

IN THE HIGH COURT OF BELIZE

CLAIM No. Civ 49 of 2016

Between

GISELLE SAMPSON
(in her capacity as Assistant Marshal)

Interpleader applicant

AND

REEF ERA HOLDING INC.

1st Interpleader claimant

CINDY LOPEZ LINAREZ

2nd Interpleader claimant

ROBERTS GROVE LIMITED

1st Interested party

ROBERT GARCIA

2nd Interested party

Appearances:

Ms Ilian N Swift of Courtney Coye LLP for the 1st Interpleader claimant

Mr Allister Jenkins of Marin Young and Co LLP for the 2nd Interpleader claimant

Ms Deshawn Torres of Mckoy Torress LLP for the 2nd Interested party

No appearance for the 1st Interested party

1 November 2024

4 November 2024

JUDGMENT

Interpleader proceedings – Part 54 of the Civil Procedure Rules – Interpleader proceedings instituted by assistant marshal as an interpleader applicant to enable the determination of contested claims to goods seized pursuant to a writ of execution - Interpleader claimants bear the burden of proof of demonstrating title to goods seized pursuant to a writ of execution

- [1] **HONDORA J.:** This is my decision on interpleader proceedings initiated by assistant marshal Giselle Sampson, under Part 54 of the Civil Procedure Rules.
- [2] I must start with a brief description of the parties. Although these interpleader proceedings involve Reef Era Holdings Inc. (the 1st interpleader claimant) and Ms Cindy Lopez-Linarez the 2nd interpleader claimant), there are also two other central players, i.e., Roberts Grove Limited (the 1st interested party) and Mr Boris Mannsfeld. Roberts Grove is or used to be a resort. It is based in Placencia, Stann Creek district - one of Belize's iconic holiday destinations. Roberts Grove's principal director in Belize is Mr Boris Mannsfeld. Mr Mannsfeld is also the principal director in Belize of Reef Era – a fact demonstrated by the Belize Companies and Corporate Affairs Registry's extract produced in evidence in these proceedings by Reef Era. Although Mr Mannsfeld has seemingly played no active part in these interpleader proceedings, his decisions in his personal capacity and as director of both corporate entities (Roberts Grove and Reef Era) have a central bearing on the outcome of these proceedings.

Background

- [3] This case originated from an employment dispute between Ms Linarez and Roberts Grove – the genesis of which need not detain us. What matters is that on **5 March 2019**, the High Court awarded Ms Linarez damages in the sum of **\$329,634.26** for breach of her employment contract. Those damages were assessed in the case of *Linarez v Roberts Grove Limited*, Claim No. 49 of 2016 – in which proceedings Roberts Grove participated. Roberts Grove did not pay the judgment debt. It is that failure by Roberts Grove to pay the judgment debt that has resulted in these interpleader proceedings.
- [4] **On 8 August 2023**, Ms Linarez issued a writ of execution pursuant to which the assistant marshal visited Roberts Grove's premises in Placencia on **24 February 2024** and seized:
- (a) two white Nissan Urvan NV350 motor vehicles bearing licence plates, SC C-15794 and SC C-1108, respectively;
 - (b) one Red Sierra SLE GMC pickup truck bearing licence plate SC C-10157;
 - (c) one fisherman boat/skiff – Golden Hamlet bearing licence plate SC-0785; and
 - (d) one double-deck dive boat – Dorado PRO 48 bearing licence plate SC-0118 (together, motor vehicles and boats).

