

Republic of Trinidad & Tobago

In the High Court of Justice

Claim No. CV2011-03884

BETWEEN

WAYNE YIP CHOY

Claimant

AND

ANGOSTURA HOLDINGS LIMITED

Defendant

Before the Honourable Mr Justice James C. Aboud

Dated: 20 September 2013

Representation:

- Mr Alvin Fitzpatrick SC instructed by Ms Joan Byrne of the firm of Byrne and Byrne for the claimant
- Mr Reginald T. A. Armour SC, leading Mr Bronock Reid, instructed by Ms Francine Wilson of the firm of Lex Caribbean

JUDGMENT

Introduction

1. By a notice of application filed on 4 April 2012 the claimant seeks an order pursuant to Part 15 CPR for summary judgment against the defendant in the sum of \$18.3 million. Alternatively, the claimant seeks an order pursuant to Part 17.5 CPR for an interim payment of \$18.3 million, or such other sum as the court thinks fit, together with interest at a rate of 12% per annum from 27 April 2011 until payment on account of the debt, damages and interest that the defendant may be held liable at the trial to pay. The claimant, Wayne Yip Choy, swore the affidavit in support of the notice of application.

2. In opposition, the defendant filed the affidavits of Steve Bideshi, Shafeek Sultan-Khan, Joseph Teixeira, Romesh Singh, Bernadette Sammy and Maria Daniel on 31 July 2012. The defendant also filed a notice of application on 31 July 2012 wherein it seeks an order that the defendant be permitted to call Maria Daniel as an expert accounting witness and that it be permitted to treat the report of Maria Daniel dated 20 December 2011 as an expert report. Permission was also given to the defendant to produce Maria Daniel's supplemental report giving her further commentary and analysis of the meaning of the technical terms in the claimant's employment letter.

Background: claimant's case

3. The claim arises out of a contract said to be partly in writing and partly oral made between the claimant and the defendant, whereby the defendant agreed to employ the claimant, and the claimant agreed to serve as chief executive officer of the defendant for the period 1 November 2009 to 31 December 2012.
4. The claimant says that insofar as the contract was in writing it is contained in an employment letter dated 4 November 2009 that was signed by the defendant's chairman, Mr Sultan-Khan, and countersigned by the claimant. Attached to the employment letter is a schedule. Clauses 5.2 and 5.3 of the employment letter and its schedule provide that if EBITDA (meaning "net earnings before deduction of interest taxes, depreciation, amortization and bonuses") for the defendant and its subsidiaries for the year 2010 exceeded \$145 million the defendant would pay to the claimant in addition to his basic salary the following compensation
 - (a) With respect to the first \$10 million excess, 5% thereof;
 - (b) With respect to the second \$10 million excess, 10% thereof; and
 - (c) With respect to any excess thereafter, 15% thereof;
5. Clauses 5.2 and 5.3 of the employment letter and its attached schedule provide that if the Free Cash Flow ("FCF") for the defendant and its subsidiaries for the year 2010 exceeds

\$75 million the defendant would pay to the claimant in addition to his basic salary and the EBITDA compensation:

- (a) With respect to the first \$10 million excess, 5% thereof;
- (b) With respect to the second \$10 million excess, 10% thereof; and
- (c) With respect to any excess thereafter, 15% thereof;

The EBITDA compensation and the Free Cash Flow compensation are together hereinafter called “the variable compensation”.

6. The claimant contends that it was an oral term of the contract, evidenced in writing by the documents mentioned immediately below that:
 - (a) EBITDA would be calculated on the basis of the net earnings of the defendant and its subsidiaries for the relevant year with interest, taxes, depreciation, amortization and any provision made for the claimant’s variable compensation added back (“the Group’s EBITDA”);
 - (b) Free Cash Flow would be calculated on the basis of the Group’s EBITDA plus or minus, as the case may be, any increase or decrease in the inventory, accounts receivables and accounts payable for the defendant and its subsidiaries for the relevant year (“the Group’s Free Cash Flow”)
7. The claimant says that the oral contract is proven by the following documents (a) certain projections and workings of the defendant’s then manager of finance (Angostura Limited), Ms Bernadette Sammy (“the Sammy projections”), which were emailed to the claimant on 2 November 2009 (prior to the employment letter) and (b) by the written calculation of the claimant’s variable compensation entitlement for the year 2010 that was prepared by the defendant’s chief financial officer at the claimant’s request subsequent to the publication of the 2010 accounts.
8. The claimant further contends that it is well understood in the financial sector that:
 - (a) EBITDA means net earnings before deduction of interest, taxes, depreciation, amortization and bonuses; and

