

United States District Court for the District of Maryland

Docket No. 18-cv-3309-PJM

Objection to Proposed Compensation Plan

FILED
LOGGED RECEIVED
FEB 26 2021
AT GREENBELT
FEDERAL BUREAU OF INVESTIGATION
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
DEPUTY

I Kim Liss of No. 14121 South Highway 97, Harrison, ID 83833 submit this objection to the proposed Compensation Plan on behalf of myself and my husband Steven Liss. As far as we can see, nowhere in the proposed plan does it address judgment creditors who have the benefit of a judgment. We are not lot owner in Sanctuary Belize but re judgment Creditors who have been more than patient in pursuing recovery.

The plan makes proposals for lot owners and we understand from the Receiver's representative that the Receiver proposes to treat us similarly to lot owners and receive payouts simultaneously with all lot owners.

We believe that as Judgment creditors our interest ranks in priority and the plan should address how our judgment, which is significant, will be addressed.

We attach a copy of relevant orders in Supreme Court Claims # 426 of 2015 Steven v Kim Liss v Sittee River Wildlife Reserve Limited and Cleo & Violet Mathis & Claim # 604 of 2017 Cleo & Violet Mathis and Sittee River Wildlife Reserve v Steven & Kim Liss. The judgment of the Supreme Court of Judicature of Belize is binding on Sittee River Wildlife Reserve Ltd which owns the land comprising the Sanctuary Bay Development.



Kim Liss

IN THE SUPREME COURT OF BELIZE, A.D. 2017

CONSOLIDATED CLAIMS NOS: 426 of 2015 & 604 OF 2017

CLAIM NO: 426 of 2015

BETWEEN

STEVEN M. LISS
KIM LISS

CLAIMANTS

AND

CLEO MATHIS
VIOLET MATHIS & SITTEE RIVER
WILDLIFE RESERVE LIMITED.

DEFENDANTS

CLAIM NO: 604 OF 2017

CLEO MATHIS
VIOLET MATHIS & SITTEE RIVER
WILDLIFE RESERVE LIMITED. }

CLAIMANTS

AND

STEVEN M. LISS
KIM LISS

DEFENDANTS

Keywords: Real estate contract; Claim for the Return of Deposit; Fraudulent Misrepresentation; Wrongful Termination of Agreement; Stay of Proceedings;

Arbitration Agreement; Two Arbitrators; Award of the Arbitrators;

Power of Court to Set Aside Award for Misconduct:

Misconduct of Arbitrators; Award not Final Award; Award on its Face is Erroneous; Whether Award is an Interim Award or Final Award; Whether Award Disposes of all Claims; Whether award Erroneous; Seat of Award Not Stated; Whether Award States Court Appointed and not Appointed by the Parties; Non-Consideration of Evidence by Arbitrators; No analysis of Parties Evidence; No Reasons for Findings of Arbitrators in Award; Whether Arbitrators Failed to Act Fairly towards Party; Failing to Address and to consider Evidence in Defence and Counterclaim; Error on the Face of Award; Error in law.

Arbitration Act; Sections 5, 6, 12, 13, of the Arbitration Act;

Before the Honourable: Mr. Justice Courtney A. Abel

Hearing Date: 6th December 2017.

Appearances:

Mrs. Julie-Ann Ellis Bradley for Steven Liss & Kim Liss.

Mrs. Deshawn Arzu Torres for Cleo Mathis, Violet Mathis & Sittee River Wildlife Reserve Limited.

WRITTEN JUDGMENT
Orally delivered on the 6th day of December 2017

Introduction

- [1] This is a contested application to determine whether an arbitral award, made by two Arbitrators on the 28th day of August 2017, be set aside or enforced by this Court.
- [2] Claim No. 426 of 2015 herein was commenced by the Claimants, Steven M Liss and Kim Liss ("Steven & Kim Liss") against the Defendants, Cleo Mathis & Violet Mathis ("Cleo and Violet Mathis") for the return of US\$159,000.00 and against the Defendant Sittee River Wildlife Reserve Limited ("Sittee River"), for the return of US\$8,360.70.
- [3] On the application of the Defendants, Claim No. 426 of 2015 was then stayed by this court to allow this claim, following a referral to arbitration, to be tried by arbitration, rather than to have the same tried by this court. The basis of the application, and of the stay, was that there existed a written agreement to submit the dispute in the same claim to binding arbitration.
- [4] After the claim had been referred to arbitration, an arbitral award was made by the Arbitrators who had been appointed pursuant to the **Arbitration Act**¹, ("**the Act**").

¹ Cap. 125 Revised 2003, Laws of Belize.

- [5] The award has not been satisfied.
- [6] The Act, and the Supreme Court of Judicature Civil Procedure Rules ("CPR"), provide the applicable legislative and procedural framework within which the issues are now to be resolved.
- [7] Upon application by the parties to this court the central issue now for determination is whether the arbitral award should be set aside (or remitted) for misconduct by the Arbitrators or otherwise enforced by this court. But before going into the issues, and law and making a determination it is necessary to set out something of the history of the proceedings.

