**IN THE CARIBBEAN COURT OF JUSTICE**
**Appellate Jurisdiction**

**APPEAL FROM THE COURT OF APPEAL OF BELIZE**

**CCJ Application No. BZCV2017/001**
**BZ Civil Appeal No. 4 of 2015**

**BETWEEN**

**THE BELIZE BANK LIMITED** **APPLICANT**

**AND**

**THE ATTORNEY GENERAL OF BELIZE** **RESPONDENT**

## JUDGMENT SUMMARY

*This summary is not intended to be a substitute for the reasons of the Caribbean Court of Justice or to be used in any later consideration of the Court's reasons.*

[1] The Belize Bank Ltd. ("the Bank"), applied to the CCJ on 4 April 2017 for special leave to appeal the judgment of the Court of Appeal of Belize handed down on 24 March 2017. The Respondent Attorney General, although not opposing the application, opposed the appeal. The CCJ heard the matter on 17 October 2017 and treated that hearing as the hearing of the substantive appeal. The issue for the Court's determination was whether enforcement of an award made by a Tribunal of the London Court of International Tribunal on 15 January 2013 ("the LCIA Award") would be contrary to the public policy of Belize.

[2] The LCIA Award required the Government to pay to the Bank BZ$36,895,509.46 together with interest at 17% and arbitration costs of £536,817.71. These monies were found by the Tribunal to be payable under a loan note, dated 23 March 2007, for BZ$ 33,545,829 ("the Loan Note"). The Loan Note was given to the Bank by the Government of Belize ("the Government") in exchange for the latter being released from the liabilities and obligations arising out of a guarantee it gave in 2004. No Parliamentary approval was given for the

Loan Note. In arriving at its decision, the Tribunal relied on the decision of the Privy Council in *The Belize Bank Limited v The Association of Concerned Belizeans & Others*[1] (the "*ACB Proceedings*") in which the legality of the Loan Note was challenged. The Privy Council determined that the Loan Note gave rise to a valid obligation on the part of the Government to make payment to the Bank in accordance with the Loan Note's terms. The Privy Council also determined that the Loan Note was in fact a Promissory Note with the consequence that prior approval by the National Assembly was not required under section 7 of the Finance and Audit Reform Act ("FARA").

[3] The Government's 2004 guarantee related to advances from the Bank to a private company, Universal Health Services Co. Ltd. ("UHS"). The money was borrowed for UHS's expansion and for the construction of a hospital. The Government supported the UHS project in line with its policy to reform the Belize health care system by promoting the expansion of health care facilities, the costs of which would be met by a national health insurance programme.

[4] The Government defaulted on its payment on the Loan Note and the Bank initiated arbitration proceedings. Those proceedings eventually led to the LCIA Award. The Bank applied to the Supreme Court under section 28 of the Arbitration Act[2] for an order granting leave to enforce the LCIA Award. This was refused by the trial judge, and the Court of Appeal upheld that decision. Both courts agreed with the Respondent that enforcement would be contrary to public policy, taking the view that the transactions underlying the Loan Note were tainted with illegality as they were concluded without Parliamentary authorization and in violation of section 114 of the Constitution. Griffith J., the trial Judge, held, and the Court of Appeal endorsed the view, that although she was bound by the Privy Council's decision in the *ACB Proceedings*, that decision was limited in scope to section 7(2) of FARA which meant that she was at liberty to enquire more expansively into the alleged illegality of the Loan Note.

[1] [2011] UKPC 35.
[2] CAP 125.

[5] The CCJ examined section 30(1) and (3) under Part IV of the Arbitration Act which makes provision for the enforcement of a 'Convention award' under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 ("the New York Convention"). The Court noted that the New York Convention framework, which favours enforcement, is reflected in the Act. In deciding whether to refuse enforcement on public policy grounds, a balancing exercise must be conducted where the interest of guaranteeing the finality of an award is weighed against the competing interest of ensuring respect for the legal system's fundamental principles. The Court said that, "[t]o tilt the balance in favour of non-enforcement, there must be strong and compelling evidence that there has been an unacceptable violation of these principles." In light of the Act's regime which favours enforcement, the Court will ensure that enforcement proceedings are not used as a guise to reopen and relitigate the issues that were decided during arbitration proceedings.