- [5] **On 11 April 2024**, Ms Linarez filed an application for an asset freezing order over Roberts Grove's assets in Belize, including the assets seized by the assistant marshal. Surprisingly, Roberts Grove did not participate in those proceedings – and this was notwithstanding numerous opportunities offered by the court to enable Robert Grove's participation and the resolution of all arising disputes between the parties arising from the 5 March 2019 judgment order. However, Reef Era did appear through Roberts Grove's then lawyers and now Reef Era's lawyers, Messrs Courtney Coye LLP and asserted ownership over all of Roberts Grove's real and personal assets. Ms Linarez sought the asset freezing order with an eye on the execution of the 5 March 2019 judgment order. Since Roberts Grove opted not to file a defence and Ms Linarez satisfied the requirements for an asset freezing order, I granted the relief sought in my **25 July 2024** judgment in the case of *Linarez v Roberts Grove Limited*, Claim no. Civ 49 of 2016 (No. 2). That order extended to the motor vehicles and boats seized by the assistant marshal on 24 February 2024.
- [6] On **6 August 2024**, Reef Era Holdings Inc. issued a notice directed at the assistant marshal asserting ownership over the seized motor vehicles and the boats. This resulted in the assistant marshal filing an interpleader application on **13 September 2024**, which was accorded a return date of **26 September 2024**.
- [7] I am grateful to Ms Swift and Mr Jenkins (learned counsel for the first and second interpleader claimants, respectively) for their oral submissions. I have also considered the evidence submitted by the parties and conclude that:
- (a) Reef Era has not demonstrated on a balance of probabilities that it has title to the motor vehicles and boats seized by assistant marshal Sampson on 24 February 2024; and
 - (b) the motor vehicles and boats seized by assistant marshal Sampson on 24 February 2024 pursuant to the writ of execution dated 8 August 2023 may be sold by public auction in satisfaction of this court's judgment order dated 5 March 2019.

The law

- [8] The law and rules on interpleader proceedings are set out in Part 54 of the Civil Procedure Rules (CPR). Interpleader proceedings are invoked where a person, who makes no claim to property, faces competing claims from others to the property in question (see *Commonwealth of Australia v Peacekeeper International FZC UAE* [2008] EWHC 1220 (QB), at para. 36). The interpleader

process was not designed to, and does not, substitute the procedures for the resolution of substantive disputes over title to or ownership of property. The procedure enables the party in physical possession of disputed property (in this case the assistant marshal) but who does not claim any title to the property to be absolved from liability and from taking any active part in the dispute itself (see also *Lopez Equipment Co. Ltd v Pasa Belize*, Civil Application No. 5 of 2017, at para. 36). In the context of assets seized pursuant to a writ of execution, the procedure allows an interpleader claimant who asserts title to seized property to demonstrate their claimed title and their entitlement to an order declaring that the seized assets be excluded from execution.

- [9] Rix J summarised the interpleader procedure quite well In *Glencore International AG v Shell International Trading & Shipping Co Ltd* [1999] 2 Lloyd's Rep. 692 where he stated:

“...the claim for interpleader relief (1) is an application to be released from proceedings, not a claim for any substantive right; (2) is conditional on at least the threat of adverse claims to the same subject-matter; (3) is further conditional on the applicant disclaiming any interest in that subject-matter; (4) typically results in the release of that applicant from any pending proceedings and (5) leads to the stating of an issue or issues between the claimants themselves (hence “interpleader”).”

- [10] The parties are not in dispute over the application to these proceedings of Part 54 of the CPR or the meaning or application of any of its provisions in relation to the issues falling for resolution in this matter. The issue between Reef Era and Ms Linarez is whether title to the motor vehicles and boats seized by the assistant marshal on 24 February 2024 (a) belong to Reef Era in which case they are not liable to execution; or (b) belong to Roberts Grove in which case they are liable to execution in satisfaction of this court’s judgment order dated 5 March 2019.

Discussion

- [11] Following the filing by the assistant marshal of her interpleader application on 26 September 2024, I issued, with the agreement of Ms Swift and Mr Jenkins, case management orders. I directed, among others, that the parties were to file and exchange affidavits by **11 October 2024**. Mr Jenkins for the 2nd interpleader claimant complied with the court’s directives but Ms Swift for the 1st interpleader claimant did not.
- [12] This matter came up for hearing on 1 November 2024.