The Proceedings

Background

- [8] On the 3rd August 2015 Steven & Kim Liss filed a claim Form, in Claim No. 426 of 2015, against Cleo & Violet Mathis & Sittee River for the sums already stated.
- [9] It was alleged in the Claim Form, by Steven & Kim Liss, that the sum of US\$159,000.00., was paid by them directly to Cleo & Violet Mathis as a deposit towards the purchase of certain property, the subject of a two-part agreement dated 13th January, 2014. This agreement was allegedly later terminated on 11th July, 2014 due to alleged misrepresentations and breaches by Cleo & Violet Mathis & Sittee River.
- [10] It was also claimed that Sittee River should return the sum of US\$562.50 which was allegedly paid towards maintenance fees for the same property, as well as the sum of \$8,360.50 by way of mortgage payments.
- [11] The reliefs claimed included 'rescission' of the two-part agreement, various declarations by this court (Including that the Claimants were entitled to relief from forfeiture), for the return of \$318,000 BZD, and for damages.
- [12] The Claim was supported by a Statement of Claim filed on the same date.
- [13] The causes of action included fraudulent misrepresentation and wrongful termination of the said two-part agreement.

[14] On the 1st October, 2015 Sittee River, applied to this Court for the following orders:

- (i) That all further proceedings in this matter be stayed pursuant to section 5 of the Act ; and
- (ii) That the Claimants pay the Applicants its Costs.

[15] The Grounds of the Application was that by a written agreement dated 13th January, Steven & Kim Liss had agreed with Sittee River as follows:

"That the parties agree to submit any dispute, claim, or controversy arising out of this real estate contract to private mediation in Belize or in any other jurisdiction agreed upon by the parties. In the event that the parties are unable to reach an amicable resolution to the dispute at the Mediation the dispute, claim or controversy arising under this real estate contract shall be resolved by binding arbitration."

[16] The other ground was that disputes had arisen between Steven & Kim Liss and Sittee River which arose "out of" the said written agreement (which contained the arbitration Agreement), but that the Claimants had commenced their claim, in breach of the Agreement to refer to arbitration such disputes arising thereunder, and as a result therefore, that the matter should be stayed.

[17] On the 1st February, 2016 this Court having heard the parties and read the supporting affidavits ordered:

- (i) That pursuant to Section 5 of the Act , all further proceedings in this claim be stayed until further order; and
- (ii) That costs be paid and adjourned the claim for report to a later date.

[18] Thus the Claim herein was stayed until further order on the basis that there was an arbitration agreement and that the parties to the present claim had a dispute, claim or controversy, the very subject matter of the claim herein, which they had agreed to submit to arbitration.

The Arbitration

- [19] The parties duly appointed the Arbitrators, Ann-Marie Smith and Dale Cayetano ("the Arbitrators") to hear the arbitration. I don't think there is any real dispute about this, although, to run ahead a little, later on in 'the Award' of the Arbitrators, such Arbitrators did say, in error, that they, the Arbitrators, were appointed by the Court.
- [20] But the Arbitrators, nevertheless, accepted their appointed on 28th February, 2017 and, according to the arbitral award, an initial meeting was held at 2:00 p.m. on the 28th February, 2017 at which Counsel for all the parties were present.
- [21] A further meeting of the arbitration, which was quite clearly a domestic arbitration, was held in Belize on the 8th May, 2017.
- [22] Directions were later given by the Arbitrators on 13th June 2017, and an arbitration hearing was duly held in Belize City on 19th July 2017.
- [23] Steven & Kim Liss were present at this latter arbitration hearing and they gave oral evidence; while the witnesses for Cleo and Violet Mathis & Sittee River were also present and gave evidence via Skype. There is no dispute about the manner in which evidence was given.

The Award of the Arbitrators

- [24] On the 28th August, 2017, the Arbitrators issued an award in writing in which the Arbitrators stated the reasons upon which the award is based. The award was published, given to the parties, on the 29th August 2017.
- [25] Unfortunately the Award doesn't state on its face that it is a "Final Award", which it clearly ought to have stated, but there is no real dispute among any of the parties that the Award was indeed a final award; nor is there any real suggestion that in the Award the Arbitrators failed to deal with any of the issues which was before them.
- [26] The failure of the Arbitrators to state that the Award is a "Final Award" is clearly an error which, in certain situations or cases (which this court has to determine) could possibly invalidate the award.

