

IN THE HIGH COURT OF BELIZE

CLAIM No. Civ 49 of 2016 (No. 2)

BETWEEN:

CINDY LOPEZ LINAREZ

Claimant

AND

ROBERT'S GROVE LIMITED

Defendant

REGISTRAR OF COMPANIES

1st Interested Party

REEF ERA HOLDINGS, INC.

2nd Interested Party

ROBERT GARCIA (*As receiver of Robert's Grove Limited*)

3rd Interested Party

Appearances:

Mr Allister T Jenkins of Marin Young & Co LLP for the Claimant
No appearance from Interested Party
Ms Iliana N. Swift of Courteney Coye LLP for the 2nd Interested Party
Ms Deshawn Torres of Mckoy Torres LLP for the 3rd Interested Party

16 July 2024
25 July 2024

JUDGMENT

Section 34(1) Senior Courts Act – CPR 17.1 - Freezing order – Test for a freezing order – Grant of injunction between final judgment and execution – Grant of injunction in aid of execution – Interpleader intervention/application – Test for interpleader application – Costs – Costs Order against an interested party – Interested party took upon itself burden of resisting claimant’s application and asserted a positive interpleader intervention/application

Introduction

- [1] **HONDORA J:** This is my decision on the claimant’s application for the continuation of an asset freezing order and on the second interested party’s interpleader intervention.
- [2] I am grateful to the legal counsels’ written and oral submissions, which assisted me greatly in arriving at my decision. For ease of reference, I shall refer to Ms Cindy Lopez Linarez as the claimant and all the other parties by their names.

Factual background

- [3] These legal proceedings rose out of an employment relationship that went sour nearly ten years ago. The claimant, worked for Robert’s Grove Limited (Robert’s Grove) between 2001 and 2015 at its resort in Placencia. The claimant sued Robert’s Grove in January 2016 for breach of contract and wrongful termination of her contract of employment. In a judgment issued by the High Court on 5 March 2019, Robert’s Grove was ordered to pay the claimant damages in the sum of \$329,634.26. Despite demand, Robert’s Grove has not settled that judgment debt.
- [4] On **8 August 2023**, the claimant secured a writ of execution pursuant to which the Marshall visited Robert’s Grove place of business in Placencia on **27 January 2024** and marked several goods and chattels. On **24 February 2024**, the court Marshall seized some of the marked goods and chattels and put them in storage in Placencia Village, Stann Creek District pending their sale by public auction in satisfaction of the judgment debt.
- [5] On **11 April 2024**, the claimant filed an application and sought a freezing order over Robert’s Grove’s assets in Belize, including the property seized by the Marshall on 27 January 2024. In her affidavit the claimant (a) contended that she had a judgment debt that remained unpaid; (b) sought to demonstrate that the defendant owned both real and personal property in Belize; (c) contended that there was a risk of the defendant dissipating the property and that there was proof that the defendant had started to transfer to third parties’ ownership of the assets discovered by the claimant.

- [6] The application was given a hearing date of **24 April 2024**.
- [7] The claimant served her application for the freezing order on Messrs Courtenay Coye LLP who were Robert's Grove legal practitioners of record in the main matter relating to the employment dispute. In that matter, Ms Swift was the attorney on record for Robert's Grove.
- [8] I pause here to commend the claimant's approach and to make the following obiter statement. Applications for freezing orders should, save in exceptional circumstances, be on notice to the defendant/respondent. I share Young J's statement in *Internet Experts S.A dba Insta Dollar v Omni Networks Limited (In Liquidation) and Ors*, Claim No. 803 of 2010 that freezing orders have been called nuclear or thermo-nuclear options given the severity of their effect and potential unfairness on defendants. For this reason, it must be a rare case in which such an application is made ex parte. I cannot put it better than Mostyn J who in *L v K (Freezing Orders)* [2014] 2 WLR 914¹, stated that:

"It is worth remembering only not only that the ex parte procedure is intrinsically unfair but also, and very importantly, that a case which begins with an ex parte order is usually poisoned from that point onwards. The unilateral step taken at the beginning of [the] case echoes down its history. Often the respondent is enraged by the step taken against him and looks to take counter-offensive measures. Every single subsequent step is coloured by that fateful first step. Costs tend to mount exponentially. And even after the lawyers close their files and render their final bills the personal relations...will likely remain forever soured. A nuclear winter often ensues. This is not to say sometime, but very rarely, an ex parte application is unnecessary."

