

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

CLAIM NO. 131 OF 2016

BETWEEN:

SITTE RIVER WILDLIFE RESERVE ET'AL

CLAIMANTS

AND

THOMAS HERSKOWITZ ET'AL

DEFENDANTS

BEFORE: the Honourable Justice Courtney Abel

Mr. Rodwell Williams, SC }
Ms. Lissette Staine } for the Claimants
Mr. Yohannseh Cave }
Ms. Stacey Grinage } for the Defendants

21ST FEBRUARY, 2017

MORNING SESSION

(Court convened at 9:00 A.M.)

5 THE COURT: Appearances?

MR. WILLIAMS: May it please you My Lord, in appear in this matter along with Ms. Lissette Staine on behalf of the Claimants and my friends Mr.

5 MR. WILLIAMS: Alfonso Bailey.

Witness sworn.

EXAMINATION-IN-CHIEF OF MR. ALFONSO BIAILEY.

Q. Mr. Alfonso Bailey you reside in Sittee River
Stann Creek District?

10 A. That is correct.

Q. Mr. Bailey and I will ask you to try and speak up
so that we could hear you and address yourself to His
Lordship so that the Judge can hear you. You gave a
witness statement which was filed in these proceedings
15 dated 30 May, 2016?

A. That is correct.

Q. Did you sign that witness statement?

A. Yes, I do.

Q. If you were shown it, you would recognize it?

20 A. As long as I see the signature.

MR. WILLIAMS: Can he be shown.

A. Yes, that is mine.

Q. That is your witness statement?

A. Yes, correct.

25 Q. Would you like to put it into evidence?

A. Sure.

THE COURT: Any objection? Admitted as
examination-in-chief without objection.

Q. My friend will now examine you. Thank you.

5 THE COURT: This is to be found where?

MR. WILLIAMS: Tab 3 in the core Bundle tab

3.

CROSS-EXAMINATION OF MR. ALFONSO BAILEY BY
MR. CAVE

10 Q. Mr. Bailey, I ask you specifically in relation to
SRWR the company. Are you currently a Director of that
company?

A. Yes, I do.

Q. How long were a Director of SRWR?

15 A. For years. I can't remember exactly when but for
years.

Q. You became a Director the same time as Mr. Usher
became Chairman?

A. I can't remember that.

20 Q. You can't remember?

A. No.

Q. You can't remember if it was 2006, was it?

A. I am not sure.

25 Q. You participated in board meetings during your
time as a Director of SRWR?

A. Yes.

Q. Do you recall when Eco Futures Development
Limited was chosen as the developer for the Sanctuary
Belize project?

5 A. Yes.

Q. In fact you signed that agreement, isn't that correct?

A. Yes.

Q. If you could speak up please so that His Lordship
10 could hear. At the time you were also Director of Eco
Futures Belize Limited, isn't that correct?

A. Yes.

Q. And you were a shareholder in that company?

A. Yes.

15 Q. May I ask Mr. Bailey, what is your profession?

A. I don't have a specific profession.

Q. You don't have a specific profession?

A. No.

Q. What work do you do generally?

20 A. I do maintenance, I do development, I do
whatever.

Q. What kind of development?

A. Well make sure that roads get built, whatever I
mean is assigned to me.

25 Q. You work along with the work crew at Sanctuary
Belize?

A. Yes.

Q. Would you say that you were an active participant
in meetings at the board levels of SRWR?

5 A. From time to time, yes.

Q. Would you say equally that you were a participant at meetings at the board definitely of Eco Futures Development Limited?

A. From time to time.

10 Q. From time to time?

A. Yes.

Q. Do you recall when the board of SRWR met and considered the development contract that was entered into with Eco Futures Belize Limited?

15 A. Yes.

Q. You participated in that board meeting?

A. Yes.

Q. Before that, I assume, did you have discussions about the formation of the company Eco Futures Belize Limited?

20

A. Yes.

Q. Let me ask you something. You are still a Director of Eco Futures Belize Limited, aren't you?

A. Yes.

25 Q. You became a Director when?

A. I can't give you an exact date

Q. Give me an approximation. Was it some time late last year?

A. I wouldn't recall that.

5 Q. Well, you are aware that Mr. John Usher is no longer Director of SRWR, isn't that correct?

A. Yes.

Q. And you are also aware that he is no longer a Director of Eco Futures Belize Limited, isn't that
10 correct?

A. Yes.

Q. You have now two shares in the company?

A. Yes.

Q. Out of the 10,000 allotted?

15 A. Yes.

Q. Do you know how much Mr. Usher had?

A. No.

Q. How about the Panamanian company do you know how much that company has?

20 A. No.

Q. Let me put it to you all you know is about your two shares, isn't that correct?

A. Yes.

Q. Do you know who is the other shareholder in the
25 Panamanian company?

A. Peter Baker.

Q. At paragraph 2 of your witness statement you state that I am also a Director and member of Eco Futures Belize Limited. I am also a Director and

5 provisional member of Sittee River Wildlife Reserve.
Eco Futures Belize is in the business of providing
exclusively to SRWR project and a real estate developer
marketing and sales to Sanctuary Belize. You say
further that I do recall that I was invited by
10 Mr. Christopher Usher to sit on the board of Directors
of SRWR as a provisional Director and from time to time
there was at least one other Director on the board from
among the provisional members of SRWR." Well let me ask
you about that. Do you know the difference between a
15 provisional Director as opposed to a full Director?