- [27] Neither does the Award, again unfortunately, state, in the place which has been typed: "Place of Award", where the place of the award was to be inserted, by indicating a place of such award. This suggests that the Arbitrators simply omitted to insert in the allotted slot, the place of the award.
- [28] Again there is no dispute among any of the parties that 'the Award' relates to the present Claim which was stayed and in relation to which this court, the Supreme Court of Belize, has jurisdiction.
- [29] There is therefore no dispute as to whether 'the Award' is a matter which was subject to the above arbitration agreement and on the basis of which agreement the present proceedings were stayed to allow the parties to submit their dispute, arising out of their real estate contract, which had improperly been brought before this court, to be resolved by binding arbitration, instead of by this court.
- [30] Also there is no dispute that the Real Estate in question, the real estate Contract in question, and the Arbitration, and therefore the place of the Award, is or ought to be in Belize.
- [31] Nor is there any suggestion that the arbitration proceeded in any way other than on the basis that the place of the arbitration and of the Award was in Belize.
- [32] Again the failure of the Arbitrators to state that 'the Place of the Award' was in Belize is clearly another error which, may possibly, and in certain situations or cases (which has to be determined in this case), could invalidate the award.
- [33] Nevertheless these errors or failures within the Award, by the Arbitrators, to indicate that the award is a "Final Award", and that the place of the Award is "Belize", are both points of which Counsel for Cleo Mathis & Violet Mathis and Sittee River Wildlife Reserve Limited, as the parties dissatisfied with the Award, have sought to take advantage, by their present application to set aside the Award, or to have the award remitted back to the arbitrators, in order to prevent its enforcement.

- [34] But, what is clear to this court, which this court considers pertinent in the present case, is that from the face of the award the arbitrators dealt with all the issues that apparently were before them and there does not appear to be any question or any issue, that was placed before them, the Arbitrators, which was not determined by them. Even a counter-claim was also apparently placed before the Arbitrators and determined by them.
- [35] I won't go too much into the details of 'the Award', which set out the facts on which the Arbitrators based their decision and makes separate awards on different issues within the award. At its final page the award also state: "Date of Award 28th August 2017", and it is duly signed by both of the Arbitrators (indicating that both Arbitrators agreed with the Award) which was duly witnessed by one Ms. Mariam Gideon.
- [36] It is clear from 'the Award' that in relation to the first issue, identified by the Arbitrators in their Award, which concerned the legal effect of Cleo and Violet Mathis & Sittee River not having a final subdivision approval in relation to the subject land, that the Arbitrators determined that the purported land sale to Steven & Kim Liss was void and of no legal effect.
- [37] In relation to the second issue identified by the Arbitrators, concerning the lawfulness and validity of the termination of the agreements, the Arbitrators duly determined that Steven & Kim Liss had legally terminated the contract for sale based upon certain breaches alleged by them, and which were stipulated and set out in the Award.
- [38] In relation to the third issue identified by the Arbitrators, concerning the question whether Steven & Kim Liss are in breach of contract for failing to pay the balance of the purchase prices as agreed, the Arbitrators adverted to the testimony and the documents of the parties, and which were presented to such Arbitrators, and they, the Arbitrators, later found that there was no merit in the Respondents' assertion that Marc Radamacher was not acting on behalf of Cleo and Violet Mathis & Sittee River as testified under oath by their witness Mr. Peter Baker.

- [39] Finally in relation to the fourth issue identified by the Arbitrators, they found no merit in the claim by Cleo and Violet Mathis & Sittee River, for specific performance, and, in referring to **Section 14 of the Land Utilization Act (LUA)**, the Arbitrators stated that it was not possible to sell a parcel of land until subdivision approval had been obtained.
- [40] The Arbitrators, in 'the Award' also referred to the oral testimony of the witnesses for Cleo and Violet Mathis & Sittee River, in which they (the latter parties) had admitted that they had not received such approval. The Arbitrators specifically noted **Sections 3, 7 and 14 of the LUA** and observed that these section were considered by them, both relevant and applicable sections of the Law; and they then determined that damages should be payable to Steven & Kim Liss, along with interest at the rate of 6%. The Arbitrators also, in favour of Steven & Kim Liss, made an award the grand total of which was for US\$173,274.61 and BZ\$346,549.22.
- [41] Finally the Arbitrators also determined that each party should bear its own costs, which may be considered favourable to Cleo and Violet Mathis & Sittee River, and also gave directions that the latter parties were to pay Steven & Kim Liss the said sum by September 30, 2017.
- [42] It is clear that by filing the Award in the present proceedings it was made public and in any event there is no question raised by any of the parties that the Award was not duly communicated to them by the Arbitrators.
- [43] No question has been raised by the parties that the Arbitrators applied rules of law (including the terms of the contract and the usage or trade applicable to the transaction) which was not designated by the parties, or was otherwise inappropriate law.

The Present Applications before this Court

- [44] On the 12th of October 2017, Steven Liss and Kim Liss filed a Notice of Application for Leave to enforce the arbitral award which application was supported by an affidavit of Steven Liss, and in which some of the matters to which I have already referred, were adverted, and of course the award was attached.

[45] On the 29th of September 2017, in the meantime, Cleo and Violet Mathis and Sittee River had filed a Fixed Date Claim Form, in Claim No 604 of 2017, herein, against Steven and Kim Liss, along with a Statement of Claim. In both of these Cleo and Violet Mathis and Sittee River made a claim for certain orders, namely; that the Arbitral award, which was published on the 29th of August 2017, be set aside, on the grounds of misconduct; or in the alterative that the award be remitted for a reconsideration of the evidence. The claim is based on the following six grounds:

- (a) That the award is on its face erroneous because it does not state whether it was an interim award or final award and does not dispose of all claims in the matter;
- (b) That the award is on its face erroneous as no award was in fact made by the arbitrators but that directions were issued for payment of certain sums as damages;
- (c) That the award does not state the seat of the arbitration;
- (d) That the arbitrators are said to be court appointed but that the appointment did not confirm with the Section 6 of the Act ;
- (e) That the award on its face was erroneous as there was no consideration of the Defendants evidence in respect of the Defence to the claim and counterclaim, and no analysis of the Defendant's evidence or reasons for the findings were provided for in the award;
- (f) That the Arbitrators failed to act fairly towards the claimants in failing to address and consider its evidence in respect of the Defence and Counterclaim and that there was, on the face of the award, an error in law and fact in awarding damages for travel expenses, etc.

