THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-01742

BETWEEN

Confederation of North, Central American and Caribbean Association Football ("CONCACAF")

Claimant

AND

JACK AUSTIN WARNER

("Sued as Austin Warner" in his personal capacity and as partner in the firm Dr. Joao Havelange Centre of Excellence)

1st Defendant

RENRAW INVESTMENTS LIMITED

(in its personal capacity and as partner in the firm Dr. Joao Havelange Centre of Excellence)

2nd Defendant

CCAM AND COMPANY LIMITED

(in its personal capacity and as partner in the firm Dr Joao Havelange Centre of Excellence)

3rd Defendant

DR JOAO HAVELANGE CENTRE OF EXCELLENCE

4th Defendant

MAUREEN WARNER

5th Defendant

KENNY RAMPERSAD

(in his personal capacity and as partner in the firm

Kenny Rampersad & Co.)

6th Defendant

KENNY RAMPERSAD & CO.

7th Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Appearances:

Mr. Christopher Hamel-Smith SC and Mr Jonathan Walker instructed by Ms Cherie Gopie for the Claimant
Mr Fyard Hosein SC and Ms Sasha Bridgemohansingh instructed by Mr Anil V Maraj for the 1st to 4th Defendants
Mr Rishi P A Dass instructed by Ms Marina Narinesingh for the 5th Defendant
Mr. Stanley I Marcus SC and Ms Debra James instructed by Mr Lemuel Murphy for the 6th & 7th Defendants

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JUDGMENT ON 1ST TO 4TH AND 5TH DEFENDANTS' APPLICATIONS FOR SECURITY FOR COSTS

I. Background:

[1] The Claimant, described as a non-profit organization registered as an external company in Trinidad and Tobago, has brought this claim against the Defendants seeking declaratory reliefs and/or damages for the misappropriation of funds with respect to the ownership and use of the Centre of Excellence (COE) complex located in Macoya, Trinidad. In the Claim, allegations of wrongdoing were levied against the 1st and 5th Defendants, Mr Warner and his wife personally as well as through their companies, the 2nd and 3rd Defendants (the Warner Companies) and also purports to sue Mr Rampersad

and his accounting firm, the 6th and 7th Defendants, as having knowingly assisted in that wrongdoing.

[2] Mr Warner had been appointed President of the Claimant, CONCACAF, from 1990 to 2011. CONCACAF, being one of the 6 continental bodies under FIFA, was responsible for governing football in the North, Central and Southern American regions along with the Caribbean. By his appointment, Mr Warner had succeeded Mr Charles Chuck Blazer, the former President of CONCACAF. Based on this influential position, the Claimant pleads that Mr Warner, along with Mr Blazer, in breach of their fiduciary duties, defrauded CONCACAF of tens of millions of USD by engaging in self-dealing schemes to enrich himself and the other Defendants. The Claimant goes on to particularize these schemes in its pleading, the details of which are not important for this decision.

On the 24th May, 2012, Mr Warner was replaced by Mr Jeffrey Webb as President of CONCACAF and Mr Webb proceeded to set up an independent integrity committee to investigate the allegations concerning Mr Warner and Mr Blazer. Just about 3 years later, both were indicted by the United States government for engaging in various corruption and bribery schemes against CONCACAF, FIFA and other football organizations.

Much, if not all of the allegations brought against Mr Warner, his wife and the other Defendants in this Claim revolve around the management and use of the Centre of Excellence. In particular, it concerns the alleged conspiracy, with the other Defendants, to misappropriate over US$50 million in CONCACAF monies by various fraudulent misrepresentations that the 4th Defendant, the said COE, belonged to CONCACAF.

[3] The 6th & 7th Defendants' liability is borne out of the alleged conflict of interest under which they operated coupled with their breach of the various codes of ethics common to their profession. It is alleged that the conflict arises by their engagement as auditors and/or accountants of the Claimant while being business associates of Mr Warner. It was also alleged that Mr Rampersad and/or his firm knowingly assisted and/or conspired with Mr Warner to conceal the misappropriation of funds with respect to the COE by assisting in (i) the concealment of facts from CONCACAF; and (ii) the failure to properly conduct its audit of CONCACAF financial statements.

