

COMMONWEALTH OF THE BAHAMAS

2022/CLE/gen/FP/00184

IN THE SUPREME COURT

Common Law and Equity Division

BETWEEN

TIA MARIE KNOWLES

(In her capacity as mother, next of kin and lawful representative of the Estate of  
Telia Tamar Well)

First Plaintiff

AND

THE ESTATE OF TELIA TAMAR WELLS

Second Plaintiff

AND

IJAHMAN WELLS

Defendant

Before: The Honourable Justice Mr. Andrew D. Forbes

Appearances: Mr. Osman Johnson on behalf of the Plaintiffs

Ms. Miranda Adderley on behalf of the Defendant

Hearing Dates: 4<sup>th</sup> and 16<sup>th</sup> November, 2022

DECISION

## FORBES J

### INTRODUCTION

1. This is a brief oral ruling. This matter started out following an unfortunate accident which claimed the life of Ms. Telia Tamar Wells.
2. The Plaintiffs filed a Summons for injunctive relief (“Injunction Summons”) on the 2<sup>nd</sup> November, 2022 to prohibit the husband, the Defendant from “carrying any cremation or other funeral process as it concerns the deceased”. The Plaintiffs also filed a Writ of Summons on the 2<sup>nd</sup> November, 2022 against the Defendant for negligence and misrepresentation.
3. The Court makes note of the following events that transpired leading up to the said hearing:-
  - a. The Plaintiffs wished for the application for the injunction to be heard ex-parte and was advised by the Court to serve the Defendant;
  - b. That by an Affidavit of Service and Service Receipt the Defendant was served on the 2<sup>nd</sup> November, 2022 at 5:06 p.m.;
  - c. That on the morning of the said hearing, the Defendant was being held in police custody however no explanation could be provided to the Court as to the reason for his arrest.
4. The parties appeared before this Court on the 4<sup>th</sup> November, 2022 where the Court heard Counsels respective submissions on the application and central issue i.e. whether the First Plaintiff as the mother of the deceased could oust the Defendant as the husband of the deceased as it relates to the order of priority in administering the deceased’s estate. As Counsel for the Defendant had only been appointed to act on his behalf the Court indicated that it would give the Defendant time to lay over his Submissions and the Plaintiffs time to lay over any additional submissions and return to Court on the 9<sup>th</sup> November, 2022.
5. Due to the passage of Hurricane Nicole, the Supreme Court in Freeport, Grand Bahama was closed from Tuesday the 8<sup>th</sup> November to Thursday the 10<sup>th</sup> November, 2022. The Supreme Court re-opened on the 11<sup>th</sup> November, 2022.

6. However, between the hearing of the Plaintiffs' application on the 4<sup>th</sup> November, 2022 and the subsequent hearing on the 16<sup>th</sup> November, 2022 the following events transpired:-
  - a. The Defendant on November 4, 2022 filed a Notice of Appointment of Attorney;
  - b. The Plaintiffs on the 7<sup>th</sup> November, 2022 filed a Notice of Discontinuance pursuant to Order 21, Rule 2(1) of the Rules of the Supreme Court ("the RSC") discontinuing the action against the Defendant;
  - c. The Plaintiffs on the 7<sup>th</sup> November, 2022 filed a Summons ("Withdrawal Summons") pursuant to Order 21, Rule 6 of the RSC seeking leave to withdraw the Injunction Summons filed on the 2<sup>nd</sup> November, 2022 ;
  - d. The Defendant on the 7<sup>th</sup> November, 2022 filed a Summons ("Strike Out Summons") and Affidavit in Support pursuant to Order 18, Rule 19 (1)(b) and (d) of the RSC seeking to strike out the Plaintiffs Summons for injunctive relief;
  - e. On the 8<sup>th</sup> November, 2022 the Defendant received the remains of the deceased and proceeded with her burial arrangements.
7. The parties once again appeared before the Court on the 16<sup>th</sup> November, 2022 on the Withdrawal Summons whereby the Plaintiffs were seeking leave to withdraw the Injunction Summons previously made.
8. The basis for the withdrawal of the Injunction Summons as surmised from the Withdrawal Summons was that during the interim period between the hearing on the 4<sup>th</sup> November, 2022 and the adjourned hearing date for the 9<sup>th</sup> November, 2022 the parties through communications and meetings sought to settle the matters and hoped to reach a consent position. The Plaintiffs in the Withdrawal Summons has asked that no order as to the costs of and occasioned by that application be made by the Court.
9. Counsel for the Defendant also indicated her intention to proceed with the strike out application. That application also seeks an Order for costs.

## **The Law**

10. Order 21 of the RSC provides:-

“1. A party who has entered an appearance in an action may withdraw the appearance at any time with the leave of the Court.

2. **(1) The plaintiff in an action begun by writ may, without the leave of the Court, discontinue the action, or withdraw any particular claim made by him therein, as against any or all of the defendants at any time not later than 14 days after service of the defence on him or, if there are two or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned.**

(2) A defendant may, without the leave of the Court —

(a) withdraw his defence or any part of it at any time;

(b) discontinue a counterclaim, or withdraw any particular claim made by him therein, as against any or all of the parties against whom it is made, at any time not later than 14 days after service on him of a defence to counterclaim or, if the counterclaim is made against two or more parties, of the defence to counterclaim last served, by serving a notice to that effect on the plaintiff or other party concerned.

(3) Where there are two or more defendants to an action not all of whom serve a defence on the plaintiff, and the period fixed by or under these Rules for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, paragraph (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period. This paragraph shall apply in relation to a counterclaim as it applies in relation to an action with the substitution for references to a defence, to the plaintiff and to paragraph (1), of references to a defence to counterclaim, to the defendant and to paragraph (2) respectively.

