[2022] JMSC Civ. 184

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2021CV02582

BETWEEN	**EVDC INVEST S.A.**	**1ST CLAIMANT**
AND	**FISH & CO S.A.S**	**2ND CLAIMANT**
AND	**B & D TRAWLING LIMITED**	**1ST DEFENDANT**
AND	**MUXTON LIMITED**	**2ND DEFENDANT**

IN CHAMBERS

Sheldon Robinson, instructed by Dentons Delany, for the claimants

Vincent Chen and Vanessa Reid Pringle, instructed by Chen Green & Co. for the defendants

June 23 and October 14, 2022

Application to challenge the jurisdiction of the court – Acknowledgement of service filed – Whether there exists a binding agreement between the parties albeit unsigned – Whether Jamaica is forum conveniens – Whether the court should exercise its discretion to allow the hearing of the matter to continue in Jamaica

ANDERSON, K. J

BACKGROUND

[1] The claimants filed the instant claim against the defendants on May 27, 2021, seeking against the defendants the following orders:

a. 'An order to recover from the defendants the principal sum of One Million Five Hundred and Forty-Five Thousand Nine Hundred and Seventy Dollars and one cent in the currency of the United States of America (USD$1,545,970.01) being monies due and owing by the defendants to the claimants;

b. Interest of 8% per annum;

c. General damages for breach of contract;

d. Interest on general damages; and

e. Costs.'

[2] The claimants averred that it loaned the defendants the said sums and entered into a guarantor mortgage agreement. It is averred that the defendants breached that agreement in that it failed to provide the claimants with goods (lobsters and conchs) representing the entire sums loaned. The claimants also aver that the defendants agreed to pay the outstanding sums as well as interest of 8% on said outstanding sum but have failed to do so, after several requests from the claimants.

The application

[3] The defendants filed this notice of application for court orders August 5, 2021, seeking several orders, namely:

a. A declaration that the local courts are not the appropriate place "forum conveniens" for the trial of this action;

b. A declaration that the court should not exercise its jurisdiction in this claim;

c. The claimants' particulars of claim be struck out;

d. There be a stay of proceedings pending litigation in another forum, namely, the Courts of the City of Paris as set out in Article 12 (Governing Rules of Contract) of the "Memorandum of Trade Agreement;

e. Costs to the defendants.

[4] The grounds on which the defendants have sought those order are as follows:

i. The claim is not in respect of a breach of contract committed in this jurisdiction.

ii. The claim relates to an alleged breach of an agreement which contains an express term in Article 12.1. that is governed by French Law.

iii. Article 12.2 established the "Memorandum of Trade Agreement" as the Entire Agreement and Article 12.3 speaks to any modification of the contract becoming an integral part of the contract.

iv. The Memorandum of Trade Agreement is first in French and then translated to English.

v. The supply and processing services to which the agreement related are completed upon shipment to the requested destination outside of the jurisdiction. The claimants being the exclusive distributors of the supplier of the French Caribbean market and the European zone.

vi. Whereas the defendants are companies registered in Jamaica and are renowned in the fishing and processing of frozen seafood including conch and lobster.

vii. The claimants have their registered offices in Luxembourg and Martinique which clearly the latter being an overseas territory of France and the former is a francophone country.

viii. Major portions of the pre-contractual negotiations, via email are in French.

ix. Even if the court were to find that this court is the forum conveniens, the parties have made a choice of law and by their written contract, have agreed to submit any dispute to the French law and Parisian Courts.

[5] The defendants led evidence on affidavit by Roderick Francis, who led evidence that:

a. The 1st defendant is a Jamaican company renowned in the fishing and processing of frozen seafood, including conch and lobster. The 2nd defendant is a holding company on behalf of the 1st defendant.

b. The claimants have no asset in Jamaica nor do they carry on business here.

c. There were negotiations between Alexandra Elize a principal of the 1st claimant to enter into a long term relationship with the 1st defendant for a period of 10 years. That agreement was reduced into writing.

d. The purpose of the guarantor's mortgage agreement was to acknowledge the debt which was to be created from season to season as collateral between the 1st defendant and the 2nd claimant. The funding advanced by the claimants was to enable the 1st defendant to purchase goods to be shipped.

e. Article 12 of the draft proposed trade agreement indicates that the agreement is governed by French law and it must be applied in interpreted in accordance to that law. It also indicated that in the event of any dispute in connecting with the agreement, the parties attribute exclusive jurisdiction to the courts of the city of Paris.

f. On the basis of the agreement, the defendant completed shipment of conch which the claimants received and distributed.

g. All parties performed their obligations in accordance with the draft agreement.

h. The claimants were aware that the 2nd defendant is a property holding company for the assets of the 1st defendant which held the mortgaged property.

i. The guarantor's mortgage agreement was an integral part of the protocol agreement and are governed by the Protocol and Article 12, i.e. to submit any dispute to the jurisdiction of the court in the city of Paris.

j. The premature termination of the intended long term relationship has caused the 1st defendant to suffer substantial losses and damages.

