

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMON LAW & EQUITY DIVISION  
2018/CLE/GEN/00271

BETWEEN

ERIC ANTON NEWBOLD JR.

Plaintiff

AND

ISLAND HOTEL COMPANIES LTD. DBA ATLANTIS

Defendant

Before: DEPUTY REGISTRAR *EDMUND TURNER*

Appearances: Mr. KEITH BELL and TREVOR LIGHTBOURNE for the Plaintiff  
Ms. LAKEISHA HANNA for the Defendant

Hearing Date: 23<sup>rd</sup> June 2020

**J U D G M E N T**

Deputy Registrar TURNER:

1. *The extension of validity of a Writ is subject to being set aside when a relevant factual particular, such as a valid limitation defense exists, but is not referenced at the initial ex-parte application.*

**Brief Facts**

2. On 8<sup>th</sup> March, 2018, the Plaintiff filed a Writ of Summons seeking damages from the Defendant for personal injury. On 28<sup>th</sup> June, 2019, the Plaintiff filed an Ex-Parte Summons and Affidavit pursuant to Order 6, Rule 7 of the Rules of the Supreme Court for an Order that the relevant Writ be renewed for a further period of twelve (12) months. The application was heard before Deputy Registrar Edmund Turner, who granted an Order that the said Writ be extended from 8<sup>th</sup> March, 2019 to 7<sup>th</sup> March, 2020. At the time

of the application for renewal, the Affidavit of Andrea Knowles at no time raised the issue of a limitation period and the fact that the time to commence a cause of action had expired. On 15<sup>th</sup> October 2019, the Defendant filed and served a Summons pursuant to Order 12 Rule 7(1) of the Rules of the Supreme Court seeking to set aside the Order of the Deputy Registrar.

### **Case for the Defendant**

3. The Defendant is arguing that the renewal took place on 28<sup>th</sup> June 2019, some three months subsequent to the date the Writ expired. It was also noted that the Plaintiff did not serve the Writ until 10<sup>th</sup> October 2019, three months and eight days after the renewal Order had been granted. Considering the issue above, reference was made to **Order 6/8/3** of *The White Book*, where it notes, i.e.;-

**'It is the duty of the Plaintiff who issues a Writ, serve it promptly...'**

4. Also, it is seen that the following is particularly noted, i.e.;-

**'In exercising the discretion whether to extend or refuse renewal of the writ, the court is entitled to and to balance the relevant hardships that will be sustained by the Plaintiff and the defendant respectively e.g. that the plaintiff might be left without remedy or that the defendant may suffer as a result of a long delay...'**

5. In considering the balance of hardships, the 'cry' of the Defendant in the current case is that the extension of validity of the relevant writ deprives it of a valid defense, i.e. limitation. If the renewal of the said writ is not set aside, the same will leave the Defendant in a vulnerable legal position.

### **Limitation**

6. It is seen in the **Limitation Act Chapter 83**, section 9(2) that in actions for negligence, personal injury cases, an action ought not be brought after the expiry of three years from the date the cause of action accrued.

7. In the current matter the Plaintiff is mandated to commence his cause of action within three (3) years of the date the cause of action arose, i.e. 14<sup>th</sup> July 2018 and 21<sup>st</sup> December 2018 respectively. From the facts, it can be seen that the Plaintiff did not serve the Writ of Summons within the one (1) year period pursuant to Order 6 rule 7(1). In addition, and of relevance in this matter is the fact that on the date of the Plaintiff's application for the renewal of the relevant Writ, the limitation period to commence an

action had expired. At the ex-parte application for leave to extend the validity of the writ, the same was not brought to the attention of the Deputy Registrar. Reference at this time can be made to the Bahamian case of **Williams v. Stubbs Rahming** (1989) Supreme Court, The Bahamas, No. 1429 of 1987 (unreported), where it is seen in an action for damages for personal injuries where both the validity of the Writ and the limitation period has expired, Thorne J. following **Battersby v. Anglo-American Oil C. Ltd [1945] KB** noted, i.e.:

**‘ the Court would not exercise its discretion in favour of renewing a writ if the effect of doing so would be to deprive a defendant of a right of limitation which had already accrued.’**

8. The above is the correct perspective of the law, considering the current facts in the matter at hand. Also, in making reference to page 32 of the aforementioned case, it is seen that **Lord Goddard** also notes, i.e.:-

**‘To grant the renewal would therefore be to disregard the statute, which no Court has the right to do merely because its operation works hardship in a particular case.’**

9. Hence, to ignore the Limitation Act Chapter 83 would be improper in law and certainly this Court has no right to so.

#### **Jurisdiction to revisit issue**

10. Considering the issue as to whether the Deputy Registrar can revisit the issue regarding the Order filed on 2<sup>nd</sup> July 2019, of particular note is the fact that at the time the application was made for the extension of validity, prejudice to the Defendant in use of a limitation argument was not before the Court in that ex-parte application. Reference at this time can be made to the case of **Farmer et al and Smith CLE/GEN/ 1798 of 2007**. At page 6 of the said judgment Sir Michael Barnett notes, i.e.:

**‘In my earlier judgement, I did note that the Bank of China (Hong Kong) Ltd. V. Chen Jianren [2007] HKEC 2277 the Court extended the time to serve the writ five years after it had expired, but in that case there was no issue that by extending the time the Court would be defeating any limitation defense**

**available to the defendant.'**

11. Hence a similar circumstance exists where at the time the extension was granted, a limitation defense was not in issue. Sir Michael in this case acceded to the Defendant's application and set aside a previous Order made to extend the validity a Writ in that matter.

12. Considering the above, I accede to the Defendant's application and hence the renewal of the Writ of Summons granted on 28<sup>th</sup> June 2019 be set aside and I set aside my Order filed on 2<sup>nd</sup> July 2019.

13. The costs of and occasioned by the application be paid by the Plaintiff to the Defendant to be taxed, if not agreed.



Edmund Turner

Deputy Registrar

9<sup>th</sup> July 2020