

COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

SCCivApp. No. 132 of 2020

B E T W E E N

RENALD FERGUSON

Intended Appellant

AND

CHARLES EVANS

Intended Respondent

BEFORE: **The Honourable Sir Michael Barnett, P**
The Honourable Madam Justice Crane-Scott, JA
The Honourable Mr. Justice Milton Evans, JA

APPEARANCES: **Appellant appeared Pro se**
Ms. Eugenia Butler, Counsel for the Respondent

DATES: **15 December 2020; 31 May 2021; 15 June 2021**

Civil Appeal – Striking out – Sections 10 and 11 of the Court of Appeal Act - Interlocutory order

By way of generally indorsed Writ of Summons the appellant brought an action against the respondent in the court below as a result of an accident which occurred in 2008. On 1 May 2020, the Respondent filed an application pursuant to Order 18 rule 19 of the Rules of The Supreme Court to have the Writ struck out. After hearing the matter, the learned judge acceded to the application, exercised his discretion and struck out the action. The appellant now seeks to appeal that decision.

Held: notice of appeal is struck out. Costs are awarded to the intended respondent to be taxed if not agreed.

As this is an interlocutory order, leave is required before the court has jurisdiction to hear the matter, no leave was sought or obtained by the intended appellant. As no leave has been obtained, the Notice of Appeal filed on the 9th November, 2020 is a nullity and the notice of appeal must be struck out as the court had no jurisdiction to hear the matter.

Sigma Construction Inc v Birch Development Ltd and others [2019] 95 WIR 166

Williams v Rolle [2017] 1 BHS J No 49

Junkanoo Estates v UBS [2017] UKPC8

Hunt v Allied Bakeries Ltd [1956] 1 WLR 1326

Peace Holdings Limited v. First Caribbean International Bank (Bahamas) Ltd. [2014] 2 BHS J. No. 73

J U D G M E N T

Judgment delivered by the Honourable Sir Michael Barnett, P:

1. The process before us is a Notice of Appeal filed 9 November, 2020.
2. It reads:

“TAKE NOTICE that the Court of Appeal will be moved as soon as PRO SE RENALD FERGUSON can be heard on behalf of the aboved named Appellant on Appeal from the Judgement herein of the Honorable Justice Mr. Keith Thompson given on the 5th. October 2020 where the learned Trial Judge ruled and Ordered that:

[3]. This case has an interesting history if I may say so. It is a 2011 Action. 4.””” 5.”””.

[6]. On June 24th 2020 the Court decided that the matter had lingered and languished far too Long in the system and that it would allow the Plaintiff the opportunity to have the matter Move forward by ordering that an Unless Order be agreed between the Parties. The Parties were to return July 01, 2020 at 1.00 pm to Lay over the Unless Order .

[7]. This is a 2011 action and I was made to understand that at the insistence of the Plaintiff The Unless Order was carried over into 2021. This being Totally unacceptable and not a a good use of Judicial time , the Court then decided that it would entertain

the Summons to strike out after that was put to the Court by the Defendant. The summons to Strike Out was heard on July 28th 2020. 8.”””” 9.””””

[10].The Plaintiff has set out some eleven (11) paragraphs in his reply to the application. In reviewing these arguments the Court is of the view that paragraph 8 that requires attention in this matter.

[11]. Order 18 Rule 19/17 in the 1988 White Book provides: “Para (1), (a) confers upon the Court in express terms powers which Which the Court has hitherto exercised under its inherent justification Where there appeared to be “ “AN ABUSE OF THE PROCESS OF THE COURT“ This term connotes that the process of the Court MUST BE USED BONA FIDE and properly and must not be abused. The Court will Prevent the improper use of its machinery from being used as a means of Vexation and oppression in the process of litigation (See CASTRO V MURRAY (1975) 10 EX. 213.