Thus, in light of the foregoing, the Claimant sought Orders and/or Declaratory Reliefs for the reimbursement of the quantified sum of US$37.8 million in addition to an unquantified sum for general and exemplary damages, an account for all profits and funds sent by CONCACAF and the ownership of the land, assets and property of the COE.

[4] The Defendants, in response, all pleaded that the Claim is either statute-barred or should be dismissed due to the undue delay in initiating this action and thus, raised the equitable defence of laches.

As a result of the delay, Mr Warner pleaded that he could not recall the facts surrounding much of the allegations made in the claim against him. However, while he admitted to being the President of CONCACAF from 1990 to 2011, he averred that he did not have effective control of the organization and made no admission as to the purported fiduciary duties which it is claimed that he owed.

He also denied that he and/or his wife were the controlling minds behind the Warner Companies and put the Claimant to proof that the 6th and 7th Defendants, while known to Mr and Mrs Warner, were either the Claimant's accountants or his business associates.

Thus, he denied all the allegations with respect to his breach of fiduciary duties and/or misappropriation of money made against him and sought to plead his case in the alternative, the details of which, in similar fashion to the Claim, are not essential for the deliberations in this decision.

[5] Mrs Warner's Defence was much of the same and she added that the COE is not owned by CONCACAF. Further, she stated that she was not party to any acquisition of funds for the COE's construction or development.

[6] Mr Rampersad admitted to providing secretarial services to one of the Warner Companies but maintained that neither he nor his firm, the 7th Defendant, was engaged as the Claimant's accountant nor was he to be considered a business associate of Mr Warner. He however admitted to being engaged as the Claimant's auditors but denied that he owed them any fiduciary duty. Moreover, he stated that he was unaware of any of Mr Warner's dealings with CONCACAF. Thus, all allegations of knowing assistance, unjust enrichment and/or breach of codes of ethics levied against them were likewise denied.

[7] The Defence of the 2nd, 3rd and 4th Defendants largely corroborated that of Mr Warner, Mrs Warner and Mr Rampersad. The Warner Companies, however, sought to separate themselves from any alleged wrong doing of Mr Warner by pleading that he did not act on their behalf in any of the alleged undertakings with respect to the COE. Further, it is their case that they had no reporting relationship to the Claimant nor was the COE owned by the Claimant and thus, deny any allegations that they mislead the Claimant or that they made any representation concerning the ownership of any of its assets.

[8] Prior to the close of pleadings and considering that the Claimant specifically pleaded that it was ordinarily resident out of this jurisdiction, the 1st to 4th Defendants, by Notice of Application filed on the 12th July, 2017, and the 5th Defendant, by Notice of Application filed on the 14th July, 2017, applied for an **Order for Security for Costs** pursuant **Part 24 of the CPR 1998.**

In the attendant affidavits of Anil Maraj, for the 1st to 4th Defendants and Mrs Warner, for the 5th Defendant, it was deposed that the Claimant is an external company with no substantial assets in this jurisdiction that has failed to update its filings at the Companies Registry since December, 2009. In these circumstances, the Defendants asked that they *"be protected from the consequences of an unsuccessful claim from a company whose assets are not within this jurisdiction and who has no substantial connection to this country".*

[9] Ms Gopie, instructing attorney for the Claimant, deposed in the affidavit in response that the reason for the dated corporate filings of the Claimant was the uncertainty that occurred after Mr Warner's resignation as President of the Claimant. She stated that prior to Mr Warner's resignation from the Claimant, the Claimant had an office in this jurisdiction and as such, had to be registered as an external company. However, upon Mr Warner's resignation, the Claimant was unable to access this office, which was under Mr Warner's control. In any event, she deposed that the Claimant is taking steps to regularise its status with the companies' registry.