First hearing and interim order

- [9] **On 24 April 2024**, the claimant was represented by Mr Jenkins of Marin Young & Co. LLP. Ms Swift appeared and informed the court that although Robert's Grove had not terminated her agency, she had no instructions to represent the company in the matter pertaining to the application for an asset freezing order. She confirmed that she had been instructed to represent Reef Era Holdings Inc. and that the latter had an interest in the proceedings because the property seized by the Marshall pursuant to the writ of execution belonged to Reef Era Holdings and not Robert's Grove. Learned counsel did not indicate that she was removing herself from the record as the defendant's legal representative in the proceedings.

¹ Although stated in the context of family proceedings, Mostyn's views in that case are of general application.

- [10] This gave rise to a conundrum. It was unclear how Ms Swift intended to balance (a) her representation of the defendant in the proceedings but without instructions; (b) her representation of the second interested party; and (c) her obligations to the court. Mr Jenkins did not raise any objections.
- [11] During the hearing there was confusion over a company called Blue Reef Caribbean Resorts, which the claimant alleged had expressed an interest in the property seized by the Marshall. Ms Swift clarified that she had been instructed that the company that had an interest in the property seized was called Reef Era Holdings Inc. and that the reference to Blue Reef Caribbean Resorts was an error.
- [12] In response to my question on whether there was any relationship between the defendant company and Reef Era Holdings Inc., Ms Swift confirmed that Mr Boris Mannsfeld (Mr Mannsfeld) was or had been a director and shareholder in Robert's Grove, the defendant. She also stated that Mr Mannsfeld was a current director and shareholder in Reef Era Holdings Inc. She further indicated that Robert's Grove might be in receivership. Learned counsel was unable to shed light on whether an official receiver (as defined under section 1 of the Companies Act, 2022) had been appointed by the court to manage Robert's Grove's operations or whether the receiver had been appointed by one or more creditors pursuant to one or more debentures or some other legal instrument(s).
- [13] Ms Swift's submissions, all made from the bar, added complexity to what had initially appeared to be a simple application for a freezing order. I allowed Ms Swift's appearance in large part because she indicated that she had been instructed to inform the court that Reef Era Holdings Inc. intended to participate in the proceedings as an interested party because it had interests in the property seized by the Marshall.
- [14] With respect to the claimant's application, I decided to issue an interim freezing order with a short return day to allow for an inter-partes hearing. I did so in view of the uncertainties relating to Robert's Grove's legal status. Additionally, section 45 of the Senior Courts Act, 2022 required me to avoid multiplicity of proceedings and seek to resolve all arising issues justly and at proportionate cost. In addition, it appeared that while Mr Mannsfeld had not given instructions to Ms Swift, his affidavit spoke on matters relating to both Robert's Grove and Reef Era Holdings Inc. I hoped that enough information would be provided on the return day to enable the court to arrive at a decision that was accurate and just.

[15] It was also my judgment that (a) the claimant had proved to the requisite standard that she had a judgment order, which remained unsatisfied more than five years after it was issued; and (b) the facts supported the conclusion that the defendant was dissipating assets. I formed that view because in his 16 April 2024 affidavit, Mr Mannsfeld acknowledged that Robert's Grove was in the process of transferring some of the movable assets seized by the Marshall pursuant to the writ of execution to Reef Era Holdings. This raised questions on why Mr Mannsfeld had not filed an affidavit or caused an affidavit to be issued for and on behalf of Robert's Grove addressing the claimant's application for a freezing order and its entitlement, if any, to the property seized and other of its assets in Belize.

[16] In the circumstances, I issued the following order, that:

“the Defendant is restrained, whether by themselves, their directors, servants, agents, assigns...from transferring, disposing, otherwise alienating or encumbering any of their assets, including their real property and the chattels seized pursuant to a Writ of Execution dated the 8th [of] August, 2023, until the inter-partes hearing on 22nd May, 2024 or [until] otherwise ordered by the Court”.

[17] I also issued the following orders, i.e.:

- “(2) The claimant shall add Reef Era Holdings Inc. and the Registrar of Companies as Interested Parties in the proceedings herein;
- (3) Reef Era Holdings Inc. is restrained, whether by themselves, their directors, servants, agents, assigns or otherwise from transferring, disposing, otherwise alienating or encumbering any of the Chattels seized pursuant to a Writ of Execution dated the 8th August 2023, until the inter partes hearing on 22nd May, 2024 or [as] otherwise ordered by the court;
- (4) The claimant shall serve a copy of the Notice of Application for a freezing order and a copy of the order herein on Reef Era Holdings Inc. and the Registrar of Companies on or before the 3rd May 2024;
- (5) The claimant shall file an affidavit of service relating to service on Reef Era Holdings, Inc. and the Registrar of Companies on or before the 10th May 2024;
- (6) The defendant and/or its receiver, Reef Era Holdings Inc. and [the] Registrar of Companies are permitted to file an affidavit in Reply to the Notice of Application for a freezing order on or before the 13th May 2024;
- (7) The claimant is permitted to file an affidavit in response on or before 17th May 2024;
- (8) The claimant is also permitted to file an affidavit in reply to any application filed by any of the parties.”

