COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2011/CLE/GEN/FP0167

BETWEEN

WORLD CLASS DEVELOPMENT LIMITED

Plaintiff

AND

PETER VON ALBEDYHLL

Defendant

BEFORE	The Honourable Mrs Justice Estelle G. Gray Evans
APPEARANCES:	Mr R. Dawson Malone and Ms Jacqueline Banona for the plaintiff
	Mr Gregory Moss and Mrs Lena HieldBonaby for the defendant
HEARING DATES:	2012: 28 February; 24 May; 4 December
	2013: 4 June; 28 June

RULING

(Security for Costs pursuant to section 285 Companies Act, chapter 308)

Evans, J.

1. The plaintiff, World Class Development Limited, is a company incorporated under the laws of the Commonwealth of The Bahamas.

2. The plaintiff commenced this action on 8 July 2011 by a specially indorsed writ of summons, as amended on 9 May 2012, in which the plaintiffcompany is seeking reliefs against the defendant, Mr Peter Von Albedyhll, by way of specific performance anddamagesfor, inter alia,breach of contract and loss of interest in real property, incurred by the plaintiff under a joint venture agreement between, inter alia, the parties hereto.

3. The defendant in its defence filed 31 October 2012 as amended with leave on 22 May 2012 denies the plaintiff's claim and applies by summons filed 3 January 2012 for security for costs pursuant to the provisions of section 285 of the Companies Act, chapter 308, Statute Laws of The Bahamas, 2000, and/or under the inherent jurisdiction of the court.

4. Section 285 of the Companies Act provides as follows:

> "Where a limited liability company is plaintiff in any action, suit or other legal proceedings, a judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant is successful in his defence the assets of the company may be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given."

5. The first issue to be determined is whether thereis credible evidence for me to believe that the assets of the plaintiff company may be insufficient to pay the defendant's costs.

6. In his affidavit filed on 4 January 2012 in support of his application, the defendant deposes, inter alia, that the plaintiff is a limited liability company and for the reasons discussed at paragraphs 16 through 21 of his said affidavit, he verily believed that if he is successful in his defence, the assets of the plaintiff may be insufficient to pay his costs.At paragraphs 16 through 21 of his affidavit filed 3 January 2012, the defendant avers as follows:

> "16. On October 11, 2011, my attorneys obtained an asset search report from Computitle which evidenced that the plaintiff has no known recorded real estate assets.
>
> 17. Thereafter, on October 25, 2011, my attorneys retrieved an online Company Report from the Registrar General's website which provides that the last payment of the plaintiff's annual fees to the Company Registry was for the year 2000.
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> 18. Subsequently, on October 26, 2011, my attorneys conducted a corporate search at the Bahamas Registrar General Office and retrieved a copy of the last statement filed on behalf of plaintiff. The statement is dated October 2, 2008, and is also for the year of 2008.
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> 19. On November 30, 2011, my attorneys wrote to the Grand Bahama Port Authority Licensing Department (GBPA) requesting information as to whether or not the plaintiff possessed a license to conduct business in Freeport. In response, on December 1, 2011, GBPA wrote a letter to my attorneys which stated that the plaintiff's License Agreement with the GBPA was cancelled on February 8, 2011.
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> 20. I have also conducted a search of the Grand Bahama Telephone Directory for the year 2011 which evidences that the plaintiff does not have a listed telephone contact.
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> 21. Based on the above mentioned, I am of the view that the plaintiff company should be ordered to pay security for my costs for the following reasons:
>
> 21.1. The asset report shows that the plaintiff does not own any assets. In the event that an order for costs is granted in my favour, I would not be able to exercise my rights of enforcement against the plaintiff's assets to aid in the recovery [of] my costs.

21.2 The plaintiff company's fees payable to the Registrar General have not been paid since 2008. Additionally the plaintiff does not have a license from GBPA to operate a business. Moreover, the plaintiff does not have a business telephone number listed in the telephone directory. In addition, I have conducted inquiries among various retailers of timeshares here in Grand Bahama and from my inquiries, I have not found anyone that states that the plaintiff conduct business as a timeshare retailer on its or [sic] account or as an agent on behalf of any other company or business. It appears that the plaintiff is not actively engaged in the operation of a business that generates income. Therefore, I believe that the plaintiff would have insufficient funds to pay my costs if I am successful in my defence. Similarly, I believe that if I obtain a costs order upon the conclusion of this action, I would be prevented from utilizing the enforcement mechanism of appointing a receiver to apply the income from the timeshare to my costs because the plaintiff is not presently licensed to operate a business that may generate income.