Moreover, she deposed that according to the Claimant's audited financial statements for 2015, CONCACAF has more than enough assets and cash to cover the costs. A copy of the purported financial statement was attached.

Ms Gopie also referenced the Claimant's relationship to FIFA, in particular, that it received millions in funding from FIFA and thus, attached and relied on a statement of FIFA's financial report in 2016 to support the contention that the Claimant can easily cover the costs of these proceedings.

Lastly, she deposed that the Claimant has strong ties to this jurisdiction and further, that its reputation will be adversely affected should it fail to pay the costs of these proceedings.

[10] At the following Case Management Conference, directions were given for the filing of an affidavit in reply by the Defendants as well as for submissions in reply if necessary. No affidavit in reply, however, was ever filed.

II. Law & Analysis:

[11] The sole issue to be decided is whether the 1st to the 5th Defendants' applications for Security for Costs (the Applications) should be granted. The governing principles are contained at **Part 24.3 of the CPR 1998,** which states the conditions to be satisfied for an Order for security for costs:

> *The court may make an order for security for costs under rule 24.2 against a claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that—*
>
> *(a) the claimant is ordinarily resident out of the jurisdiction;*
>
> *(b) the claimant is an external company and there is reason to believe that the claimant will be unable to pay the defendant's costs if ordered to do so;*
>
> *(c) the claimant—*
>
> *(i) failed to give his address in the claim form;*
>
> *(ii) gave an incorrect address in the claim form; or*
>
> *(iii) has changed his address since the claim was commenced, with a view to evading the consequences of the litigation;*

(d) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 21 and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;

(e) the claimant is an assignee of the right to claim and the assignment has been made with a view to avoiding the possibility of a costs order against the assignor;

(f) some person other than the claimant has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover; or

(g) the claimant has taken steps with a view to placing his assets beyond the jurisdiction of the court.

[12] The submissions in support of the Applications relied primarily on the local High Court case of **British American Insurance Company Limited v First Citizens Investment Services Limited CV2011-03501** to set out the appropriate test. The Claimant, in turn, relied initially on Kokaram J's decision in **Elma Lawson v Sherba Dick & others CV2010-02739**.

[13] Boodoosingh J set out the test in **British American** *supra* as follows:

"10. The Court's powers to make a security for costs order is set out in CPR Part 24. Rule 24.3 provides that the court, having regard to all the circumstances of the case, considers it just to make such an order.

11. The primary grounds relied on by the Defendants are those set out in Rule 24.3 (a) and (b), that is, the Claimant is ordinarily resident out of the jurisdiction and or the Claimant is an external company and there is reason to believe that the claimant will be unable to pay the Defendant's costs if ordered to do so.

12. In Keary Developments Limited v Tarmac Construction Limited [1995] 3 All ER 534, the principles guiding the court in applications such as this were set out. The principles relevant to this application, as set out by Gibson LJ can be summarised as follows:

- ***The Court has a complete discretion whether to grant security for costs.***

- ***The Court must carry out a balancing exercise. It must weigh the injustice to the Claimant if prevented from pursuing a proper claim by an order for security against the injustice to the defendant if he cannot recover costs if the claim fails.***

- ***The order is not meant to be an instrument of oppression such as by stifling a claim by an indigent company against a more prosperous one.***

- ***In considering all the circumstances of the case, the court will have regard to the claimant's prospect of success, "but it should not go into the merits in detail unless it can clearly be demonstrated that there is a high degree of probability of success or failure".***

- ***The court can make an order for any amount up to the amount claimed, but it should not make an order for a nominal amount. It is not bound to make an order for a substantial amount."*** [Emphasis added]

From the learning, it is clear that much discretion is vested in the Court to consider all factors in the aim of weighing the injustice to, in this case, CONCACAF, should the Applications be granted, against the injustice to the 1st to the 5th Defendants should they be unable to recover their costs. In conducting this balancing exercise, I am also permitted to account for CONCACAF's prospect of success on its Claim. Additionally, as stated by Kokaram J in **Elma Lawson** *supra*, the first consideration in **Part 24.3 (a)** i.e. non-residency of the Claimant, is not a determining factor, but rather, merely puts the 1st to the 5th Defendants in the running for their Applications.