[12]. The Plaintiff's Conduct of this case has been totally unacceptable. Surely when. One looks at the sample of history of the conduct of this matter by the Plaintiff, It begs the application of Order 31 A Rule 20 (1), (b) which provides.

[13]. Order 31 A Rule 20(1) , (b) provides :-

“20 (1)— In addition to any powers under these rules , the Court may strike out A pleading or part of a pleading if it appears to the Court.

(a)

(b) that the pleadings or the part to be struck out is an abuse of the process of The process of the Court or “ IS LIKELY TO OBSTRUCT THE JUST DISPOSAL OF THE PROCEEDINGS.

[14] In the Courts view there has been more than Obstruction and oppression as against Defendant. Certain affidavits were filed by the Plaintiff even while he had Counsel Retained. The Defendant in every action must know the case he has to meet. (See PHILLIPS V PHILLIPS (1978) 4 Q.B.D.127).

[15].Additionally, the Plaintiff on numerous occasions has filed documents under the Style of RAY REYNOLDS & CO ., RENALD ALLEN FERGUSON, RAY REYNOLDS & CO.#67, THE ROTHUNDER WESTRIDGE ESTATES WESTRIDGE AND OCEAN VIEW DRIVE.

[16].In this regard Section 20 and 21 of the Legal Profession Act 1992 also beg to be Applied .

[17]. Sections 20 and 21 provides:-

“20. (1) Save where expressly permitted by this or any other Act, No unqualified person shall act as a Counsel and Attorney, Or as such sue out any writ or process, or commence , carry On or defend any action , suite or other Proceedings in the Name of any other person or in his own name ,in any court, Or act as Counsel or Attorney in any case Civil or Criminal, To be heard or determined in any Court.

(2) Any person contravening this section is guilty of an offence And liable on summary conviction to a fine not exceeding one Thousand dollars or to imprisonment for a term not exceeding Six months.

“ 21. Any unqualified person willfully pretends to be , or takes or uses Any name , title , addition or description implying that he is Qualified, or recognized by law as qualified, to act as Counsel As Counsel and Attorney, a registered Associate or a legal Executive, is guilty of an offence and liable on summary Conviction to a fine not exceeding one thousand dollars”

[18].A person who wishes to Represent himself pro se can do so , but he or she cannot hold Himself out as an Attorney by drafting documents in the style as was done by the Plaintiff.

[19]. In light of the circumstances and after having taken into account the entire Conduct of this Matter , inclusive as to how much Judicial time has been spent on this matter .I hereby Accede to the Defendant's application to strike the Plaintiff's Reamended Writ of Summons . I also strongly recommend that the Bahamas Bar Association investigate this matter further As to how the Plaintiff held himself out as Counsel and Attorney

many times in this action and If necessary take action against the Plaintiff.

[20]. The Reamended Writ of Summons stands dismissed and costs of the Action to the Defendant To be taxed if not agreed.

For an Order That :

1. The Judgement be Quashed and set aside in its entirety and the Appellants claim as so set So set out in his Re -Amended Writ of Summons proceed to Trial. AND FURTHER TAKE NOTICE that the grounds of this Appeal are: 1. The learned Judge erred and misdirected himself in Law and fact when he found that the Order 18 rule 19,1 (b) and (d) did apply to this case as Scandalous, frivolous and Vexiaous

2. The Learned Judge erred and misdirected himself in Law and fact when he classified a personal injury matter as an abuse of the Process of the Court under Order 18 rule 19, (1) d.

3. The Learned Judge erred and misconducted himself in law and fact when he found that this Personal Injury matter was an abuse of the process and that the Courts machinery was used as a means of vexation and oppression in the process of Litigation. Order18 rule 10/17 which is in contravention of the constitutional rights of having a fair trial.

4. That the Learned Judge erred and misdirected himself in law and fact when he found that the Reamended WRIT of Summons filed was likely to obstruct the Just disposal of the Proceedings which is also a circumvention of the constitution of a right to a fair hearing.