[6] The claimants led evidence through Alexander Elize. The summary of that evidence is as follows:

a. The protocol agreement was a document intended to set out the terms and conditions on which the parties intended to carry on their commercial relationship. That protocol was still being deliberated on, then it was to be subsequently signed by both parties.

b. Despite the lengthy discussions, and the commencement of the business relationship between the claimants and defendants, a final agreement was not reached.

c. The parties did not agree to any binding agreement or otherwise to submit any or all dispute in connection with their commercial arrangement to the terms of the protocol agreement.

d. The claimants unlike the defendants have not committed any breach of any agreement which governed their commercial arrangement.

e. This jurisdiction is forum conveniens because:

   i. The defendants are registered in this jurisdiction.

   ii. The 1st defendant's mind, manpower, resources and plant facility are all in this jurisdiction.

   iii. The claimants' claims for the relevant sum were paid over to the 1st defendant into a bank account located in Jamaica.

   iv. The guarantor mortgage agreement which the claimants aver was breached, was duly executed in Jamaica.

v. The evidence on the issues as well as witnesses which may be required to testify are available in this jurisdiction.

vi. It would be more convenient and less expensive to try the claim in Jamaica for both parties.

vii. The defendants hold their real and personal property in Jamaica.

[7] Both parties have filed written submissions to this court which I will refer to further in these reasons.

ISSUES

[8] The following issues now stand to be determined by this court in light of the facts above:

i. Is the agreement which was drafted but unsigned by the parties binding?

ii. What is the forum conveniens for this matter?

LAW AND ANALYSIS

Challenging the court's jurisdiction

[9] **Rule 9.6 of the Civil Procedure Rule (CPR)** sets out the procedure to dispute the court's jurisdiction. That rule reads as follows:

> *'(1) A defendant who-*
>
> *(a) disputes the court's jurisdiction to try the claim; or*
>
> *(b) argues that the court should not exercise its jurisdiction, may apply to the court for a declaration to that effect.*
>
> *(2) A defendant who wishes to make an application under paragraph (1) must first file an acknowledgment of service.*

(3) An application under this rule must be made within the period for filing a defence.

4) An application under this rule must be supported by evidence on affidavit.

(5) A defendant who –

(a) files an acknowledgment of service; and

(b)does not make an application under this rule within the period for filing a defence, is treated as having accepted that the court has jurisdiction to try the claim.

(6) Any order under this rule may also –

(a) strike out the particulars of claim;

(b) set aside service of the claim form;

(c) discharge any order made before the claim was commenced or the claim form served; and

(d) stay the proceedings.

(7) Where on application under this rule the court does not make a declaration, it-
(a) must make an order as to the period for filing a defence; and

(b) may –

(i) treat the hearing of the application as a case management conference; or

(ii) fix a date for a case management conference.'

[10] The 1st and 2nd defendants were served on June 24 and 29, 2021, respectively and this application was filed on August 5, 2021. The said application was filed within the period stipulated under **rules 9.6(3) and 10.3(1) of the CPR**. That is, it was filed within the 42 days' period, after having been served on the defendants and the defendants filed an acknowledgement of service on July 8, 2021. In that acknowledgement of service, they stated that same was filed for the sole purpose of disputing this court's jurisdiction to try this claim.

Approach

[11] The court must now, before determining whether Jamaica's courts would be the forum conveniens, examine the basis on which the defendants aver that such hearing ought not be done in Jamaica. This assertion is grounded on the basis of the drafted protocol agreement which is unsigned. The defendant contends that the draft contract was accepted by both parties for over a year. The defendants contend that though the agreement in question was unsigned, that agreement was accepted by all parties, and acted upon by both sides. They contend that both parties have performed the contract, as was drafted.

