

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2019/CLE/gen/00260

B E T W E E N

CHERELLE CARTWRIGHT

Claimant

AND

SAPODILLA OF WEST BAY LTD.

Defendant

Before: Deputy Registrar Mr. Renaldo Toote
Appearances: Syann Thompson-Wells for the Claimants
Cheryl Whyms for the Defendant
Hearing dates: *[Heard on the Papers]*

RULING

Toote, Deputy Registrar

[1.] This ruling addresses whether to set aside an Order issued on 10 August 2021, which extended the validity of a Writ of Summons.

Background

[2.] The Plaintiff, Cherelle Cartwright, filed a specially endorsed Writ of Summons on 4 March 2019, seeking compensation for injuries, loss, and damage allegedly sustained at the Defendant's restaurant on 16 July 2016. However, the Writ was not served within the prescribed time and subsequently expired on 4 March 2020.

[3.] On 14 July 2021, the Plaintiff filed an ex parte application, resulting in the Writ's renewal for 12 months, and a further extension of 7 months until 1 October 2021. On 18 October 2021, the Defendant filed a Summons to set aside this Order, arguing that the Plaintiff failed to provide sufficient reasons to justify the Court's discretion for extending the Writ's validity beyond the original 12-month period.

[4.] Despite this, on 30 March 2022, the Plaintiff obtained a Default Judgment against the Defendant, followed by a Notice of Appointment of Assessment of Damages on 29 June 2022. The Defendant renewed its Summons on 29 July 2022 to set aside the Order extending the Writ's validity.

Issues

[5.] The primary issue before the Court is whether the Plaintiff provided sufficient reasons to justify the Court's discretion in extending the Writ's validity beyond the original period.

Legal Framework

[6.] For the avoidance of any doubt, the instant issue arose prior to the enactment of the Civil Procedure Rules, 2022. Therefore the Court must turn to the Rules of the Supreme Court, 1978 to determine any action taken prior to 1 March 2023.

[7.] The extension of the Writ's validity is governed by Order 6 Rule 7 of the Rules of the Supreme Court 1978. According to *Charles, J.* (as she then was) in **Jared Rosen (Executor for the Estate of the late Raymond Donat Charron Jr.) v Lottie Mae Charron and another** [2020] 1 BHS J. No. 1, an application to extend the validity of a writ must be made within the original validity period or within a 12-month extension. Exceptional circumstances may allow for further extensions, particularly where the interests of justice require it.

[8.] Under Order 3 Rule 4, the Court may extend the period for any required or authorized act in proceedings, even if the application is made after the expiration of that period. However, to justify an extension, the applicant must provide good reason and a satisfactory explanation for the delay.

Discussion

[9.]The Plaintiff supported her original *ex parte* application with an affidavit filed on 14 July 2021, detailing the difficulties she faced with her former attorney, Floyd Watkins. She highlighted his health issues and logistical challenges related to the COVID-19 pandemic, which impacted his ability to serve the Writ.

[10.]The Plaintiff further stated that Attorney Watkins mistakenly named the wrong Defendant in the initial action and assured her that the correct papers would be filed promptly. However, it was later discovered that the Writ of Summons, although filed, had never been collected or served on the Defendant by Attorney Watkins.

[11.]In considering the explanation provided by the Plaintiff, I refer to the local decision in **Canadian Imperial Bank of Commerce v Wells et al** BS 2013 SC 47. In that case, the Court considered whether there was good reason for a delay and whether granting an extension would prejudice the other party. The Court determined that the defendants had justified the delay and that potential prejudice to the plaintiff was outweighed by the circumstances.

[12.]Similarly, in this case, I find the Plaintiff's explanation for the delay to be sufficient. The delay was primarily due to her attorney's health issues and the logistical difficulties posed by the pandemic. Additionally, the Plaintiff took all reasonable steps to ensure the matter progressed within the required timeframes.

Conclusion

[13.]Given the circumstances, the Plaintiff has provided good and sufficient reasons to justify the extension of the Writ's validity. Moreover, the Defendant's application to set aside the Order is procedurally flawed as they failed to enter a formal appearance before the Court.

[14.]In the absence of any formal appearance before the Court whether it be conditional or unconditional, the Plaintiff rightly entered a default judgment against the Defendants. The filing of only a summons without any formal appearance before the Court is wholly irregular which warrants the failure to be recognized before the Court.

[15.]Therefore, the Defendant's Summonses filed on 29 July 2022 and 18 October 2021 are dismissed. Costs are awarded to the Plaintiff, to be taxed if not agreed.

Dated this 18th day of September 2024

Renaldo Toote

Deputy Registrar