- [13] As a preliminary matter, I invited Ms Swift to address the court on why the 1st interpleader claimant's affidavit had been filed 20 days out of time and only one day before the hearing date. I also asked learned counsel to explain why there had been no application for relief from sanctions for non-compliance and why the affidavit filed out of time should not be struck out.
- [14] After hearing Ms Swift's application for condonation and the reasons for non-compliance, and in consideration of the position taken by Mr Jenkins not to oppose Ms Swift's application, I allowed Reef Era to rely on Mr Song's affidavit. However, I reminded counsel of the need to apply for relief from sanctions in a timely manner for reasonable cause to mitigate against the risk of an adverse costs order or of pleadings being struck out.
- [15] In his 30 October 2024 affidavit, Mr Song stated that he is a director of Reef Era, which is a foreign company that was incorporated in the United States on 30 November 2022 and in Belize on 5 January 2023. In support of his claim that the motor vehicles and boats seized by the assistant marshal belonged to Reef Era, Mr Song relied, among others, on (a) Reef Era's certificate of incorporation produced by the Belize Companies and Corporate Affairs Registry; (b) two certificates produced by a Mrs Patricia Rodriguez certifying as true and accurate a debenture dated 21 February 2011 between Roberts Grove and Atlantic Bank and a deed of assignment dated 10 August 2015; (c) nineteen adverts placed in different newspapers advertising the public auction on 4 February 2019 of certain assets owned by Roberts Grove; (d) a conditions of sale document; (e) a Memorandum of sale; (f) a 2021-2022 Asset Report/Inventory of Roberts Grove's assets; (g) an addendum to the agreement of sale; (h) Proof of Payment/Swift Confirmation document dated 22 February 2022 in the sum of US\$3,443,372.74; (i) a letter by Messrs Courtenay Coye LLP dated 28 February 2023; and (j) notification certificates of transfer of vehicle ownership.
- [16] Further, in his affidavit, Mr Song explained that on **21 February 2011**, Roberts Grove Limited entered into a mortgage debenture with Atlantic International Bank Limited, which placed a first priority charge in favour of **Atlantic International Bank Limited** on Roberts Grove's assets. On **10 August 2015**, Atlantic International Bank Limited assigned the mortgage debenture to **Atlantic Bank Limited**. Apparently, on an undisclosed date and for undisclosed reasons, Atlantic Bank called up the mortgage debenture and, on **20 August 2018**, appointed a Mr Robert Garcia (the 2nd interested party) as a receiver of Roberts Grove. Mr Song averred that on **15 November 2022**, "all

real and personal properties of [Roberts Grove] were auctioned [and] Reef Era purchased the properties for the sum of \$7,500,000.” He also stated that *“The sale agreement was executed by Mr. Boris Mansfeld (sic) on behalf of Reef Era. The sale was not conducted to evade any creditor, but was in fact triggered by [Atlantic Bank Limited] as a creditor with a first priority charge on all the assets of [Roberts Grove]”*. In para. 9 of his affidavit, Mr Song also explained that *“Upon completion of the sale, the properties were transferred into Reef Era’s possession.”* It would appear that this averment related to several pieces of land, which are not the subject of these interpleader proceedings. In para. 13 of his affidavit, Mr Song stated that Roberts Grove and Reef Era *“commenced the process of transferring”* four identified vehicles from Roberts Grove to Reef Era. Three of those vehicles are the subject of these interpleader proceedings. In his affidavit, Mr Song made no specific mention of the boats, which were seized by the assistant marshal.

Reef Era bears the burden of proof

[17] In these proceedings, it is common cause between the parties that the seized motor vehicles and boats were owned by Roberts Grove. The question that arises is whether Reef Era obtained title of the seized motor vehicles and boats before they were seized by the assistant marshal or if Roberts Grove still retained its title over the same when they were seized. Consequently, Reef Era bears the burden of proof of demonstrating on a balance of probabilities its claim that:

- (a) Reef Era purchased *“all the real and personal properties”* owned by Roberts Grove on 15 November 2022 during a public auction conducted by a Mr Kevin Castillo and that the motor vehicles and boats seized by the assistant marshal *“are no longer owned by [Roberts Grove] and Reef Era is the rightful owner”* of the same;
- (b) although the sale agreement was executed by Mr Mannsfeld, he did so on behalf of Reef Era; and
- (c) Reef Era paid for the assets said to have been sold via public auction and that the payment for the sold assets, which included those seized by the assistant marshal, was made to the auctioneer.