5. That the Learned Judge erred and misdirected himself in Law and fact when he denied the Plaintiff his constitutional rights to recover all of his losses especially in a Personal Injury matter. And denied him his right an Appeal within the Supreme Court as set out by Articles 28 (4) The Enforcement of Fundamental and Rights in the Constitution of the Bahamas and under the Universal Declaration of Human Rights.

6. The Learned Judge erred and misdirected himself in law and fact when he ascertained that certain Affidavits were filed by the

Plaintiff even while he had Counsel, without requesting discovery or evidence but he omitted the Removal of Attorney Notice and Charge of Attorney Notices filed on the records pleadings by the Plaintiff.

7. The Learned Judge erred and misdirected himself in law and fact when he accepted into Court an unauthorized unorthodox and unorganized Replica of the Original Supreme Court File #01238/2011 from the Defense Attorney Mrs. Eugenia Butler without demanding its Authenticity. The same file that had prejudiced the case before it was transferred to him from Justice's Ian Winders Court. And the same file that adjourned the case because of its controversial composition. Of which he could not find the Reamended Statement of Claim himself in that File. And the Judge and his Staff denied the Plaintiff the right to view and inspect this Replica of the Original missing file. Which is a Procedural Impropriety. In order to Prejudice the Plaintiff's case a second time with Bias from the bench.

8. The Learned Judge erred and misdirected himself in law and fact under Paragraph 17. of his Judgment, Section 20 & 21 of the Legal Profession Act of 1992 where he intentionally omitted section 22 which also refers to unqualified Persons preparing documents. He accused the Plaintiff of a crime and A criminal offence by 'defending himself as Attorney and Counsel' without DISCOVERY or proof or evidence and by circumventing his constitutional rights to Act Pro Se. Due to the repeated Negligence of his Attorneys.

9. The Learned Judge erred and misdirected himself in Law and fact when he Classified RAY REYNOLDS & CO as a legal entity or Law firm without requesting an explanation and without proof of collecting funds from another ¢ and without Evidence of a ¢ Billing of any kind ¢ representing another individual for payment. Ray Reynolds and CO is listed as an address for Service. And has a designated trading business license in that name.

10. The Learned Judge erred and misdirected himself in Law and fact when he Arbitrarily overturned his own order to hear the strike Qut Action in replacement of an unauthorized Unless Order by Renald Ferguson but brought about by the Attorneys

acting together ,then strike Out the Unless Order because the date surpassed his retirement date because he wanted to hear this matter himself. He ignored A previous Court Order giving unrestricted access to the Plaintiff to review The Replicas of the Original missing files. The Learned Judge also ignored Promissory Estoppel & Consideration between the Defendants insurance company Bahamas first General Insurance Company and the Plaintiff because they had mad a partial settlement on the Claim.

11. The Learned Judge erred and misdirected himself in Law and fact knowing that the Insurance Company had made several partial settlement payments to facilitate the Damages, he acted Ultra Vires and ignored his Duty of care. The judge ignored the trifector of the PARTIAL SETTLEMENT made between the Insurance Company and the Plaintiff. And ignored that a legal Relationship had already been established due to the Payments made. An Interlocutory Judgement for Quantum of Damages should have been made as he had previously Ordered and the Case fast Forwarded to Assessment of Damages and Expedite and eliminate any further waste of the Court and everybody's time but he entertained hearsay and unproven evidence.

12. The Learned Judge erred and misdirected himself in law and fact by refusing a rehearing of the Application before his Order was Perfected, from the Listing OFFICER. Despite The necessary affidavit and motions being filed, which is a breach of ones Fundamental Human and Constitutional Rights.

13. The Learned Judge Erred and misdirected himself in law and fact by the Omission of the 'SLIGHT NEGLIGENCE' committed by the Defense Attorney through out the case. And by allowing the Insurance company who was being sued by the Plaintiff, to Employ the Former Attorney of the Plaintiff to circumvent the level of damages previously calculated and Assessed from for the Plaintiff.

