

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY SIDE
2019/CLE/gen/NP/00507
2021/FP/CLE/gen/00040**



BETWEEN

**NORRISHER SOPHIA NEWMAN
First Plaintiff**

AND

**NICKY NATASHA FEASTER
Second Plaintiff**

AND

**SHARON LINDA SMITH
Third Plaintiff**

AND

**CELIANN GRANT
Fourth Plaintiff**

AND

**GEORGE DELANCY
Fifth Plaintiff**

AND

**JERMAINE THOMPSON
Sixth Plaintiff**

AND

**CLEMENCIA DANIEL DAVIS
Seventh Plaintiff**

AND

**JOHJANE BRAYNEN
Eighth Plaintiff**

AND

**HATTIE CLARKE
Ninth Plaintiff**

AND

**APEX INTERNATIONAL MARKETING COMPANY LIMITED
Defendant**

BEFORE: The Honourable Petra M. Hanna-Adderley

APPEARANCES: Osman Johnson for the Plaintiffs

HEARING DATES: July 22, 2021 and September 3, 2021

SUBMISSIONS: September 8, 2021

RULING

Adderley, J

Introduction

1. The Plaintiffs' application submitted orally before this Court on July 22, 2021 and September 3, 2021 pursuant to Order 31A, Rule 12 (5) (b), RSC, seeks an Order for the following relief:
 - "An Order that pursuant to Order 31A, Rule 12, (5) (b), Rules of the Supreme Court, and/or the inherent jurisdiction of the Court that the Plaintiffs be granted an Order for Judgment in Default of attendance to Case Management Conference as against the Defendant and on the grounds that the Defendant was duly served at its Registered Office, with Notice of two (2) Case Management hearings on July 22nd 2021 and September 3rd 2021 respectively and failed and/or refused to attend on both occasions."

Statement of Facts

2. By the Specially endorsed Writ of Summons filed herein on April 11, 2019 the Plaintiffs' claims for damages from the Defendant for its failure to pay vacation pay to the Plaintiffs upon their respective terminations contrary to Section 15 (1) (a) and (b) of the Employment Act, failure and/or refusal to provide two (2) weeks' Notice or two (2) weeks pay in lieu of Notice and contrary to Section 29 (1) (a), (b) and (c) of the Employment Act, Unfair Dismissal contrary to Section 34 of the Employment Act, failure and/or refusal to pay the Plaintiffs their respective wages, in the absence of an Order of the Supreme Court confirming the Defendant's insolvency, and contrary to Section 60 (1) of the Employment Act, failure and/or refusal to pay the Plaintiffs their respective wages at regular intervals of not more than one month and contrary to Section 60 (1) of the Employment Act, failure and/or refusal to pay the Plaintiffs their respective wages in a timely manner and with the effect that the respective Plaintiffs were often not paid their wages by the Defendant on working days and in breach of the statutory provision under Section 63 (1), applying deductions to the Plaintiffs' respective salaries in excess of One-fifth of the total amount of wages due to the Plaintiffs for the period in question and contrary to Section 64 (1) of the Employment Act; failure and/or refusal to pay the Plaintiffs the statutory minimum wage and contrary to Section 4 (1) (a) of the Minimum Wages Act, Chapter 321B, special damages in respect of legal fees prior to the filing of the Writ of Summons, interest pursuant to the Civil Procedure (Award of Interest) Act 1992 and costs.

Chronology of Events

3. The Plaintiffs filed an action against the Defendant on April 11, 2019 and by way of a Writ of Summons which was served on the Defendant at its Registered Office Stephen B. Wilchcombe & Co. on July 1, 2019. The Defendant filed a Notice and Memorandum of Appearance to this action on or about July 11, 2019 and thereafter failed to file and serve a Defence within 14 days of service.
4. The Defendant filed applications under Order 2, Rule 2 and Order 18, Rule 19 (1) (c) and (d) by way of Summons filed herein on July 26, 2019 seeking an Order to

set aside the Plaintiffs' Statement of Claim as against the Defendant; and an Order striking out certain paragraphs of the Plaintiffs' Statement of Claim.