- (b) Free Cash Flow means EBITDA plus or minus, as the case may be, any increase or decreases in inventory, accounts receivables or accounts payable for the relevant year;

and that the parties understood these terms as used in the contract to have these meanings as applicable to the defendant and its subsidiaries, both local and foreign.

Background: defendant's case

9. The defendant says that it is a publicly listed company carrying on the business of the sale of spirits for local consumption and for export. It forms part of a group of companies known as the CL Financial Group of companies ("the CLF group"). In 2009 the CLF group got into major financial difficulties and requested a financial bailout from the Government of the Republic of Trinidad and Tobago
10. The defendant engaged in negotiations for financial restructuring with a commercial bank in order to regularise its relationship with its creditors. It also commenced a search for a new chief executive officer. The defendant's new board of directors authorised its newly appointed chairman, one other board member and its acting CEO to commence negotiations with the claimant for a tentative contract, subject to board approval.
11. In the course of the negotiations the claimant participated in at least one budget planning meeting held by the defendant's senior management staff. Those negotiations took place between the claimant and the defendant's the chairman and the acting CEO. In due course, an employment letter was signed by the chairman and the claimant on 4 November 2010 after which the claimant commenced work.
12. It is said that this employment letter was not approved by the board before signature by the chairman and the claimant. The defendant's By-Laws provide that such contracts must be countersigned by the secretary and be formally approved by the board of directors. The defendant says that the employment letter was not circulated to the board until claimant's demand for the variable compensation component was brought to its attention. At that time, the board had been re-populated with new members and was

headed by a different chairman. The meaning and effect of the contract, as contained in the employment letter, is the basis of the dispute between the parties.

13. The affidavits filed by Shafeek Sultan-Khan, Romesh Singh, Steve Bideshi, Joseph Teixeira, Bernadette Sammy and Maria Daniel all contain disputes of facts with the version of events narrated by the claimant, and some of these disputes are material and some are less material, or immaterial.
14. Former chairman Shafeek Sultan-Khan says that he engaged in talks with the claimant for filling the post of CEO with the knowledge of the board. He also says that the board gave him authority to represent it in negotiating a tentative contract that the board would eventually need to approve. He says that the claimant was not present at the time when the board conferred and discussed his selection to the post of CEO. He refutes the claimant's case that the meanings of EBITDA and Free Cash Flow were expressly mentioned during the course of his negotiations. He admits that he prepared the letter dated 4 November, 2009, that is to say the text part of exhibit WYC2, but suggests that it was the claimant who drafted the schedule that was eventually attached to the letter.
15. Steve Bideshi, who at the time of negotiations was the acting CEO, says that the claimant was not present when the board gave authority to Mr Sultan-Khan to negotiate on its behalf. Mr Bideshi says that though the 'purported contract' included a conservative base salary and a performance related variable element, it is not correct to say that the performance related variable element would be or is premised on EBITDA and Free Cash Flow for the defendant and its local and foreign subsidiaries. He says that it was the claimant who drafted the schedule attached to the employment letter. Further, the defendant was in a "debt-reduction mode" after the meltdown of the CLF Group and was not prepared to rely on a metric linked solely to earnings as this would have been an indefensible position to put to the shareholders. He says that on the basis of the hypothesis used by the company the variable compensation would have approximated TT \$2-3 Million, and not the present claim of TT \$18.3 Million.

