

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. 252 OF 2022

BETWEEN:

[1] CARLTON WATSON

Claimant

AND

**[1] BRADLEY RINEHART
[2] REGISTRAR OF COMPANIES**

Defendants

Barrow & Company LLP for the Claimant

Barrow & Williams LLP for the Defendants

Written submissions filed on 3 May 2024

DECISION

Practice & Procedure – Variation of order to hold ‘in person’ trial – Rules 25.1 (k) & (l), Civil Procedure Rules 2005 – Section 186, Senior Courts Act No.27 of 2022

- [1] **Mansoor J:** The claimant has filed an application to vary the order made on 21 March 2024 setting down the trial and requiring witnesses to appear in person. This application seeks an order allowing the claimant to appear virtually and give evidence. The application is supported by the claimant’s affidavit. The defendants opposed the application. There was no oral hearing, but both parties filed written submissions on 3 May 2024.
- [2] The claimant states that he resides in Canada and expects to travel to Turkey in May and June this year. As such, the claimant states, he is unable to attend the trial in Belize. However, he says he can attend proceedings remotely and give evidence.
- [3] The claimant relies on section 186 of the Senior Courts Act No.27 of 2022 which allows hearings to be conducted virtually, and rules 25.1 (k) and (l) of the Supreme Court (Civil Procedure) Rules 2005 (“CPR”), which state that part of the court’s active case management duties include making appropriate use of technology and giving directions to ensure that the trial of the case proceeds quickly and efficiently.
- [4] The claimant states that the overriding objective in the civil procedure rules includes saving expenses and ensuring that the case is dealt with expeditiously. The claimant

says that delaying the trial to attend 'in person' runs contrary to the overriding objective of the rules and that it would result in unnecessary expenses. It is also said that no prejudice will arise by allowing the claimant to attend the trial remotely.

- [5] The claimant points out the associated expenses and the potential for unforeseen exigencies that could delay the trial. It is submitted that as the claimant resides outside the court's jurisdiction, it would be just and convenient to allow the claimant to appear virtually for a single day trial.
- [6] It is submitted that the claimant has appeared virtually on numerous occasions during these proceedings, and that there is no suspicion concerning the claimant's identity as was the case in **Great Hall Mortgages No.1 PLC v Law Debenture Corporate Services Ltd**¹, in which court required witnesses to attend the hearing in person. In this case, no doubt has been raised concerning the claimant's identity.
- [7] By affidavit filed on 26 April 2024, the first defendant, Mr. Bradley Reinhart, says he is the defendants' sole witness and that he would attend the trial in person. He says several documents would have to be shown and cross referenced during the trial and that this could not be conveniently done through a virtual hearing.
- [8] The defendants relied on the decision in **IDB Corporate Retreat Club Ltd v Green Light Equity Partners LLC**² in arguing that the court's order must not be varied. Young J expressed the view that the court must exercise its jurisdiction to vary or revoke an order very carefully and sparingly.
- [9] The defendants say that there has been no change of circumstances as advocated in the decision of Young J, to warrant a variation of the court's order, and that the claimant has not put forth credible and sufficient material to justify such a variation. The defendants submit that the claimant must appeal if dissatisfied with the court's order for an in person trial.
- [10] The court will not go so far as to hold that its direction to hold an in person trial can only be varied in appeal. The court's decision does not affect the rights of the parties. The direction is about what the court considers to be the most appropriate mode of holding the trial. The point raised by the defendants, however, need not be decided in determining the claimant's application.
- [11] The claimant filed a fixed date claim form on 20 April 2020 seeking several declarations and orders concerning an allotment of company shares in Coral Bay Holdings Limited. It is alleged that the first defendant caused returns of allotment dated 20 November 2019 and 9 December 2019 to be fraudulently lodged with the second defendant. By doing so, it is alleged, the first defendant has fraudulently taken over the company. An injunction was sought to restrain the first defendant

¹ 2022 EWHC 712 (Comm)

² Claim No.645 of 2011

from exercising any powers as a director of the company; it was granted on 3 June 2022 and was extended from time to time. The record shows that the interim injunction was last extended until 26 September 2022.

- [12] The circumstances related to each case will likely influence the judge in deciding what is a suitable and proportionate way to hear a case. The overall objective is implicit in such a decision. The allegations by the claimant are of a serious nature. The issues in this matter are such that the court is of the opinion that an in person trial would be appropriate. The claimant's reasons in requesting a virtual hearing are that he is travelling in May and June and the expenses in attending. The court agrees that expenses are an important consideration in opting for the most suitable mode in hearing the case.
- [13] It is reasonable to assume that the parties would have been in contemplation of the likely expenses in proceeding to trial. Generally, costs related to the action are recoverable by the successful party. Each party has identified a witness to be cross examined at the trial. The claimant is the sole witness on his behalf. The claimant has not set out the expenses likely to be incurred in attending the trial to be cross examined or evidence of his overseas travel itinerary.
- [14] The applicant made an oral request for a virtual application when the case came up for pre-trial review on 21 March 2024, and the application was filed on 19 April 2024. An in-person hearing was ordered as the court felt this was appropriate and proportionate in considering the parties' evidence. The court agrees with the defendants that cross examination is most beneficial when witnesses are in attendance. The decision in this case will turn on important findings of fact, and an in person trial may be advantageous to the court in reaching its findings. The application is, therefore, declined.
- [15] The court is conscious of the delay that can result in declining the application as the claimant says he is engaged in overseas travel. An early trial date will be fixed to avoid such delay. The orders made on 21 March 2024 will stand.

ORDER

- A. The application to give evidence virtually is declined.
- B. Witnesses are to be present in court to be cross examined.
- C. The case is to be mentioned on 27 May 2024 to fix a trial date.
- D. Costs to be in the cause.

M. Javed Mansoor

Judge