(i) *Has Reef Era demonstrated that it purchased at auction the assets seized by the assistant marshal*

[18] In support of Reef Era’s claim, Mr Song relies on a memorandum dated 15 November 2022, which states that on that day several pieces of real estate belonging to Roberts Grove and other *“floating*

assets” were sold to Mr Boris Mannsfeld for the price of \$7,100,000 as proof that the first interpleader claimant purchased all of Roberts Grove’s assets, including the motor vehicles and boats seized by the assistant marshal.

[19] The memorandum does not refer to Reef Era and no document was produced identifying Reef Era as the purchaser of any of the motor vehicles and boats seized by the assistant marshal.

[20] Additionally, the nineteen adverts that were placed by Mr Castillo advertising the sale of Roberts Grove’s assets do not refer or relate to the seized assets. The nineteen adverts affirm that what was being sold were various buildings, fuel tanks and eighteen parcels of land on 13 acres. I requested Ms Swift to address me on the issue and why the court should not hold that those adverts demonstrated that the stated public auction did not pertain to any of the assets in dispute in these interpleader proceedings as those were not included in the adverts produced by Mr Song. Learned counsel was unable to offer any explanation and none was evident from the evidence tendered.

[21] I also asked learned counsel if Mr Song was associated in any way with Roberts Grove. She indicated that he was not. This raised the question of how Mr Song could affirm under oath that “*all real and personal properties of [Roberts Grove] were auctioned*” to Reef Era and what weight, if any, the court should place on Mr Song’s bare assertion. That Roberts Grove sold all of its real and personal assets to Reef Era could only have been made by Roberts Grove through Mr Mannsfeld – its principal director - who decided not to take any part in these interpleader proceedings and provide evidence demonstrating if, how and when all of Roberts Grove assets were sold to Reef Era.

[22] In the circumstances, I conclude that the adverts do not support the interpleader claimant’s claim that it purchased and possesses title over the motor vehicles and boats that are the subject of these interpleader proceedings. Relatedly, Reef Era did not produce any other evidence that demonstrated its title to the seized assets.

(ii) *Proof that Mr Mannsfeld purchased the seized goods on behalf of Reef Era*

[23] In para. 8 of his affidavit, Mr Song stated that “*The sale agreement was executed by Mr. Boris Mansfeld (sic) on behalf of Reef Era.*” In the 15 November 2022 memorandum of sale referred to above, there is no mention that Mr Mannsfeld purchased the property on behalf of any other person,

let alone Reef Era. Rather, the memorandum identifies Mr Mannsfeld by name as the purchaser of the property in clear and unambiguous terms. In addition, Mr Song has not provided any documents from Reef Era and/or Mr Mannsfeld demonstrating that when he entered into the memorandum of sale, Mr Mannsfeld did so on behalf of Reef Era.

- [24] Further, Mr Mannsfeld could not, as a matter of fact and law, have entered into the memorandum of sale on behalf of Reef Era. This is because as of 15 November 2022 (the date of the alleged public auction), Reef Era had not been incorporated – not in the USA and not in Belize. To that extent, Mr Song’s statement that Mr Mannsfeld executed the “*sale agreement...on behalf of Reef Era*” is misleading. Consequently, I place no weight on his assertion.
- [25] Mr Mannsfeld – as the nerve centre of Roberts Grove and Reef Era (the two principal entities) - may have entered into the memorandum of sale with the intention of transferring Roberts Grove’s assets to Reef Era. However, that intention was not pleaded in these proceedings. In any event, any such intention would not have operated to grant Reef Era any rights to or title over the property that was seized by the assistant marshal not least because at the material time, i.e., 15 November 2022 when the auction is alleged to have taken place, Reef Era had not been incorporated.
- [26] To sustain its case (if that were at all possible on the facts of this matter), Reef Era needed to, but did not demonstrate that after it was incorporated by Mr Mannsfeld (who is its principal director in Belize) or by any other party, it entered into a contract with Mr Mannsfeld, which resulted in the title to the assets subject to these interpleader proceedings being transferred to Reef Era. This is to say, Reef Era did not contend that there exists any oral or documented contract between itself and Mr Mannsfeld, which transferred to Reef Era the assets that he had personally purchased to Roberts Grove. Consequently, this part of the 1st interpleader claimant’s plea fails.
- [27] Relatedly, as I explain below, title to the seized assets (assuming without accepting that they were part of any public auction) did not transfer from Roberts Grove to any third party because (as accepted by Ms Swift) no payment was made to the auctioneer as of 15 November 2022. This raises the question: did Reef Era pay for the seized assets? I address this below.

