

**IN THE SUPREME COURT**

**Common Law & Equity Division**

**BETWEEN**

**SIGNATURE PLANNING INVESTMENT LTD.**

**Plaintiff**

**AND**

**HARMONY MANAGEMENT LIMITED**

**Defendant**

**Before: The Honourable Madam Justice Ntshonda Tynes (Ag.)**

**Appearances: Mr. Osman Johnson for the Plaintiff**

**Mr. Paul Wallace Whitfield for the Defendant**

**Hearing Date: 7<sup>th</sup> November, 2022 (Defendant's Submissions 29<sup>th</sup> November, 2022; Plaintiff's Submissions 5<sup>th</sup> January, 2023)**

**DECISION**

**Tynes, J (Ag.)**

1. This is my Decision on the question of the costs order to be made following the Defendant's application for an extension of time to file and serve its Defence and Counterclaim. The application was made by Summons filed on the 28<sup>th</sup> October, 2022 pursuant to Order 3 Rules 4(1) and 4(2) and Order 31A Rule 18(2)(b) of the Rules of the Supreme Court and under the inherent jurisdiction of the Court. It included a prayer that the costs of the application be costs in the cause.

2. At the hearing on the 7<sup>th</sup> November, 2022, the Plaintiff did not oppose the substantive application but indicated that it would seek an order for costs in its favour. The Defendant was thereupon granted leave to serve its Defence and Counterclaim by the 21<sup>st</sup> November, 2022, which it has done. The Defendant's submissions on the issue of costs were filed on the 29<sup>th</sup> November, 2022. The Plaintiff's submissions were delivered on the 5<sup>th</sup> January, 2023.
3. According to an Affidavit of Service issued on the 7<sup>th</sup> November, 2022, one Debra E. Lambert, on the 5<sup>th</sup> October, 2022, served on the Defendant's Registered office, E. Dawson Roberts & Co. at their office located at Magna Carta Court, Parliament and Shirley Streets Nassau, Bahamas the specially indorsed Writ of Summons filed herein on the 5<sup>th</sup> September, 2022. According to a second Affidavit of Service issued on the 14<sup>th</sup> October, 2022, Sergeant 2706 Corey Rolle also served the Writ on Mr. Damaso Gray, the President of the Defendant's Board of Directors, on the 8<sup>th</sup> October, 2022. No challenge was made by the Defendant as to the service of the Writ.
4. The provisions of section 23 of the Companies Act state that "*Any writ, notice, order or other document required to be served upon a company may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company at its registered office.*"
5. Accordingly, the Writ was effectively served on the Defendant when it was served on its Registered Office on the 5<sup>th</sup> October, 2022. Service of the Writ on Mr. Gray tended only to bring the same to Mr. Gray's attention if he had not received notice already from the Defendant's Registered Office.

6. The Defendant was therefore required to enter an appearance by the 18<sup>th</sup> October, 2022 (Order 12 Rule 4(a) of the RSC) and a Defence by the 1<sup>st</sup> November, 2022 (Order 18 rule 2(1) of the RSC). A Memorandum of Appearance dated the 17<sup>th</sup> October, 2022 was issued on behalf of the Defendant on the 18<sup>th</sup> October, 2022.
7. It is trite law that the two fundamental principles relating to the question of costs are first that costs are in the discretion of the Court and secondly that costs generally follow the event. However, in the case of applications for an extension of time, the provisions of Order 59 Rule 3(4) expressly provide that *“The costs of and occasioned by any application to extend the time fixed by these Rules, or any direction or order thereunder, for serving or filing any document or doing any other act... shall be borne by the party making the application, unless the Court otherwise orders.”*
8. The Defendant submits that the peculiar circumstances surrounding the need for an extension of time in the instant case justify the court exercising its discretion to deviate from the usual order whereby the costs of such an application are borne by the party applying and that an order for costs in the cause ought to be directed.
9. In support of the application, the President of the Defendant’s current Board of Directors, Mr. Damaso Gray, in a supporting Affidavit filed on the 31<sup>st</sup> October, 2022, has proffered, by way of explanation, several reasons as to why additional time was needed in order to file the Defence and Counterclaim. He says that sometime after the 17<sup>th</sup> October, 2022 he provided Defence Counsel with a considerable volume of files, records and papers (totalling several hundred pages in length) relevant to the Defendant’s Defence and Counterclaim. He also referenced difficulty in retrieving the Defendant’s records (which were maintained in electronic form) due to changes in

passwords to several accounts and/ or deletion of records from the electronic system by persons unknown. Thirdly, Mr. Gray explained that due to his own bout of food-poisoning he was rendered physically unable to assist Defence Counsel with information necessary for drafting the Defence and Counterclaim. (No medical certificate was adduced by Mr. Gray. Neither does Mr. Gray indicate whether another of the Defendant's Officers, a Secretary or Vice President for instance, was available to assist Defence Counsel in Mr. Gray's stead.)

10. The Plaintiff's specially indorsed Writ of Summons contains a 5-page Statement of Claim seeking, inter alia, damages for breach of contract. It makes specific and detailed reference to various clauses of a 7-page written Contract purportedly entered into between the parties. The Defendant has responded to the Statement of Claim with a 14-page Defence and Counterclaim denying the allegations made in the Statement of Claim and seeking inter alia damages for breach of covenant by its Counterclaim. In addition to its own detailed responses citing the written Contract between the parties, the Defence and Counterclaim also makes reference to several other written documents including a Lease Agreement and other service contracts between the Defendant and various third parties.
11. Additionally, the Court is cognisant of the fact that the Defendant was also faced with the task of simultaneously responding to the Plaintiff's application for mareva relief, the deadlines for which overlapped with the pleading extension deadline and which the Defendant met as required.
12. While I appreciate that there was a significant amount of material with which Defence Counsel had to come to grips and while I sympathise with Defence Counsel who did

commendable work on behalf of the Defendant in a relatively short space of time, the absence of an explanation as to why no other of the Defendant's officers stepped in to fill the breach in Mr. Gray's absence is an omission which tends to tip the scales in the Plaintiff's favour. This is not a situation in which the Defendant is a sole individual who alone is capable of providing Counsel with any necessary assistance.

13. I am therefore minded to and do direct that the costs of the Defendant's application for an extension of time are to be paid by the Defendant to the Plaintiff to be taxed if not agreed.

**Dated this 9<sup>th</sup> day of January, A.D. 2023**

**Ntshonda Tynes  
Justice (Ag.)**