16. Romesh Singh, the defendant's chief financial officer, gives some background details of his calculations of the claimant's EBITDA and FCF in 2010 in exhibit WYC7. Mr Singh admits that he prepared a calculation of the claimant's variable compensation entitlement for the year 2010 based on calculations gathered from the defendant's consolidated financial statements for the year 2010. This would have represented all the companies, both foreign and local, despite the fact that the Sammy projections only referred to the local and not the foreign subsidiaries. But he contends that this method of calculation was used because the claimant, who was his CEO at the time, insisted that he do so.
17. Bernadette Sammy, the then Manager of Finance (Angostura Limited) says that the document WYC1 was prepared by her upon the instructions of Mr Bideshi, and she was not told nor was she aware that it was being prepared for the purpose of contract negotiations with the claimant. She denies, among other things, the claimant's allegation that she prepared the schedule to the employment letter which projected EBITDA and Free Cash Flow for the group for the years 2010 to 2012. She says that she recognises some of the figures in the schedule as being in line with that which she produced in WYC1, but that the bullet line calculations are not hers and those bullet line calculations could not be used to represent or reflect the projected EBITA and Free Cash Flow for the group in years 2010 to 2012. She says this because her projections were limited to the Trinidad subsidiaries and did not include the foreign subsidiaries.
18. Joseph Teixeira, a member of the board of directors of Angostura Holdings Limited, asserts that he first became aware that there was an issue with the claimant's bonus payment when a meeting was called by the defendant's new chairman, Mr Gerald Yetming, after the claimant had made a claim for payment. It was at this meeting that he first saw the contract between the claimant and the defendant. He contends that as soon as he saw the contract he expressed concern that it had not been ratified by the Board, was not enforceable having regard to the By-Laws and that the performance metrics had not been properly defined. He further rejects the claimant's reliance on a line item in the 2010 annual report as being proof that his variable compensation package was recognised by the defendant.

19. Maria Daniel, deemed an expert, is a certified chartered accountant by profession, with a B.Sc in Economics and Management from the University of the West Indies in 1992. Attached to her affidavit is her report. The report evaluates the variable compensation aspect of the claimant's case, importantly stating that there is no standard as to what comprises EBITDA, even within companies within the same industry. She says that FCF "may be even more volatile than EBITDA as it includes the effects in changes in working capital". She describes the claimant's contract as vague as it refers only to budgeted numbers and prone to volatility as it contains no maximum ceiling or limit. However, using the variables at her disposal and excluding the earnings of the foreign companies she arrives at a potential variable compensation of TT \$ 6.6 Million. However, she inserts the proviso "we note that this bonus calculation may differ subject to the use of Angostura Limited's and Trinidad Distiller Limited's audited net change in working capital in the FCF portion of the bonus calculation".

The law

Summary Judgment

20. Summary judgment procedures are designed for the swift disposal of straightforward cases without trial, and are only available where the applicant demonstrates that the defence (or the claim, as the case may be) has no "real" prospect of success and if there is no other compelling reason why the case or issue should be disposed of at a trial: Part 15.2 CPR. Thus, without the assistance of pre-trial procedures, such as disclosure of documents, and without the benefit of trial procedures, such as cross examination, the court's function is to decide whether the defendant's prospect of successfully establishing the facts relied on by him is "real", which is to say, more than "fanciful" or "merely arguable." The test to be applied was summarised by Sir Andrew Morritt V-C. in *Celador Productions Ltd v. Melville*¹. In *Western United Credit Union Co-operative Society*

¹ [2004] EWHC 2362 (CH) at paragraphs 6 and 7

Limited v Corrine Ammon,² Mr Justice Kangaloo, JA stated the relevant principles, and I quote in extenso:

“...the test to be applied in dealing with applications for summary judgment is contained in Part 15 of the CPR which provides that the court may give summary judgment if it is of the view that either the claim or defence has no realistic prospect of success...The principles to be applied in dealing with applications for summary judgment have been recently set out by Beason J. in *Toprise Fashions Ltd v Nik Nak Clothing Ltd, Nik Nak (1) Ltd, Anjum Ahmed*.³ In his judgment the following passage from the case of *Federal Republic of Nigeria v Santolina Investment Corp* [2007] EWHC 437 (CH) is reproduced:

- i. The court must consider whether the defendant has a “realistic” as opposed to a “fanciful” prospect of success: *Swain v Hillman* [2001] 2 All ER 91;
- ii. A “realistic” defence is one that carries some degree of conviction. This means a defence that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ. 472 at para [8];
- iii. In reaching its conclusion the court must not conduct a “mini trial”: *Swain v Hillman*;
- iv. This does not mean that the court must take at face value and without analysis everything that a defendant says in his statements before the court. In some cases it may be clear that there is no real substance in the factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at para [10];
- v. However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can

² Civ App No. 103 of 2006

³ [2009] EWHC 1333 (Comm)

reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;

- vi. Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63.”

