

CAYMAN ISLANDS COURT OF APPEAL

Caribbean Islands Development Ltd -v- First Caribbean International Bank (Cayman) Limited (Unreported) (8 October 2014)

SECURITY FOR COSTS - INDEMNITY BOND - WHETHER INDEMNITY BOND PROVIDED REAL SECURITY

By way of summons the Plaintiff sought an order to retrospectively vary a Security Order (and subsequent unless order) so the Plaintiff would be allowed to provide security for costs by way of after-the event insurance and an unconditional and irrevocable bond in the sum of US\$100,000 (the "Indemnity Bond"). The Plaintiff had obtained the Indemnity Bond from QBE Insurance (Europe) Limited, a London based international insurer and reinsurer.

In determining whether the Indemnity Bond was capable of discharging the security order, the Chief Justice applied the test in the English case of *Versloot Dredging BV -v- HDI Gerling Industrier Versicherung AG* [2013] EWHC 658 (Comm) as stated by Justice Christopher Clarke:

The essential question for the Court in deciding on what security is acceptable is whether what is proposed does indeed provide real security. This it may do if it amounts to a promise which would in all likelihood be honoured, given an entity with the wherewithal to pay and against whom enforcement can readily be obtained; in short, if given a truly creditworthy entity.

The Chief Justice considered the terms of the Plaintiff's Indemnity Bond and found that in the circumstances the Defendant would have to incur the additional expense of obtaining English legal advice, on the basis that the Indemnity Bond was governed by English law, to be satisfied as to whether it provided real security. Further, that in the event judgment was given against the Plaintiff, the Defendant would be required to seek enforcement of the Indemnity Bond in England, if a dispute arose as to its terms. And finally, there was a degree of uncertainty and real concern as to whether the Indemnity Bond

would cover costs orders already made in the Defendant's favour and which already would consume one half of the security provided by the Security Order.

The Chief Justice found it settled principle that the purpose of an order for security for costs is to ensure that a successful Defendant will have a fund available within the jurisdiction of the Court against which it can enforce the judgment for costs. In the circumstances, the Chief Justice found the Indemnity Bond did not provide 'real security', as per the test in *Versloot*, and therefore was incapable of discharging the Security Order.

The positive for Cayman liquidators to draw from this Ruling is, the Chief Justice appears to recognise, in principle, that an indemnity from an ATE insurer may be good security for costs in certain circumstances. This is welcome news for liquidators with good claims to bring on behalf of cash strapped liquidation estates since security in this form is cost effective but also provides good security for the Defendant. However, if liquidators are to provide security in this form, they must ensure the bond is governed by Cayman Islands law and capable of being enforced by the Cayman Islands Court.

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