

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division**

2024/CLE/gen/00218

BETWEEN

THE ATTORNEY GENERAL

Claimant

AND

DIANNE BURROWS

Defendant

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Adele J. Mangra for the Claimant
Obie Ferguson Jr. KC with Keod Smith for the Defendant

RULING

WINDER, CJ

[1.] This action was brought by the Claimant by Standard Claim seeking vacant possession of Stall No. 36, Lot No. 32 Arawak Cay and arrears owing in the amount of \$31,648.14.

[2.] The brief history of the proceedings are as follows:

19 March 24	Standard Claim filed
11 April 24	Standard Claim and Acknowledgement of Service served on Defendant
24 April 24	Defendant sought and obtained an extension from the Claimant to file Defence
13 May 24	Claimant filed a Request for the Entry of Judgment in Default
12 June 24	Defence filed
17 June 24	Defendant filed a Notice of Application seeking the setting aside of the Claim.

[3.] The Defendant's application for the setting aside of the Claim was made on the basis that the Attorney General is not a proper party to action. Paragraph 2 of the Defendant's submission states that:

The Attorney General is not the proper party to this action and as such is not the appropriate Claimant in this matter. The lease agreement executed between the parties on the 1st May, 2002 was between the Defendant and the Minister Responsible for the Department of Lands and Surveys. The Minister of Lands and Surveys is the only statutory office named therein – not the office of The Attorney General.

[4.] This issue could be determined very quickly by looking at the description of the parties to the 2002 lease. The Landlord is described as "*The Minister responsible for the Department of Lands and Surveys acting in the name of and on behalf of the her Majesty Queen Elizabeth the*

second in right of Her Commonwealth of the Bahamas". Section 12(1) of the **Crown Proceedings Act** provides:

12. (1) Civil proceedings by or against the Crown shall be instituted by or against the Attorney-General. (2) No proceedings instituted in accordance with this Part of this Act by or against the Attorney-General shall abate or be affected by any change in the person holding the office of Attorney-General.

[5.] The property being referenced in the 2002 Lease is clearly crown land and in accordance with the **Crown Proceedings Act** the Attorney General is the proper party. The Defendant did not identify any statutory or corporate footing for a Minister responsible for the Department of Lands and Surveys and therefore I found no merit in the submission.

[6.] In the course of the hearing, albeit not a ground stated in Notice of Application or any prayer for relief raised in the notice, the Defendant asserted that this action ought to be stayed in preference to an arbitration. Reliance was placed on Clause 4(11) of the Lease which provides:

(11) if any dispute question or differences whatsoever shall arise between the parties hereto concerning any clause herein contained or the construction of effect of this Lease or the rights duties and liabilities of either party under the Lease or the subject matter thereof or any matter arising out of or in relation thereto respectively or otherwise upon which no agreement shall be arrived at between the parties hereto shall be referred to a single arbitrator in the case the parties can agree upon one otherwise by two arbitrator one to be appointed by each party to the difference and in either case in accordance with the Arbitration Act, Chapter 168, Statute Laws of the Bahamas 1987 or any statutory modification or reenactment thereof for the time being in force.

[7.] Clause 4(11) is extremely wide and encompasses any dispute between the parties.

[8.] The short but helpful decision of the Court of Appeal in the case of **Bimini Bay Resort Management Limited et al v. Therapy Beach Club Incorporated** [2015] 2 BHS J. No. 26 is instructive. According to **Allen P** who delivered the decision of the Court:

1 Having heard extensive arguments by counsel, and having read and considered the learned judge's decision and all of the other documents to which we were referred, we are satisfied that the learned judge's decision refusing the application for a stay cannot stand.

2 The authority to apply for a stay is derived from section 9(1) of the Arbitration Act, which provides:

"A party to an arbitration agreement against whom legal proceedings are brought ... in respect of a matter which under the agreement is to be referred to arbitration may ... apply to the court in which the proceedings have been brought to stay the proceedings so far as they concern that matter."

3 The authority to grant a stay is predicated on subsection (4) of the Arbitration Act, which clearly states:

"On application under ...[subsection (1)] the court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed."

4 The learned judge, apart from his saying that there was an assertion of repudiation, failed to have regard or to consider the conditions specified in subsection (4). He did not find the agreement null and void, inoperative or incapable of performance; instead he misdirected himself by finding that litigation was the preferred method of resolving the dispute between the parties because a third party was involved.

5 In the absence of any finding by the learned judge from which we may infer the existence of any one of the conditions in subsection (4), we are unable to apply the provision of rule 24(3) of the Court of Appeal Rules as counsel for the respondent urged us to do.

6 In the premises, we allow the appeal, quash the decision of the learned judge refusing to grant a stay and grant a stay of Action CLE/gen/00613 so far as it relates to first and second appellants and the respondent.

[9.] In the circumstances I will grant a temporary stay of these proceedings as I am satisfied that there are no statutory conditions in Section 9(4) of **the Arbitration Act**, which warrant a refusal of a stay of these proceedings.

[10.] Notwithstanding the late reliance by the Defendant on the arbitration clause, I am not satisfied that the same was not to delay these proceedings. In any event, I will grant a stay of these proceedings for a period of six (6) months with the expectation that the parties are able to resolve their issues.

[11.] As it relates to the issue of costs I make no order as to costs.

Dated the 16th day of January 2025



Sir Ian R. Winder
Chief Justice