

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

Common Law and Equity Division

2023/CLE/gen/00670

IN THE MATTER OF the properties known as the Four (4) Darby Islands and being Big Darby Island, Little Darby Island, Guana Cay, Betty Cay and which are owned by Darby Shores Ltd.

AND IN THE MATTER OF Sections 23, 25, 25A and 25C of the Real Property Tax Act (Chap. 375)

AND IN THE MATTER OF Sections 81, 278, 279 and 280 of the Companies Act 1992 (Chap. 308)

B E T W E E N

WILLIAM LAMAR CHESTER

Claimant/First Applicant

AND

DARBY SHORES LTD.

First Defendant

WILLIAM GORDON CRICHTON COOK, JR.

Second Defendant

RICHARD HENRY DAVIS

Third Defendant

AILLEN MARTY

Fourth Defendant

WILLIAM SAEGER

Fifth Defendant

Before: **The Honourable Madam Senior Justice Deborah E. Fraser**

Appearances: **Mr. Damien Gomez K.C. and Mr. Jacy Whittaker for the First Applicant/Claimant**

Mr. Christopher Jenkins K.C. Mr. Ramonne Gardiner, and Mr. McFalloughn Bowleg for the First, Second and Third Defendants

Mrs. Krystal Rolle K.C. and Mr. Darron Cash for the Fourth and Fifth Defendants (did not participate in proceedings)

Mr. V. Moreno Hamilton for Mr. Lindsey John Cancino and Ms. Marcia Woodside the Court Appointed Joint Receivers and Managers of Darby Shores Limited/Second and Third Applicants

Hearing Date: **Heard on the Papers**

Contempt of Court - Breach of Court Order – Disobedience of Court Order Criminal Standard of Proof – Beyond a Reasonable Doubt – True Meaning and Intendment of Court Order – Purported Actions of alleged Contemnor in breach of Court Order – Clear Evidence Beyond a Reasonable Doubt – Public Policy

RULING

FRASER, SNR. J:

- [1.] This is an application brought on behalf of Mr. William Lamar Chester (“**the Claimant**”) against the First through Third Defendants (“**the DSL Parties**”) alleging they are in breach of an order of the Court dated 29 August 2023 and should thus be held in Contempt of Court.
- [2.] The Receivers of Darby Shores Limited have also filed a “Notice of Objection” (an application not recognized by the Supreme Court Civil Procedure Rules, 2022 – “**CPR**”) relating to alleged contempt of the DSL Parties and have lodged submissions against the First to Third Defendants in relation to the Notice of Objection.

Background

- [3.] The Claimant/Applicant (“**Claimant**”) is a shareholder, alleged creditor, former director/officer of Darby Shores Limited (“**DSL**”).
- [4.] The First Defendant is a joint venture company that owns and manages four islands and/or cays in the Exuma chain of islands known as Big Darby Island, Little Darby Island, Guana Cay and Betty Cay (“**the Darby Islands**”).
- [5.] The Second, Third and Fourth Defendants were all directors and shareholders of DSL responsible for its management and operation.
- [6.] The Fifth Defendant is also a shareholder of DSL.
- [7.] The Receivers/Second and Third Applicants (“**Receivers**”) are the Joint Receivers and Managers of the Darby Islands.
- [8.] In or about 2010, the Darby Islands began accruing real property taxes. In response, DSL sought to sell a few of the islands and use the proceeds from sale to settle the taxes. A total of about \$9,203,894.50 in real property taxes was due and owing at the material time.

[9.] On 10 July 2023, due to the mounting real property tax sums and demand notices from the Department of Inland Revenue (“**DIR**”), the shareholders of DSL agreed to sell the Darby Islands.

[10.] The Second Defendant, as President of DSL, signed an exclusive listing agreement with Coldwell Banker Lightbourn Realty on 17 July 2023 relating to the sale of the Darby Islands. It was marketed for \$44,500,000.00.

[11.] On 09 August 2023, DIR served its final demand on DSL in relation to the outstanding real property taxes.

[12.] By Notice of Application filed 11 August 2023, the Claimant sought orders declaring that the Defendants were acting in bad faith and mismanaging Darby Shores by allegedly failing to pay real property taxes owed to the Department of Inland Revenue in the sum of \$9,203,894.30.

