

COMMONWEALTH OF THE BAHAMAS

2018/CLE/gen/00211

IN THE SUPREME COURT

Common Law & Equity Division

IN THE MATTER of The Arbitration Act, 2009 of the Statute Laws of the Commonwealth of The Bahamas.

AND IN THE MATTER of an Intended Arbitration between Nassau Laboratory Partners (a firm) and Doctors Hospital Health System Limited, formerly Doctors Hospital (1986) Limited.

BETWEEN

NASSAU LABORATORY PARTNERS (a firm)

Plaintiff

AND

**DOCTORS HOSPITAL HEALTH SYSTEM LIMITED
formerly DOCTORS HOSPITAL (1986) LIMITED**

Defendant

BEFORE The Honourable Madam Justice Renae McKay

APPEARANCES: Mr. Raynard Rigby with Mr. Christopher Francis for the Defendant
Mr. Wayne Munroe QC with Ms. Tommell Roker for the Plaintiff

HEARD ON: 16th April A.D. 2019

RULING

McKay J.

Application

1. This is an application by the Defendant by Summons issued on the 28th day of December, A.D. 2018 for an Order discharging the Exparte Interim Injunction granted on the 28th day of February 2018 and for the Defendants costs. The parties to this application have relied on affidavits set out in their written submissions tendered in this matter,

2. I hasten to say that the prayer of the Summons fails to acknowledge that at an interpartes hearing on the 29th day of March, 2018 the original exparte injunction was continued subject to agreement of the parties on three conditions. Notwithstanding this oversight I treat this application as an application to set aside the modified as well as the original interim injunction.

Background

3. I adopt the background as set out in the written submission of the Defendant which is not contested by the Plaintiff in the following terms subject to the addition of the hearing of the 16th April, 2019.

- a. Dr. Conville Brown (“CB”), Dr. Henry Coleman (“HC”) and Doctors Hospital Health Systems Limited, formerly Doctors Hospital (1986) Limited (“DH”), entered into a partnership, Nassau Laboratory Partners (“NLP”), by way of a General Partnership Agreement dated the 9th day of January, 1996 (“the GPA”).
- b. NLP operates a cardiac catheterization laboratory and is governed by the GPA and the *Partnership Act, 1904*, Chapter 310, Statute Laws of The Bahamas (“PA”).
- c. CB and HC each hold a 45% shareholding in NLP, whereas DH holds a 10% interest.
- d. By virtue of clauses 4 and 7(b) of the GPA, NLP occupies and operates its laboratory from premises situate in Doctors Hospital.
- e. Clause 5 of the GPA expressly states that the partnership “**shall.....terminate on the date that is twenty (20) years thereafter,**” that is **8th January, 2016.**
- f. In a letter by CB dated 6th December, 2015 the duration of the partnership was purportedly extended by a majority shareholder vote (CB and HC) for a further 3 year period, from 9th January, 2016 to 8th January, 2019.
- g. It is DH’s contention, however, that in accordance with the aforesaid Clause 5 of the GPA, the partnership terminated on the 8th day of January, 2016 by effluxion of time, and thereafter in accordance with section 28 of the PA continued as a partnership at will.
- h. On 28th February, 2018 an Injunctive Order was granted restraining DH from disturbing NLP from its quiet enjoyment and possession of the laboratory situate at Doctors Hospital.
- i. Under cover letter by CB dated 26th December, 2018 DH was provided Minutes of Meeting held 17th December, 2018 wherein the duration of the partnership was purportedly extended by a majority shareholder vote (CB and HC) for an additional five year period, from 8th January, 2019 to 7th January, 2024.
- j. On 27th December, 2018 DH terminated the partnership at will effective 8th January, 2019 by issuance of a Notice of Dissolution in accordance with the

relevant provisions of the PA.

k. DH now makes application for the aforesaid Injunctive Order to be discharged and that the affairs of NLP be wound up in accordance with the issued Notice of Dissolution, or alternatively, that the Court make an order to dissolve the partnership pursuant to section 36(d) and/or 36(f) of the PA.

4. The Defendant says that the interim injunction ought to be discharged on the basis that the partnership agreement is no longer current having expired by the effluxion of time. The Defendant argues that the partnership continues as a partnership at will and falls to be dissolved for the reasons set out in the arguments which amount to misconduct on the part of the Plaintiff and that it is just and convenient for the partnership to be dissolved.

5. The Plaintiff counters that the issue of whether the partnership is still current is a matter for the arbitrator. The Plaintiff further argues that the partnership agreement was validly extended in accordance with Article 16 of the Agreement. The Plaintiff then argues that in accordance with the terms of the agreement the agreement can then only be terminated in accordance with Clause 26 of the Agreement. If they are wrong the Plaintiff argue that there is no default by the Plaintiff and that it is not just and convenient to dissolve the partnership.

Discussion

6. I remind myself that this action is one for the grant of an injunction in aid of an arbitration.

7. The parties having chosen arbitration as the dispute resolution process it is not for this Court to resolve any dispute between them. I hold that the relevant question is whether there is a dispute that is properly subject to the arbitration clause in the Partnership Agreement. If there is such a dispute then the proper forum for resolution of that dispute is arbitration. At one point when the Defendant was represented by Mr. Farquharson of Graham Thompson & Co. the parties had intimated that they might choose to submit their dispute to this Court for resolution. In the end there was no agreement to submit the dispute to the jurisdiction of this Court.

8. I find that there is a dispute as to whether the partnership is still extant. This being so there is an issue that must be decided by arbitration which is the dispute resolution process agreed by the parties.

9. I am fortified in this view by the fact that even if the agreement came to an end by the effluxion of time as the Defendant alleges and continued as a partnership at will the Partnership Agreement's arbitration clause would still be applicable by virtue of section 28 of the Partnership Act.

10. As I find that there is a dispute that must be disposed of by arbitration I do not propose to treat at length with the parties submissions as to how the Court ought to dispose of the issue if it were properly a matter to be resolved by this Court. In doing so no disrespect for the industry of Counsel on both sides is intended or should be taken.

11. If I am wrong in my principal finding having seen the witnesses and considered the documentary evidence I found Dr. Conville Brown to be a witness of truth on the issue to which

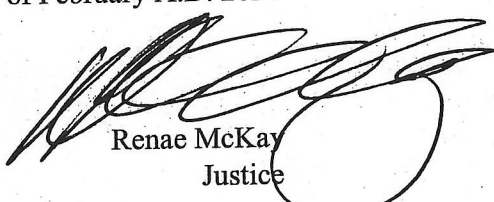
he spoke. Regrettably the Defendant did not lead any evidence from Dr. Charles Diggis who would be the individual most able to speak to the issue on which there was any dispute.

12. I did not find any default by the Plaintiff as asserted by the Defendant. It was clear that the parties operated during the period of the agreement up to the events that resulted in this litigation in a completely appropriate and professional manner. It is noteworthy that complaints such as there are all arose when the Defendant was and is seeking to resist the variation of the termination date of the partnership agreement.

13. As I see it the issue is really the commercial terms on which the partnership is to be terminated in accordance with what might be found by the proper forum to be applicable terms of the agreement.

14. In the circumstances I dismiss the application by the Defendant by its Summons filed on the 28th December, 2018. The Defendant is to pay the Plaintiff's costs of the application to be taxed if not agreed.

Dated this 11th day of February A.D. 2020


Renae McKay
Justice