21. The court has to be alert for the defendant who seeks to avoid summary judgment by making a case look more complicated or difficult than it really is. Similarly the court has to guard against “the cocky claimant” (as he was described in one of the cases), who, having decided to apply for summary judgment, confidently or smugly presents the factual and legal issues as simpler and easier than they really are and urges the court to be efficient. In handling all applications for summary judgment the court’s duty is to keep considerations of procedural justice in proper perspective: *Bolton Pharmaceutical Co 100 Ltd v Doncaster Pharmaceuticals group Ltd and Others*⁴

Interim Payment Order

22. Rule 17.5 (1) (d) of the CPR provides that the court “may make an order for an interim payment only if ... it is satisfied that, if the claim went to trial, the claimant would obtain judgment against the defendant from whom he is seeking an order for interim payment for a substantial amount of money or for costs...”.

⁴ [2006] EWCA Civ 661 paragraphs 10, 11, 12.

23. In *Her Majesty's Revenue and Customs v The GKN Group*⁵ Lord Justice Aikens, in considering Part 25 of the English CPR (which is analogous to our rule) said this:

33. It is obvious that the claimant seeking the interim payment has the burden of satisfying the court that the necessary conditions have been fulfilled for it to consider exercising the power to grant an interim payment order. An interim payment order is one that is obtained in civil proceedings. Whatever conditions have to be satisfied must be to the usual standard of proof in civil proceedings unless there is an express indication in a statute or rule of court to the contrary. Here there is none. Therefore the claimant has to satisfy the court that the requisite conditions have been fulfilled to the civil standard, which is upon the balance of probabilities. Since the House of Lords' decision in *Re H [1996] AC 563*, it is well established that there is only one civil standard of proof on a balance of probabilities. In the case of an application for an interim payment order under CPR Part 25.7(1)(c), of course, the claimant has to satisfy the court on a balance of probabilities about an event that has not, in fact, occurred; that is, that if the claim went to trial, he would obtain judgment (and for a substantial amount of money).

34. In *Heidelberg Graphic Equipment Ltd v Commissioners for HM Revenue and Customs* [2009] STC 2334, Henderson J, who was dealing with an application for an interim payment in another GLO action and having considered statements made by this court in *British and Commonwealth Holdings Plc v Quadrex Holdings Inc* [1989] 1 QB (“the Quadrex case”) concerning the equivalent provision in the former RSC, said at para 14:

“It follows, therefore, that the burden, although the usual civil standard of proof applies, is a high one, and the court needs to be satisfied that the plaintiff will succeed; it is not enough that it merely thinks it likely that the plaintiff will succeed”.

38. What precisely is meant by the court being satisfied that, if the claim went to trial, the claimant “*would obtain judgment for a substantial amount of money*”? In my view this means that the court must be satisfied that if

⁵ [2012] EWCA Civ 57

the claim were to go to trial then, on the material before the judge at the time of the application for an interim payment, the claimant would actually succeed in his claim and furthermore that, as a result, he would actually obtain a substantial amount of money. The court has to be so satisfied on a balance of probabilities. The only difference between the exercise on the application for an interim payment and the actual trial is that the judge considering the application is looking at what would happen if there were to be a trial on the material he has before him, whereas a trial judge will have heard all the evidence that has been led at the trial, then will have decided what facts have been proved and so whether the claimant has, in fact, succeeded. In the latter case, as Lord Hoffmann makes plain in *Re B* [2008] AC 561, if a judge has to decide whether a fact happened, either it did or it did not: the law operates a “binary system” and there is no room for a finding that it might have happened. In my view the same is true in the case of an application under CPR Part 25.7 (1) (c). The court must be satisfied (to the standard of a balance of probabilities) that the claimant *would* in fact succeed on his claim and that he *would* in fact obtain a substantial amount of money. It is not enough if the court were to be satisfied (to the standard of a balance of probabilities) that it was “likely” that the claimant would obtain judgment or that it was “likely” that he would obtain a substantial amount of money.