[13.] By an Ex Parte Order filed on 29 August 2023, Lindsey John Cancino and Marcia Woodside were appointed as Joint Receivers over the Darby Islands (“**Ex-Parte Order**”). The body of the Ex-Parte Order reads as follows:

“...A. IT IS ORDERED and DIRECTED that, subject to the TERMS and CONDITIONS of the Order, Lindsey John Cancino of Nassau, The Bahamas and Marcia Woodside of Nassau, The Bahamas, both impartial and qualified individuals, be and are hereby appointed as Joint Receiver-Managers over the Four (4) Darby Islands, namely Big Darby Island, Little Darby Island, Guana Cay, and Betty Cay and being the property of Darby Shores Ltd. (“the Assets”) and each of them for the purpose of resolving the outstanding real property taxes affecting the Darby Islands with the Inland Revenue Department of government of The Bahamas by taking charge of the Asset and taking charge of the process of the marketing, advertising and negotiating of the Darby Islands for a proposed sale or any one or more of them, or developing a plan for financing to settle the taxes, or coming up with any other plan, matter or thing that will cause a settlement of the taxes and prevent the Darby Islands being subject to a forced Bahamas government sale at auction, or other governmental confiscatory relief.

(1) Power and Duties of the Receivers and Joint managers

The Joint Receivers-Managers:-

(a) shall take possession and control of the “Assets” but the Assets shall not be distributed, encumbered, sold, assigned, financed, leased or parted with until further Order.

(b) are authorized to collect, manage preserve, secure and protect the Assets under their control to the best of their abilities and in accordance with the law.

(c) are granted all necessary powers to carry out their duties effectively, including but not limited to the power to execute documents, manage financial

transactions, and make necessary decisions to protect the Assets under their supervision.

(d) Shall submit regular reports to this court, detailing the status of the assets, any action taken, and any major developments in the matter.

(e) Shall apply to the court for approval of payments to all persons including creditors and shareholders.

(f) Shall ensure that any act required or authorized under this Order is to be done by all the Joint Receiver-Managers

(2) Duration of Appointment – This Order shall remain in effect until further notice or order, or until such time as the Joint Receiver-Managers have fulfilled their responsibilities and have been properly discharged by this court.

(3) Compensation: - The Joint Receiver-Managers shall be entitled to reasonable compensation for their services, subject to the approval of this court.

(4) "Cooperation of Parties: All parties involved in this case are hereby ordered to cooperate fully with the Joint Receiver-Managers and provide any necessary assistance or information required for the proper execution of their duties. In particular; all of the Respondents, their agents and business advisors including but not limited to Mr. Roland St. Louis, Heather Lightbourn and Coldwell Banker Bahamas shall provide the Joint Receiver – Managers with all Darby Island information on prospective sales, any ongoing or planned negotiations, potential buyers and contracts immediately on being served with a copy of this Order.

(5) Security – The Joint Receiver-Managers are not required to give Security."

[14.] Based on tension and disagreement amongst the shareholders relating to the value of the Darby Islands, they each sought legal advice from different counsel on the best way forward. A flurry of applications were subsequently filed in these proceedings by the parties relating to the Darby Islands.

[15.] Based on the failure of DSL to settle the outstanding taxes, the DIR moved to sell the Darby Islands by its Power of Sale.

[16.] On 18 July 2024, the DSL Parties filed an urgent application requesting, inter alia, (i) leave to commence Judicial Review Proceedings against the DIR relating to its decision to sell the Darby Islands and (ii) an interim injunction preventing any purported sale of the Darby Islands by the DIR. On 31 July 2024, Justice Darron Ellis delivered a ruling acceding to the DSL Parties' application ("**the Ellis Ruling**").

[17.] Prior to any of the substantive applications being heard, on 30 September 2024, the Claimant filed a "Notice of Preliminary Objection" alleging that the First through Third Defendant breached the terms of the Ex-Parte Order.

[18.] On 02 October 2024, the Receivers also lodged a separate “Notice of Objection” relating to the DSL Parties’ alleged breaches of the terms of the Ex-Parte Order.