[18] The court added Reef Era Holdings Inc. as an interested party in response to Ms Swift's representations. The Registrar of Companies was added because Ms Swift had indicated that Robert's

Grove might have been placed under receivership. At the time, it was unclear whether this was done pursuant to the Companies Act or under a contractual arrangement. I adjourned the hearing to 22 May 2024 and ruled that costs would be costs in the cause. There were no objections or representations in this regard by Ms Swift.

22 May 2024 hearing

[19] On **22 May 2024**, Mr Jenkins appeared for the claimant and Ms Swift appeared for Reef Era Holdings Inc.

[20] Once again, Ms Swift informed the court that she had no instructions from Robert's Grove. As a practical matter, Robert's Grove was represented by its legal counsel albeit one who had not been given any instructions regarding Robert's Grove's defence. I let it be known to Counsel that I found the situation unsatisfactory.

[21] Ms Swift submitted that her client, Reef Era Holdings Inc, had filed an interpleader intervention/application, which was supported by an affidavit from one of Reef Era Holdings Inc.'s directors and shareholder known as Yang Song.

[22] I pointed out to both counsel that the fair and just resolution of the dispute relating to the freezing order sought by the claimant required Mr Mannsfeld to clarify several issues relating to Robert's Grove. I made the order since Mr Mannsfeld was already participating in the proceedings and had filed – on 16 April 2024 – an affidavit on behalf of Reef Era Holdings Inc.

[23] With Mr Jenkins and Ms Swift concurring, I extended the interim freezing order and directed Mr Mannsfeld to file an affidavit by 5 June 2024:

- (a) addressing whether Robert's Grove was a going concern;
- (b) addressing whether Robert's Grove continued to be registered on the Companies register;
- (c) addressing whether Robert's Grove was in liquidation or in the process of being wound up or had been dissolved;
- (d) addressing whether he (i.e., Mr Mannsfeld) was entitled to represent Robert's Grove and act on its behalf including in relation to the administration of its assets; and
- (e) providing responses to the claimant's application for a freezing order.

[24] I also asked the parties to file skeleton arguments on the issues of fact and law relating to the claimant's request for continuation of the freezing order.

[25] I adjourned the matter to 20 June 2024.

20 June and 16 July 2024 hearings

[26] The matter came up for hearing on 20 June 2024 during which Ms Swift applied for leave to remove Courtney Coye LLP from the record as Robert's Grove legal representative in the matter. Mr Jenkins, representing the claimant did not object and I granted Ms Swift's application.

[27] I commend Ms Swift for her decision. The facts of this case constitute a cautionary tale on the challenges that lawyers face when representing corporate entities fronted by one director or several clients not all of whom have the same interests or that have no intention or that are unable to pursue similar litigation positions and strategies.

[28] On 24 April 2024 and 22 May 2024, Ms Swift indicated that although her law firm was on record as representing the defendant, she had not received any instructions. Her instructions in this regard would have come from Mr Mannsfeld. Certainly, as an experienced legal practitioner, I expected learned counsel to secure relevant clarifications from her client to enable her to consider her obligations to her client and to the court. Compounding the situation is the fact that Ms Swift was receiving instructions from Mr Mannsfeld regarding Reef Era Holdings Inc.'s interpleader claim. This placed Ms Swift in a potentially untenable position.

[29] Lawyers will, of course, be alive of their overriding duty to the court and on the need to take prompt action to mitigate against being professionally embarrassed.

[30] That hearing was postponed at the request of Mr Jenkins after I had asked questions on the reasons why Mr Robert Garcia, as the alleged receiver of Robert's Grove had not filed any affidavit providing information on Robert's Grove. The matter was postponed to **16 July 2024**.

Mr Mannsfeld's and Mr Garcia's affidavits

[31] Ahead of the 20 June 2024 hearing, i.e., on 14 June 2024, Mr Mannsfeld filed an affidavit answering the questions I had raised in my 22 May 2024 order. And ahead of the 16 July 2024 meeting, i.e., on 11 July 2024, Mr Garcia filed his affidavit giving a brief outline of the circumstances that led to his

appointment as a receiver and addressing matters relating to the mortgage debenture between Robert's Grove and Atlantic Bank. At the hearing, Mr Garcia was represented by Ms Deshawn Arzu Torres of Mckoy Torres. Both affidavits provided welcome clarification on some issues but also raised other issues, which I address below.