39. There is the question of what is meant by “*a substantial amount of money*”. In my view that phrase means a substantial, as opposed to a negligible, amount of money. However, that judgment has to be made in the context of the total claim made. What is a substantial amount of money in a case where there is a comparatively small claim may not be a substantial amount when the claim is for a much larger claim. It may be that in very small claims an applicant could never satisfy the court that, even if it obtained judgment, the amount of money it would obtain would be “*substantial*”.

24. These principles were discussed in *Sobers v Pricemart Limited and Ps Operations Limited*⁶, and the forecast of success at the trial was described as one of “inevitable victory”.

⁶ CV2011-02972, 22 March 2012

25. Blackstone's Civil Practice⁷ notes the relationship between applications for summary judgment and applications for interim payments. Under the former Rules of the Supreme Court there were several reported cases that considered the question of whether it was possible to make an interim payment order if a summary judgment application was unsuccessful: *Andrews v Schooling* [1991] 1 WLR 783. In light of the increased availability of summary judgment under the CPR, I think that that if summary judgment is refused it would be very rare for a court to make an interim payment order on the basis of inevitable victory on a civil law burden of proof.

Facts in dispute

26. Mr Armour submitted that the court should have regard to a number of conflicts of fact. I note the following from his submissions:

The Making of the Contract

- (a) Whether the defendant's chairman had full authority to negotiate and conclude the claimant's contract of employment without further recourse to the board. There is a dispute as to whether or not the chairman and Mr. Bideshi could have bound the company without board approval.
- (b) Whether the authorization of the board given to the defendant's then chairman was done in the presence of the claimant. The defendant's witnesses deny that the claimant was present.
- (c) Whether the defendant's Bernadette Sammy was instructed by the chairman and CEO to prepare the group's balance sheets for the purpose of negotiations between the claimant and the defendant. There is a stark dispute as to this question as Ms. Sammy has testified that her projections were not undertaken for contract negotiations with the claimant.
- (d) Whether the defendant's Bernadette Sammy emailed the document referred to as "WYC1" to the claimant on 2 November 2009 as alleged or at all. Ms. Sammy unequivocally testifies that she did not email the projections to the claimant at any time.

⁷ 2005 Ed; para 36:11

- (e) Whether the defendant's CEO was present when the employment letter was executed. The claimant says that he was present. Mr. Steve Bideshi's says that he was not.
- (f) Whether the schedule to the contract was prepared by the claimant. Both Mr. Bideshi and Mr. Sultan-Khan testified that the schedule was prepared by the claimant and not the defendant company.

The Terms of the Contract

- (g) Whether the terms EBITDA and FCF appearing in schedule were agreed between the parties. This is a central dispute of the case upon which evidence doggedly travels in opposite directions.
- (h) Whether the variable compensation aspect of the claimant's employment letter was to be calculated on the basis of the defendant's EBITDA and FCF of its local as well as foreign companies and their respective subsidiaries. This is another fundamental dispute of fact. The company insists, on the basis of, among other things, the Sammy projections, that the calculations were in respect of the local subsidiaries only and in particular Trinidad Distillers Limited and Angostura Limited.
- (i) Whether Bernadette Sammy's calculations reflected the projected EBITDA and FCF of the defendant's local and foreign subsidiaries. Ms. Sammy has unequivocally testified that her projections were based on the local subsidiaries only and, in fact, at the top of exhibit "WYC1" it is clearly stated "Angostura Group - Trinidad Companies".
- (j) Whether the schedule to the contract was prepared by the claimant.

The Final Calculations

- (k) Whether the defendant's CFO calculated the variable compensation aspect of the employment letter on the basis of the group's local and foreign subsidiaries independently of the claimant's influence. The claimant suggests that the CFO calculated the variable compensation on his own volition but the CFO says that the claimant, who was his CEO, insisted that the calculation should include the local and foreign subsidiaries, despite his reservations. His evidence, on paper, was persuasive