21.3. Notwithstanding my request for security for costs on the ground that I believe that the plaintiff is a liability company that may have insufficient funds to pay my costs if I am successful in my defence, the plaintiff rejected my request without disputing whether or not the plaintiff was capable of paying my costs and did not proffer any substantive reason.

7. Included amongst the documentary evidence exhibited to the defendant's said affidavit is a letter dated 25 November 2011 from counsel for the plaintiff to counsel for the defendant, in response to the plaintiff's request for security for costs, in which he wrote, inter alia:

> "We reject your client's request for security for costs in the sum of $300,000.00 or nay [sic] other sum whatsoever as, in the circumstances, your client has no entitlement to any such security."

8. At paragraph 22 of his said affidavit, the defendant avers further:

> "22. As set out above, subsequent to my initial request for security for my costs, the plaintiff has filed an amended writ which purports to add an additional party to the action and I have also filed a summons to strike out the purported amendment. In addition, I have now been put to the expense of making a formal application for security for costs. Taking into account the additional costs that have arisen subsequent to my initial request, my costs in defending this action have increased since my initial request and in the continued conduct of my defence, the costs are now estimated to be approximately $530,000.00 upon conclusion."

9. Also exhibited to the defendant's said affidavit is a draft bill of costs showing the sum of $520,550.00 as his estimated professional fees and $10,032.00 as the estimated disbursements, for a total estimated bill of $530,582.00.

10. The plaintiff opposes the defendant's application and relies, inter alia, on the affidavit of Mr Franklyn Laing filed 27 February 2012. Nowhere in his said affidavit does Mr Laing, on behalf of the plaintiff, refute thedefendant's allegations regarding the status of the plaintiff company, nor does hesay that the plaintiff has assets sufficient to pay any costs which it may be ordered to pay in the event its claim is unsuccessful.

11. However, during the course of his arguments, counsel for the plaintiff submitted that the interest in certain properties to which the plaintiff is entitled under the Joint Venture Agreement, the subject of these proceedings, exceeds "by a massive amountthe moneys required for security for costs."

12. It seems to me that by that submission,counsel for the plaintiff is saying that the plaintiff's ability to meet a costs order is dependent on the plaintiff being successful in its claim against the defendant. The defendant denies that the plaintiff is entitled to the interest it claims. So, if the plaintiff is unsuccessful, the plaintiff would not be entitled to the 40% interest in the said properties which it claims; in which event, it would have no assets to meet a costs order.

13. In the circumstances, I am satisfied that if the defendant is successful in his defence, the assets of the plaintiff company may be insufficient to pay the defendant's costs.

14. It is accepted that the court has a complete and unfettered discretion whether or not to order security for costs. Sir Lindsay Parkinson & Co Ltd v. Triplan Ltd [1973] 2 All ER 273, [1973] QB 609.

15. The defendant's position is that the plaintiff should be ordered to provide security for its costs and, that it is really just a matter of whether the plaintiff is ordered to pay all or only a portion of the amount that the defendant is asking. In support of the defendant's position, counsel for the defendant relies on three local authorities, namely the judgments of Osadebay, J. (Acting) (as he then was) in El Condor Enterprises Ltd v Paradise Island Ltd [1994] BHS J. No. 82; and D.B.S. Builders and Developers Co. v Beauport Investment Co[1998] BHS J. No. 103; and the judgment of Thompson, J. in the case ofMega Management Limited v Southward Ventures Depositary Trust and others [2006] BHS J No. 65, in each of which the Court found that the assets of the respective plaintiff companies may have been insufficient to pay the defendant's costs in the event the respective defendants were successful. The Court in those cases also considered that an order for costs may have had the effect of driving the respective plaintiffs from the judgment seat, but nevertheless made the order. It appears that the latter consideration may only have affected the amount of security for costs required, which is the view held by counsel for the defendant.

