

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Action No.2010/CLE/gen/00153

BETWEEN

CLAYTON ARMBRISTER

AND

SHERELLE ARMBRISTER

Plaintiffs

AND

KAREN JOHNSON-KNOWLES

Defendant

RULING

1. This is an application by the Plaintiffs by **Summons filed 16 September 2019** ("Application"). The Summons prays for an order that the Plaintiffs be granted an extension of time to file a bill of costs, but what they are really seeking is an extension of time for the taxation of their costs. These would be the costs of the Action consequent upon the Default Judgment entered in 2011 that is further mentioned below.
2. The application is made under Order 59 rule 14 of the Rules of the Supreme Court and is supported by the Affidavit sworn jointly by the Plaintiffs and filed on 14 June 2019.

3. I heard the Application on the papers, pursuant to the Court's Covid-19 Protocols. Counsel for the Plaintiffs, Mrs. Gia Moxey-Lockhart of Moxey Law Chambers, laid over Skeleton Arguments on 4 March 2021, setting out the grounds, legal arguments and authorities relied upon in support of the Application.
4. Relevant circumstances that the Court must consider for granting an extension of time within which to begin taxation are set out in the Court of Appeal case **Glen Alexander Colebrooke and Bahamas Jehovah's Witnesses v The National Insurance Board, SCCIVApp No.127 of 2008**, at paragraph 15. Those circumstances include: (i) the duration of the delay, (ii) the extent to which it is explained or excusable; (iii) the degree of prejudice suffered by any other party, and (iv) any additional interest.

Duration and Explanation for Delay

5. When this lawsuit was started the Plaintiffs represented themselves. The Writ of Summons was filed on 9 February 2010. After the Writ was served an Appearance was entered by the Defendant, followed by the filing of the Statement of Claim which was served on 4 March 2011. No Defence was ever served. Accordingly, on **25 May 2011 a Judgment in Default of Defence** was filed for \$23,200 in damages plus costs to be taxed if not agreed.
6. In February 2014 the Plaintiffs appointed counsel to act on their behalf, namely Bethel, Moss & Co. Their then counsel proceeded to have the Defendant personally served with the Judgment in Default of Defence on or about 8 May 2015. This was presumably to elicit a reaction from the Defendant since none had been forthcoming from her attorneys of record who had entered the Appearance on her behalf.

7. It does not appear that any further steps were taken by the Plaintiffs' counsel from that time up to the engagement of Moxey Law Chambers, their new and current counsel.
8. I am therefore treating this matter as having two periods of delay in seeking taxation of costs: The first period being when the Plaintiffs were unrepresented, that is to say from 2011 to 2014, and the second period when they were represented by counsel, from 2014 up to the filing of the Application.
9. The explanation for the first period of delay is contained in paragraph 7 of the Plaintiffs' Affidavit: they were unaware of the time limited by the Rules of the Supreme Court for beginning proceedings for taxation. No doubt they were also unaware that such a requirement even existed, although it is clear from the papers filed that they were receiving professional legal guidance since in all respects the form and content of the documents filed, for example the writ itself, the Affidavit of Service and the default judgment, are all regularly and properly drawn. Be that as it may, I accept the explanation for the delay in the first period.
10. In relation to the second period of delay, the only explanation offered is in paragraph 10 of their Affidavit where the Plaintiffs say that the parties made attempts to settle, through their respective counsel. However this only accounts for delay during the year 2014. Furthermore, I understand the case of **Glen Alexander Colebrooke v The NIB** (*supra*) to be specifically stating (at paragraph 32) that negotiations are not a good reason for not complying with the rules. There is no other statement in the Plaintiffs' Affidavit that seeks to address the delay between 2014 and 2019, a lapse of 5 years. Thus I find no satisfactory explanation for the second period of delay.

Degree of Prejudice Suffered by other party

11. The Plaintiffs have asserted that the Defendant has taken no steps in this matter; that attempts at negotiations have proved fruitless, and apparently on that basis

concluded that the Defendant has suffered no prejudice in the delay in the making of their Application (see paragraphs 9, 10 and 11 respectively of their Affidavit).

12. From the entry of the Default Judgment up to the filing of the Summons for an extension of time, the total period of delay is 8 years. In paragraph 34 of the **Colebrooke** case the Court of appeal said that delay may be presumed from circumstances where there is no justification. That seems to be the situation here. Thus while no specific prejudice has been shown – this being effectively an ex parte application where the other side is not represented – the fact of prejudice may be presumed in the circumstances.

13. I do not see that any additional interest arises in this case.

14. For the reasons stated above the application for an extension of time to file a bill of costs is refused. There is no order as to costs.

Dated this 29th day of March, A.D., 2021



Carol D. Misiewicz
Deputy Registrar