

**TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV2010-01352**

**Between**

**CLICO INVESTMENT BANK**

**Claimant**

**AND**

**LOUIS ANDRE MONTEIL**

**RICHARD TROTMAN**

**STONE STREET CAPITAL LIMITED**

**FIRST CAPITAL LIMITED**

**Defendants**

**RULING**

**Decision**

1. I have decided to direct the Claimant to provide security for costs for the First and Third Defendants in the amount of \$500,000 and also to provide security for costs for the Second Defendant in the amount of \$500,000 and to stay all further proceedings until those sums are deposited into Court. The costs of the respective applications are to be paid by the Claimant to the First and Third Defendants and the Second Defendant to be assessed in default of agreement.

**Reasons**

2. The fact that the Claimant may be deterred in pursuing this claim against the Defendants is not a sufficient reason for refusing to make an order for security for costs. Section 522 of the Companies Act gives the court the discretion to order the Claimant to provide sufficient security and to stay all proceedings until the security is given "if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence."
3. The Claimant, having failed to file an affidavit in opposition to this application, has failed to put before the court any facts to rebut the presumption that it would be unable to pay the Defendants their costs having regard to the facts contained in the affidavits of Daniel and Hiralal and the Order made by Boodoosingh J. for the winding up of the Claimant. In fact, despite the fact that the Deposit Insurance Corporation ("DIC") has been appointed the Liquidator since 17<sup>th</sup> October 2011, nothing has been put before the Court to show that the Claimant may be able to pay the Defendants' costs if the claim fails or that Claimant may be able from any other source be able to provide security for costs. Further, the Claimant has not put forward any facts about how an order for

security for costs in this matter may impact on other legal proceedings that the Claimant may have filed or may intend to file in the future.

4. On the one hand, I have taken into account the injustice to the Claimant of not being able to pursue this claim until security is provided and on the other hand, I have weighed up the injustice to the Defendants if no security is ordered and at the trial the Claimant's claim fails and the Defendants are unable to recover the costs of defending the action from the Claimant. I do not consider that the Defendants are using this application as an instrument of oppression to stifle the Claimant's claim.
5. I am satisfied that on the face of the court record the Claimant's claim is genuine but equally I am satisfied that the defences filed herein are genuine and are not spurious or flimsy defences intended solely to delay or frustrate the Claimant from securing a judgment against them. Accordingly, I am not prepared at this early stage of the proceedings to go into any detailed consideration of the prospects of success of the claims or the defences, since those are matters more properly left for the trial. There has been no admission of liability by any of the Defendants or anything that demonstrates that the Claimant's prospects of success are greater than the Defendants'.
6. The Claimant has not raised any issue of delay in making this application and therefore this issue does not impact on my decision.
7. In determining the quantum of the security to be provided by the Claimant, section 522 provides that the court *"may, if it appears to the court that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs....."*
8. In my opinion, this section requires the court, first of all, to make an assessment of what the defendants' costs may be after the matter has been fully ventilated at a trial and a decision has been given in favour of the defendant. Then, the court may require the Claimant to provide *"sufficient security for those costs"*.
9. The claim herein against the First, Second and Third Defendants is for \$78 million. Although there are different allegations made against the First and Third Defendants and the Second Defendant, the claims for, inter alia, damages, equitable compensation and restitution are intended to recoup from the Defendants the sum of \$78 million together with interest thereon. Part 67.5 (1) provides that *"the general rule is that where rule 67(4) does not apply and a party is entitled to the costs of any proceedings those costs must be determined in accordance with Appendices B and C to this Part and paragraphs (2) –(4)..... In determining such costs the value of the claim is to be decided - ..... in the case of a defendant (i) by the amount claimed by the claimed by the claimant in his claim form; or (ii) if the claim is for damages and the claim form does not specify an amount that is claimed, such sum as may be agreed between the party entitled to,*

*and the client liable to, such costs or if not agreed a sum stipulated by the court as the value of the claim;.....*

10. Based on the facts alleged by the Claimant in the Re-Amended Claim Form and Statement of Case, I am of the view that this is a claim for damages and the measure of damages is the amount of \$78 million. Accordingly, I am of the view that the costs that the defendants would be entitled to in the event that the claim fails against them should be calculated on that basis.
11. The more difficult issue is whether at the conclusion of a trial the Claimant could be held liable to the First and Third Defendants and the Second Defendant separately for costs calculated on the same basis pursuant to Rule 67.5. In my opinion, I am not required to decide that issue at this stage. However, for the time being it is clear, first of all, that Rule 67.5 (1) described “the general rule” and Rule 67.5 (4) permits the court to “award a percentage only of such sum having taken into account the matters set out in rule 66.6 (4), (5) and (6).”
12. By my calculation, the costs on \$78 million computed in accordance with Appendix B amounts to \$622,350.00. Of course, since interest is also being claimed on that figure of \$78 million, the measure of damages or the amount for which equitable compensation or restitution is being sought would be much more than that. Attorneys for the First and Third Defendants and for the Second Defendant contend that the costs that their clients would be entitled to, if the claim against them fails, is \$765,377 and this figure has not been challenged by the Claimant’s Attorney.

In the exercise of my discretion, therefore, and doing the best I can, with a likely trial some distance away, I am of the view that I should discount the figures suggested by one-third and therefore, I consider that “sufficient security” for the costs of the First and Third Defendant.

Dated this 4th day of March 2013.

André des Vignes  
Judge