A. I would think so.

Q. You would think so?

A. Yes.

Q. Could you explain it for the benefit of the Court
20 please what you understand the difference to be?

A. Well in my interpretation maybe I know a full
member is the person that makes decisions and the
provisional is the one that can't make.

Q. What?

25 A. The full member is the one that makes the
decisions and the provisional is the one that don't
make the decisions.

Q. You referred to member a few moments ago. I was
asking you about the difference between a provisional

5 Director and a full Director, yes. So now that I have clarified what my question was, could you tell us what you interpret the difference to be between a provisional Director and a full Director.

A. The full Director like I said it is the one that makes the decision. And the provisional is the one that don't make decisions.

Q. So, a full Director of the company makes decisions and the provisional Director doesn't make any decisions, yes?

15 A. Yes, correct.

Q. I take it based on your interpretation the provisional Director which you are doesn't have any vote on the board of Directors, right? Is that your interpretation?

20 A. No.

Q. So what do you mean by the full Director makes decisions and the provisional Director doesn't?

A. Like I said the full member is the one that makes the decisions.

25 THE COURT: I got lost there. When you said no, what were you saying the no to? What were you saying that they have a vote or they don't have a vote.

A. Well the full member have the vote.

THE COURT: The provisional member?

5 MR. CAVE: Except, My Lord, I was asking him
about Directors.

THE COURT: The full Directors I am not sure
I don't know what to write down.

A. Can you ask the question again.

10 Q. I am going to ask it again. I am not referring
to members. I am referring to Directors. You say in
your witness statement that you were invited by
Mr. Christopher Usher to sit on the board of Directors
of SRWR as a provisional Director. I simply asking you
15 what you understood the difference to be between a
provisional Director and a full Director. You
understand my question now, please?

A. Like I said the provisional is just the
provisional and the full Director is the full Director.

20 Q. So your explanation is that the provisional
Director is the provisional Director and the full
Director is the full Director?

A. Yes.

Q. Is it that you don't know what the difference is
25 between the two?

A. No.

Q. No what, you don't know the difference between
the two or you don't know the difference between the
two?

5 A. No, I don't know.

Q. You don't know the difference between the two?

A. No.

Q. So even though you were invited by
Mr. Christopher Usher to sit on the board as a
10 provisional Director you don't know what was the
difference between the position which you held and the
position of the other Directors?

A. No.

Q. You don't know how provisional Directors are
15 appointed or elected to the post, is that correct?

A. Well by a meeting, I guess.

Q. By a meeting you guess?

A. Yes.

Q. Meaning you are not sure?

20 A. Well yes, I sure it is by a meeting.

Q. A meeting of what or whom?

A. Well if it is the company it is the company. If
it is SRWR company somebody have to have a meeting.

Q. You don't know what kind of meeting that would
25 have to be?

A. It has to be a board meeting.

Q. So your position is that a provisional Director
is appointed at a board meeting of SRWR?

A. That is how it is supposed to be done.

5 MR. CAVE: My Lord, I don't have any further questions for this witness.

THE COURT: Any re-examination?

MR. WILLIAMS: Just a few.

RE-EXAMINATION OF MR. JOHN USHER BY MR.

10 WILLIAMS

Q. You understand that a Director, you referred to provisional Director, maybe put on the board of SRWR by the board of Directors?

A. Yes, that is correct.

15 Q. I just wanted to clarify that. And you understand that, right?

A. Yes.

Q. Thank you.

THE COURT: You can step down.

20 MR. CAVE: My Lord, if I may please, I have had a discussion with my learned senior, I believe that he is amenable that we have a witness we have two witnesses perhaps it maybe a convenient point to stop because we have.

25 THE COURT: Keep your voice up so everybody can hear you.

MR. CAVE: I was simply having a discussion with my learned senior as to whether this was a convenient moment to stop this afternoon. My

5 preference is to do so because what my learned senior
has communicate to me is that there are certain
preliminary matters that we may have to deal with and
if that is the case then certainly I don't think that
we are going to be able to make sufficient progress to
10 finish that witness this afternoon.

THE COURT: Can we deal with the preliminary
matters now?

MR. CAVE: I will confess, My Lord, that I am
a bit tired both physically and mentally and I have not
15 had lunch yet, My Lord, and that is why.

THE COURT: Join the club.

MR. CAVE: So that is why my preference.

THE COURT: That is why you should always
have a very good breakfast.

20 MR. CAVE: Perhaps I will take your advice,
My Lord.

THE COURT: My father's advice.

MR. CAVE: So in the circumstances I plead my
own personal circumstances in asking the Court to
25 perhaps --

THE COURT: One difficulty since in the time
that I spoke with you at midday and now things have
radically changed about my situation next week. I
should be able to be here on Wednesday.

5 THE COURT: We were hoping for the 1st and
2nd.

THE COURT: We might probably be able to do
that.