[46] Attached to the Fixed Date Claim Form is a Statement of Claim; and attached to the latter is the arbitral award.

[47] The two claims were consolidated by consent of the parties, by order of this Court on the 28th November 2017.

[48] So all the issues for determination, whether the arbitral award should be enforced and/or whether it should be set aside and/or remitted, are now to be considered by this court.

[49] On 1st November, 2017 Alfonso Bailey for Cleo and Violet Mathis and Sittee River filed an affidavit. Unfortunately this affidavit is rather skimpy and mainly sets out the formal matters, to most of which I have already referred. It really neither substantiates nor seeks to substantiate, any of the grounds contained in the applicant's application to set aside and/or remit the award. Certainly it does not set out any of the merits of the case to support an allegation of serious misconduct such as the evidence which was presented before the arbitrators; and nor does it allege any significant procedural errors or procedural unfairness.

[50] On 4th December, 2017 Steven Liss filed an additional affidavit in support of their application to enforce the Award. In this affidavit he deposes:

- (a) to having participated in the arbitration process;
- (b) that they spent a significant amount of money to pay for the arbitration proceedings, and also incurred expenses which, though they were successful, they had to bear all of these costs, and that they are obviously disappointed in the delay which has happened in getting the fruits of the arbitral decision;
- (c) to the advice they had received from their attorneys that under the Act there is very limited circumstances within which an arbitral award may be set aside and that Cleo and Violet Mathis & Sittee River have failed to show any sufficient basis on which it may be appropriate to set aside the award in the present case;
- (d) that in any event the matters raised by the other side are not decisive of the final outcome of any review of the decision; and
- (d) That the application to set aside or remit the arbitral award ought to be refused and that it should instead be enforced.

Issues

[51] So the issues before this court now is:

- (a) Whether there was any misconduct by the arbitrators; or
- (b) Whether the arbitral award should otherwise be set aside or be enforced by this court.

The Law

[52] The statutory basis for the law on arbitral awards is primarily set out in the Act.

[53] Under **Section 4 of the Act** a submission to arbitration, such as in the present case, is deemed to have included within it the matters set forth in the First Schedule of the Act. This includes at its **Clause 8** that an award is final and binding on all the parties.

[54] In **Section 12(2) of the Act**, on which Cleo and Violet Mathis & Sittee River have relied, it is stated that:

"Where an arbitrator ...has misconducted himself, or an arbitration award has been improperly procured, the court may set aside the award".

[55] Section 13 of the Act provides:

"An award on a submission may, by leave of the court, be enforced in the same manner as a judgment or order to the same effect."

[56] A number of cases have been referred to by Counsel for the parties.

[57] Both parties have in fact relied on **Consolidated Actions Nos. 440 of 2000², 67 of 2001³, and 68 of 2001⁴**; in which the then Chief Justice, Hon. Abdulai Conteh, had reason to look at the Act, and in quoting **Chitty on Contracts**, adopted the views expressed therein, as follows:

"Misconduct in arbitration law does not necessarily imply any reflection on the competence or integrity of the arbitrator. It

² *Cedric Flowers v Belize Tourist Board & Registrar of Hotels & Tourist Accommodation.*

³ *Registrar of Hotels & Tourist Accommodation v Cedric Flowers.*

⁴ *Belize Tourist Board v Cedric Flowers.*

*covers irregularities or procedural unfairness which is not proper in relation to quasi-judicial proceedings.*⁵

[58] Thus misconduct, I accept, is not necessarily confined to situations where the competence or integrity of the arbitrator is being questioned.

[59] In his decision Hon. Abdulai Conteh also referred to situations where there may be errors or alleged misbehavior by the arbitrator, and in that particular case, determined that:

“...the issue of the exact date of publication or notification of the Final Award, is really *de minimis*, and cannot properly be a ground to impugn it or a bar to the grant of leave for its enforcement.”⁶

[60] Counsel for Steven Liss and Kim Liss also referred this Court to the case of ***Fayleigh Ltd v Plazaway Ltd Trading As Hotel Partners and Francis Murphy***⁷. This is a decision of Justice Ryan in the High Court of Ireland in which he refers to sections of the Act, which is apparently on all fours with the Belize Arbitration Act. It also relates to the remitting of an award in relation to an allegation of misconduct. The trial Judge in this case, quoting Jenkins L. J. in the English case of ***McCarthy v. Keane***⁸, echoes the words of CJ Conteh where it is stated that:

“‘Misconduct’ is, of course used in the technical sense in which it is familiar in the law relating to arbitrations as denoting irregularity, and not any moral turpitude or anything of that sort”⁹

[61] But such irregularity of course includes procedural unfairness, also referred to in that case under the four traditional grounds developed over time (of error on the face of the award, mistake, new material evidence or misconduct).