(4) If all the parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by producing to the Registrar a written consent to the action being withdrawn signed by all the parties.

3. (1) Except as provided by rule 2, a party may not discontinue an action (whether begun by writ or otherwise) or counterclaim, or withdraw any particular claim made by him therein, without the leave of the Court, and the Court hearing an application for the grant of such leave may order the action or counterclaim to be discontinued, or any particular claim made therein to be struck out, as against any or all of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.

(2) An application for the grant of leave under this rule may be made by summons or motion or by notice under Order 25, rule 7.

4. Subject to any terms imposed by the Court in granting leave under rule 3, the fact that a party has discontinued an action or counterclaim or withdrawn a particular claim made by him therein shall not be a defence to the subsequent action for the same, or substantially the same, cause of action.

5. (1) Where a party has discontinued an action or counterclaim or withdrawn any particular claim made by him therein and he is liable to pay any other party's costs of the action or counterclaim or the costs occasioned to any other party by the claim withdrawn, then if, before payment of those costs, he subsequently brings an action for the same, or substantially the same, cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.

(2) An application for an order under this rule may be made by summons, or by notice under Order 25, Rule 7.

**6. A party who has taken out a summons in a cause or matter may not withdraw it without the leave of the Court."**

11. As provided for above, a party is at liberty to discontinue an action or withdraw a part of it without the leave of the Court if the action is begun by Writ and that such Discontinuance/Withdrawal is made before the defence

is served or within 14 days after its service. However, the said party must pay the other party's costs. **Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice, Chapter 17, "Settling or Withdrawing an Action", pages 241-242.**

12. In The Supreme Court Practice, 1999, Volume 1 on pages 404-405 at 21/6/1 "Effect of rule" it states *"...If the Summons has not been served, leave to withdraw it may be obtained ex parte from the Practice Master who will indorse his leave on the summons. If the summons has been served, and the other party consents, leave to withdraw may also be obtained ex parte from the Practice Master; but if the consent of the other party is not obtained or is refused, leave to withdraw may be sought only at the hearing of the summons, when the Master will deal with the costs occasioned thereby."*

## **Discussion**

### **Notice of Discontinuance**

13. Mr. Osman Johnson, Counsel for the Plaintiffs has not disputed that a Notice of Discontinuance had been filed on the 7<sup>th</sup> November, 2022. Moreover, Mr. Johnson has not disputed that the said Notice of Discontinuance was duly served on the Defendant on the 21<sup>st</sup> November, 2022 as evidenced by an Affidavit of Service filed on the 2<sup>nd</sup> December, 2022.
14. Therefore, as costs are usually in the discretion of the Court and in the absence of any authorities on behalf of the Plaintiffs which persuade this Court that it should depart from the usual costs order the Court hereby orders that the First Plaintiff is to pay the costs of the action to the Defendant to be taxed if not agreed.

### **Notice to Withdraw Injunction Summons**

15. Mr. Johnson has also sought leave by way of Order 21, Rule 6 of the RSC to withdraw the Injunction Summons. The Summons to withdraw was filed on the same day as the Notice of Discontinuance of this action (7<sup>th</sup> November, 2022).
16. The Court gave its preliminary view at the hearing on the 4<sup>th</sup> November, 2022 that the husband is the next of kin and the first in line of priority in accordance with the Inheritance Act and the Probate and Administration of Estates Rules, 2011. However, as Counsel for the Defendant had only been

retained the Court adjourned the matter so that both parties could provide the Court with additional submissions. Due to the intervening events as stated above, (i.e. filing of the Notice of Discontinuance and Notice of Withdrawal of the Summons) the the burial arrangements of the deceased which was the subject matter of the said Injunction Summons was disposed of the deceased's lawful heir.

17. The purpose of an interim injunction is to preserve the status quo until trial of the action. **See Gilbert and Vanessa Kodilinye, Commonwealth Caribbean Civil Procedure, 3<sup>rd</sup> Edition, "Chapter 12, Interim Injunctions", pg 93.** The Plaintiffs have not provided any authorities in support of the position that this Court in the absence of the said Writ of Summons it should and can grant such injunctive relief. Moreover, with the withdrawal of the said action and the events that followed the hearing of the 4<sup>th</sup> November, 2022, there is no unlawful act or some threatened unlawful act whereby the Court should intervene to protect any potential risk or injury or harm.
18. Therefore, as the Plaintiffs filed their Notice of Discontinuance of the action, the Court grants leave to the Plaintiffs to withdraw their Injunction Summons. As costs are usually in the discretion of the Court and in the absence of any authorities on behalf of the Plaintiffs which persuade this Court that it should depart from the usual costs order the Court hereby orders that the First Plaintiff is to pay the costs of and occasioned by this application to the Defendant to be taxed if not agreed.

### **Defendant's Strike Out Application**

19. The Defendant filed his application to strike out the Plaintiffs' action pursuant to Order 18, Rule 19(1)(b) and (d) of the RSC on the 7<sup>th</sup> November, 2022.
20. The Court notes that the Plaintiffs Notice of Discontinuance and the Defendant's Strike Out application were filed on the same date. However, as the Court has already considered that the Plaintiffs Notice of Discontinuance of the Action ended the instant matter, granted the Plaintiffs leave to withdraw their Injunction Summons, the Court is of the view that there is no need to consider the Defendant's application to strike and that Summons is hereby dismissed. As the Court has awarded costs to the Defendant as it relates to the Plaintiffs Notice of Discontinuance and Notice of Withdrawal

the Court makes no order as to costs following the dismissal of the Defendant's application to strike out.

Dated the 15<sup>th</sup>, 2023

*Handwritten signature of Justice Andrew Forbes*

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Justice Andrew Forbes