Issue

[19.] The Court must determine whether or not the First through Third Defendants are in Contempt of Court.

Evidence

Claimant’s Evidence

[20.] The Claimant seeks to provide evidence through his submissions with no filed affidavit properly placing any evidence before the Court. Though I note a myriad of correspondence sent to the Court by email, this does not amount to evidence, as such ought to be placed in an affidavit and filed, should same wish to be relied on by a party in a formal application. As no affidavit has been filed on behalf of the Claimant relating to this application, no evidence from the Claimant is properly before me.

Receivers’ Evidence

[21.] Similarly, I have not seen any filed affidavit relating to the Receiver’s application for alleged Contempt of Court by the First through Third Defendants. Again, the Court’s email has been inundated with a flurry of correspondence by counsel, however any correspondence which the Receivers seek to rely on was not reduced into a filed affidavit. Consequently, there is no evidence from the Receivers relating to this application which I can review and consider.

First to Third Defendants’ Evidence

[22.] The First to Third Defendants filed the Affidavit of Khaliq Martin on 23 September 2024. Essentially, the affidavit provides evidence that Mr. Christopher Jenkins K.C. (“**Mr. Jenkins K.C.**”) kept all parties apprised of all actions and efforts made by the First to Third Defendants seeking the best price for the Darby Islands and preventing the DIR from proceeding with a sale of the Darby Islands. There is also evidence of Mr. Moreno Hamilton (counsel for the Receivers) requesting that Mr. Jenkins K.C. provide clarity on certain issues relating to the DSL Parties’ course of action (from an email dated 17 July 2024). Mr. Jenkins K.C. provided a comprehensive response to the queries presented by Mr. Hamilton by email dated 17 July 2024. The communication was done through numerous email correspondence (which are exhibited to the affidavit). There is also evidence by letter dated 09 July 2024 from Mr. Jenkins to all the parties relating to the DSL Parties’ intention to initiate Judicial Review Proceedings, a request for an interim injunction to prevent the sale of the Darby Islands by the DIR and a request for all parties to join in or alternatively, support the application.

[23.] The First to Third Defendants also filed the Second Affidavit of Khaliq Martin on 03 October 2024. The affidavit exhibits correspondence among counsel for all parties. The exhibits include: (i) A letter dated 24 September 2024 from the Claimant's Counsel to the DSL Parties' counsel demanding disclosure of, inter alia, all documents relating to the Judicial Review Proceedings and an explanation as to why the Claimant was excluded from certain correspondence with all other parties in the matter; (ii) A letter dated 26 September 2024 from the Claimants Counsel to the DSL Parties' providing, an offer to buy-out the Claimant's 12.5% interest in DSL, a demand for, inter alia, disclosure of all documents relating to the Judicial Review Proceedings lodged by the DSL Parties; (iv) a letter dated 30 September from the Claimant's counsel to the clerk of this Court outlining an allegation of contempt of court on the part of the DSL Parties for alleged breaches of the Ex-Parte Order by, inter alia, disregarding the Ex-Parte Order by initiating Judicial Review Proceedings without involving the Receivers. According to the letter, this breaches the order as it is the Joint Receivers with exclusive authority to manage and resolve the outstanding real property taxes and to take any necessary legal actions to prevent a forced sale of the Darby Islands; and (v) email correspondence amongst counsel relating to the Darby Islands and the way forward.

[24.] The Second Affidavit of Khaliq Martin also had, inter alia, letters dated 30 September 2024 and 03 October 2024 from the Claimant's counsel to the Clerk of this Court alleging contempt by the DSL Parties for, inter alia, their failure to disclose all documents relevant to the Judicial Review proceedings.

Law, Discussion and Analysis

Preliminary Matters

[25.] **Rule 11.6 of the CPR** makes it clear the form applications are to take in civil proceedings. Such can be dispensed with (and made orally) by the Court or can be waived if permitted by a rule or Practice Direction (Rule 11.6 (2)(a) and (b) of the CPR). Based on the serious allegations being made by the Claimant and Receivers, the Court found it appropriate to proceed with the application, despite those parties not complying with the correct form of application as prescribed under the CPR.