⁵ Ibid Page 13 of the Judgment.

⁶ Ibid Page 11 of the Judgment.

⁷ [2014] IEHC 52.

⁸ [2004] 3 I. R 617

⁹ Ibid Page 6 of the judgment.

[62] In the case of **McCarthy vs Keane** it was observed that:

"...While the courts do not have an unLtd discretion to remit the award and should always respect the procedural autonomy of the arbitrator, the discretion to remit could be invoked where it would be inequitable for the award to take effect or where the dispute between the parties had not been adjudicated in accordance with overarching requirements of fairness or to the extent envisaged in the arbitrator's terms of reference¹⁰."

[63] In the same case of **McCarthy vs Keane** Fennelly J stated that:

"the standard test of misconduct of such a nature as would be something substantial, something that smacks of injustice or unfairness", and that "a mere error on the part of the Arbitrator does not constitute misconduct¹¹."

[64] In the same case **Fayleigh Ltd v Plazaway Ltd Trading As Hotel Partners and Francis Murphy** the decision of O'Donnell J in the case of **Galway City Council v. Kingston and another¹²** was noted where he stated:

"...it is not enough that there should be an error or misconduct ...but that the factor must reach the level of being "so serious and so substantial, or so fundamental, that it smacks of injustice and the Court cannot permit it to remain unchallenged."

[65] It has been rightly been observed there is generally a winner and a loser if an arbitration proceeds all the way to a final award; with the losing party, perhaps being aggrieved by such a final award¹³, but sometimes with the lawyers being the only 'winners'¹⁴.

¹⁰ Ibid Page 6 of the Judgment.

¹¹ Ibid Page 7 of the Judgment.

¹² [2010] 3 I.R. 95

¹³ Law, Practice and Procedure of Arbitration (2nd Edition) Paragraph 45.1. Page 733.

¹⁴ Ibid Note J.

[66] But the object and advantage of arbitration is that it should make a final and binding determination of the dispute between the parties, which is enforceable by the courts (including this court). The court's role, and supervisory jurisdiction, in relation to such arbitrations, is or ought to be, delineated by the statutes, being very limited; with a very pro-enforcement approach, all in support and recognition of 'party agreement' (by the arbitration agreement in which they have entered), and party autonomy. This is undoubtedly to preserve the integrity of the arbitral process, as well as to play its part in a general, and desirable, pro-enforcement judicial supervisory frame-work, as well as to help create and maintain an arbitration-efficient jurisdiction¹⁵.

[67] I accept all of the above as containing a correct applicable statement of the law.

Determination of the Application

[68] Counsel for Cleo and Violet Mathis & Sittee River went through the five items or issues which were set out in their grounds.

[69] The Court in relation to all of those grounds would have benefited from legal authority in support of all the propositions of law which were submitted to this Court. But instead, in relation to each of these grounds, unfortunately and sadly, this Court was not provided with such authority, as would have enabled it to be satisfied on, or in relation to, many of the submissions made by Counsel for Cleo and Violet Mathis & Sittee River.

[70] Of course, this Court, having had some experience and background in arbitrations, has an inkling or notion of the basis on which some of these submissions were being made; but this Court does not consider that the case as it has been presented to it by Counsel for Cleo and Violet Mathis & Sittee River, with the onus being on them in relation to their applications, has established to the satisfaction of this court, the bases of such submissions, on a balance of probabilities. As a result this Court could not

¹⁵ Ibid Page 733- 734.

find the grounds being relied upon by them have been fully substantiated; and/or that such grounds have been sufficiently and legally satisfied on the basis of which the submissions were being made.

[71] This is so because, of course it is clear from the legal authority to which the Court has already referred, that there is a wide discretion which this court must exercise from '*de minimis*', on the one end, and on the other end, the situation where it would be inequitable for the award to take effect as a result of some kind of procedural unfairness and/or any misconduct as already defined.

[72] In exercising its discretion this Court would like to have had all the facts and circumstances before it, as well as all the clear legal principles that it has to invoke, before making such a determination – sadly this was not the case in relation to the application of Cleo and Violet Mathis & Sittee River.

[73] Therefore this Court considers that this ground fails for being insubstantial and may even be '*de minimis*'; and it certainly doesn't suggest that the parties have, as a result, been put in a position where they are unclear or uncertain as to whether in fact the award was final or not.

[74] The second ground was the seat of the arbitration. Now, in relation to this issue, this case is clearly a domestic arbitration as the arbitral proceedings were commenced by a claim in this Court, the jurisdiction of which, other than as a result of the arbitration agreement, has not been challenged. This court has stayed the initial proceedings, No. 426 of 2015, brought by Cleo and Violet Liss, on the application of Cleo and Violet Mathis and Sittee River, and all of such parties fully participated in the arbitral proceedings.