[14] In the Amended Statement of Case filed on the 13th February, 2017, the Claimant is described as a non-profit organisation incorporated under the laws of Bahamas. Thus, the condition in **Part 24.3 (a)** is satisfied as CONCACAF is ordinarily resident out of the jurisdiction. Further, the Claimant, in its submissions filed on the 29th September, 2017, confirmed that it is indeed registered as an external company in Trinidad and Tobago.[1] However, the parties are in dispute as to whether the Defendants, on whom the burden lies, has shown that the Claimant is unable to pay the Defendants' costs if ordered to do so.

[15] Ms Gopie, in her affidavit in response, focused her evidence in rebuttal to the Applications on the Claimant's financial statement and its alleged ties to this jurisdiction. She deposed that due to these factors, the Claimant is willing and able to satisfy any costs order made in these proceedings. In support, she attached at **"CG5"** a copy of **CONCACAF's Consolidated Financial Statements for the years ended December 31, 2015 and 2014.**

[16] The 5th Defendant submitted that this Consolidated Financial Statement does not represent the financial position of CONCACAF alone but rather, includes that of its two wholly owned subsidiaries—CMTV and Cayman. This appears to be a correct submission (see page 14 of the Financial Statement under the sub-heading ***"Consolidation Principles"***). Further, CONCACAF is described as a non-profit company whereas as its subsidiary, CMTV is "for profit" (see page 22). This begs the question of whether and to what extent is the Claimant the true revenue earner out of the three consolidated companies and thus, whether the assets stated on the Statement are owned by CONCACAF. I also agree with the submission that the doctrine of separate legal personality prevents a subsidiary from being automatically liable for the debts of its parent unless the Court finds it necessary or equitable to "pierce the corporate veil". My readings into this doctrine have alerted me to the fact that such a veil is rarely ever pierced. This leads me to the conclusion that the Consolidated Financial Statement provided by

[1] Para 7 (a)

the Claimant does not convince this Court of the Claimant's stand-alone financial position.

[17] In **Elma Lawson** *supra*, further guidance was given to assist the Court in determining these Applications. For one, its begs the Court to ask:

> *"Is the respondent impecunious or does it have assets to satisfy the costs order of the applicant or even an order for security and whether such impecuniosity is attributed to the acts of the applicant* ***"The court will properly be concerned not to allow the power to order security to be used as an instrument of oppression, such as by stifling a genuine claim by an indigent company against a more prosperous company, particularly when the failure to meet that claim might in itself have been a material cause of the plaintiff's impecuniosity*** *(See Farrer v Lacy, Hartland & Co (1885) 28 Ch D 482 at 485 per Bowen LJ).* ***But it will also be concerned not to be so reluctant to order security that it becomes a weapon whereby the impecunious company can use its inability to pay costs as a means of putting unfair pressure on the more prosperous company*** *(see Pearson v Naydler [1977] All ER 531 at 537, [1977] 1 WLR 899 at 906)."* ***Keary*** *(supra)."*[2]

[18] As stated above, Ms Gopie tried to convince this Court that her client, CONCACAF, is not to be considered impecunious. While, as stated above, such a finding is inconclusive, there is nothing to suggest that Mr Warner or his Companies should be considered to be the more prosperous party and thus, I do not find that the Applications can be seen as an *"instrument of oppression against the Claimant"* when applied to the dicta above.