[32] In his affidavit, Mr Mannsfeld said he was a "former director" of Robert's Grove. He made that statement despite being aware that he remains a director of Robert's Grove. He attached to his affidavit an extract from the Belize Companies and Corporate Affairs Registry, which shows that he is still registered as a director of that company.

[33] This fact also undermined Mr Mannsfeld's averment that his role as director of Robert's Grove was displaced when Atlantic Bank appointed a receiver. As a matter of law, Mr Mannsfeld's role as director of Robert's Grove was not displaced on the appointment of a receiver by Atlantic Bank. The powers of a receiver appointed pursuant to a mortgage debenture extend to (i) voting rights; (ii) receiving distributions in respect of the shares; and (iii) exercising other rights and powers of the mortgagor or chargor in respect of the shares, until such time as the mortgage or charge is discharged (see section 66(4)(c) of the Companies Act). It was not alleged by Mr Mannsfeld or Mr Garcia that the latter had used his voting power pursuant to the Companies Act and the mortgage debenture to remove Mr Mannsfeld as a director of Robert's Grove.

[34] When he filed his affidavit, Mr Garcia knew or must have known that Mr Mannsfeld had alleged that he was nothing more than a "former director". Mr Garcia did not comment on Mr Mannsfeld incorrect information. During the hearing, his lawyer, Ms Torres indicated that she had no instructions to address the court on this or other matters arising from the claimant's application for a freezing order.

[35] In his affidavit, Mr Mannsfeld also said that he was unaware whether Robert's Grove was liquidated or wound up. Mr Mannsfeld knows that the company has not been liquidated or wound up. He knows that because he attached to his affidavit an extract from the Belize Companies and Corporate Affairs Registry that attests to the fact that the company has not been liquidated or wound up. Mr Jenkins submitted that based on his client's investigations, Robert's Grove remained on the companies' register and had not been liquidated or dissolved. As the receiver, Mr Garcia did not address this issue, although he knew or must be assumed to have known that this was a live issue in the matter. It is certainly an issue that should have been of concern to him given his role as receiver.

[36] In addition, in his affidavit, Mr Mannsfeld denied being the purchaser of property, which it is alleged was sold at an auction on 15 November 2022. At para. 10 of his affidavit, Mr Mannsfeld stated:

“At paragraph 14 of her affidavit, the Claimant states that I was the purported purchaser. However that is completely untrue; the purchaser was Reef Era and I executed the Memorandum as a representative of the intended new company which was later formed as Reef Era with a foreign investor, Jason Song.”

[37] Contained in the Memorandum of sale is the following paragraph:

“That at the sale by auction this 15th day of November, 2022 of the properties and assets mentioned in the annexed auctioneer’s particulars of sale, **Mr Boris Mannsfeld** of [addressed omitted] **was the purchaser** of all that freehold interest of Messrs Robert’s Grove Limited described as follows...”

[38] Relatedly, Mr Robert Garcia attached to his affidavit a letter written by his lawyers, Messrs Mckoy Torres LLP to the Commission of Lands and Surveys. In that letter, Messrs Mckoy Torres LLP stated the following in the second paragraph:

“On or about the 15th of November 2022, RGL entered into an agreement for the sale of its assets to Boris Mannsfeld and which included several parcels of land situate (*sic*) in the Placencia Registration Section. A copy of the Terms and Conditions of Sale is enclosed for ease of reference.”

[39] Notably, Mr Garcia did not comment on Mr Mannsfeld’s misleading statement that he was not the purchaser of the property allegedly sold at auction on 15 November 2022.

[40] On these facts, Mr Mannsfeld’s denial that he was the purchaser of the property mentioned in the Memorandum of sale does not stake up. These facts make it difficult to avoid the conclusion that Mr Mannsfeld has been frugal with the truth.

[41] In addition, none of the copies of the mortgage debentures or the agreement of sale between Mr Garcia and Robert’s Grove as vendor were authenticated and the second and third interested parties legal representatives did not tender any explanations. Consequently, in these proceedings, I have placed little weight on the same.