14. The Learned Judge Erred and misdirected himself in law and fact When he allowed his staff to give misleading and bias information about the Courts Operating procedures to the Plaintiff regarding the Appearance of A Medical Witness and

misleading information after the first Covid19 Lockdown: and on the whereabouts of the Court Files being transferred to the Listing OFFICER Mrs. Archer after the case had been dismissed.

15. The Learned Judge Erred and misdirected himself in law and fact by Ordering the Court's Stenographer to omit his personal and bias comments and accusations to be struck from the Record.

16. Given the circumstances its apparent that the Appellant was denied Natural Justice.

17. All in all the reasons given in the Judgment are respectfully irrelevant to the to the Order 'To Strike out The Reamended Writ of Summons, under Order 18 Rule 19 of the Rules of The Supreme Court of the Bahamas.

18. And any Other Grounds that may appear in the Records once Perfected”.

3. The notice purports to appeal a judgment dated 5 October, 2020 given by Thompson J in the Supreme Court.
4. In fact the Order striking out the Writ was made on 21 July, 2020, although the reasons were not delivered until 5 October, 2020.
5. The judge struck out the Writ upon an application by Summons of the Respondent/Defendant filed on 1 May 2020. The application was made pursuant to Order 18 rule 19 of the Rules of The Supreme Court. The Order of 21 July, 2020 was perfected and filed in the Supreme Court on 4 August, 2020. It said:

“UPON APPLICATION BY SUMMONS filed herein on the 1st day of May A.D., 2020;

AND UPON READING the Affidavit of Clinton Clarke in Support of an Order to Strike Out also filed herein on the 1 day of May A.D., 2020;

AND UPON HEARING Mrs. Eugeina T. Butler of Counsel for the Defendant and Mr. Larell Hanchell of Counsel for the Plaintiff;

IT IS HEREBY ORDERED as follows:

1. That the Plaintiff's Re-Amended Writ of Summons filed on the 11th day of August, A.D. 2016 and all earlier and subsequent pleadings in this action be wholly struck out and or dismissed; and

2. That costs be awarded to the Defendant; the same to be taxed if not agreed."

6. The action in the Supreme Court had commenced as far back as 2011 arising out of an accident which occurred in 2008. The proposed appellant was represented over the years by a number of attorneys. The proposed appellant had done very little to prosecute the action. The judge recited the history of the matter:

"5 The Writ was filed by Ian M. Jupp & Co. and an example of the subsequent filings is as follows:-

- a) **Statement of Claim filed on May 29th, 2012 by RAY REYNOLDS & CO. THE ROTHUNDER WESTRIDGE ESTATES OCEANVIEW DRIVE NASSAU, BAHAMAS;**
- b) **A document entitled "NOTICE OF INTENTION OF PARTY TO ACT IN PERSON IN PLACE OF SOLICITOR REMOVED" was filed May 29th 2012 by RAY REYNOLDS & CO. THE ROTHUNDER replacing Ian M. Jupp.**
- c) **On February 05th, 2013 a summons was filed by RENALD ALLEN FERGUSON RAY REYNOLDS & CO. #67 THE ROTHUNDER WESTRIDGE ESTATES, WESTRIDGE & OCEANVIEW DRIVE (another entity).**
- d) **On February 12th, 2013 a document entitled the same as in (b) above was filed by Renald Allen Ferguson replacing one Jason Romer of Halsbury Chambers.**
- e) **On April 15th, 2013 a summons was filed by Lockhart & Co. seeking an order that the Plaintiff be at liberty to amend the Writ of Summons and Statement of Claim.**
- f) **On May 16th 2013 an order was perfected thereby ordering the relief as sought in the Summons at (e) above.**

