

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 2022/CLE/gen/01638

BETWEEN

CINDY MICHELLE ROLLE

Claimant/Respondent

AND

HIGGS & JOHNSON (a firm)

First Defendant/Applicant

AND

OCEAN CENTRE LTD.

Second Defendant

Before: The Honourable Mr. Justice Leif Farquharson

Appearances: Mrs. Romona Farquharson-Seymour and Mr. Samuel Taylor for the Claimant
Mr. Audley Hanna and Mrs. Dennise Newton-Briggs for the Defendants

Heard on the papers

RULING

1. By Notice of Application filed on 29 April 2025, the First Defendant ("H&J") sought an order staying all further proceedings in this action unless and until the Claimant undergoes an independent medical examination by a physician of its choosing.
2. Before giving my decision, it is useful to provide some background information on the claim itself, which serves to place the current application in its proper context.

Background

3. The Claimant is a former employee of H&J. She commenced proceedings in November 2022 seeking damages for personal injuries allegedly sustained on the job in December 2019. The claim was initially commenced solely against H&J. The Second Defendant was later added as a party, ostensibly on the basis that it owned the property where the injurious incident occurred and where H&J carries on business. The thrust of her case is that whilst carrying out her duties as a Deed Clerk, she slipped and fell on an uneven sidewalk as she was approaching H&J's staff entrance. She alleges the sidewalk posed a hazard and that the Defendants were negligent and/or acted in breach of their statutory duties in failing to place warning signs and take other protective measures to prevent injury to users of the premises such as herself.
4. According to her Amended Statement of Claim, the Claimant was initially diagnosed as having sustained a sprain to her right ankle and directed to return to Doctors Hospital for scans after the swelling in one of her knees had subsided. She alleges that after further examination approximately two weeks later, she was diagnosed as having suffered damage to her anterior cruciate ligament (ACL) and posterior cruciate ligament (PCL) in her left knee and advised that she would require surgery. She says she did not undergo surgery at the time due to the onset of the COVID-19 pandemic. She also says she was laid off (seemingly temporarily) around this time and resigned from her employment in August 2020. She alleges that she eventually underwent surgery on her knee in January 2021, with one month of therapy sessions afterwards.
5. This evidently did not produce the desired results as the Claimant alleges that she is currently unable to bend her knee, stand or sit for an extended period, and must use the assistance of a cane to walk. She also alleges that she now experiences constant pain, spends 80% of her time in bed and has developed a limp. She states that this has affected her ability to obtain gainful employment. As of 18 June 2025, she was claiming special damages of \$6,581.50, damages for pain and suffering and loss of amenities (PSLA) of \$100,000.00 and damages for loss of future earnings of \$394,246.58,¹ making a grand total of just over \$500,000.00. This is, of course, in addition to interest and costs.
6. According to her Amended Statement of Claim, the Claimant relies on the following medical reports detailing her condition: the report of Dr. Alphaeus Allick, an emergency medicine specialist, dated 13 September 2022; the report of Dr. Robert Gibson of Bahamas Orthopedic Sports Medicine Clinic Ltd. dated 1 September 2022; and the report of Dr. Nicholas Fox of The Medi-Center dated 30 June 2022. These reports are also appended to her Statement of Claim.
7. Both Defendants deny all liability for the negligence and wrongdoing attributed to them. They also assert, further or alternatively, that the Claimant caused or contributed to the events described through her own actions or omissions. H&J further contends that the Claimant failed to mitigate her losses. Very importantly, both Defendants also make no admissions regarding the alleged injuries and put the Claimant to strict proof of the same.
8. When the current application first came before me, there were other pending interlocutory applications before the Court, including an application by the Claimant to add two

¹ This is stated to be based on her age of 51 years at the time of the alleged incident, her remaining employment life of 13 years and her annual salary of \$30,326.66.

additional defendants (which was later reduced to one, the Second Defendant) and to correspondingly amend the Statement of Claim. The Court in exercise of its case management powers therefore deferred consideration of H&J's application for a stay until the pending joinder and amendment-related issues had been resolved. The Court also encouraged the parties to seek to resolve the medical examination issue without the necessity of a ruling on the matter and commended to their consideration the recent decision of the learned Chief Justice in *Patricia Edgecombe v. Super Value Food Stores Ltd.*²