[26.] Further, **Rule 11.9 of the CPR** makes it patently clear that evidence sought to relied on by a party in an application must be placed in an affidavit (unless otherwise provided by Court Order, Practice Direction or a rule).

[27.] Counsel should ensure compliance with rules of court to ensure matters proceed and are dealt with as fairly, expeditiously and concisely as possible.

Whether or not the First through Third Defendants are in Contempt of Court?

[28.] I have read and considered the submission of all parties in this application. I will now outline the law and provide my analysis of the evidence.

[29.] As the Claimant's counsel correctly submits, the Court has a duty to ensure that its orders are obeyed and should not entertain any applications by parties who are in contempt. This was established in the well-known case of **Hadkinson v Hadkinson** [1952] P 285 ("**Hadkinson**"), where the Court opined:

"It is the plain and unqualified obligation of every person against, or in respect of whom, an Order is made by a Court of competent jurisdiction, to obey it unless and until that Order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an Order believes it to be irregular or even void...

Such being the nature of this obligation, two consequences will, in general, follow from its breach. The first is that anyone who disobeys an Order of the Court (and I am not now considering disobedience of Orders relating merely to matters of procedure) is in contempt and may be punished by committal or attachment or otherwise. The second is that no application to the Court by such a person will be entertained until he has purged himself of his contempt....The rule, in its general form, cannot be open to question. There are many reported cases in which the rule has been recognised and applied and I need refer only to (Garstin v. Garstin 4 Swaby & Tristram, 73) and (Gordon v. Gordon 1904 Probate, 163)...

...such exceptions is that a person can apply for the purpose of purging his contempt and another is that he can appeal with a view to setting aside the Order upon which his alleged contempt is founded; neither of those exceptions is relevant to the present case. **A person against whom contempt is alleged will also, of course, be heard in support of a submission that, having regard to the true meaning and intendment of the Order which he is said to have disobeyed, his actions did not constitute a breach of it;** or that, having regard to all the circumstances, he ought not to be treated as being in contempt. The only other exception which could in any way be regarded as material is the qualified exception which, in some cases, entitles a person who is in contempt to defend himself when some application is made against him (see e.g. Parry v. Ferryman — referred to in the notes to Chuck v. Cremer, 1 Cooper 205)...

It is a strong thing for a Court to refuse to hear a party to a cause and it is only to be justified by grave considerations of public policy. It is a step which a Court will only take when the contempt itself impedes the course of justice and there is no other effective means of securing his compliance. In this regard I would like to refer to what Sir George Jessel, M.R. said in a similar connection in (In re Clements v. Erlanger 46 Law Journal, Ch. 375, page 382): "I have myself on many occasions had to consider this jurisdiction, and I have always thought that, necessary though it be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men's rights, that is, if no other pertinent remedy can be found. Probably that will be discovered after consideration to be the true measure of the exercise of the jurisdiction". Applying

this principle I am of opinion that the fact that a party to a cause has disobeyed an Order of the Court, is not of itself a bar to his being heard, but if his disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the Court to ascertain the truth or to enforce the Orders which it may make, then the Court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed.

[Emphasis added]”

[30.] This Court recently dealt with contempt proceedings. In **Dr. Paul D. Fuchs v Lockhart & Co et al – 2023/CLE/gen/00763**, after considering *Hadkinson*, I made the following pronouncements at paragraph 28:

“[28] ...It is the role of the Court to ensure orders are complied with and not permit persons who voluntarily choose to disobey an order to make applications while flaunting their disregard of court orders – I will not allow it.

[31.] In the Court of Appeal decision of **The Confederation of North, Central America and Caribbean Association Football v. Lisle B Austin (“CONCACAF”)** - Civil Appeal 90 of 2011; CAIS 90 of 2011, John and Conteh JJA made the following pronouncements at paragraph 44, 58 and 60, 79, 80:

“[44] **Contempt of Court is, a grave matter with serious consequences for the contemnor; but the law requires that proof of it be established by clear evidence beyond reasonable doubt. Other than a manifest and clear contempt in the face of the Court, contempt of Court is not to be inferred or assumed. It must be established by clear evidence so as to make the court feel sure that there has been an irrefutable disobedience of its Orders...**