- g) A notice of appointment was filed on March 12th, 2013 by Lockhart & Co. replacing the Plaintiff having conduct of the case.**
- h) On July 01st, 2016 a NOTICE OF CHANGE OF ATTORNEY was filed by L.I.F.E. INTEGRATED FINANCIAL & EQUITY on behalf of the Plaintiff.**
- i) On August 31st, 2016 Re-Amended Statement of Claim was filed by L.I.F.E. Chambers on behalf of the Plaintiff.**
- j) On May 30th, 2017 yet another NOTICE OF CHANGE OF ATTORNEY was filed by Cooke-Mclver & Co. replacing Halson D. Moultrie.**
- k) On November 01st, 2017 a document entitled "NOTICE OF REMOVAL OF ATTORNEY FROM RECORD AT INSTANCE OF ANOTHER PARTY" was filed removing Cook-Mclver.**
- l) On April 13th, 2018 a Notice of Change of Attorney was filed by E.D.M. LAW GROUP replacing RAY REYNOLDS & CO.**
- m) On July 25th, 2019 Tara Knowles appeared before me representing the Plaintiff.**
- n) On June 06th, 2020 Renald Ferguson appeared before me pro se.**
- o) On June 24th, 2020 Laurel Hanchell appeared before me representing the Plaintiff.**

6 On June 24th, 2020 the Court decided that the matter had lingered and languished far too long in the system and that it would allow the Plaintiff the opportunity to have the matter move forward by ordering that an Unless Order be agreed between the parties. The parties were to return July 01st, 2020 at 1:00 p.m. to lay over the Unless Order.

7 This is a 2011 action and I was made to understand that at the insistence of the Plaintiff the Unless Order was carried over into 2020. This being totally unacceptable and not a good use of judicial time, the court then decided that it would entertain the summons to strike out after that was put to the court by the Defendant. The summons to strike out was heard on July 21st 2020.

7. After an interpartes hearing at which the intended appellant was represented by counsel, the judge exercised his discretion and struck out the action. It is not necessary for this judgment to set out the reasons.
8. The proposed appellant now seeks to appeal that decision. As I said the Notion of Motion was filed on 9 November, 2020.
9. Sections 10 and 11 of the Court of Appeal Act provides:

“10. Subject to the provisions of this Part of this Act and to the rules of court, the court shall have jurisdiction to hear and determine appeals from any judgment or order of the Supreme Court given or made in civil proceedings, and for all purposes of and incidental to the hearing and determination of any such appeal and the amendment, execution and enforcement of any judgment or order made thereon, the court shall, subject as aforesaid, have all the powers authority and jurisdiction of the Supreme Court.

11. No appeal shall lie —

(f) without the leave of the Supreme Court or of the court from any interlocutory order or interlocutory judgment made or given by a Justice of the Supreme Court except —

(i) where the liberty of the subject or the custody of infants is in question;

(ii) where an injunction or the appointment of a receiver is granted or refused;

(iii) in the case of a decree nisi in a matrimonial cause or a judgment or order in an Admiralty action determining liability;

(iv) in the case of an order in a special case stated under the Arbitration Act;

(v) in the case of a decision determining the claim of any creditor or the liability of any contributory or the liability of any director or other officer under the Companies Act in respect of misfeasance or otherwise; or

(vi) in such other cases to be prescribed as are in the opinion of the authority having power to make rules of court, of the nature of final decisions.

10. The order striking out the action on an application under Order 18 Rule 19 of the Rules of the Supreme Court is an interlocutory order. In **Peace Holdings Limited v. First Caribbean International Bank (Bahamas) Ltd.** [2014] 2 BHS J. No. 73 the court of appeal in determining whether an order is final or interlocutory said:

“20 For the purpose of this application however, we must determine whether the appeal is from an interlocutory order or interlocutory judgment made or given by a Justice of the Supreme Court, and requires leave in order to be heard by this Court.