[12] The claimants contend that there existed no valid contract between both parties. It is contended that the draft protocol which was sent was subject to further review and was incomplete. Consequently, the matter of jurisdiction may well have been subject to further discussions from that which was drafted in the protocol. They also contend that the breach for which the claimants sue, does not arise from the draft protocol but instead it arises from the guarantor mortgage agreement which was separately signed between the parties.

[13] Before examining the status of the protocol agreement, it is important to note that I do not agree with the claimants' contention that there can be a separation of the guarantor mortgage agreement and the protocol agreement. From the evidence which was presented, I am of the view that both agreements operate in tandem for the purposes of this matter. One does not make sense without the other. Further it is the claimants' own evidence that the protocol agreement was intended to dictate a healthy business relationship between the parties. To my mind, the guarantor mortgage agreement is a part of said relationship and cannot thus be removed and adjudicated upon, independently by the court.

The alleged contract

[14] Laing J. in **Eqillibrio Solutions Jamaica Ltd v Peter Jervis & Associates Limited [2021] JMCC COM 26,** summarized some of the pertinent principles of contract, at paragraphs 9 and 10 as follows:

> *'9.The law of contract provides that for there to be a valid contract there needs to be an intention to create legal relations, an offer, and by the acceptance of that offer an agreement and consideration. Contracts may be formed by the parties signing a written document which embodies all its terms. However, a contract can also be entirely oral or it may be partly oral and partly in writing.*
>
> *10. The determination of whether an agreement has been reached by the parties is usually relatively straightforward where there is a well-written contract. It sometimes proves to be problematic where there is an oral component and this is one such case. The parties did not execute a written document embodying all the terms of their agreement.* ***The Court is not required to practice alchemy and conjure a contract from thin air. What is necessary is for the Court to examine the evidence as to the terms which the parties have asserted form a part of the contract, based on oral agreement and/or conduct****. For this reason, it is necessary for me to assess the interaction between the parties and deconstruct the agreement between them into distinct component parts, in order to determine what constitutes the legal agreement.' [Emphasis added]*

[15] From the quotation above, I agree with the statement of the law above as quoted by my brother Laing J. It is important for this court, since the agreement is unsigned between the parties, to examine the evidence of the conduct of the parties and to see if they point to there having been an actual agreement between the parties, which was in accordance with the draft agreement.

[16] In **RTS Flexible Systems Ltd v Molkerei Alois Muller GmbH & Co KG (UK Production) [2010] 1 WLR 753,** Lord Clarke at page 771 set out the general principles as regarding a binding contract follows:

> *'Whether there is a binding contract between the parties and, if so, on what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations. Even if certain terms of economic or other significance to the parties have not been finalised, an objective appraisal of their words and conduct may lead to*

the conclusion that they did not intend agreement of such terms to be a precondition to a concluded and legally binding agreement.'

[17] In **CRS GT Limited v McLaren Automotive Limited and Others [2018] EWHC 3209 Comm** Phillips J noted as follows from the text - **Chitty on Contracts,** at paragraph 126:

> *'126.As appears from that summary of the approach, there is a distinction, which will often be easier to state than to apply in practice, between (i**) an agreement in principle, which remains incomplete and not binding because important terms have not been agreed, and (ii) a complete binding agreement, notwithstanding that points of detail remain to be settled**. Chitty on Contracts 33rd ed. explains the distinction as follows:*
>
> > *'2-120 Agreement in principle only. Parties may reach agreement on essential matters of principle, but leave important points unsettled so that their agreement is incomplete. It has, for example been held that there was no contract where an agreement for a lease failed to specify the date on which the term was to commence; that an agreement 'in principle' for the redevelopment and disposal of residential property, which specified core terms but left important matters, such as the timing of the project, for future discussion was an 'incomplete agreement and so did not amount to a binding contract… That an oral contract for an estate agent to find a buyer was incomplete where the parties had failed to specify the event which would trigger the agent's entitlement to commission since such contracts do not follow a single pattern… In such cases, moreover, '[i]t is not legitimate under the guise of implying terms, to make a contract for the parties' since the court can only imply a term into an otherwise concluded contract….*
> >
> > *2-121 Agreement complete despite lack of detail. On the other hand, an oral agreement may be complete though it is not worked out in meticulous detail. Thus an agreement for the sale of goods may be complete as soon as the parties have agreed to buy and sell, where the remaining details can be determined by the standard of reasonableness or by law… An even more striking illustration of this approach is provided by a case [Bear Stearns Bank Plc v Forum Global Equity Ltd [2007] EWHC 1576] in which parties had reached an all agreement by telephone for the sale of notes … The agreement identified the subject matter and specified the price; and it was held to be contractually binding even though it did not specify the settlement date and left many other important points to be resolved by further agreement. In all these cases, the courts took the view that the parties intended to be bound at once in spite of the fact that further significant terms were to be agreed later and that even their failure to reach such an agreement would not invalidate the contract unless without such further agreement it was unworkable or too uncertain to be enforced.'*
> >
> > *[Emphasis added]*