(iii) *Proof that Reef Era paid the purchase price for the seized assets*

- [28] Mr Song averred that Reef Era paid the auctioneer for Roberts Grove's assets said to have been sold at the public auction. In support, Mr Song produced a redacted document/statement dated **22 February 2023** said to have been produced by Interaudi Bank of New York. That pro forma statement names Reef Era Holdings Inc. as having transferred **US\$3,443,372.74** from an originator bank whose name was redacted to a beneficiary bank, whose name was also redacted. It also provides that that US\$3,443,372.74 was transferred to Messrs Courtenay Coye LLP. Mr Song also attached a letter from Courtenay Coye LLP dated **28 February 2023** addressed to Atlantic Bank instructing that bank to transfer the sum of **\$6,390,000** to Mr Kevin Castillo (who is named as the auctioneer in the memorandum of sale).
- [29] These two documents do not assist the 1st interpleader claimant's case.
- [30] First, as noted above, Reef Era has not produced any proof that directly identifies the assets seized by the assistant marshal as having been sold via public auction to Reef Era on 15 November 2022. In addition, the evidence demonstrates that Reef Era was incorporated after 15 November 2022 and could not as a matter of fact have instructed Mr Mannsfeld to purchase the seized assets on its behalf. There is also no evidence demonstrating that subsequent to 15 November 2022, Mr Mannsfeld entered into a contract with Reef Era through which he sold or transferred the assets he had allegedly purchased through the alleged public auction to Reef Era. Consequently, more is needed to demonstrate adequately that the alleged payment made by Reef Era to Messrs Courtenay and Coye LLP pertained in some way to or involved the motor vehicles and boats that are the subject of these interpleader proceedings.
- [31] Second, in para. 8 of his affidavit, Mr Song alleges that Roberts Grove's assets were sold for \$7,500,000. This is inconsistent with the memorandum of sale, which provides that Roberts Grove's assets were sold for \$7,100,000. Ms Swift was unable to provide any explanation, which reconciles Mr Song's affidavit statement and the alleged memorandum of sale. That said, I am inclined to accept her submission that this must have been a typographical error.
- [32] Additionally, converted at the official rate, the sum of US\$3,443,372.74 which is claimed to be the purchase price for the properties sold at public auction, and which was allegedly sent via a bank

transfer by Reef Era to its lawyers, Courtenay Coye LLP, amounts to **BZ\$6,886,745.48**. This amount is \$213,254.52 lower than the \$7,100,000 claimed to be the purchase price of Roberts Grove's assets. This raises a question, not addressed by Mr Song in his affidavit of how the sum of **BZ\$6,886,745.48** constituted the purchase price of Roberts Grove assets, which were allegedly sold at public auction for **BZ\$7,100,000**. Put differently, this discrepancy raises the unanswered question whether the alleged payment was indeed payment for what is said to have been the purchase price of Roberts Grove's assets sold at the public auction or whether the alleged financial transaction pertained to other matters.