16. In El Condor, the defendant had asked for $20,000.00, but the court gave $10,000.00. In the Mega Management case Thompson, J. ordered the plaintiff to pay $100,000.00 as security, although the defendant had asked for $250,000.00 and had alleged that it had already incurred fees in excess of $236,000.00.

17. The plaintiff in this case says that it does not have the means to provide security for the defendant's costs and blames the defendant for its lack of funds. Mr Laing, in his said affidavit filed 27 February 2012, avers at paragraphs 4 and 5 thereof as follows:

> "4. That as a result of the defendant's breach the plaintiff has been deprived of all income which [it] would have derived under the Joint Venture Agreement herein.
>
> 5. Further, that as a result of the defendant's breach of the said Joint Venture Agreement herein, the plaintiff has no money to satisfy any order for security for costs."

18. Counsel for the plaintiff, relying on the cases of Sir Lindsay Parkinson and Co. Ltd v Triplan *supra*; Keary Developments Ltd v Tarmac Construction Ltd, *supra,*two of the leading English cases on the issue of security for costs, submits that the plaintiff's lack of means to meet an order for security for costs is, or ought to be, a material consideration for the court in determining whether or not to grant the order sought by the defendant. So, too, counsel submits, is the fact that such an order would essentially stifle the plaintiff's action and would, in effect, drive the plaintiff from the judgment seat. See also Olatawura v Abiloye [2002] 4 All ER

903 (CA). Further, that as the defendant is responsible for the plaintiff's financial situation and an order for security for costs would stifle the plaintiff's claim, to make such an order against the plaintiff in the circumstances of this case would be unjust.

19. Counsel for the plaintiff submits further that the plaintiff has a bona fide which has a reasonably good prospect of success and that the plaintiff verily believes that the defendant's defence will fail. Therefore, counsel submits,the defendant's application for security should be refused (see Crozat v Brogden (1894) 2 QBD 30).

20. Indeed, Mr Moss went so far as to argue that the plaintiff has a high probability of success and he referred, over the objection of counsel for the defendant, in some detail to the affidavit and documentary evidence filed by the plaintiff in support of its pending application for an injunction.

21. While I am mindful that in the exercise of my discretion whether or not to order the plaintiff to provide security for the defendant's costs I ought to consider all the circumstances of the case, I am also mindful that it is not necessary or appropriate to conduct a mini trial or go into the merits of the case.

22. I am guided by the dicta of Sir Nicholas Browne-Wilkinson V-C in Porzelack KG v Porzelack (UK) Ltd(UK) Ltd [1987] 1 All ER 1074 on the conduct of the application for security for costs before him, where he said at page 1077:

> "A detailed examination of the possibilities of the success or failure merely blows the case up into a large interlocutory hearing involving a great expenditure of both money and time. Undoubtedly if it can clearly be demonstrated that the Plaintiff is likely to succeed in the sense that there is a very high probability of success then that is a matter that can properly be weighed in the balance. Similarly, if it can be shown that there is a very high probability that the defendant will succeed, that is a matter that can be weighed. But for myself, I deplore the attempt to go into the merits of the case unless it can be clearly demonstrated one way or another that there is a high degree of probability of success or failure."

23. In this case, the plaintiff's claim arises out of a Joint Venture Agreement (JVA) entered into on 19 October 2007 between the plaintiff, the defendant and one Ralph Abbott for the development and sale of time shares in property owned and/or controlled by the defendant. The plaintiff contends that upon execution of the JVA, it became vested with a 40% interest in certain properties which are owned and/or controlled by the defendant. The plaintiff is relying, inter alia, on paragraph 5.7 of the JVA which states that upon execution of the JVA the ventures shall each own the following interests in the properties...World Class Development Limited – 40%. The plaintiff is seeking specific performance of that agreement by calling for a conveyance of the said interest to itself. The value of the said properties is said to be approximately $11,500,000.00.

24. On or about 22 January 2008 the plaintiff, the defendant and the said Mr Abbott executed a "purported" addendum to the JVA which addendum purported to create a three months minimum performance requirement whereby Mr Laing was required to generate a minimum of $800,000.00 "in good processable sales" failing which the JVA would automatically be terminated commencing 31 May 2008 and no partners would thereafter make any claims against each other resulting from the termination of the JVA. The plaintiff claims that the purported addendum had no legal effect upon the JVA for the reasons set out in the amended statement of claim and as I understood Mr Moss' alternative submission, if the purported addendum had legal effect, its terms had been performed and, therefore, the JVA is subsisting and binding on the parties. However, he says, the defendant has "intentionally and

systematically embarked upon a course of conduct to defraud the plaintiff...of all rights, entitlements and benefit which are due to [it] under and by way of the said JVA."