[18] This court will seek to examine the evidence presented to see whether the protocol agreement, was incomplete and unbinding owing to pertinent terms not being

agreed between the parties or whether the said protocol agreement was complete and binding notwithstanding that points of detail, remain to be settled. The court will examine whether the parties by their conduct, intended to be bound, notwithstanding that further terms, could potentially have been added.

[19] The fact that the claimants have raised an assertion that the agreement was incomplete, is insufficient to oust the jurisdiction of the court in examining the total state of affairs of the parties, and to arrive at a conclusion that said contract was complete and thus enforceable by the defendants.

[20] From the email correspondence dated March 15, 2014, the claimants wrote to the defendants as follows:

> *'We will write a trade agreement protocol that puts on paper clearly our relations. We will send you the protocol. You will write the final commercial agreement based on your comments and potential returns.*
>
> *The idea is that we will agree on everything. We try to prepare an agreement in the mind set of our relationship, healthy.'*

[21] Mr Francis responded that he awaited the draft protocol so that the trade agreement may be drafted by him. He also indicated that he would draft the guarantor agreement in keeping with the claimants' suggestions. It is unclear from the evidence before the court when the protocol agreement as was exhibited by the defendants, was provided. Despite its provisions, the claimants' primary contention is that the said agreement does not bear the signature of the parties and accordingly is not binding. There is notably no attempt to negate the terms of the agreement, on the evidence of the claimants.

Parties conduct

[22] The defendants contend that both parties acted in accordance with the protocol agreement: These include:

i. Under Article 3 titled, 'Supplier's obligation' it is noted that: the supplier will export good following the shipment

schedule, in Appendix 2 and 3. Appendix 2 refers to shipment taking place between July– March of 2016/2017. Appendix 3 refers to shipment between June and September.

ii. The defendants contend that they shipped the first container in July 25, 2016. The licence was exhibited which was dated July 12, 2016

iii. The claimants wrote on August 23, 2016 acknowledging receipt of the conchs inter alia, which the defendants sent.

[23] From the conduct of the parties, I am of the opinion that there is before this court, by virtue of that draft protocol agreement and correspondence, related to the terms of relationship between the parties, that is for the defendants' supply of goods to the claimants, a binding agreement. From the conduct of the parties when looked at in the context of that relationship, the court is not left to guess, or pull out of thin air, the terms which the parties expected to abide by.

[24] On account of the evidence which is presently before this court, it is, in the opinion of the court, a reasonable conclusion, that on a balance of probability, there existed an agreement as between the parties reduced into writing, for the operation of a healthy business relationship between both, by means of said protocol agreement. Though same was unsigned, there is no evidence before this court which properly satisfied the court that objectively, and based on their conduct there was no certainty and a legally binding relationship between the claimants and the defendants.

[25] On a balance of probabilities, the defendants have established that the protocol agreement between them was complete and as such, may be enforced.

Forum conveniens

[26] Having decided that the protocol is a binding agreement between the parties, it must then be examined, to what extent the defendants' assertions that Jamaica is not forum conveniens, is meritotious for the claim before this court.

[27] Article 12.1 of the protocol agreement provides that:

> *'The agreement is governed by French Law. It must be applied and interpreted in accordance with this law.*
>
> *In the event of any dispute in connection with this agreement, the parties attribute exclusive jurisdiction to the court of the city of Paris.'*

[28] In **Donohue v Armco Inc [2001] UKHL 64**, Lord Bingham specified as follows at paragraph 24:

> ***'[24]** If contracting parties agree to give a particular court exclusive jurisdiction to rule on claims between those parties, and a claim falling within the scope of the agreement is made in proceedings in a forum other than that which the parties have agreed, the English court will ordinarily exercise its discretion (whether by granting a stay of proceedings in England, or by restraining the prosecution of proceedings in the non-contractual forum abroad, or by such other procedural order as is appropriate in the circumstances) to secure compliance with the contractual bargain, unless the party suing in the non-contractual forum (the burden being on him) can show strong reasons for suing in that forum. I use the word "ordinarily" to recognise that where an exercise of discretion is called for there can be no absolute or inflexible rule governing that exercise, and also that a party may lose his claim to equitable relief by dilatoriness or other unconscionable conduct**. But the general rule is clear: where parties have bound themselves by an exclusive jurisdiction clause effect should ordinarily be given to that obligation in the absence of strong reasons for departing from it. Whether a party can show strong reasons, sufficient to displace the other party's prima facie entitlement to enforce the contractual bargain, will depend on all the facts and circumstances of the particular case**. In the course of his judgment in The Eleftheria [1970] P 94, 99-100, Brandon J helpfully listed some of the matters which might properly be regarded by the court when exercising its discretion, and his judgment has been repeatedly cited and applied. Brandon J did not intend his list to be comprehensive, but mentioned a number of matters, including the law governing the contract, which may in some cases be material. (I am mindful that the principles governing the grant of injunctions and stays are not the same: see Aérospatiale at p 896. Considerations of comity arise in the one case but not in the other. These differences need not, however, be explored in this case).' (Emphasis added)*

[29] In **the Eleftheria [1970] P 94 at page 99** it is noted as follows:

'The principles established by the authorities can, I think, be summarised as follows:

(1) Where plaintiffs sue in England in breach of an agreement to refer disputes to a foreign court, and the defendants apply for a stay, the English court, assuming the claim to be otherwise within its jurisdiction, is not bound to grant a stay but has a discretion whether to do so or not.

(2) The discretion should be exercised by granting a stay unless strong cause for not doing so is shown.

(3) The burden of proving such strong cause is on the plaintiffs.

(4) In exercising its discretion the court should take into account all the circumstances of the particular case.

(5) In particular, but without prejudice to (4), the following matters, where they arise, may properly be regarded:-

> *(a) In what country the evidence on the issues of fact is situated, or more readily available, and the effect of that on the relative convenience and expense of trial as between the English and foreign courts.*
>
> *(b) Whether the law of the foreign court applies and, if so, whether it differs from English law in any material respects.*
>
> *(c) With what country either party is connected, and how closely.*
>
> *(d) Whether the defendants genuinely desire trial in the foreign country, or are only seeking procedural advantages.*
>
> *(e) Whether the plaintiffs would be prejudiced by having to sue in the foreign court because they would:*
>
> > *(i) be deprived of security for their claim;*
> >
> > *(ii) be unable to enforce any judgment obtained;*
> >
> > *(iii) be faced with a time-bar not applicable in England; or*
> >
> > *(iv) for political, racial, religious or other reasons be unlikely to get a fair trial.'*

[30] The court having accepted that a contractual agreement between the parties was existent, the burden of proof rests on the claimants to show that, that clause ought not to be followed. The fact that the contract provides for such a situation, is not an absolute bar to the court's exercise of its discretion. The court must then weigh all the circumstances, in ascertaining whether Jamaica is forum conveniens.

[31] In **paragraph 131 of Halsbury's Laws of England, 4th Edition, Volume 8(3),** the factors that the court should consider in deciding whether or not to grant a stay and whether or not there exists another forum which is, "*clearly and distinctly more appropriate"* than that contended for by the applicant for the stay, were stated to include the following:

> *'1. The residence of the parties.*
>
> *2. The factual connection between the dispute and the Courts, such as the place where the relevant events occurred, and the residence of the witnesses.*
>
> *3. The law which will be applied to resolve the dispute.*
>
> *4. The possibility of a lis alibi pendens or other proceedings; and*
>
> *5. The question whether other persons may become parties to the litigation. The question of which factors are relevant, and the weight to be accorded to each of them (which will vary from case to case), is essentially one for the discretion of the trial judge, with whose assessment an appellate court will be reluctant to interfere.'*

[32] The court will examine those respective factors above in applying them to the facts of this case in determining whether Jamaica is the forum conveniens.

Residence of the parties

[33] It is noted that the defendants are registered companies based in Jamaica. The directors, representatives and assets are located herein. The claimants primarily operate from Luxembourg and Martinique respectively and hold no asset in Jamaica. In this regard, the, 'residence' of the parties is relevant. It is relevant because depending on the outcome of the case, if the claimants are successful, then the claimants will need to seek to enforce the judgment.