[42] During the hearing, I referred Ms Swift and Ms Torres to the Mortgage Debenture dated 10 August 2015 and pointed out to them that the type-font used on pages (1) to half of page (13) and on page (59) to (66) was different and more modern from the one used in a section starting on the second half of page (13) to (58) headed “THE SCHEDULE ABOVE REFERRED TO”. The type-font used from page (13) to (58) appears (a) to have been added at some point after those documents were settled; and (b)

to not be part of the original document. I invited submissions and clarifications. Ms Torres reiterated that she had no instructions beyond the affidavits submitted and she was unable to explain the apparent discord and the concern that these documents were highly unlikely to be originals and that the schedule of chattels was added later - potentially to give the impression that the listed items were sold by Robert's Grove to Mr Mannsfeld.

[43] In the circumstances, there was not before me any reliable information demonstrating that the property seized by the Marshall pursuant to the writ of execution did not belong to Robert's Grove. If, in truth and as a matter of law, Atlantic Bank had taken ownership of all of Robert's Grove's real and personal property, then I would have expected Mr Garcia to state this fact in his affidavit. As the receiver, he was expected to make all relevant averments in this regard.

[44] In para. 3 of his affidavit, which he filed on 17 July 2024, Mr Garcia indicated that all of Robert's Grove's assets "*were charged in favour*" of Atlantic Bank. But this is not the same as saying ownership of any or all of Robert's Grove assets was transferred from Robert's Grove to Atlantic Bank.

[45] Although I make no definitive ruling, it is doubtful that Atlantic Bank took ownership of any of Robert's Grove movable property. It is also clear from para. 8 of the 10 August 2015 "assignment debenture" that Robert's Grove retained ownership of its movable assets. Notably, para. 8(b) provides that:

"The...provisions of this clause shall not be construed or operate to confer on the Assignee [i.e., Atlantic Bank] any right to any furniture or any chattels of the Company [Robert's Grove] or any charge or security thereon."

[46] In the circumstances, I rule that the claimant has demonstrated that the defendant has assets in Belize against which it can levy the writ of execution.

Issues arising

[47] Drawing on the above, two key issues arise for determination, i.e.:

- (a) whether the court should continue the freezing order over the defendant's assets; and
- (b) whether Reef Era's interpleader intervention is properly before the court.

Whether the freezing order should be continued

[48] The court's authority to grant freezing orders is set out in Section 34(1) of the Senior Courts Act, 2022, as read with Rule 17.1 of Civil Procedure Rule (CPR).

[49] Section 34(1) of the Senior Courts Act provides:

“Subject to the rules of the court, the court may grant a mandamus or injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the court to be just or convenient to do so.”

[50] Relatedly Civil Procedure Rule (CPR) 17.1 provides

“The court may grant interim remedies, including...(f) an order (referred to as a ‘freezing order’) ...restraining a party from dealing with any assets whether located within the jurisdiction or not.”

[51] The court’s power on freezing orders was considered and upheld in, among others, **Internet Experts S.A dba v Omni Networks Limited (in liquidation) and Ors**, Claim No. 803 of 2010; and in **Bella Group LLC and Ors v Marco Caruso and Ors**, Claim No. 626 of 2020. In these proceedings, the second and third interested parties’ legal representatives did not dispute the court’s power to grant freezing orders. In the circumstances, little is gained in addressing this undisputed issue in any detail.

[52] In a persuasive statement in **Orwell Steel (Erection and Fabrication) Ltd v Asphalt and Tarmac (UK) Ltd** [1985] 3 All ER 747, Farquharson J.’s ruled that the court had “*power to grant an interlocutory injunction between final judgment and execution*” and that “*an injunction can be used as an aid to execution*” (page 749). The terms of Section 37 of the United Kingdom’s Supreme Court Act, which Farquharson was considering are similar to those contained in section 34(1) of our Senior Courts Act, 2022.

[53] It is also well-established and it admits of little dispute that a party that seeks a freezing order must (a) put forward an appropriately strong case with a clear of cause of action or demonstrate their entitlement to a judgment order duly issued by the court; (b) demonstrate on objective facts and/or evidence and not unsubstantiated opinion that the defendant owns or has an interest in assets in or outside the jurisdiction; (c) demonstrate using evidence and not mere expressions of anxiety or suspicion a substantive risk of the dissipation of assets (see **L.K (Freezing Orders: Principles and Safeguards)** [2014] 2 WLR 914. In **Bella Group**, Shoman J relied upon the case of **Mareva Compania Naviera S.A v International Bulk Carriers S.A** [1975] 2 Lloyd’s Report 509, the locus classicus, which set out the test for the grant of what became known as the Mareva injunction.