[33] Relatedly, Courtenay Coye LLP is said to have instructed its bank, Atlantic Bank to transfer the sum of **BZ\$6,390,000** to Mr Kevin Castillo, the auctioneer for the purchase price of Roberts Grove's assets sold at the public auction. This leads to the conclusion that Courtnay Coye deducted **\$496,745.48** from the **BZ\$6,886,745.48** transferred by Reef Era to its lawyers for the alleged settlement of the **\$7,100,000** purchase price. This also represents a shortfall of **\$710,000** from the alleged purchase price of Roberts Grove's assets, which suggests that Reef Era did not pay the full purchase price. And, if it did not pay the full purchase as of 28 February 2023, this raises the unanswered question on the existence and/or continued validity of the contract claimed to exist between the auctioneer on behalf of Atlantic Bank and Mr Mannsfeld and whether this resulted in the transfer of any title to the properties advertised for sale.

[34] In short, in the absence of any explanation of the questionable nature and quality of the information provided said to prove payment of the purchase price agreed at the public auction, I am unable to accept that (a) Reef Era has demonstrated to the appropriate standard that it paid any of the \$7,100,000 said to have been the purchase price for Roberts Grove's assets; (b) there is any reliable proof that any of the payments alleged to have been made as set out in the bank transfer document and the letter from Courtnay Coye LLP relate to or include the motor vehicles and boats that are the subject of these interpleader proceedings; and (c) title to the assets seized by the assistant marshal passed from Roberts Grove to any third party.

(iv) *Res judicata*

[35] Further and more importantly, in my 25 July 2024 judgment (*Linarez*, at para. 45) I ruled that:

"It is...clear from para. 8 of the 10 August 2015 'assignment debenture' that Roberts 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 [Roberts Grove] or any charge or security thereon.' [Emphasis added]

[36] Reef Era did not appeal against my decision whose effect is that Roberts Grove did not assign to Atlantic Bank its movable assets, which include the motor vehicles and boats seized by the assistant marshal. Consequently, Atlantic Bank could not have sold Roberts Grove's movable assets (including the assets seized by the assistant marshal) through Mr Robert Garcia (the 2nd Interested party). Reef Era needed to, but did not, produce evidence that demonstrated that notwithstanding para. 8 of the 10 August 2015 assignment debenture, Atlantic Bank was entitled or subsequently enabled to dispose and did sell Roberts Grove's movable assets, including those which were seized by the assistant marshal in satisfaction of whatever debt was owed to it by Roberts Grove and that the latter lost its title to those assets.

[37] In the circumstances, in view of my ruling in the 25 July 2024 judgment, it is not open to Reef Era to seek a different ruling from this court on an issue, which is now *res judicata*. It follows that this court has already determined that the seized assets belonged to Roberts Grove and remain liable to execution in satisfaction of this court's 5 March 2019 judgment order.

Quality of evidence

[38] For completeness, I should add that I have not been persuaded that the documents used by Mr Song in support of Reef Era's application were authentic, that I should have placed any weight on them, and that they tended to support his application that Reef Era has title to the motor vehicles and boats in dispute in these interpleader proceedings.

[39] Mr Song relied on two statements which claimed to certify the truthfulness and correctness of (a) the debenture dated 21 February 2011 between Roberts Grove Limited and Atlantic International Bank Limited; and (b) the deed of assignment dated 10 August 2015 between Atlantic International Bank Limited and Atlantic Bank limited. The certification was done by a Mrs Patricia Rodriguez. In both of her certificates, Mrs Rodriguez inserted the following statement "*Given under my hand and seal of the Land Registry, City of Belmopan, Belize this 6th September, 2024*" (*sic*). In her stamp, immediately below this statement, Mrs Rodriguez inserted in her own handwriting **5 September**

2024 as the operative date and added her signature. I accept, as submitted by Ms Swift that this must have been a clerical error. However, in my view and considering my other concerns with the evidence, that operated to cast doubt on the claimed authenticity and to invalidate the certification.

[40] Relatedly, I must restate what I stated in my 25 July 2024 judgment, which issue Ms Swift failed to address both during those proceedings and in relation to these interpleader proceedings. I stated at para. 42 that:

“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 pages (13) to (58) appears (a) to have been added at some point after those documents were settled; and (b) not to be part of the original document.”