[75] This matter has now come back to this Court on a previous order under which this Court clearly has oversight of these Arbitral proceedings. So there is no question about the seat of the Award and the place of the Arbitration.

[76] The present application by all of the parties are grounded very clearly in the proceedings of this Court, although, of course, it is obviously based on an arbitration agreement of the parties.

- [77] We turn now to the third ground which is that on the face of the award, because it is not stated to be an award, no award was made. Again, this court has looked at the Award and is in no doubt that an award was made. There is no evidence presented by the Cleo and Violet Mathis & Sittee River that they are confused or unsure or unclear that an award was made, nor as to how much they should pay. So again this court finds this ground is unsubstantial. Of course it would have been preferable, indeed very desirable, for there to have been absolute clarity on this point, and for there to have been on the face of the award, boldly and clearly, stating that it was a "Final Award" and had disposed of all the issues which was placed before it.
- [78] The other ground is that the Arbitrators did not consider the evidence of Cleo and Violet Mathis & Sittee River in its reasoning and findings. This Court has looked at the award and again, it would have been preferable for the Arbitrators to have set out in greater detail, the evidence of these defendants. That's assuming that there was relevant evidence which the Arbitrators omitted to mention, which this court cannot conclude as there was no such evidence presented to this court. But despite this, as Counsel for Steven and Kim Liss pointed out by reference to the Award, it is clear that the Arbitrators did in fact make determinations of law which were dispositive of these issues before them; and in fact adverted to evidence in relation to the second and the third issues and the fourth issue through evidence which they presented to the Court and made findings on them. So, on that basis, this Court cannot find that there was any substance whatsoever in this issue.
- [79] Finally, the ground of the appointment of the arbitrators clearly is an error because this Court did not appoint the Arbitrators. It was the parties who appointed the arbitrators, and this is undisputed between Counsel for the parties. This latter question was never raised by Cleo and Violet Mathis and Sittee River, that the Arbitrators were not duly and properly appointed by them, and did not have jurisdiction to deal with this matter. Nor was it ever

raised that they had been misled by that error in the arbitral award where the Arbitrators stated that they had been appointed by the Court when they had not been. So again, this ground has no merit and to the extent that it has any merit at all, it is wholly '*de minimis*'.

[80] Now the question arises whether some of the errors raised, or possible errors that have been raised by Counsel for Cleo and Violet Mathis and Sittee River, even though individually may be '*de minimis*' or insubstantial, whether cumulatively they may amount to circumstances that this Court ought to use to justify for the setting aside of the award, or to remit it to the Arbitrators.

[81] After careful consideration of all of these little things, as one might say, this Court has concluded that they do not cumulatively amount to anything that approaches any kind of procedural error or misconduct such that this Court ought to entertain either the setting aside of the award or even remitting it.

[82] Further this Court is unable to find or to make the determination that it would be inequitable or unfair for the Award to take effect or was otherwise outside the Arbitrator's terms of reference. This Court considers that in all the circumstances of the case the omissions, as found by this Court, are mere and regrettable errors, all of which are insubstantial, and do not, and should not invalidate the Award.

[83] When this Court looks at all the facts and circumstances of the case, including the amount of money at stake and expended by all parties, the time that has been expended, and any possible gains that could be obtained from setting aside or remitting any part of the award, this Court has concluded that no such benefit would arise.

[84] This Court has concluded that nothing has been brought to its attention which should lead the parties to conclude that this award is anything but final and binding and clear in what are its determinations.

[85] The award is that there is a clear winner and loser on this claim. Clearly the loser may feel aggrieved by the award, which is final, and it is not for this Court to interfere with it, and with it there is no proper basis for this Court to

interfere, in so far as the decision of the Arbitrators is concerned in its determination of the winner and the loser.

[86] Indeed this Court has come to the conclusion that the applications which have been brought before this Court is simply to postpone the day on which payment is due. This is not a permissible basis on which to set aside or remit the Award.

[87] Also this court has determined that if this Court were to set aside or remit the award it would defeat party autonomy: being the entire purpose for which the parties had originally agreed to submit any of their disputes to arbitration, rather than have such disputes tried by this Court, and which was to have a swift, final and binding result.

[88] This Court will therefore act to enforce the terms of the parties agreement and determine, in accordance with the application of Steven & Kim Liss, that there should be finality to those proceedings, and not to exercise any kind of supervisory jurisdiction by interfering in these proceedings by setting aside or remitting any part of the award.

[89] This Court considers that to set aside or remit the Award on the bases submitted, might result in the whole process of arbitration, being undermined.

[90] Indeed, this Court considers that the only winners, if the Court were to remit or set aside the award, would be the lawyers.

[91] Given the findings of this Court, this Court determines that there has been no actionable misconduct by the Arbitrators.

[92] This Court has also determined that the arbitral award made on the 28th day of August 2017 by Arbitrators Dale Cayetano and Ann Marie Smith should not be set aside and that no part of it should be remitted; but that the whole should be enforced by this Court.

Costs

[93] I think the only outstanding issue now is the issue of costs which may not have been addressed.