25. The plaintiff accuses the defendant of wholly breaching and/or repudiating his obligations and covenants under the JVA, by failing to perform the same.

26. The defendant admits the execution of the JVA but denies that the plaintiff has any interest in the properties as the plaintiff contends and he relies, inter alia, on the proviso to recital (4) of the JVA which provides that until payment in full of the moneys provided for in the JVA by the plaintiff to the defendant no provision of the agreement is to be interpreted as an agreement by the defendant to actually transfer any property or shares to the plaintiff "other than for accounting purposes for future profit distribution."

27. The defendant also claims that due to lack of sales by the plaintiff, as agreed, the defendant terminated the JVA in accordance with its terms on 22 January 2008; that by a subsequent agreement dated 8 February 2008 the parties entered into a further joint venture on similar terms to the original JVA but subject to further conditions, notably a condition that the plaintiff achieve $800,000.00 of sales in the first three months (amended JVA); that only around $220,000.00 of sales were achieved in that period and, as a result of the plaintiff's breach, the amended JVA came to an end automatically in accordance with its terms on 31 May 2008.

28. The defendant contends that as both agreements came to an end in accordance with their terms, due to lack of sales achieved by the plaintiff, there is no basis for the plaintiff's claim, which claim is bound to fail. On the other hand, counsel for the plaintiff maintains that the plaintiff has a reasonably good prospect of success.

29. I cannot, at this stage of the proceedings, say that the plaintiff's case is bound to fail or that the defendant's case is bound to succeed. However, having reviewed the pleadings and the documentary evidence before this Court, and having heard counsel for both parties, although not considering the merits of their respective cases as invited by Mr Moss, it is sufficient, I believe for me to say that I accept Mr Moss' submission that the plaintiff's claim is not a sham, but a bona fide one;and I am satisfied that there are issues to be tried.

30. It is accepted that the purpose for ordering security for costs is to ensure that a successful defendant will have funds available against which he can enforce an order for costs and that security may be ordered even if the plaintiff has a strong and arguable case. See judgment of Osadebay, J. in D.B.S. Builders.

31. Further, although the Court has a complete and unfettered discretion whether or not to order security, in the exercise thereof, the court may be guided by certain considerations/factors which have been encapsulated in the judgment of Peter Gibson L.J., with which Butler-Sloss L.J. agreed, in the Keary Developments Ltd. case at page 539 et seq:

(1) In the exercise of its discretion, the court will act in the light of all relevant circumstances. Sir Lindsay Parkinson & Co. Ltd v Triplan *supra.*

(2) The possibility or probability that the plaintiff company will be deterred from pursuing its claim by an order for security is not without more a sufficient reason for not ordering security (see Okatcha v. Voest Alpine Intertrading CmbH[1993] BCLC 474 at 479per Bingham LJ, with whom Steyn LJ agreed).

(3) The court must carry out a balancing exercise...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) Ch D 482 per Browne L.J.). 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] 3 All ER 531 at 537, [1977] 1 WLR 899 at 906).

(4) In considering all the circumstances, the court will have regard to the plaintiff company's prospects 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 (see Porzelack KG v Porzelack (UK) Ltd [1987] 1 All ER 1074 at 1077, [1987] 1 WLR 420 at 423 per Browne-Wilkinson V-C).

(5) The Court in considering the amount of security that might be ordered will bear in mind that it can order any amount up to the full amount claimed by way of security, provided that it is more than a simply nominal amount; it is not bound to make an order of a substantial amount (see Roburn Construction Ltd v. William Irwin (South) & Co Ltd [1991] BCC 726).

(6) Before the court refuses to order security on the ground that it would unfairly stifle a valid claim, the court must be satisfied that, in all the circumstances, it is probable that the claim would be stifled. There may be cases where this can properly be inferred without direct evidence (see Trident International Freight Services Ltd. v. Manchester Ship Canal Co. [1990] BCLC 263).