[19] The second principle from **Elma Lawson** *supra* is more applicable. It asks the Court to consider questions such as *"how long will it take for the defendant to enforce an order for costs, what may be some of his obstacles, challenges in enforcing an award of costs*? *Are there jurisdictional issues, other creditors?"*

While, the Claimant attempted to show that it has sufficient assets to pay any costs order, it has not, to my mind, convinced this Court that it has any assets in this jurisdiction. Page 23, paragraph 9 of the **2015 Consolidated Financial Statement** indicates that the

[2] See page 2 paragraph 5 (a) of the judgment of Kokaram J in ***Elma Lawson***

Organization (i.e. the Claimant and its two subsidiaries) have leased offices in ***Miami, Florida, Grand Cayman, Cayman Islands and New York***. In fact, Ms Gopie stated in her affidavit, that the Claimant's only offices in this jurisdiction were located in a building under Mr Warner's control. It therefore appears to me that there is nothing to suggest that the Claimant has any assets in this jurisdiction on which it can rely to meet a Costs Order. Further, at paragraph 10 to the Notes to the Consolidated Financial Statement states that *"due to the ongoing DOJ investigation, there can be no assurance that CONCACAF will not be affected financially as a result of these matters"* despite the Organization's belief that the investigation will not have a material impact on the consolidated financial statements.

Considering this fact, coupled with the fact that (i) the 2015 Consolidated Financial Statement does not indicate the Claimant's assets separate from its subsidiaries; and (ii) the Claimant is a non-profit company, I am of the opinion that there is a probability that the Defendants may experience some obstacles in enforcing any Costs Orders should they be successful in these proceedings.

In the alternative, I find that no evidence has been provided to show that the Claimant's Claim would be stifled in any way should the Court make any Orders requiring it to provide security for the costs of these proceedings.

Considering the learning in **Elma Lawson** *supra*, i.e. that it is for the respondent (to the Applications), in this case the Claimant, who must satisfy the Court that it would be prevented by an order for security from continuing the litigation (see **Flender Werft AG v Aegean Maritime Ltd [1990] 2 Lloyd's Rep 27**), I find that the Claimant has failed to discharge this burden.

[20] To the contrary, I find that the 1st to the 5th Defendants, being Mr Warner, the Warner Companies, the Centre of Excellence and Mrs Warner, would incur injustice should their Applications not be granted. It must be remembered that, in reality, each of the first 5 Defendants are really represented, owned or controlled by Mr Warner. He is the breadwinner of his family and thus, quite likely, he might be the one to bear the brunt of any costs order. Similarly, he was the principal director of his companies. While no specific value for the Claim has been placed in the Amended Statement of Case, in the

Claimant's counsel's submissions, the claim was valued at **US $37.8 million** in addition to an unquantified amount in damages and thus, computed likely prescribed costs at **TT$1,500,300.00**.

The 1st to the 5th Defendants, in both their Applications, put the figure for costs at **US$648,000.00**. Even if this Court were to accept the lower figure put forward by the Claimant, it is indicative of the onerous legal costs of this matter, which, as described above, will be borne, in the case of the 1st to the 4th Defendants, by one man, Mr Warner, as opposed to a Company, for the Claimant.

In those circumstances, I find that there would be greater injustice to the 1st to the 5th Defendants should I refuse their Applications.

The likelihood of success for the Claim:

[21] This matter is quite complex and involves both issues of fact and law. Indeed, much of the facts pleaded by the Claimant have been either denied or put to proof by the Defendants. Further, Mr Warner has indicated that, due to the delay in bringing these proceedings, he is unable to recall much of the events surrounding the allegations. As it stands, witness statements have not yet been filed and thus, this Court is not yet in a position to accurately estimate the prospect of success in the Claim.

[22] What it can do, however, is summarily dismiss the Defendants pleading that this action is statue-barred or subject to the equitable defence of Laches. For one, this matter does not involve an action under contract or quasi-contract nor does it claim any damages for personal injuries[3].

As to the latter defence, the words of Lord Camden L.C. are instructive. He stated that a court of equity *"has always refused its aid to stale demands, where a party has slept upon his right and acquiesced for a great length of time."*[4] Considering, that this Court has found that the statute of limitations does not apply, the guiding principles on Laches is therefore set out in **Snell's Equity**[5] as follows:

[3] See Section 3 & 4 of the Limitation of Certain Actions Act, Chap 7:09
[4] Smith v Clay 1767 3 Bro. C.A. 639n at 640n.
[5] 31st Edition at para 5-19

"Now the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver to it, or where by his conduct and neglect has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases lapse of time and delay are most material."