[58] **In our view, to ground any allegation or finding of contempt in the circumstances of the case, it was important also to analyze the language of the Order itself alongside the acts of the appellant claimed to be a contumelious disobedience of that Order. Nothing short will suffice...**

[60] **The contempt which had to be established legally, we think, lies in the disobedience of the ex parte Order by the appellant. This has to be proved to the criminal standard; that is, to make the judge feel sure...**

[79] THE POSITION OF A CONTEMNOR WHO IS A PARTY TO PROCEEDINGS BEFORE A COURT

It is unarguable that contempt of court is insidious and ultimately destructive of the rule of law, pernicious of the due process of law and a very grave threat to the proper administration of justice. It is a phenomenon courts are familiar with, and it takes many forms and manifestations. This has caused it to be aptly described as the Proteus of the legal world: See J Moskowitz, *Contempt of Injunctions*, Civil

and Criminal” (1943) 43 CoI LR, 780, cited in Contempt of Court, 31d Ed. by C.) Miller at para. 1.01

[80] Because of the effect of contempt of court on the administration of justice generally, superior courts have for a long time been imbued with the power to deal with it, sometimes peremptorily. This power is inherent in the jurisdiction of superior courts and by virtue of this jurisdiction they have the widest power to deal with contempt of court, and to administer condign punishment as the circumstances warrant. This may range from fines, imprisonment, and sequestration of assets, and in appropriate cases, a refusal of audience to a contemnor, especially one who seeks some benefit or relief from the court while in contempt.

[Emphasis added]”

[32.] From the above authorities, particularly *CONCACAF*, the following is clear: the Court will only rule that a party is in contempt of Court once satisfied that the applicant has discharged the criminal standard of proof – it must be proven beyond a reasonable doubt that the alleged contemnor indeed is in contempt. In other words, the Court must feel sure that the alleged contemnor is in contempt of Court. This is clearly a higher threshold than the usual civil standard of a balance of probabilities. The Court must be able to assess the evidence and such evidence must make it patently clear that the alleged contemnor is in contempt of Court. The evidence relied upon by the applicant must be clear. Furthermore, in cases where the alleged contempt is based on a breach of a court order, the language of the relevant order must be analyzed carefully by the Court along with the acts of the alleged contemnor in order to confirm whether or not a contempt of court has indeed occurred.

[33.] As I have said in the *Dr. Fuchs* judgment, it is the duty of the Court to uphold its integrity and ensure parties before it obey court orders and not flaunt willful disobedience by filing applications before the Court in the face of such disobedience. This will not be tolerated.

[34.] The Claimant’s counsel asserts that the First through Third Defendant’s contempt emanates from its disobedience of the Ex-parte Order. The relevant excerpt of the order counsel focuses on is the following:

“...Lindsey John Cancino of Nassau, The Bahamas and Marcia Woodside of Nassau, The Bahamas, both impartial and qualified individuals, be and are hereby appointed as Joint Receiver-Managers over the Four (4) Darby Islands, namely Big Darby Island, Little Darby Island, Guana Cay and Betty Cay and being the propert of Darby Shores Ltd. (“the Assets”), and each of them for the purpose of resolving the outstanding real property taxes affecting the Darby Islands with the Inland Revenue Department of government of The Bahamas by taking charge of the Assets and taking charge of the process of the marketing, advertising and negotiating of the Darby Islands for a proposed sale or any one or more of them,

or developing a plan for a financing to settle the taxes, or coming up with another plan, matter of thing that will cause a settlement of the taxes and prevent the Darby Islands being subject to a forced Bahamas government sale at auction, or other governmental confiscatory relief....

All parties involved in this case are hereby ordered to cooperate fully with the Joint Receiver-Managers and provide any necessary assistance or information required for the proper execution of their duties.”

