] C.P.L.R. 20 CA***, cited by Mr. Young, is to the point.
9. I also accept the submission by Mr. Young that, it is not good enough that the issue on which Mr. Boyce seeks to be joined in this claim depends on if he wins an appeal in which he challenged the compulsory acquisition of the shares as unconstitutional. The questions to be resolved all together upon joinder of the new party cannot be a contingent issue, it must be a current existing issue.
10. Further, the dispute in this claim is over an award made in favour of Btl, but it has since assigned away the award to Belize Social Development Ltd. If Mr. Boyce representing 23% shareholders in Btl at the time claims part of the award, his claim lies against the directors of Btl at the time, who assigned away property of the company, may be in breach of

fiduciary duty. Mr. Boyce's claim for the award made by LCIA cannot now lie directly against the Attorney General. If a claim for that award is to be made against the Attorney General, the proper claimant would be Belize Social Development Ltd.

11. Learned counsel Ms. Lois Young SC, for Btl adopted the submission of Mr. Young, but she added a very important submission that Mr. Boyce as a trustee of Btl Employees Trust was a shareholder of Btl, a shareholder was not one and the same person as Btl, a corporate person. As such, Ms. Young submitted, Mr. Boyce and Mr. Arnold the other trustee of Btl Employees Trust had no claim to the property of Btl the company, and cannot join in a claim concerning property of Btl. I totally agree. In this claim there is no common dispute between the Government, Btl and Belize Social Development Ltd. on the one part, and Mr. Boyce representing Btl Employees Trust, on the other part.

12. The order that I make is that the application dated 8.2.2011, of Mr. Dean Boyce to join as an interested party in these proceedings is dismissed with costs to the Attorney General and Belize Telemedia Limited. Belize Social Development Ltd. has not so far, participated in these proceedings, it is not entitled to the costs of this application.

13. I have not considered the question whether Mr. Boyce one of two trustees, can act alone in bringing an application to court; it is not necessary for the determination of the application.

13. **Delivered this Tuesday the first day of March 2011**

At the Supreme Court

Belize City

**SAM LUNGOLE AWICH
Ag. Chief Justice
Supreme Court**