

CAYMAN ISLANDS

GRAND COURT

Cigna Worldwide Insurance Company (by and through its Court appointed receiver, Josie Senesie, and in respect of the assets, undertakings and affairs of its licensed Liberian branch and business) -v- Ace Limited Cause FSD 96 of 2011 (Originally Cause No. 39 of 2008), per Creswell J (27 January 2012)

PROCEDURE - SECURITY FOR COSTS FOREIGN RECEIVER - STAY

Cigna Worldwide Insurance Company is a Delaware insurance company with operations in various countries around the world. Ace, a Swiss insurer originally incorporated in Cayman, acquired by agreement certain assets and assumed certain liabilities of Cigna's property and casualty business, including liabilities pertaining to Cigna's Liberian business. Competing and conflicting judgments have been issued in the United States and in Liberia with respect to Cigna's liability for certain policy claims from the time of the Liberian civil wars. Complex issues of sovereign immunity, conflicts of laws, enforcement of foreign judgments, discovery and the legal status of foreign receivers are being considered in various proceedings. Assorted stays and anti-suit orders have been issued. Against this backdrop, the Cayman action was commenced by the Liberian court appointed receiver of what is described as Cigna's registered branch insurance business in Liberia. In this action, the Plaintiff seeks recognition of his appointment and indemnification for two Judgments rendered by the Liberian Court in favour of the insured. It is alleged in various proceedings that the receivership appointment is invalid and the Plaintiff in fact acts at the behest of private individuals who had purchased the claims. This application is brought by Ace for, *inter alia*, an order that the Plaintiff provide security for costs and for an order that the Cayman action be stayed pending the final determination of the proceedings, and any appeals therefrom, in the US matters.

Security for costs

It was uncontested that the Court had jurisdiction to make an order for security for costs in this situation, but the Plaintiff argued that the Court should not exercise its discretion to do so in this case on the basis of impecuniosity. The Court disagreed. A plaintiff who alleges that an order for security for costs will stifle the claim must adduce satisfactory evidence that the plaintiff does not have the means to provide security and that the plaintiff cannot obtain appropriate assistance to do so from any third party who might reasonably be expected to provide such assistance if they could. The affidavit evidence provided by the Plaintiff in this case was not satisfactory, as it did not set out the grounds of the affiant's statement of information or belief. As such, it was appropriate to make an order for security for costs. In determining the amount of security, the court must take into account the amount the Respondent is likely to be able to raise. The court should not normally make a continuation of the claim dependent upon a condition which it is impossible for the respondent to fulfil. Where a respondent opposes the making of an order for security or seeks to limit the amount of security by reason of impecuniosity, the onus is on the respondent to put proper and sufficient evidence before the Court, and make full and frank disclosure. If the respondent gives an incomplete or misleading account of its resources, the Court may, in exercising its discretion, set an amount which represents the Court's best

estimate of what the respondent can afford. In this case, the Court considered that the Plaintiff had not made full and frank disclosure, nor had he given anything approaching a complete account to the Court. Given the complexity of the issues, the length of time required to hear them, and the retaining of leading counsel from London, security for costs to the end of the five days scheduled for hearing was set at US\$850,000. The Defendant's impromptu request that the Court order that the receiver identify the persons who are funding him in these proceedings so that any unsatisfied order for costs could be enforced against them was deflected on the basis that there was no formal application for such an order before the Court.

Stay of proceedings:

The Court should only in the most compelling circumstances (if at all) exercise its case management powers to impose a temporary stay on proceedings commenced as of right in the Cayman Islands, in order to force the plaintiff to commence parallel proceedings in a foreign jurisdiction in which he would not otherwise choose to litigate. The Court has a duty to further the overriding objective of the Rules of Court by actively managing proceedings, and regard may be had to the existence of litigation in other jurisdictions, to the extent appropriate in the circumstances. In this instance, it was appropriate to issue a stay until the Plaintiff complies with the order for security for costs, following which a case management conference will be held to set the timetable of these proceedings and in doing so the Court will have regard to any developments and anticipated developments in the other proceedings.

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