9. The hearing of H&J's application was subsequently set for 4 November 2025. Although the Claimant laid over written submissions resisting the application, she then indicated through her counsel that she was not opposed to a medical examination being conducted. She nonetheless remained opposed to it being performed by H&J's nominated doctor. This reluctance appeared to stem from some previous experience(s) counsel had with him in other unrelated litigation. She then proposed that H&J provide a list or panel of experts in the field of orthopedics for the Claimant to choose from. H&J agreed to consider this proposal and inform the Court of its position within 14 days. If rejected, or if the parties failed to otherwise agree on a physician to perform the examination, both sides were given leave to lay over further written submissions within seven days thereafter and the Court would then proceed to consider the application for a stay on the papers.³
10. H&J subsequently confirmed that it was not minded to furnish a list of physicians for the Claimant to select from. The Court must therefore now rule on the application for a stay.
11. The application is supported by the Second Defendant.

Grounds for the Application and Affidavit Evidence

12. In making the present application, H&J relies on Section 16(3) of the *Supreme Court Act, 1996*, the Court's inherent jurisdiction and the following provisions of the *Supreme Court Civil Procedure Rules, 2022* ("CPR"): Rule 25.1(h), (j) and (l); Rule 26.1(q) and (v); Rule 26.2; and/or Rule 32.12(1)(b).
13. The grounds advanced by H&J may be summarised as follows: (i) despite a formal request for the Claimant to submit to an independent medical examination by letter dated 6 March 2025, she has continuously refused to do so without providing a formal response explaining the reasons for such refusal; (ii) the Claimant's failure or refusal to submit to an independent medical examination will deprive the Court of a balanced perspective on issues which are critical to the determination of the claim; (iii) if not permitted to have the Claimant independently examined by an expert of its choosing, H&J will be placed at an unfair disadvantage and will be prejudiced in the conduct of its defence.
14. H&J's application is supported by an affidavit sworn to by Toreo Taylor, an associate with the firm, filed on 26 June 2025. Mr. Taylor materially states that by email dated 7 March 2025, H&J requested that the Claimant undergo an independent medical examination by its nominated doctor, an orthopedic surgeon whom I shall simply refer to as "Dr. X". This email was preceded by a letter from H&J sent a day earlier requesting that the Claimant

² 2019/CLE/gen/01817

³ See Directions Order dated 4 November 2025

attend Dr. X for an examination for the purposes of securing his testimony should the matter proceed to trial. The letter also requested that she bring with her any updated medical reports or documentation not already disclosed and that she execute an authorisation for the release of her medical records. The letter further provided a list of dates on which Dr. X would be available to conduct the examination during the months of March, April and May 2025.

15. Mr. Taylor confirms that the Claimant's counsel acknowledged receipt of H&J's email of 7 March 2025 on 8 March 2025, and indicated that she would take instructions. However, as of the date he swore his affidavit, he states that no response had been received to the request for an examination. Referring to an earlier hearing held on 31 March 2025, shortly after I assumed carriage of the case, Mr. Taylor notes that the Claimant's counsel then stated that her client would not attend Dr. X's office for a medical examination and that the Claimant would not agree to an examination. As mentioned, the Claimant's stance on the examination changed slightly subsequent to that hearing, albeit she remained steadfast in refusing to be examined by Dr. X. This will be discussed further.
16. Mr. Taylor concluded his affidavit by stating that H&J would suffer grave prejudice if the matter proceeded to trial in the absence of an independent medical examination. He also asserted that the Claimant had provided no reasonable excuse for not submitting to the requested exam.
17. No affidavit evidence has been filed on behalf of the Claimant in opposition to the application. She nonetheless maintained her objection to Dr. X conducting the examination.