[6] The CCJ relied on its own exposition of the operating principle in *BCB Holdings Limited and The Belize Bank Limited v The Attorney General*[3] (the "*BCB Holdings case"*), a case in which it refused enforcement on public policy grounds. There the Court stated that, for reasons of international comity, the public policy exception should be restrictively applied because an expansive construction, "would vitiate the Convention's attempt to remove pre-existing obstacles to enforcement and to accommodate considerations of reciprocity"[4]. Interpretation of what is contrary to public policy ought to reflect the Convention's "pro-enforcement bias" and, as such, enforcement of foreign arbitral awards will only be declined in exceptional circumstances.[5]

[7] The Court ruled that the Privy Council's decision in the *ACB Proceedings* created an issue estoppel between the parties; it disagreed with the lower courts' position that the *BCB Holdings case* permitted them to examine the foundational transactions of the Loan Note for illegality. Further, it took the view that the present case was distinguishable from *BCB*

[3] [2013] CCJ 5 (AJ).
[4] Ibid at [26].
[5] Ibid.

*Holdings* as, in the latter, the Minister acted in clear violation of legislation and the Constitution in making and implementing the Settlement Deed whereas in these proceedings, the Privy Council had held that there was no contravention of the FARA and that the Minister had the authority to enter into the agreement.

[8] The Court went on to examine whether section 114 of the Constitution bore any relevance to the Bank's application. The section came into focus as the Respondent contended that it would be illegal to pay on the Loan Note and that it would therefore be contrary to public policy to recognize and enforce the LCIA Award. This was on the basis that there was no law authorizing payment from the Consolidated Revenue Fund ("the CRF"), as required under section 114. The Bank, while accepting that payments from the CRF must be authorized, either by the Constitution or "some other law", argued that an order granting leave to enforce the LCIA Award would enable recourse to section 25 of the Crown Proceedings Act[6]. That section provides for satisfaction of judgments against the Crown.

[9] The CCJ disagreed with the view held by the Court of Appeal majority that the trial Judge correctly refused leave to enforce because of section 114. Firstly, having made the distinction between the making of a contract and its enforceability against the State, the Court noted that the Loan Note neither expressly nor by way of implication required payment without Parliamentary approval. Secondly, there was an important distinction between an order to enforce an award and an order requiring the issuance of a certificate (under section 25 of the Crown Proceedings Act) compelling payment. This distinction, the Court stated, is similar to that made in other cases between the "registration" and "enforcement" of awards. It noted that although the Arbitration Act does not refer to "registration", an order under the Act to enforce a foreign award is similar in effect to registration as such an order permits the foreign award to be treated as a judgment or order made by a domestic court.

[6] Cap. 167.

[10] The Court did not accept, as the Court of Appeal did, that there would be an "anticipated illegality" in granting leave to enforce as that would violate the principle that the Executive cannot incur an enforceable obligation without the National Assembly's approval of payment from the CRF. It was concluded that an order allowing enforcement of the LCIA Award would not involve any illegality and would not be contrary to the public policy of Belize as there was a statutorily prescribed mechanism for enforcement having regard to section 25 of the Crown Proceedings Act and section 115(3) of the Constitution. Under section 115(3) of the Constitution, legislative approval, by way of appropriation, can be secured to pay the LCIA Award.

[11] In these circumstances, the CCJ granted the Bank's application for leave to appeal, allowed the appeal, granted the Bank permission to enforce the LCIA Award in the same manner as a judgment or order of the Supreme Court to the same effect, and awarded costs both here and in the courts below. The Court, however, declined to make the order sought by the Bank under section 25 of the Crown Proceedings Act, noting, among other things, that it would be premature to do so as such an order anticipates that the Government will not honour its commitment. In any event, section 25 requires the Bank to take certain steps prior to obtaining such an order.