[35.] Based on the evidence before me, I do not agree with the Claimant’s counsel position. As the First through Third Defendants’ counsel submits, there is nothing in the body of the order which expressly prohibits them from initiating independent legal proceedings. Based on the evidence before me, at every juncture, the First through Third Defendants apprised all parties of their intention to approach the Court to initiate independent judicial review proceedings. This is based on the following:

- On 21 June 2024, Mr. Jenkins K.C. (counsel for the First through Third Defendants) informed the parties that they intended to make an urgent application for an injunction.
- On 25 June 2024, Mr. Jenkins K.C. wrote to all parties explaining how it was in the best interest of all parties to oppose the action of the DIR and requested that all parties join in or support the judicial review proceedings.
- On 01 July 2024, Mr. Jenkins K.C. wrote to the Receivers enclosing a draft of the Application Notice for the Judicial Review Proceedings and requested that the Receivers indicate their position on the matter.
- On 09 July 2024, a copy of the filed Notice of Application was sent to the Receivers’ counsel.
- On 18 July 2024, the hearing took place and on 31 July 2024, the ruling was delivered and a copy of it was sent to the Receivers’ counsel.

[36.] It appears that the DSL parties sought to keep all parties – particularly the Receivers – abreast of and fully aware of all matters relating to the Darby Islands. In my view, this seems consistent with the very wording of the order – “All parties involved in this case are hereby ordered to cooperate fully with the Joint Receiver-Managers and provide any necessary assistance or information required for the proper execution of their duties.” I believe it was the DSL Parties’ intention to cooperate with the Receivers and ensure they were well informed of any and all actions taken relating to the Darby Islands. Indeed, the DSL Parties also ensured that any documents relating to such proceedings were delivered to the Receivers – even before they were filed and after.

[37.] Furthermore, I do not see how such actions prejudice the Claimant. In fact, securing the injunction and initiating judicial review proceedings have, in my view, preserved and protected the assets of DSL and has now brought the decision of the DIR

to sell the Darby Islands before the Court for review. This seems to, once again, align with the obligations of the parties under the express terms of the Ex-Parte Order. Despite the fact that the Claimant may view such actions as prejudicial or in breach of the Ex-Parte Order, I am not satisfied on the evidence that such has been established. At every turn the DSL Parties ensured that all parties were made aware of all steps taken relating to the Darby Islands.

[38.] With respect to the non-disclosure allegations, The Claimant's application for discovery is before the Court. I do not believe it would be proper to address this issue at this time. I therefore, make no ruling on the matter.

[39.] Similarly and in relation to the Receivers' "Notice of Objection" (which is not a document recognized under the Supreme Court Civil Procedure Rules, 2022) relating to the alleged contempt (as contained in the Receivers' "Notice of Objection"), the actions of the DSL parties that the Receivers take issue with do not, in my view, rise to the level of contempt. As I have already ruled, the lodging of judicial review proceedings is not contemptuous, based on the circumstances and the evidence before me. Furthermore, the DSL Parties' failure not to include a leave to appeal application of the Ellis Ruling or the Stay application in relation to same does not mean that there is a contempt of Court. Further, the Receiver's counsel did not descend into reasons why he says these action are contemptuous.

[40.] In addition, Counsel calling the DIR relating to the Darby Islands in the absence of the Receivers, without more, does not rise to the level of contempt either. Again, the parties were all made aware of such correspondence and actions of the First through Third Defendants and were invited to provide their input and position on the matter prior to approaching the Court.

[41.] In contempt proceedings, there needs to be compelling and cogent evidence proving the alleged contempt of an alleged contemnor. In exercising its powers to punish parties in contempt, the Court must do so carefully in appropriate circumstances, in the interest of justice and based on public policy. It cannot be based on unsubstantiated allegations. It requires strong evidence that makes it abundantly clear that an alleged contemnor is guilty of contempt of court.

[42.] In the premises, I am not satisfied, beyond a reasonable doubt, that the DSL Parties have committed any contempt of court.

Conclusion

[43.] Based on the evidence before me and the present state of the law, the First through Third Defendants are not in contempt of Court. Their actions align with the Ex-Parte Order filed on 29th August, 2023. They have therefore been obedient to the Court. Accordingly, the Claimant's and Receivers' applications are dismissed.

[44.] The Claimant and the Receivers (in relation to their respective applications) shall pay the costs of the First through Third Defendants, to be assessed by this Court if not agreed.

Dated this 18th October 2024

Deborah E. Fraser
Senior Justice