27. In the normal case the claimant must satisfy the court on applications for summary judgment and an interim payment order that he is bound to succeed on his claim against

the defendant, which in effect means, among other things, that the defendant has no real prospect of success in defending the claim. These requirements are substantiated in cases such as *Swain v Hillman* and *Royal Brompton Hospital NHS Trust v Hammond*. There is no gainsaying that in this matter there are a number of glaring factual disputes which, in the normal case, would upend most applications for summary judgment and or interim payment. Certain facts however are either not in dispute or cautiously conceded by the defendant:

- (a) The claimant performed the duties of chief executive officer of the defendant.
- (b) During his employment he participated in, if not engineered, the revitalisation of the defendant's alcohol products business.
- (c) The company intended, on the basis of the employment letter, to pay him, in addition to his salary, variable compensation pegged to certain undefined performance indicia.
- (d) The company at the time of the negotiations, believing that the undefined performance indicia should be based only on the performance of the local subsidiaries estimated, in the words of Mr. Bideshi and Mr. Sultan-Khan, that the variable compensation would be about TT \$ 2-3 million.
- (e) The defendant's expert Ms. Maria Daniel has, with certain reservations, estimated the variable compensation due to the claimant in the sum of TT \$6.6 million. This figure is subject to possible downward revision and represents, in the defendant's view, what is the claimant's best case scenario at the trial assuming that the court approves her bases of calculation.

28. In my opinion the claimant's realistic prospect of success on a claim for TT \$18.3 million does not meet the standard required for summary judgment. I am also satisfied that the claimant is not bound to win TT \$18.3 million, which would be a useful finding to an

applicant seeking an interim payment. However having regard to those areas of the case that are not in dispute and those areas which the defendant is prepared to concede (I refer particularly to sub paragraphs (c), (d) and (e) of paragraph 27 above), I feel confident that the claimant will easily be able to prove that he entered into a contract that included a variable compensation package and that, regardless of how he now quantifies it, the defendant's officers responsible for negotiating the contract estimated the variable compensation package as worth about TT \$2-3 million, or had those figures within their contemplation.

29. At this stage of the proceedings, before a microscopic examination of the evidence of each witness has taken place, it certainly cannot be said that the claimant is bound to succeed on his claim for variable compensation as he has quantified it. The defendant has mounted a very strong defence. The prospect of a mutual mistake in the formation of the contract is not to be disregarded, not only in relation to the parties understanding of the EBITDA and FCF components but also in relation to whether it was confined to the Trinidad subsidiaries. The paper evidence strongly suggests that it was confined to the Trinidad subsidiaries. However, having regard to Ms. Daniel's insightful opinion, and the uncontested or conceded facts already outlined, the claimant is bound to win a substantial sum. At this stage, it seems likely to be much less than TT \$18.3 million. Ms. Daniel, puts it at a maximum of TT \$6.6 million, and I have no reason at this stage to question her expert opinion. The defendant's negotiators say they had figures in the range of TT \$2-3 million within their contemplation at the time they negotiated with the claimant. These are not insubstantial sums. In my view, a court is not disentitled from awarding an interim payment of a sum that it considers realistic, although it is far less than the sum a claimant unrealistically pursues on the pre-trial application.

30. I do not feel much confidence in the defendant's submission that the employment contract was never ratified by the board and is thus unenforceable. The length of the claimant's tenure and his full participation at the board level makes that argument purely technical in scope; it does not pay sufficient regard to the board's duty to govern itself

and to observe its own procedural formalities, especially when dealing with a CEO that is reporting to it.

31. In light of these findings and using the more conservative estimate of variable compensation that was contemplated by Mr. Bideshi and Mr. Sultan-Khan at the time of entering into the contract, namely TT \$2-3 million, I feel satisfied that the claimant is bound to obtain a judgment that recognises his entitlement to a variable compensation package and, further, that it would be at least TT \$2.5 million, using the 2010 budget projections for the defendant's local subsidiaries.
32. In my opinion an interim payment of TT \$1 million will meet the justice of this case together with interest thereon at the rate of 12% per annum from 27 April 2011 to the date of this order.
33. Permission has been granted to both parties to adduce further expert evidence and I fully expect that with the assistance of the experts the court will be able to better understand what was or was not within the contemplation of the parties and what is the proper methodology for calculating the variable compensation that is due to the claimant under his contract.
34. I will now hear the Attorneys on the question of costs.

James Christopher Aboud
Judge