[54] On the facts I find that the claimant has a judgment order for the sum of \$329,634.26 granted by this court on 5 March 2019, which judgment remains unsatisfied. Although he declined to give evidence on

behalf of the defendant despite being a director, Mr Mannsfeld did not contest that (a) the judgment order issued in favour of the claimant is valid; (b) the judgment order has not been satisfied; and (c) that no appeal was lodged against it. In addition, Mr Mannsfeld did not provide any explanation as to why the judgment debt remains unpaid or demonstrate that there is no need for an asset freezing order.

[55] I also rule that the claimant has demonstrated that the defendant owns and/or has interests in different types of properties, which include chattels and real estate. It appears that some of the real estate is mortgaged to Atlantic Bank and as appears from Mr Garcia's affidavit, some of the property remains in Robert's Grove name. The fact that some of Robert's Grove property is mortgaged does not prevent that property being sold in satisfaction of the judgment order with the sums realised being distributed among creditors with Atlantic Bank getting priority.

[56] Relatedly, Mr Mannsfeld has not indicated that he and/or other directors of Robert's Grove have taken any steps or are willing to take appropriate measures to clear Robert's Grove indebtedness to the claimant. The facts as pleaded support the inference that Robert Grove's directors have taken no steps to settle the judgment debt.

[57] In addition, Mr Mannsfeld confirmed in his 16 April 2024 affidavit, that Robert's Grove is in the process of transferring assets away from itself to Reef Era Holdings Inc. including those seized by the Marshall acting pursuant to the August 2023 writ of execution. This fact establishes a very real risk of dissipation of assets. Whether those assets now belong to Reef Era Holdings Inc is a legitimate question that falls to be decided in separate legal proceedings instituted either by Robert's Grove or Reef Era Holdings Inc. if they are so inclined.

[58] In arriving at this conclusion, I have also considered that Robert's Grove has been represented in these proceedings by counsel but who appeared without instructions. In addition, Roberts Grove opted to not file any pleadings in opposition to the claimant's application. I have also taken into consideration that this court gave Robert's Grove several opportunities to participate in the proceedings.

[59] In addition, as indicated above, I rule that Mr Mannsfeld has not been candid with the court. His claim that he is no longer a director of Robert's Grove is misleading as is the insinuation that has had little-to-no dealings with the company. If the latter were true, he would not have been privy to the information, which he disclosed in his 16 April 2024 affidavit that Reef Era Holdings Inc. and Robert's Grove are in

the process of transferring ownership rights over property that is currently in the name of the latter. To allay the very valid concerns about dissipation of assets, Mr Mannsfeld was required to disclose all relevant information and to be candid with the court.

[60] This case also raises credible concerns about unjustified dealing with assets (see *L v K*, at para. 23) – an issue that Mr Jenkins repeatedly emphasised, and I must say, with considerable skill. Mr Mannsfeld allegedly bought some or potentially all of Robert’s Grove’s assets at what is said to be a public auction on 15 November 2022. The relevant agreement does not show that any money exchanged hands between Mr Mannsfeld and the receiver, which raises unanswered questions on the validity of that alleged contract of sale and whether there was any true transfer of ownership from Robert’s Grove to Mr Mannsfeld and from Mr Mannsfeld to Reef Era Holdings.

[61] As indicated above, the issue of what assets, if any, Robert’s Grove owns or has financial interests in is a matter to be resolved between the parties, including potentially in separate legal proceedings.

[62] In the circumstances, I rule as follows:

1. Until further order by this court, the defendant must not whether by itself or through third parties remove from Belize or in any way dispose, deal with, encumber or diminish in value any of its assets, which are in Belize, including:
 - (a) the following movable property seized by the Marshal acting pursuant to the 8 August 2023 writ of execution: (i) 1 fisherman boat/skiff – Golden Hamlet – SC 0785; (ii) 1 fisherman boat/skiff – SC 0374; (iii) 1 double deck dive boat; (iv) 1 white Nissan Urvan NV250 – Licence Plate No. SC C-15794; (v) 1 white Nissan Urvan NV350 – Licence Plate No. SC C-11008;; and (vi) 1 red Sierra SLE GMC pickup truck – Licence Plate No. SC C-10157; and
 - (b) the following immovable property in Block 36 Placentia North Registration Section: (i) Parcel 3260; (ii) Parcel 3279; (iii) Parcel 3287; (iv) Parcel 3282; (v) Parcel 3280; (vi) Parcel 3285; (vii) Parcel 3284; (viii) Parcel 3281; (ix) Parcel 3283.
2. This order will cease to have effect if the defendant:
 - (a) provides security by paying the sum of \$329,634.26, prescribed costs, and all costs incurred to date by the claimant in execution of the 5 March 2019 judgment order; or

- (b) makes provision for security of all due sums by another method agreed with the claimant's legal practitioners.
3. Any person served with or notified of this order may apply to the court at any time to vary or discharge the order (in so far as it affects that person), but they must first inform the claimant's legal representatives in writing. If any evidence is to be relied upon in support of the application by that person, the substance of it must be communicated in writing to the claimant's legal representatives in advance of approaching the court.
 4. It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.
 5. This freezing order does not prevent any bank from exercising any right of set-off it may have in respect of any facility which it gave to the defendant before it was notified of this order.
 6. Costs of this application (i.e., for the asset freezing order) are awarded to the claimant as against the defendant and the 2nd Interested party, the one paying the other to be absolved. If not agreed, these costs must be assessed.