[94] Having heard the parties I have determined that costs of both applications should be in the sum of \$5,000 which is to be paid by Cleo and Violet Mathis and Sittee River Wildlife Reserve to Steven and Kim Liss.

Disposition

[95] This court will therefore dismiss the claim of Cleo and Violet Mathis & Sittee River that the Arbitral award published on the 29th of August 2017 be set aside; or in the alternative that the award be remitted for a reconsideration of the evidence, whether the following grounds, individually and cumulatively, of misconduct, or otherwise:

- (a) That the award is on its face erroneous because it does not state whether it was an interim award or final award and does not dispose of all claims in the matter;
- (b) That the award is on its face erroneous as no award was in fact made by the arbitrators but that directions were issued for payment of certain sums as damages;
- (c) The award does not state the seat of the arbitration;
- (d) The arbitrators are said to be court appointed but that the appointment did not conform with the Section 6 of the Act ;
- (e) The award on its face was erroneous as there was no consideration of the Defendants evidence in respect of the Defence to the claim and counterclaim, and no analysis of the Defendant's evidence or reasons for the findings were provided for in the award;
- (f) That the Arbitrators failed to act fairly towards the claimants in failing to address and consider its evidence in respect of the Defence and Counterclaim and that there was, on the face of the award, an error in law and fact in awarding damages for travel expenses, etc.

[96] This court on the other hand will grant the application dated the 12th of October, by Steven Liss and Kim Liss for Leave to enforce the arbitral award dated 28th August 2017 of the Arbitrators Ann-Marie Smith and Dale Cayetano, in like manner as a judgment or order of this court, and to the same effect, with costs in relation to the all the applications before this court

in the sum of BZ\$5,000, which is to be paid to Steven and Kim Liss jointly and severally by Cleo and Violet Mathis and Sittee River Wildlife Reserve Limited.



The Hon. Mr. Justice Courtney A. Abel

14th May 2018

CONSOLIDATED CLAIMS

IN THE SUPREME COURT OF BELIZE A.D. 2015

CLAIM NO. 426 of 2015

BETWEEN:	(STEVEN LISS	FIRST CLAIMANT
	(KIM LISS	SECOND CLAIMANT
	(
	(AND	
	(
	(CLEO MATHIS	FIRST DEFENDANT
	(VIOLET MATHIS	SECOND DEFENDANT
	(SITTEE RIVER WILDLIFE	
	(RESERVE LIMITED	THIRD DEFENDANT

AND

IN THE SUPREME COURT OF BELIZE A.D. 2017

CLAIM NO. 604 of 2017

BETWEEN:-	(CLEO MATHIS	FIRST CLAIMANT
	(VIOLET MATHIS	SECOND CLAIMANT
	(SITTEE RIVER WILDLIFE	
	(RESERVE LIMITED	THIRD CLAIMANT
	(
	(AND	
	(
	(STEVEN LISS	FIRST DEFENDANT
	(KIM LISS	SECOND DEFENDANT

ORDER

DATED December 6, 2017

BEFORE the Honorable Justice Courtney Abel

APPEARANCES Mrs. Julie-Ann Ellis Bradley for the Claimants and Mrs. Deshawn Arzu-Torres for the Defendants

UPON the Notice of Application for Leave to Enforce an Arbitral Award filed by the Claimants on October 12, 2017 coming on for hearing AND UPON the Hearing of Application to Set Aside or Alternatively to Remit Arbitral Award by way of Fixed Date Claim Form filed by the Defendants on September 29, 2017

Handwritten:
Mrs. Andrea Bradley
7-2-18
2:06 pm

IT IS HEREBY ORDERED THAT:

1. That this Court grants leave for the Award of Arbitrators Ann Marie Smith and Dale Cayetano made the 28th day of August, 2017, being an award on a submission in the sum of \$422,790.98 to be paid to the Claimants by the Defendants be enforced in the same manner as a Judgment or order of this Court pursuant section 13 of the Arbitration Act, Chapter 125 of the Laws of Belize.
2. That the Defendants do pay interest at the rate of 6% per annum from September 30, 2017 on the sum of \$422,790.98 until payment in full.
3. That cost of both Applications to be paid by the Defendants in the sum of \$5,000.00 to the Claimants.

BY ORDER,


Deputy REGISTRAR
6-2-18

IN THE SUPREME COURT OF BELIZE, A.D. 2015

CONSOLIDATED CLAIM No: 426 of 2015 & 604 OF 2017

(STEVEN LISS
(KIM LISS
(
BETWEEN (AND
(CLEO MATHIS
(VIOLET MATHIS
(SITTEE RIVER WILDLIFE RES. LTD. DEFENDANT

CLAIMANTS

Seal Writ of Execution directed to the Registrar against CLEO MATHIS, VIOLET MATHIS & SITTEE RIVER WILDLIFE RESERVED LIMITED the Defendants in the sum of \$441,304.46 together with interest at the rate of 6% per annum, from the 30th day of September, 2017.

Dated this 11th April, 2018.