(7) The lateness of the application for security is a circumstance which can properly be taken into account.

32. The foregoing principles were cited with approval in several local cases, including the case of D.B.S. Builders and Developers Co. v Beauport Investment Co. *supra.*

33. The plaintiff and its counsel have made it clear that the plaintiff has no means with which to provide security for cost and that position, they say, is the result of the alleged breach of contract by the defendant. Lord Denning, M.R. in Sir Lindsay Parkinson & Co. Ltd v Triplan said that one of the considerations for the court when exercising its discretion whether or not to order security is whether the plaintiff company's want of means has been brought about by any conduct by the defendant. The plaintiff says further that any order for security for costs will stifle its claim and drive it from the judgment seat as it cannot meet such an order.

34. Counsel for the defendant submits that even if the plaintiff's impecuniosity was somehow attributable to the defendant, which the defendant denies, there is no evidence that from 2008, the date of the alleged breach of contract, to the present, that there has been any continuing conduct on the part of the defendant to prevent the plaintiff from operating its business during the past four or five years.

35. Further,counsel for the defendantpoints out that the defendant has already obtained two costs orders against the plaintiff, which, by the plaintiff's admission, it is unable to pay, and in addition to which, the plaintiff also has a pending application for injunction which, if pursued, will necessitate the defendant incurring additional costs.

36. As observed in the case of Okatcha v. Voest Alpine Intertrading CmbH *supra*,the possibility or probability that the plaintiff company will be deterred from pursuing its claim by an order for security is not without more a sufficient reason for not ordering securitysince, by making the exercise of the discretion under the English provision, which is similar in all material particulars to section 285 aforesaid, conditional on it being shown that the company is one likely to be unable to pay costs awarded against it, parliament must have envisaged that the order might be made in respect of a plaintiff company that would find difficulty in providing security.

See also Pearson v Naydler [1977] 3 All ER 531 at 536 - 537, [1977] 1 WLR 899 at 906 per Megarry V-C.

37. Counsel for the plaintiff has referred to several cases in which security for costs was refused. However, it appears that in refusing to make the order, the court was persuaded by something more than the inability of the plaintiff to pay or the possible stifling of the plaintiff's claim.

38. For example, in the case of External Trust Co. v Bahamas International Trust Co.[1986] BHS J. No. 30, Georges C.J. refused to order security for costs on the basis that there had been admitted breaches of trust. At paragraph 25 of his judgment, the learned Chief Justice said:

> "It seems to me, however, unjust to order the plaintiff to give security for costs to Mackinnon in the face of the admission that he was unjustly enriched at the expense of the trust of which the plaintiff is now trustee when the purpose of the action is to ascertain whether this admitted unjust enrightment has been equitably remedied. Accordingly, I do not order that the plaintiff give security for costs in respect of Mackinnon."

39. In Crozat v Brogden *supra,* Collins, J. opined that "there being a strong prima facie presumption that the defendant" would "fail in his defence to the action", he did "not think" the defendant was "in a position to insist upon security for costs". However, Davey L.J., on the appeal from that decision, allowingthe appeal, said at page 36:

> "...the court cannot, upon an application for security for costs to be given by a plaintiff go into the merits of the action. It appears to me that it would be highly inconvenient to do so, and as the reason for giving security for costs is not dependent on the merits of the action, I do not see why the merits of the action should be looked into at all. If the defendant has no defence, or if it is a frivolous defence, and a mere attempt to try the action over again, there are appropriate means for setting aside and removing from the files of the court a statement of defence which affords no real ground of defence, but which is frivolous and vexatious."
>
> With regard to the grounds stated by Collins J., I can only say that I am not aware of any authority, nor has any been cited to us, to shew that where security for costs is sought from a plaintiff resident abroad, there is any difference between an action brought on a foreign judgment and an action brought in respect of any ordinary contract, or for any other cause."