[63] For completeness, this order does not prevent the claimant from proceeding with execution against any property owned by or in which the defendant has relevant financial interests. In addition, it does not pronounce on any rights of ownership relating to any of the property seized or that may be seized by the Marshall acting pursuant to any writ of execution issued by the court.

Whether Reef Era is entitled to make an interpleader intervention

[64] As noted above, when the claimant served her application for a freezing order on the defendant, it resulted in a response not from the defendant but from Reef Era Holdings Inc. Ms Swift informed the court that her client, Reef Era Holdings Inc. had an interest in the property seized by the Marshall pursuant to the writ of execution.

[65] Reef Era Holdings filed three affidavits in response to the claimant's application. The first was by Mr Mannsfeld on 16 April 2024 in which he stated that "*the assets and parcels of land are no longer owned by the Defendant and Reef Era Holding is the rightful owner. Therefore the items were marked and seized in error under the Writ of fieri facias.*" The second was filed on 14 May 2024 by Yang Song in

which the deponent stated “*I...believe that the assets and the parcels of land are no longer owned by the Defendant and Reef Era Holdings is the rightful owner.*” The third was by Mr Mansfeld who addressed the questions raised by the court regarding the Robert’s Grove’s status, his role in that company, whether Robert Grove was a going concern and/or remained on the register of companies.

[66] In its brief skeleton arguments, Reef Era Holdings Inc. affirmed that in its view, the property seized by the Marshall is property that was sold to it and consequently “*should not be subject to the Writ of Execution.*” Reef Era Holdings Inc. also alleged that the property (but without providing any specifics) was paid for on 28 February 2023 and that consequently, the “*goods/chattels were transferred to Reef Era as of 28 February 2023.*” That submission was improperly made. It was not based on any of the affidavit evidence filed on behalf of Reef Era Holdings Inc. i.e., by Mr Mansfeld or Yang Song.

[67] What is to be made of Reef Era Holdings Inc.’s pleadings and participation in these proceedings? In response to Mr Jenkins’ argument that Reef Era Holdings Inc. had made an incompetent interpleader application/intervention, Ms Swift argued that all what Reef Era Holdings had done was to give notice to the Marshall of its interest in the property that she seized.

[68] I agree with Mr Jenkin’s submission. Reef Era Holdings Inc. used the wrong procedure to assert its alleged interests in property said to have been sold to it by Robert’s Grove/Mr Mansfeld.

[69] Ms Swift did not dispute the principle set out in the case of ***Lopez Equipment Co. Ltd v PSA Belize Ltd and Ano***, Civil Application No. 5 of 2017 – a case that was cited by Mr Jenkins in his written submissions. Interpleader proceedings may only be initiated by the Marshall or a third party that is under liability in relation to the assets seized or in relation to which there are two or more persons laying claim to the same property. This much is clear from CPR 54(1) and (2), which provide:

- “(1) This part deals with the situation where –
 - (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and proceedings are taken against him, or are likely to be taken against him by two or more persons making adverse claims in respect of the debt, money, goods or chattels; or
 - (b) a claim is made to any money, goods or chattels seized or intended to be seized by the marshall or the proceeds or value of such goods or chattels.
- (2) The person under a liability under paragraph (1)(a) or the marshall may apply for relief.”

[70] Reef Era Holdings did not allege, and the facts do not demonstrate, that it was under any liability in respect of the property seized by the Marshall or indeed any of the other assets owned by and/or held in the name of Robert's Grove, which the claimant seeks to sell in satisfaction of her judgment order. In fact, in her oral submissions, Ms Swift in all but name conceded this point.

[71] I hold that Reef Era Holdings has neither locus standi nor a valid cause of action under the CPR interpleader process. In addition, its pleadings were not any answer to the claimant's application for a freezing order against Robert's Grove's assets. That Mr Mannsfeld chose to ignore the essence of the claimant's application for a freezing order opting instead to focus solely on Reef Era Holdings Inc.'s alleged ownership of assets when he was and is a director in both companies suggests that the property transactions were not done at arm's length.