21 The question whether an order is final or interlocutory was described by Lord Denning MR. in Salter Rex & Ghosh [1971] 2 All ER 865 as 'uncertain', but the Court adopted the 'application test' formulated by Lord Esher MR. in Salaman v Warner and Others [1891] 1 QB 734.

22 That test was applied in Steinway & Sons v Broadhurst-Clegg (1983) Times 25 February where the Court held that judgment in default of defence was interlocutory. It was approved in White v Brunton [1984] 2 All ER 606, as the general rule to be applied in determining whether an order is interlocutory or final.

23 Notably, the 'order test' as formulated in Bozson v Altrincham UDC [1903] 1 KB 547, namely, whether the order as made finally disposes of the rights of the parties, was disapproved in White v Brunton (above) as the general test for when an order was interlocutory or final.

24 Lord Esher's 'application test' is that if the decision whichever way it is given will, if it stands, finally dispose of the matter in dispute, it is final. If, on the other hand the decision if given one way will dispose of the matter in dispute, but if given in the other, will allow the action to go on, then it is interlocutory.”

11. An order on an Order 18 Rule 19 application may or may not dispose of the action. Hence it is an interlocutory order. The point was made by the English Court of Appeal in **Hunt v Allied Bakeries Ltd** [1956] 1 WLR 1326 where Lord Evershed MR said:

“For these reasons (and this decision will now necessarily govern other cases) I hold that orders under Ord. 25, r. 4,

striking out the whole or part of a claim on the ground that it disclosed no reasonable cause of action, or was frivolous and vexatious, or both, and staying all further proceedings, must be treated as interlocutory.”

12. As this is an interlocutory order, leave is required before the court has jurisdiction to hear the matter. This was made clear by the Privy Council in **Junkanoo Estates v UBS** [2017] UKPC 8 where it said:

“5. Under section 11(f) of the Court of Appeal Act, an appeal to the Court of Appeal from an interlocutory order lies only with the leave of the Supreme Court or that of the Court of Appeal. Rule 27(5) of the Court of Appeal Rules provides:

“Wherever under the provisions of the Act or of these Rules an application may be made either to the court below or to the court, it shall be made in the first instance to the court below.”

13. Not only was the Notice of Appeal filed more than 14 days after the Order of 21st July, 2020, no leave of this court was obtained by the intended appellant. Indeed, no leave has ever been sought by the intended appellant. As no leave has been obtained, the Notice of Appeal filed on the 9th November, 2020 is a nullity. The point was made by this court in **Williams v Rolle** [2017] 1 BHS J No 49 where Allen P said:

“Having heard counsel for the respondent on the preliminary objection this morning, namely, the appellant does not have leave to appeal this matter to the Court of Appeal in breach of section 11(f) of the Court of Appeal Act, and having considered the submissions of counsel for the appellant, we find that this appeal is incompetent, inasmuch as no appeal shall lie from an interlocutory decision without such leave. Counsel has admitted that he has not applied for, nor has he obtained, leave to appeal. In the premises, this appeal can-not lie to this court and is a nullity.

See also **Sigma Construction Inc v Birch Development Ltd and others** [2019] 95 WIR 166

14. In the circumstances this notice of appeal must be struck out.
15. When this matter first came before this court, we implored Mr. Ferguson to seek assistance from a lawyer. He has continuously refused to do so, and said at the last hearing that all the lawyers he retained have given him bad advice or represented him poorly.

16. As explained to Mr. Ferguson, matters in the Court of Appeal involve questions of law and it is essential that things are done properly. If he had retained a lawyer as we suggested, they would immediately have made him aware that his appeal could not succeed because in the absence of leave, the court had no jurisdiction to hear the matter.
17. The Notice of Appeal filed on the 9th November, 2020 is struck out. The intended appellant is to pay the intended respondent's cost, to be taxed if not agreed.

The Honourable Sir Michael Barnett, P

The Honourable Madam Justice Crane-Scott, JA

The Honourable Mr. Justice Evans, JA