

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

True Blue Development Limited and others

v.

Grenada

(ICSID Case No. ARB/21/37)

**ORDER OF THE TRIBUNAL TAKING NOTE OF THE DISCONTINUANCE OF THE
PROCEEDING**

Members of the Tribunal

Ms. Wendy Miles KC, President of the Tribunal

Prof. David S. Berry, Arbitrator

Prof. Horacio Grigera Naón, Arbitrator

Secretary of the Tribunal

Ms. Anneliese Fleckenstein

6 September 2023

Order of the Tribunal Taking Note of the Discontinuance of the Proceeding

REPRESENTATION OF THE PARTIES

Representing *True Blue Development Limited, True Blue Services, Limited, True Blue Management Limited, Polar Palms LLC, and Circle Park Holdings LLC*:

Mr. Mark A. Cymrot
Mr. Paul M. Levine
Ms. Analia Gonzalez
Mr. Carlos Ramos-Mrosovsky
Mr. James J. East
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and
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Representing *Grenada*:

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Mr. Peter Flint
Ms. Angela Ha
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Order of the Tribunal Taking Note of the Discontinuance of the Proceeding

1. On 17 June 2021, the International Centre for Settlement of Investment Disputes (“ICSID”) received a request for arbitration from True Blue Development Limited, True Blue Services, Limited, True Blue Management Limited, Polar Palms LLC, and Circle Park Holdings LLC (“the Claimants”) for the institution of arbitration proceedings under the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (“the ICSID Convention”), in respect of a dispute with Grenada (“the Respondent”) (“the Request”). An updated version of the Request was submitted on 24 June 2021, correcting a few typographical errors corresponding to dates.

2. On 8 July 2021, the Respondent wrote to the ICSID Secretariat stating that “[t]he *RfA* is premature and inadmissible because it fails to comply with Article VI (2) of the BIT [regarding the obligation to seek to resolve the dispute by consultation and negotiation and the six-month cooling off period].”

3. The dispute relates to the refurbishment of one of Grenada’s grand old hotels and the later expansion of the project into a condominium resort which was to be operated by the Kimpton Hotels and Restaurant Group.

4. On 9 July 2021, the Secretary-General registered the Request pursuant to Article 36(3) of the ICSID Convention and Rules 6(1)(a) and 7(a) of the ICSID Institution Rules and notified the Parties of the registration. In the Notice of Registration, the Secretary-General invited the Parties to proceed to constitute an Arbitral Tribunal as soon as possible in accordance with Rule 7(d) of ICSID’s Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings.

5. Pursuant to Article 37(2)(b) of the ICSID Convention, Claimants appointed Prof. Horacio Grigera Naón, a national of Argentina, and Respondent appointed Dr. David Berry, a national of Canada and the United States of America, as arbitrators in this case.

6. By letter dated 8 October 2021, the Claimants requested the Chairman of the ICSID Administrative Council to appoint the presiding arbitrator pursuant to Article 38 of the ICSID Convention and Rule 4(1) of the ICSID Arbitration Rules.

7. By Claimants’ letter of 10 October 2021 and Respondent’s message of 15 October 2021, the parties, in the absence of an agreement, informed ICSID that they wished to

Order of the Tribunal Taking Note of the Discontinuance of the Proceeding

proceed with the ballot procedure, pursuant to Article 38 of the ICSID Convention and Rule 4(1) of the ICSID Arbitration Rules.

8. By letter dated 9 November 2021, ICSID provided the parties with a list of six candidates to serve as presiding arbitrator and invited them to complete a ballot form indicating which of the candidates each party would agree to accept as presiding arbitrator.

9. Following the receipt of the parties' respective ballot forms, the Secretary-General informed the parties that the parties had agreed to appoint Ms. Wendy Miles KC as presiding arbitrator, and that ICSID would proceed to seek Ms. Miles' acceptance of her appointment, pursuant to Rule 5(2) of the ICSID Arbitration Rules.

10. Pursuant to Rule 6(1) of the ICSID Arbitration Rules, on 19 November 2021, the Secretary-General informed the parties that all three arbitrators had accepted their appointments and that the Tribunal was therefore deemed to have been constituted as of that date, pursuant to Rule 6 of the ICSID Arbitration Rules. Ms. Ella Rosenberg, ICSID Legal Counsel, was designated to serve as Secretary of the Tribunal.