40. Then in Porzelack v. Porzelack, an order for security for costs on the ground that the plaintiff was ordinarily resident in West Germany, outside of the jurisdiction of the court, was sought by the defendant. In refusing to grant the order, Sir Nicolas Browne-Wilkinson V-C noted that not only was there little doubt that the plaintiff organisation would be unable to provide security for costs if he were to make such an order but also that the defendant may have great difficulty in recovering the costs against the plaintiff, not because it was resident outside of the jurisdiction, but because of its lack of funds to meet the order. In refusing to order security, His Lordship indicated that he also took the following into account, namely:

(1) If no security was given, the defendants could enforce an order for costs under the law of West Germany;

(2) There was little doubt that if security was ordered on the scale asked for, the plaintiff's action would in fact be stifled;

(3) The defendant's conduct in the case was such as to disentitle the defendant to an order for costs in its favour.

(4) The "moving spirit" behind the plaintiff company had offered to be joined as a plaintiff in the action and any order for costs would be enforceable against him directly.

41. InTrident International Freight Services Ltd. v. Manchester Ship Canal Co, the action arose out of a partnership venture between the plaintiff (Trident) and the second defendant (Currie) for the operation of a sea and land freight service in respect of whose losses indemnities were given to the partnership by the first defendant (MSC). It had been accepted by the plaintiff, which ceased to trade on 30 September 1982,that it would be unable to pay the costs of either defendant if such defendant was successful in its defence.

42. On an application for security for costs, Judge O'Donoghue thought that there was a substantial dispute between the parties and decided that the complex history and background of the unfortunate relationship between the parties was such that in his judgment it would not be just or proper for Trident to be driven away from the judgment seat." He refused to grant the order for security.

43. On appeal from Judge O'Donoghue's decision, Purchas LJ said at page 270:

> "...so long as this court is bound, as it is bound, by the majority judgments in Sir Lindsay Parkinson & Co Ltd v Triplan Ltd, the exercise of the judicial function under s 726(1) of the Companies Act 1985 is one of unfettered discretion. This court can, therefore, only interfere on well-known principles where it is shown that the judge below erred in a matter of law or principle or was plainly wrong; as Nourse LJ has indicated, that does not apply in this case."

44. Nourse, LJ, opined that Judge O'Donoghue was entitled to assume that orders for security would probably drive the plaintiff away from the judgment seat.

45. It is interesting to note, however, that both Nourse and Purchas LJJ, expressed a preference for the minority view of Cairns LJ in the case of Sir Lindsay Parkinson & Co Ltd v Triplan Ltd that in the exercise of the discretion, security ought to be ordered unless there are special circumstances which justify its refusal. However, they acknowledged that they, like Judge O'Donoghue, were bound by the majority decision in that case.

46. In the end, their Lordships declined to interfere with Judge O'Donoghue's exercise of his discretion and dismissed the appeal.

47. In the case of Olatawura v Abiloye *supra*, on appeal by the plaintiff of the judge's order for security for costs, Simon Brown, LJ, with whom Dyson LJ agreed, in answer to the question: "What should be the court's approach to the exercise of its wider new jurisdiction to order security for costs"? said at age 910:

> "The first point to be made is I think this. Before ordering security for costs in any case...the court should be alert and sensitive to the risk that by making such an order it may be denying the party concerned the right to access to the court. Whether or not the person concerned has (or can raise) the money will always be a prime consideration...Paradoxically, of course, the more difficult it appears to be for the person concerned to raise the money, the more obvious becomes the need for an order for security to protect the other party against the risk of incurring irrecoverable costs. The court will have to resolve that conundrum as best it may."

48. In my judgment, the best way to resolve the conundrum in this case is to order that the plaintiff provide some security, although not in the sum requested by the defendant.

49. In making such order, I bear in mind the aforementioned factors to be borne in mind in the exercise of my discretion whether or not to order security for costs, having regard to the plaintiff's admitted impecuniosity, which means it is probable that an order for security for costs will stifle its claim. Also, in light of my finding that the plaintiff's assets may be insufficient to pay the defendant's costs if he is successful, I take into consideration the fact that the defendant already has two orders for costs as well as the likelihood of injustice to the defendant, if no security is ordered, finding himself unable to recover those or any other costs in the event he is successful.

50. Therefore, in the exercise of my discretion, I order the plaintiff to provide $50,000.00 as security for the defendant's costs.Such security to be by bond, given by a reputable financial institution in The Bahamas, or by cash deposited in a joint account held by counsel for the plaintiff and counsel for the defendant and that until such security is provided, this action is stayed.

DELIVERED this 28th day of June A.D. 2013

Estelle G. Gray Evans
Justice