[23] To summarise, the learning states that delay will be fatal to a claim for ***equitable relief*** if (i) it is evidence of an agreement by the claimant to abandon or release his right; or (ii) it resulted in the destruction or loss of evidence by which the claim might have been rebutted.[6]

[24] Unfortunately, the ability of this defence fails at the outset because this claim cannot be considered as one seeking an equitable relief. The claims made against the Defendants in the Amended Statement of Case are contained at pages 23 – 24. They seek, in addition to several Declarations and Orders, claims for damages and exemplary damages.

[25] Damages are considered to be the usual relief granted in law and thus, are not equitable remedies.[7] Further, declaratory reliefs, have been officially declared by the UK Court of Appeal not to be equitable remedies.[8] In fact, they are described as neither law nor equity.

In these circumstances, I do not find that this Claim seeks equitable relief and thus, the equitable defence of Laches does not arise.

[26] Notwithstanding, I do find that, due to the delay in bringing this claim, which, considering that many of the allegations to which it relates occurred during the period of 1996 to 2006[9], there would be some difficulties for the Claimant due to the likely loss of evidence. The Claim was filed over 11 years after the incidents arose. Mr Warner has expressly stated that, due to the long passage of time, he is effectively a stranger to the many transactions and cannot be expected to recall the material facts. Although, the Claimant

[6] Snell's Equity ibid para 5-19
[7] Snell's Equity at para 12-01
[8] Snell's Equity at para 12-16
[9] See para 35 of the Amended SOC

has not disclosed who its witnesses would be, it is likely that they would suffer from the same predicament as Mr Warner.

Additionally, from the Amended Statement of Case, it is clear that the Claimant intends to rely primarily on the findings in the **CONCACAF Integrity Committee Report of Investigation dated the 18th April, 2013** as its documentary evidence. In fact, this was the only document attached to their Claim. In this Report, the "Investigative Process" is discussed and the following information was revealed: That the Committee *"did not find many documents authored by Warner on CONCACAF's servers because the President's Office in Trinidad and Tobago, where Warner primarily worked, had not been networked with the servers in CONCACAF's headquarters in New York."* In fact, in terms of those documents, the Committee concluded that more than likely, Mr Warner would have destroyed them[10].

[27] Indeed, many of the Committee's attempts to get external documentation from either of these Defendants were not always successful. The Report indicated that the 6th Defendant, Mr Rampersad, failed to provide a full written response to its letter dated the 31st January, 2013 requesting a *"wide range of documents related to topics under investigation"*.[11] Moreover, First Citizen's Bank, who extended the mortgage loan in 2007, has yet to provide documents relating to CONCACAF's accounts at the bank.[12] Further, the Report indicates that it attempted to obtain information from the former FIFA President, Joao Havelange, related to the ownership of the COE by letter dated the 20th February, 2013. Mr Havelange eventually responded by letter dated the 5th March, 2013 *"reiterating his inability to assist with the Committee's investigation.*"[13]

While the Committee were nevertheless able to make some findings against Mr Warner[14], the Claimant has not convinced this Court that it would have, at its disposal, the same or similar documentary evidence as the Committee and therefore, does not convince this Court that its Claim is bound to succeed.