[41] I concluded by saying:

“...there was not before me any reliable information that there was not before me any reliable information demonstrating that the property seized by the marshal (sic) pursuant to the writ of execution did not belong to Roberts Grove. If, in truth and as a matter of law, Atlantic Bank had taken ownership of all of Roberts Grove’s real and personal property...I expected Mr Garcia to state this fact in his affidavit. As the receiver, he was expected to make all relevant averments in this regard.”

[42] In drawing attention to what I stated in my 25 July 2024 judgment, I do not mean to criticise Ms Swift – an excellent advocate who very ably presented the 1st interpleader’s case. Certainly, it is not for learned counsel to make submissions on issues of fact. Rather, my concern was and remains that Reef Era did not address the concerns I raised, including for purposes of these proceedings on the authenticity of the contents of the mortgage deed. In the absence of a clarifying and supporting statement, from Roberts Grove, I am not prepared to place any weight on the mortgage debenture deed because it plainly appears to have been manipulated and its contents altered. It is for a claimant to prove its case and to directly address concerns pertaining to the authenticity of its evidence especially where, as here, the issue of authenticity and reliability of the tendered evidence calls for an answer and cannot be overlooked for decision-making purposes.

[43] I also note from the 19 adverts attached to Mr Song’s affidavit that the public auction of Roberts Grove’s assets was advertised for **4 February 2019 at 1:30 PM**. In the document presented as the memorandum of sale, it is stated that the public auction took place on **15 November 2022**, i.e.,

three years, nine months later. Mr Song did not attach any adverts relating to any public auction that was scheduled for 15 November 2022 and neither did he tender any explanation for tendering adverts that were clearly stale as proof that there was any public auction of Roberts Grove's assets in November 2022. This raises the inevitable but unanswered question of whether any public auction took place or whether the transaction was in all but name a private treaty between Mr Mannsfeld and the auctioneer – and the terms of which did not expressly include the assets seized by the assistant marshal on 24 February 2024.

[44] Further, as I noted above, in response to my question on how Mr Song knew as much as he did about Roberts Grove's affairs and whether he was in any way connected with the company, Ms Swift indicated that he had no relationship with Roberts Grove. Although that was evidence from the bar, Ms Swift was unable to offer any explanation for Mr Song's knowledge of the inner dealings of Roberts Grove (see **para. 15-16 above**), including in particular how he knew and could aver that the alleged sale of Roberts Grove's assets was not triggered by any desire to avoid paying any creditor. If he had no relationship with Roberts Grove, it was not open to him to definitively express such a statement since it would be within his personal knowledge. Is it the case that Mr Song misled the court in stating in para. 4 of his affidavit that the information he was outlining was "within his personal knowledge" or did he have some relationship with Roberts Grove, which he has not disclosed to the court? I refrain from making any definitive ruling, but litigants should be aware that the reckless or negligent provision of misleading information to the court will likely lead to their credibility being called into question and little to no reliance placed on their testimony.

Costs

[45] The 1st interpleader claimant's application fails. Consequently, per the general rule, it must bear costs of suit. In their oral submissions, Ms Swift, for the 1st interpleader claimant and Mr Jenkins, for the 2nd interpleader claimant, stated that costs should follow the cause. I also order that costs shall include the storage fees incurred by the 2nd interpleader claimant since the seizure by the assistant marshal of the motor vehicles and the boats subject to these interpleader proceedings. In these proceedings, the interpleader claimants correctly did not seek costs against the 2nd interested party, Mr Robert Garcia. For her part, Ms Torres did not seek an order for costs, and none is made. Relatedly, Roberts Grove did not participate in the proceedings, and I make no order for costs relating to Roberts Grove.

Ruling

[46] Drawing on the above, I rule that:

1. Reef Era Holdings Inc.'s claim that it has title over the motor vehicles and boats seized by the assistant marshal on **24 February 2024** is dismissed.
2. The motor vehicles and boats seized by the assistant marshal on 24 February 2024 may be sold in execution of this court's judgment issued on **5 March 2019**.
3. Reef Era Holdings Inc. shall bear costs of suit, which if not agreed shall be assessed.

**Dr Tawanda Hondora
High Court Judge
Civil Division**