MR. CAVE: May I clarify, My Lord, I think
10 one of the days you accept, is it your anticipation
that we make submissions on one of those dates?

THE COURT: Well perhaps.

MR. CAVE: I think this is the sort of trial
that may necessitate submissions in writing even if the
15 Court hears it orally, My Lord. There are certain
legal issues which I would want to put to the Court in
writing and of course there are voluminous facts in
this matter which I believe needs to be dealt with. Is
it that the Court is saying that there is a difficulty
20 with the 1st and 2nd?

THE COURT: There may be some difficulty
because I may have to travel on the weekend. But I am
anticipating I should be able to get back here on
Wednesday morning probably about 10 o'clock or
25 something like that. That is what has been changed. I
won't be able for Wednesday but remember I was planning
to deal with two matters on Wednesday. So we could
start a bit later on probably.

MR. WILLIAMS: On the afternoon of the 2nd.

5 THE COURT: Monday is still okay the
afternoon of Monday is still okay because I should get
back on Wednesday morning.

MR. WILLIAMS: Wednesday is the 1st.

THE COURT: So I will be back here by
10 Wednesday afternoon.

MR. WILLIAMS: So we can contemplate
Wednesday afternoon.

THE COURT: Wednesday afternoon.

MR. WILLIAMS: Not before Wednesday
15 afternoon and Thursday.

THE COURT: And Thursday.

MR. WILLIAMS: Okay.

THE COURT: But I want to make sure that we
have enough time to deal with all the evidence.

20 MR. WILLIAMS: I am confident.

THE COURT: Because I wouldn't want to
adjourn again.

MR. WILLIAMS: I feel confident, My Lord, in
fact we will set that as the time limit.

25 THE COURT: Alright good so we can set the
Wednesday afternoon and Thursday. The case as I
understand it is one that I might benefit from having
written submissions. I always consider submissions are
for my benefit primarily and it is, you know, I would

5 benefit from that so we can probably in planning we can
probably try and set a date for oral arguments allow
time for you to do some written submissions after the
evidence is in and then come back to do oral arguments
after the submissions. I am not one of these judges
10 that like to do things on the paper.

MR. WILLIAMS: Could we perhaps establish
those windows on Wednesday when we are finished rather
than now?

THE COURT: We could probably start looking
15 at dates now because you know, dates go very quickly.
And as a case that is part heard I would like to give
priority to this and having it completed rather than it
being pushed further and further back. So, I would
certainly like for us to start canvassing some dates
20 now about oral arguments and a timetable for putting in
written submissions. How long would you think you
would need to do written submissions.

MR. WILLIAMS: Which would come first about
10 days, My Lord.

25 THE COURT: As long as you stick to it I
don't mind what date.

MR. WILLIAMS: What happened we may have the
intervention of the Court of appeal. I would say a 10
day window for written submissions and once the written

5 submissions are in the oral could be any shorter time
thereafter. That would be my sense.

THE COURT: Soon after the written
submissions are done while it is still fresh in your
mind.

10 MR. WILLIAMS: While it is still fresh.

THE COURT: Alright, should we try and fix
dates now.

MR. WILLIAMS: My Lord, my disposition is to
certainly freeze the date for Wednesday and Thursday
15 1st and 2nd and on the rising of the Court on the 2nd
we could freeze the date.

THE COURT: Well just for the benefit of the
Marshall I indicated to the Court that the interval
between lunch time and coming back into Court things
20 have changed a little and I will not be available
Wednesday morning. So, I will be available on
Thursday afternoon so we are looking at fixing the date
for Wednesday afternoon and Thursday all day. We can
possibly even start at 1. It is a matter for you all.
25 So let's stick at 2:00

MR. WILLIAMS: The jetlog would be over.

THE COURT: Nothing significant.

MR. WILLIAMS: At 2:00

THE COURT: 2:00 is okay. And if need be we

5 can sit --

MR. WILLIAMS: - -later.

THE COURT: Yes, so Wednesday and Thursday.
And we are looking at then at least 10 days right?

MR. WILLIAMS: Two weeks good, My Lord.

10 THE COURT: That looks like 9th and 10th but
I am not sure about that.

MR. WILLIAMS: 15, 16 would be two weeks
from there.

15 THE COURT: That would be a better time you
know what my calendar is looking like? Well that is
just to hand in.

THE COURT: I am looking for a date for oral
hearing though. I am available on the 16th is that too
soon?

20 MR. WILLIAMS: The following week for the
oral, My Lord.

THE COURT: 23 is okay? So we can push the
written submission back a bit to a week before 23 March
is oral arguments so we can push written submission by
25 the 17th.

MR. WILLIAMS: Perhaps we should take the
weekend because that is when these things happen.

MR. WILLIAMS: Thursday the 17th is a
Friday.

5 THE COURT: I want to have the documents with
me on the weekend. So I would have the weekend to look
at it.

 MR. WILLIAMS: So it could be in. Alright
thank you.

10 THE COURT: So we will adjourn to 2:00
o'clock on Wednesday the 1st.

Court adjourn at 4:06 p.m.

From Article at GetOutOfDebt.org