[10] See page 15 – 16 paras 4.6 – 4.10
[11] Para 4.17
[12] Para 4.20
[13] See para 4.19 of the Report
[14] See the "Review of the Evidence and Findings" from page 21 onwards of the Report

[28] Accordingly, the Court's findings are as follows:

i. That the Claimant is a non-resident, external company with its registered address being in the Bahamas; and

ii. That the Claimant has little to no assets in this jurisdiction and further, the **2015 Consolidated Financial Statement** does not convince the Court that the Claimant, by itself, can satisfy any costs order;

iii. Therefore, if the Defendant were to succeed in the substantive matter, it is likely to face some difficulty in enforcing its Costs Order based on the findings at (i) & (ii) above ;

iv. That the onerous legal Costs for defending this Claim for the 1st to 5th Defendants would likely be borne solely by Mr Warner and thus, he would be severely prejudiced should he succeed but is unable to recover his costs from the Claimant;

v. That the Claimant has not shown this Court how its Claim would be stifled by any Order for Security of Costs;

vi. That the Court does not find that the Claimant' Claim is bound to succeed considering the absence of documentary evidence attached to the Claim;

Considering the above, the Court is therefore minded to grant the **Applications for Security for Costs** pursuant to **Part 24 of the CPR**.

The Value of the Claim:

[29] Based on the Amended Statement of Case, the Claimant states that its Claim is in *"**excess of US$50 million** in misappropriated funds from CONCACAF"*[15]. I therefore do not agree with their submission that the value to be used in quantifying prescribed costs is US$37.8 million.[16] If I were to take the US$50 million value as a preliminary value of the Claim only for the purpose of working out security for costs, applying the conversion rate of 6.8 obtained from RBC Royal Bank as at today's date (17th May, 2018) the value of the Claim when converted to Trinidad and Tobago currency amounts to **$340,000,000.**

[15] Para 29 of the Amended SOC
[16] See para 33 of the Claimant's submissions

Quantifying prescribed costs in accordance with **Appendix B of Part 67 CPR 1998** works out as follows:

i.	First $30,000 x 30% =	$9,000.00
ii.	Next $20,000 x 25% =	$5,000.00
iii.	Next $50,000 x 20% =	$10,000.00
iv.	Next $150,000 x 15% =	$22,500.00
v.	Next $250,000 x 10% =	$25,000.00
vi.	Next $500,000 x 7.5% =	$37,500.00
vii.	Next $1,000,000 x 5% =	$50,000.00
viii.	Next $3,000,000 x 2.5% =	$75,000.00
ix.	Next $5,000,000 x 1% =	$50,000.00
	Costs on first $10,000,000.00 =	$284,000.00
x.	Next $330,000,000 x 0.5% =	$1,650,000.00
	TOTAL =	**TT$1,934,000.00**

[30] This figure of prescribed costs comes close to the maximum figure for security for costs suggested by the Claimant in its submissions (**TT$1,500,300.00**) for **each application**[17]. Conversely, however, it is far lower than that advanced by the Defendants (**US$648,000.00** which equates to **TT$4,406,400.00** using the same conversion rate of 6.8).

[31] However, guided by the learning outlined above, while I find in favour of the Applications, I remain wary of setting a costs figure that would be oppressive to the Claimant or serve to stifle the claim. This caution must be, of course, balanced against the prejudice against the Defendants should they succeed but be unable to recover the onerous costs likely to be incurred in defending the claim.

[17] See para 33 of the Claimant's submissions filed on the 29th September, 2017

While I have found that there would be some notable hurdles to cross in proving this claim, I am, nevertheless, of the opinion that it is not wholly unmeritorious. Further, I note that no set value has been given for this claim. Thus, although in the Amended Statement of Case it is stated, on one hand, that the sum of **over US$50 million** in assets and monies allegedly defrauded from CONCACAF is claimed against the Defendants, it is however, expressly sought in the reliefs at **paragraph 83 (1) (c) & (e)** Orders that the Defendants reimburse the Claimant for the sums of **US$32.5 million** and **US$5.3 million**, thereby totalling **US$37.8 million**. This suggests that the US$50 million figure, on which the prescribed costs were calculated may not be the true value of the claim and instead, these proceedings potentially could be valued less.

In those circumstances, I am not minded to grant security for costs on either application in the full figure of prescribed costs based on the US$50 million value of the claim. In achieving an equitable figure that is not oppressive to the Claimant yet provides some security for the Defendants, I find that, in terms of the application made by the **1st to the 4th Defendants,** it is equitable to award security for costs at **80%** of the prescribed costs figure calculated above.