Discussion and Analysis

18. The power to grant or impose a stay is a well-recognised incident of the Court's inherent jurisdiction to regulate its own proceedings. Section 16(3) of the *Supreme Court Act, 1996* declares that "*Nothing in this Act shall affect the power of the Court to stay any proceedings before it, where it thinks it fit to do so, either of its own motion or on the application of any person whether or not party to the proceedings.*" CPR 26.1(2)(q) further states that the Court may "*stay the whole or part of any proceedings generally or until a specified date or event.*"
19. In *Starr v. National Coal Board*,⁴ the English Court of Appeal had occasion to consider the principles to be applied in determining whether to grant a stay of proceedings pending a claimant undergoing an examination by a physician nominated by the defendant. Briefly stated, the action itself involved a claim for damages for personal injuries allegedly suffered during the course of employment. In his particulars of injuries, the claimant asserted that he had sustained ulnar nerve compression resulting in the nerves in his elbows and hands becoming damaged and the surrounding area inflamed, and that although he had received operative treatment on his elbows he still suffered from the effects of nerve compression in his hands and hypersensitivity of the scars on his elbows. The defendants thought it necessary to obtain a neurologist's opinion on his condition. They nominated a distinguished consultant neurologist to examine the claimant. The claimant conceded that his examination on behalf of the defendants by a neurologist was

⁴ [1977] 1 All ER 243

necessary in the interests of justice, but adamantly refused to be examined by the defendants' chosen physician. No attack was made on the doctor's professional competence or personal integrity. The claimant (or, more properly, his counsel) instead asserted an apprehension that the doctor would produce a misleading report as he had allegedly been unprofessional in his conduct in examining and reporting on other claimants. The claimant also suggested that he was a hostile examiner of claimants. The claimant stated that he was willing to be examined by any consultant neurologist other than the defendants' chosen physician. The defendants applied for a stay of all further proceedings in the action unless and until the claimant submitted to the requested medical examination.

20. In dismissing the claimant's appeal, the Court found that the stated concern that the defendants' nominated physician would produce a misleading report or would carry out his examination with unprofessional hostility had not been substantiated. There was also no evidence to undermine confidence in his impartiality and professional judgment. Ultimately, it was determined that the defendants' request had been reasonable and that the claimant's refusal had been unreasonable. The Court's analysis of the issue is addressed in the judgment of Scarman LJ, who stated (at pages 249-250):

"So what is the principle of the matter to be gleaned from those cases? In my judgment the court can order a stay if, in the words of Lord Denning MR in Edmeades' case ([1969] 2 All ER 127 at 129, [1969] 2 QB 67 at 71), 'the conduct of the plaintiff in refusing a reasonable request [for medical examination] is such as to prevent the just determination of the cause'. I think that those words contain the principle of the matter. We are, of course, in the realm of discretion. It is a matter for the discretion of the judge, exercised judicially on the facts of the case, whether or not a stay should be ordered. For myself, I find talk about 'onus of proof' in such a case inappropriate. There is, I think, clearly a general rule that he who seeks a stay of an action must satisfy the court that justice requires the imposition of a stay.

In the exercise of the discretion in this class of case, where a plaintiff has refused a medical examination, I think the court does have to recognise (and here I think Pickett's case is helpful) that in the balance there are, amongst many other factors, two fundamental rights which are cherished by the common law and to which attention has to be directed by the court. First, as mentioned in Pickett's case by Willmer and Donovan LJJ, and by Sachs LJ in Lane's case, there is the plaintiff's right to personal liberty. But on the other side there is an equally fundamental right—the defendant's right to defend himself in the litigation as he and his advisers think fit; and this is a right which includes the freedom to choose the witnesses that he will call. It is particularly important that a defendant should be able to choose his own expert witnesses, if the case be one in which expert testimony is significant.

With the initial approach in Pickett's case I find I have considerable sympathy; and I do not think it is an approach that has been discarded by these courts. A plaintiff is not to be regarded as acting unreasonably merely because he does not wish, or his advisers do not wish him, to be examined by a doctor chosen by the defendant. But, if a defendant insists on examination of the plaintiff by the doctor he, the defendant, has nominated, then the problem does arise: in what circumstances will the court order a stay unless the plaintiff yield?