[34] However, in the circumstances, the fact that the primary places of operations of the claimants are overseas, may cause the defendants to make an application for security for costs under **Part 24 of the CPR,** in the proper form and with affidavit evidence, as the rules require. This may be pursued by the defendants in an

attempt to secure any costs orders which may be made in their favour, since the claimants hold no assets in Jamaica.

[35] In that regard, the fact of the claimants' registered offices being outside of the jurisdiction, in the opinion of this court, is not a factor which makes Jamaica, forum non conveniens. As an observation, this could potentially be a challenge to be overcome in any court in which, the dispute is handled, as the fact remains, that both sides do not operate in the same country and under the respective laws, appropriate redress would need be pursued by the prudent party.

The factual connection between the place of dispute

[36] From the evidence which is presented to the court, the defendants being resident in Jamaica, the respective witnesses' for them will be easily assessable should the trial of this matter occur in Jamaica. The bank account which holds the sums paid over to the defendants, is in Jamaica. The alleged breach complained by the claimants necessitate witnesses on both sides coming before the relevant court. On the defendants' account, the circumstances surrounding the ending of the alleged contractual relationship has caused substantial loss and damages. The court presumes that in light of those losses, if Jamaica is considered to be forum conveniens, then it will no doubt reduce the defendants' expenses in making themselves available before this court, in Jamaica.

[37] The court also accepts that the relevant property which is the subject of the guarantor agreement, is registered in Jamaica, under a mortgage under the **Registration of Titles Act.**

The law to be applied to resolve the dispute

[38] The claimants aver that the guarantor agreement, states that the agreement ought to be read and construed in accordance with Jamaican law. In that light, even if it were that the matter was to be tried in Paris over the protocol, in that matter, regard would have to be held for the Jamaican law. Further as it relates to the primal

elements in proving a breach of contract, there is no indication that the application of French law in this regard will be more favourable to the defendants.

The possibility of a lis alilbi pendens or other proceedings

[39] The claimants aver that if the matter were to be tried elsewhere, there is a distinct possibility of another proceeding being instituted in Jamaica, despite any proceeding in any foreign court. The claimants aver that based on the mortgage agreement, the claimants have power of sale and the power to appoint a receiver.

[40] The court agrees that if this claim was tried elsewhere, and was determined in favour of the claimant, enforcement proceedings, would, of necessity, need to be instituted in Jamaica.

Whether other persons may be parties to the litigation

[41] From the court's observation, the nature of this claim, indicates that it arose from contract. The respective parties have been so named in this claim. Though the defendants have not filed their defence, there is not, on the evidence currently before the court, any indication that a third party, who is not resident in Jamaica is likely to be added as a party.

The language of the memorandum of Trade Agreement and pre-contractual negotiations.

[42] The fact that the memorandum of Trade Agreement and of some of the pre-contractual negotiations, is in French first and then translated to English, is a challenge which can readily be overcome in a Jamaican court, with the assistance of an appropriately qualified expert in French to English translation. That is a challenge which likely, would have to be equally faced by any court in France. It should not be difficult for an expert to ascertain whether the English translation is accurate or not and to let the court know of his or her opinion, in that regard. It is equally so, with respect to some of the pre-contractual negotiations which were

done, using the french language. The translation of same can be done, by an expert, for the court's benefit.

Other considerations

[43] From the evidence which the defendants have led, the court is unable to find a genuine reason advanced as to why this claim should not be tried in Jamaica. In the circumstances, the court is minded to consider that this application is in pursuit of procedural advantage being sought to by he defendants stay the proceedings on the issue of jurisdiction.

CONCLUSION

[44] In the final analysis, the protocol agreement between the parties, albeit unsigned, is in the opinion of this court binding. Having so concluded, the court then notes that from the evidence which the claimants have presented, Jamaica is forum conveniens. The trial of this matter should take place in Jamaica.

[45] Accordingly, the court will order that the trial of this matter proceed in the Commercial Division of the court pursuant to its general case management powers under **rule 26.1(v) of the CPR,** for the best management of this case.

DISPOSITION

[46] In light of the court's reasons above, the orders are as follows:

(1) The defendants shall file their defence by or before November 28, 2022.

(2) The Registrar of the Commercial Division shall act promptly in scheduling a case management conference once the period for filing a defence has passed, as ordered by this court.

(3) The costs of this application are awarded to the claimant and such costs shall be taxed, if not sooner agreed.

(4) The claimants shall file and serve this order.

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Hon. K. Anderson, J