However, as it pertains to the 5th Defendant's application, I am minded to include a further deduction for several reasons.

Firstly, as stated above, Jack Warner is the primary target of this litigation and thus, any involvement that he may have had in any of the allegations pleaded would have far exceeded that of his wife. In fact, in the Amended Statement of Case, the allegations made against his wife seemed ancillary and were based primarily on the fact that she was a shareholder in the Warner Companies. Thus, because of her shareholding, it was pleaded that she would have conspired or been involved in the misappropriation of monies or in the defrauding of CONCACAF[18]. She therefore had to respond to less allegations and deal with less issues than Mr. Warner. It was therefore not surprising to see that her Defence only comprised nine (9) pages in response. Alternatively, two separate Defences

[18] Paras 10, 11, 12 & 29 of the Amended Statement of Case

were filed for the first four Defendants comprising 13 pages on behalf of Mr Warner and another 11 pages for the 2nd to the 4th Defendants.

Secondly, there would undoubtedly be some overlap between the two Applications filed, as well as, with the three Defences (i.e. the Defences of the 1st, the 2nd to the 4th and the 5th Defendants).

Thus, should the Defendants be successful in defending this Claim, the costs incurred would not be equal among them. That is to say that the 1st to 4th Defendants would likely have incurred more costs than Mrs Warner.

With these considerations in mind, I would be minded to award security for costs on the 5th Defendant's application at a lesser rate of **60%** of the prescribed costs figure calculated above.

[32] This arrives at a figure of **TT$1,547,200.00** in security for costs for the **1st to the 4th Defendants** and **TT$1,160,400.00** on the **5th Defendant's application**. Both figures seem equitable given the analyses above and, in any event, are fairly close to the figure for security for costs offered by the Claimant.

Costs:

[33] While it is clear that the Court has found in favour of the Defendants by granting both Applications, which suggests that the Defendants are the successful party, I also note that the amount of security for costs to be paid on each application is more in line with the Claimant's submissions. Thus, there is room for me to apply **CPR Part 66.6(3)(a)** in ordering the Claimant to pay only a specified proportion of the Applicants' costs of the two Applications. In those circumstances, I find that a just Order for costs would be that **the Claimant should pay 55% of the costs** of each of the two Applications. And I so hold.

III. Disposition:

[34] Accordingly, in light of the foregoing analyses, the Order of the Court is follows:

ORDER:

1. **That pursuant to Part 67.5 (2) (b) (i) of the CPR, the Claim be preliminarily valued at the sum of US$50,000,000.00.**

2. **That the Claimant shall provide security for the costs of this Claim to the 1st, to the 4th Defendants in the sum of TT$1,547,200.00.**

3. **That the Claimant shall provide security for the costs of this Claim to the 5th Defendant in the sum of TT$1,160,400.00.**

4. **That the Claimant shall pay the sum of TT$2,707,600.00 as security for the 1st to 5th Defendants' costs of these proceedings in the form and manner to be agreed by all respective parties within 28 days of the date of this order.**

5. **That pursuant to Part 24.5 (a) of the CPR, these proceedings be stayed until such time as the security for costs is provided in accordance with Clause (4) of this Order.**

6. **That pursuant to Part 24.5 (b) of the CPR, in default of such security for the costs being provided by the Claimant in accordance with Clause (4) of this Order, the Claim filed on 20th May, 2016 and the Amended Statement of Case filed on the 13th February, 2017 be struck out.**

7. **The Claimant shall pay to the 1st to 4th Defendants and the 5th Defendant 55% of their costs of their Applications filed on the 12th and 14th July, 2017, respectively, for security for costs, to be assessed in accordance with Part 67.11 of the CPR, in default of agreement.**

8. **There shall be liberty to apply.**

Dated this 23rd day of May, 2018

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Robin N. Mohammed
Judge