Chattels

- 1 DVD PLAYER & PLAY STATION
- 1 GE GREY STOVE
- 1 DINNING TABLE W/ 4 CHAIRS
- 1 KITCHEN UTENSILS PLATES, CUP, SAUCERS etc.
- 2 AC UNITS
- 1 STIHL CHAIN SAW & 2 SHINDAIWA WEED EATER
- 1 MASSAGE TABLE
- 1 OFFICE DESK W/ OFFICE CHAIR
- 2 CALCULATOR (CANON)
- 1 WALL PAINTING, PHONE, KEY RACK & PRINTER
- 1 WHITE DUFFY ELECTRIC BOAT
- 1 LARGE CUMMINS GENERATOR
- 1 LARGE WATER PUMP (SELF DRIVE)
- 1 YELLOW 320 KUMATSU EXCAVATOR
- 1 BLACK 2004 LAND ROVER/ RANGE ROVER LP SCC-11092
- 1 YELLOW 1994 BLUE BIRD BUS LP SCC-11861
- 1 YELLOW 1995 BELSE TRAILOR
- 1 BROWN 2003 CHEVY VAN LP SCC-9550
- 1 YELLOW 2003 CHALLENGER TRACTOR JCM50906
- 1 BLACK 2013 MAHINDRA PICK-UP TRUCK LP SC11028
- 1 BLACK 2013 MAHINDRA PICK-UP TRUCK LP SC-11459

IN THE SUPREME COURT OF BELIZE, A.D. 2015

CONSOLIDATED CLAIM No: 426 of 2015 & 604 OF 2017

(STEVEN LISS
(KIM LISS
(
BETWEEN (AND
(CLEO MATHIS
(VIOLET MATHIS
(SITTEE RIVER WILDLIFE RES. LTD. DEFENDANT
CLAIMANTS

Seal Writ of Execution directed to the Registrar against CLEO MATHIS, VIOLET MATHIS & SITTEE RIVER WILDLIFE RESERVED LIMITED the Defendants in the sum of \$441,304.46 together with interest at the rate of 6% per annum, from the 30th day of September, 2017.

Dated this 11th April, 2018.

Chattels

- 1 SM EWAVE REFRIGERATOR
- 2 WOODEN SHELF & 1 WOODEN LOCKER
- 1 CONTINENTAL FREEZER
- 1 STAINLESS STEEL KEG MACHINE
- 1 MICROS COMPUTER CASH REGISTER & 40" SUNBRITE TV
- 1 LAPAVONI COFFEE MACHINE & BLENDER
- 11 WOODEN BAR STOOL & 9 WOODEN BEACH RECLINING CHAIRS W/ STOOL
- 4 STAINLESS STEEL SINK & WORK COUNTER
- 6 WOODEN TABLES W/ 24 PADDED CHAIRS
- 4 WOODEN TABLES W/ 10 CHAIRS
- 4 WHITE WOODEN BEACH CHAIRS W/ STOOL
- 8 WICKER WOODEN CHAIRS & 3 WOODEN CHAIRS
- 1 WOODEN DINNING TABLE SET & 4 WOODEN TABLES
- 28 WOODEN TABLES W/ 49 CHAIRS & 2 WOODEN TABLES (L)
- 5 FOLDING FOOD STAND & 2 WOODEN BABY CHAIRS
- 1 HOSHIZAKI ICE MAKER & 1 BUNN COFFEE MACHINE
- 1 STAINLESS STEEL SINK W/ STAND & 3 STAINLESS STEEL FOOD WARMER
- 1 LG REFRIGERATOR & 2 WOODEN COUNTER
- 6 LASKO FANS & 7 WHEEL BARROW

- 1 4PC WOODEN SOFA SET W/ WOODEN TABLE**
- 1 WHITE HIACE TOYOTA VAN SCC-10658**
- 1 WHITE HIACE TOYOTA VAN SCC-10657**
- 1 WHITE MAHINDRA PICK-UP TRUCK SCC-11527**
- 1 WHITE MAHINDRA PICK-UP TRUCK SCC-11285**
- 1 WHITE ISUZU MPC FREIGHT TRUCK SCA-1394**
- 1 BLUE/ WHITE FORD 171 TRACTOR W/ TRAILOR**

These goods and chattels were marked by me Charles Humes Deputy Marshall of the Supreme Court on the 5th of May, 2018 in the presence of Francisco Pop at Sittee River Wildlife Reserved Ltd. All Pines Rd. and Lawrence Nunez of Kanantik Resort , Stann Creek District, Belize.

Dated this 8th May, 2018.

Date good picked up _____.



CHARLES HUMES
DEPUTY MARSHALL OF THE SUPREME COURT

FedEx Express

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A 3625
02/26

ORIGIN ID: COER (208) 881-1446
KIM LISS
14121 S HWY 97
HARRISON, ID 83633
UNITED STATES US

SHIP DATE: 24 FEB 21
ACTWT: 0.10 LB
CAG: 6897084/SSFD2121
BILL CREDIT CARD

TO CLERK OF COURT
US DIST. COURT DIST. OF MARYLAND
6500 CHERRYWOOD LN

GREENBELT MD 20770

(000) 000-0000 REF: FEB 24 2021



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