[72] In the circumstances, I dismiss Reef Era Holdings Inc.'s application with costs.

Costs

[73] The claimant has succeeded in its claim for a freezing order against Robert's Grove and is consequently entitled to costs.

[74] In these proceedings, the court gave Robert's Grove more than ample opportunity to appear and either agree to the order or state its case. Robert's Grove was properly served and its director, Mr Mannsfeld opted to not make any representation. Robert's Grove director chose instead to make representations with respect to Reef Era Holdings Inc. which may be a successor company structured out of Robert's Grove.

[75] In addition, I find that the claimant validly served Robert's Grove through its lawyers on the record. In the circumstances, Robert's Grove made a deliberate choice, and it must be held to its election and be taken as having considered the cost implications of its litigation strategy.

[76] Relatedly, in this matter, the second interested party intervened and took upon itself the burden of resisting the claimant's application for a freezing order, including through an interpleader intervention. In the circumstances, the second interested party assumed the risk of contesting the claimant's asset freezing application. In addition, its participation added to the costs incurred by the claimant from 24 April 2024 - the date of the first hearing. This court can, in appropriate cases, and after considering all

relevant factors, including the conduct of the parties, award costs against an interested party (*The Queen (On the Application of Easter) v Mid-Suffolk District Council and Another* [2020] EWHC Civ 1378).

[77] It is also fair to say, the claimant would not have incurred the costs of this application had Mr Mannsfeld, who is a director of Robert's Grove and Reef Era Holdings, Inc.) engaged the claimant on the judgment order, which remains unsatisfied.

[78] In the circumstances the claimant is entitled to an award of costs against Robert's Grove and Reef Era Holdings Inc., the one paying the other to be absolved. This is in line with the general rule on costs as set out in CPR 63.6(1). If not agreed between the parties, the costs must be assessed.

[79] Relatedly, Reef Era Holdings Inc.'s interpleader intervention/application has no merit. Consequently, the claimant is also entitled to costs.

Conclusion

[80] In the circumstances, my decision and orders are as follows.

A. On the application for a freezing order:

1. Until further order by this court, the defendant must not whether by itself or through third parties remove from Belize or in any way dispose, deal with, encumber or diminish in value any of its assets, which are in Belize, including:
 - (a) the following movable property seized by the Marshal acting pursuant to the 8 August 2023 writ of execution: (i) 1 fisherman boat/skiff – Golden Hamlet – SC 0785; (ii) 1 fisherman boat/skiff – SC 0374; (iii) 1 double deck dive boat; (iv) 1 white Nissan Urvan NV250 – Licence Plate No. SC C-15794; (v) 1 white Nissan Urvan NV350 – Licence Plate No. SC C-11008;; and (vi) 1 red Sierra SLE GMC pickup truck – Licence Plate No. SC C-10157; and
 - (b) the following immovable property in Block 36 Placentia North Registration Section: (i) Parcel 3260; (ii) Parcel 3279; (iii) Parcel 3287; (iv) Parcel 3282; (v) Parcel 3280; (vi) Parcel 3285; (vii) Parcel 3284; (viii) Parcel 3281; (ix) Parcel 3283.
2. This order will cease to have effect if the defendant:

- (a) provides security by paying the sum of \$329,634.26, prescribed costs, and costs incurred to date by the claimant in execution of the 5 March 2019 judgment order; or
 - (b) makes provision for security of all due sums by another method agreed with the claimant's legal practitioners.
- 3. Any person served with or notified of this order may apply to the court at any time to vary or discharge the order (in so far as it affects that person), but they must first inform the claimant's legal representatives in writing. If any evidence is to be relied upon in support of the application by that person, the substance of it must be communicated in writing to the claimant's legal representatives in advance of approaching the court.
 - 4. It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.
 - 5. This freezing order does not prevent any bank from exercising any right of set-off it may have in respect of any facility which it gave to the defendant before it was notified of this order.
 - 6. Costs of this application (i.e., for the asset freezing order) are awarded to the claimant as against Robert's Grove Limited and Reef Era Holdings Inc, the one paying the other to be absolved. If not agreed, these costs must be assessed.

B. On Reef Era Holdings Inc.'s interpleader intervention/application

- 7. Reef Era Holdings Inc.'s interpleader intervention/application is dismissed.
- 8. Costs relating to Reef Era Holdings Inc.'s interpleader intervention/application are awarded to the claimant as against Reef Era Holdings Inc. If not agreed, these costs must be assessed.

**Dr Tawanda Hondora
High Court Judge**