11. The Tribunal is composed of Ms. Wendy Miles KC, a national of New Zealand, President, appointed by agreement of the Parties following a ballot format; Prof. Horacio A. Grigera Naón, a national of Argentina, appointed by the Claimants; and Dr. David Berry, a national of Canada and the United States of America, appointed by the Respondent.

12. On 17 December 2021, the ICSID Secretariat, acting on behalf of the Tribunal, sent the parties a draft Procedural Order No. 1 for their discussion prior to the first session. The parties provided the comments on 11 January 2022, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

13. On 13 January 2022, the Tribunal held a First Session with the parties via videoconference.

14. On 19 January 2022, the Secretary-General informed the parties that Ms. Anneliese Fleckenstein, ICSID Legal Counsel, had been assigned to serve as Secretary of the Tribunal going forward.

Order of the Tribunal Taking Note of the Discontinuance of the Proceeding

15. On 27 January 2022, the ICSID Secretariat circulated to the parties an updated draft Procedural Order No. 1 and invited the parties to submit their final comments.
16. On 2 March 2022, the Tribunal issued Procedural Order No. 1.
17. On 9 May 2022, the Claimants notified the Tribunal that they had received third-party funding for the pursuit of their claims.
18. Pursuant to the timetable established under Annex B of Procedural Order No. 1, the Claimants filed their Memorial on the Merits on 1 July 2022, together with exhibits C-0001 through C-0118; legal authorities CL-0001 through CL-0079; the witness statements of Mr. Warren Newfield, Ms. Daisy Andall and Mr. Irvin Kessler; and the expert reports of Compass Lexecon, HVS Consulting & Valuation, and Rider Levett Bucknall.
19. On 1 November 2022, the Respondent submitted its Objections to Jurisdiction and Request That They Be Dealt with as Preliminary Questions, together with legal authorities RL-0001 through RL-0037 (“Respondent’s Application for Bifurcation”).
20. On 28 December 2022, the Claimants submitted their Reply to Respondent’s Objections to Jurisdiction and Request that they be dealt with as Preliminary Questions, together with exhibits C-0119 through C-0124 and CL-0080 through CL-0133.
21. By letter dated 25 January 2023, the Tribunal informed the parties that “[u]pon review of the parties’ submissions on bifurcation, the Tribunal has determined that no hearing on bifurcation is necessary. The Tribunal bases its decision on the fact that, as submitted by the Respondent, the issues for resolution are narrow in scope and call for no examination of witnesses and is therefore satisfied that it can make a decision based on the written submissions from the parties.”
22. On 27 January 2023, the Tribunal issued Procedural Order No. 2, denying the Respondent’s Application for Bifurcation.
23. On 30 June 2023, the Respondent submitted its Counter-Memorial on the Merits and Memorial on Jurisdiction, together with exhibits R-0001 through R-0104; legal authorities RL-0038 through RL-0137; the witness statements of Mr. Ronald Theodore and Mr. Alister Bain; and the expert reports of Mr. Anthony Charlton and Mr. Derek Nelson.

Order of the Tribunal Taking Note of the Discontinuance of the Proceeding

24. By letter of 31 August 2023, the parties informed that they have reached a settlement agreement and formally requested that the Tribunal take note, in an order, of the discontinuance of the proceeding pursuant to Rule 43(1) of the ICSID Arbitration Rules.

25. Rule 43(1) of the ICSID Arbitration Rules provides:

If, before the award is rendered, the parties agree on a settlement of the dispute or otherwise to discontinue the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall, at their written request, in an order take note of the discontinuance of the proceeding.

ORDER

26. THEREFORE, in accordance with the parties' request, and pursuant to Rule 43(1) of the ICSID Arbitration Rules, the Tribunal hereby takes note of the discontinuance of the proceeding.

Dated as of 6 September 2023:

[Signed]

Prof. David S. Berry
Arbitrator

[Signed]

Prof. Horacio Grigera Naón
Arbitrator

[Signed]

Ms. Wendy Miles KC
President of the Tribunal