

Defendant then appealed the District Court's decision to the United States Circuit Court of Appeals for the 6th Circuit and that appeal is now pending.

On June 16th, 2000 I dismissed the Defendant's application to set aside the ex parte order that I had granted on April 17th. Therefore, since June 16th the Plaintiff has had the legal right to commence appropriate execution proceedings against the Defendants and their assets within the Cayman Islands. The Plaintiff has not yet done so but rather, as a result of discussions between counsel and the Court at the conclusion of the hearing in June, it has agreed to a stay of execution of the proceedings in the Cayman Islands, pending a determination of the Appeal to the United States Circuit Court of Appeals. The parties have not however been able to agree upon the appropriate terms of the stay and as a result have brought this application so the Court may impose those terms.

The application for a stay has not been brought pursuant to section 7 (2) (f) of the Foreign Arbitral Awards Law (1997 Revision) because the U.S. Courts have not suspended or set aside the arbitral award there. Rather, this application would have to fall under Order 47 Rule 1 of the Grand Court Rules or alternatively under the Courts inherent jurisdiction to stay its own orders in the appropriate circumstances.

The question is under what circumstances, if any, should this Court grant a stay of execution of a foreign arbitral award properly enforceable in the Cayman Islands, and if a stay is granted, upon what terms. I was advised by counsel that there were no reported cases or other authorities which would assist the Court. It is clear however, that pursuant



to Order 47 Rule 1 the Court has a wide discretion in granting a stay of execution and imposing appropriate terms (see The Supreme Court Practice 1999 Street and Maxwell p. 819).

The Plaintiff is prima facie entitled to the benefit of the monetary arbitral award. To deprive the Plaintiff of that entitlement the Defendant must satisfy the Court that;

1. The appeal in the foreign proceedings is not frivolous or vexatious. Put another way that it has some reasonable prospect of success, and;
2. That;
 - (1) the Defendant is able to provide security in the amount of the award;
or
 - (2) if the Defendant is unable to provide security in the amount of the award but has some real and substantial assets and satisfies the Court that he will obey any injunction granted, then he should be enjoined from disposing of or dissipating his assets, except as necessary to meet his ordinary, usual and reasonable expenses and obligations, including reasonable legal fees;

This Court may then stay the execution proceedings on the foreign arbitral award. However, if the Defendant has little or insignificant assets, then the Court would normally not exercise its discretion in favour of the Defendant by granting a stay.



Having reviewed the facts in this case I do not conclude that the Defendant's appeal is frivolous or vexatious or that it has no reasonable prospect of success. I may not be persuaded that it will probably succeed but that, in my judgement, is not required.

Turning to the 2nd branch of the test, it is apparent that the Defendant does not have sufficient assets here, to provide security for the award. He does however have approximately U.S.\$500,000.00 in liquid assets plus two unencumbered properties in the Cayman Islands. Accordingly, I order that the execution proceedings here be stayed until the dismissal of the appeal by the United States Circuit Court of Appeal for the Sixth District or further order of this Court, upon the following terms;

1. That the 1st Defendant be enjoined from disposing of, or dissipating his assets here except;
 - (a) up to the amount of US\$8,500 per month for necessary and reasonable living expenses and;
 - (b) up to the amount of \$75,000.00 for payment of reasonable legal fees.
2. That within 21 days the 1st Defendant file an affidavit disclosing;
 - (a) all of his assets in the Cayman Islands and;
 - (b) a time table for the appeal proceedings in the United States Circuit Court of Appeal for the Sixth District.



3.Costs of this application, to be paid by the party who is unsuccessful, in the appeal proceeding in the United States.

Dated this 16th day of August, 2000.

Dale Sanderson
Judge of the Grand Court