5. No steps were taken by the Defendant to have the said Summons listed for hearing and its Counsel of record eventually submitted an application pursuant to Order 63, Rule 5 to have themselves removed from the record in these proceedings, which Order was granted by Justice Ruth Bowe-Darville on January 7, 2021.
6. At the direction of Chief Justice Sir Brian Moree this matter was transferred to the Supreme Court Northern Division and by way of letter dated April 29, 2021 from the Clerk to the Honorable Madam Justice Petra Hanna Adderley, set down for a Case Management Conference on July 22, 2021 at 12:00 noon.
7. Counsel for the Plaintiffs conducted a search for the Registered Office of the Defendant at the Registrar General's Department and determined that the Registered Office of the Defendant is situate at the chambers of Stephen B. Wilchombe & Co. ("the Registered Office"). The Registered Office was served with the Plaintiffs' Notice of Referral to Case Management Conference, filed herein on May 6, 2021, on July 15, 2021 at approximately 3.48 p.m. An Affidavit of Service by Trinity Russell to prove the said process service was filed on July 20, 2021.
8. The Plaintiffs attended at the said Case Management Conference on July 22nd 2021 at 12.00 p.m. The Defendant failed to appear. The Plaintiffs provided evidence to the Court that the Registered Office of the Defendant had been served with due Notice of the hearing. On the basis of the Defendant's non-attendance, Counsel and Attorney for the Plaintiffs submitted an oral application pursuant to Order 31A, Rule 12 (5) (b), Rules of the Supreme Court and requested that the Court enter Judgment in Default of attendance to Case Management Conference as against the Defendant.
9. The Court Ordered that the Plaintiffs file a Notice of Hearing, with a return date September 3, 2021 at 2:30 p.m. for the hearing of the Plaintiffs' application for Judgment in Default of attendance to Case Management, along with evidence in

support of the said application which was to be filed and then served on the Registered Office of the Defendant.

10. The Plaintiffs accordingly filed a Notice of Hearing and Affidavit of Nicky Natasha Forbes-Feaster, with evidence exhibited thereto, on August 27, 2021 and served the said documents on the Registered Office of the Defendant on August 30, 2021, before filing an Affidavit of Service of Osman Johnson on September 2, 2021.

Analysis, Conclusions and disposition

The Law

11. Order 31A, Rule 12 (5), (b) of the Rules of the Supreme Court provides litigants the right to apply to the Court for the following relief:

Order 31A, Rule 12 (3) and (5) (b)

“(3) The judge may dispense with the attendance of a party or representative if upon prior representation the Court is satisfied that such attendance is not necessary.”

“(5) Subject to paragraph (3), if the Court is satisfied that notice of the hearing has been served on the absent party or parties in accordance with these Rules, then — (a) if the claimant does not attend, the Court may strike out the claim; and (b) if any defendant does not attend, the Court may enter judgment against that defendant in default of such attendance. ”

12. Order 61, Rule 5(2)(e) of the RSC provides:

“(1) Service of any document, not being a document which by virtue of any provision of these Rules is required to be served personally, may be effected —

(a) by leaving the document at the proper address of the person to be served; or

(b) by post; or

(c) in such other manner as the Court may direct.

(2) For the purposes of this rule, the proper address of any person on whom a document is to be served in accordance with this rule shall be the address for service of that person, but if at the time when service is effected that person has no address for service his address for the purposes aforesaid shall be —

(a) his post office box, if he has one;

(b) in any case, the business address of the attorney (if any) who is acting for him in the proceedings in connection with which service of the document in question is to be effected; or

(c) in the case of an individual, his usual or last known address; or

(d) in the case of individuals who are suing or being sued in the name of a firm, the principal or last known place of business of the firm within the jurisdiction; or

(e) in the case of a body corporate, the registered or principal office of the body.


(3) Nothing in this rule shall be taken as prohibiting the personal service of any document or as affecting any enactment which provides for the manner in which documents may be served on bodies corporate." (Emphasis mine).

13. Order 31A, Rule 12 (5) (b) creates an obligation on the Parties and the subject Defendant to attend a Case Management hearing, provided that due notice of the hearing has been served on the Parties and on the Defendant in question. Pursuant to Order 61 Rule 5 (2) (e) service of pleadings on the Registered Office of the Defendant amounts to proper service.

14. Mr. Osman Johnson, Counsel for the Plaintiffs, submits and I accept that the Statute does not compel the Plaintiffs to establish any other ground for the application seeking an Order for Judgment in Default of attendance to Case Management, save for to demonstrate to the Court, **"that notice of the hearing has been served on the absent party or parties in accordance with these Rules"**.

15. Evidence of the said Notices of hearing having been duly served on the Defendant was provided to the Court by way of two (2) Affidavits of Service filed herein on July 20, 2021 and September 2, 2021 respectively, in connection with the hearings before the Court on July 22, 2021 and September 3, 2021 respectively. As such, the Plaintiffs have satisfied the Court that they have met the requirement under Order 31A, Rule 12 (5) and are entitled to the Order granting the relief sought herein. Judgment is therefore entered for the Plaintiffs with Damages to be assessed, interest thereon at the statutory rate and the Plaintiffs are awarded the costs of this action to be taxed if not agreed.

Dated the 21st day of January, A. D. 2022


Petra M. Hanna-Adderley
Justice