First, one has to look to the defendant's request and ask oneself the question: is it a reasonable request? The defendant is not to be regarded as making an

unreasonable request merely because he wishes to have the plaintiff examined by a doctor unacceptable to the plaintiff. The decisive factor, therefore, becomes, as I think Lord Denning MR recognised in *Edmeades Thames Board Mills Ltd*, that of the interests of justice—of the 'just determination' of the particular case. I would add that it can only be the interests of justice that could require one or other of the parties to have to accept an infringement of a fundamental human right cherished by the common law. The plaintiff can only be compelled, albeit indirectly, to an infringement of his personal liberty if justice requires it. Similarly, the defendant can only be compelled to forgo the expert witness of his choice if justice requires it.

And so in every case, as I see it, the particular facts of the case on which the discretion has to be exercised are all-important. The discretion cannot be exercised unless each party does expose the reasons for his action. I have already indicated that I do not regard this as a question of onus of proof. There is, in my judgment, a duty on each party in such a situation to provide the court with the necessary material known to him, so that the court, fully informed, can exercise its discretion properly. However, I would add this comment: that at the end of the day it must be for him who seeks the stay to show that, in the discretion of the court, it should be imposed.

Applying those principles, I think that the first question, as one turns to the facts of the case, which one has to ask is: was the defendants' request for the examination of the plaintiff by Dr X a reasonable request? I have no doubt that it was. Dr X is a distinguished consultant neurologist. The opinion of a consultant neurologist was needed in order that the defendants might properly prepare their case. Sometimes, of course, one would not have to go further, and one could, as, for instance, in *Edmeades v Thames Board Mills Ltd*, impose a stay merely because the reasonable request had been refused. But sometimes one has to go further and to consider the plaintiff's reasons for refusing the request; and the present case is, in my judgment, such a one.

Therefore the second question is: granted the reasonableness of the defendants' request, was the plaintiff's refusal of it unreasonable?"

The test here must be related to the necessity, so far as the court can assist, of ensuring a 'just determination of the cause'." [Emphasis supplied]

The reasoning in Starr was followed locally in *Patricia Edgecombe v. Super Value Food Stores Limited* and *Brindell Pratt v. AML Foods Ltd.*⁵

21. More recently, after reviewing several leading authorities, Gargan J. suggested in *Clarke v. Poole and Others*⁶ that it was appropriate for the court to adopt a staged approach in such applications:

"85. The starting point is whether the defendant has shown that, absent the claimant's objections, it is in the interests of justice for the testing to be carried out. As Kennedy LJ points out, if the defendant cannot satisfy this test, then the court need go no further and the application must be dismissed.

86. The second question is whether the claimant has put forward a substantial objection which is more than imaginary and illusory. If the objection is

⁵ 2021/CLE/gen/01470

⁶ [2024] EWHC 1509 (KB)

"imaginary and illusory" then the outcome of the application must favour the defendant.

87. However, where there is a substantial objection, the court must embark on a third stage and balance the competing rights, namely (i) the defendant's right to defend itself in the litigation; and (ii) the claimant's right to personal liberty. In my judgment Kennedy LJ was right to suggest that when undertaking that exercise particular weight should be given to the claimant's concerns if the test is invasive and/or involves pain/discomfort and/or the risk of physical/psychological harm.
88. Finally, when carrying out the balancing exercise the court must identify the terms of the stay proposed as, in my judgment, it is important that the stay do no more than is reasonably required to enable the defendant properly to defend the claim." [Emphasis supplied]

22. Guided by these principles, I readily accept that it is in the interests of justice for the proposed examination to be conducted. The Claimant is suing H&J for substantial damages. Liability for all wrongdoing is denied. The existence and extent of her injuries are directly in issue, as is causation. For her part, the Claimant asserts that she now spends 80% of her time in bed and is unable to obtain any form of gainful employment due to her condition. The Claimant herself relies on medical reports to support her claim, including a report from Dr. Robert Gibson of Bahamas Orthopedic Sports Medicine Clinic Ltd. Dr. Gibson's report, along with the other two reports annexed to her Amended Statement of Claim, is now quite dated and indicates that his last evaluation of the Claimant was carried out in June of 2021. His report also concludes with the statement that he is "*unable to assess a prognosis to her condition.*" In these circumstances, I regard it as eminently fair and reasonable for H&J to wish to have its own orthopedic expert carry out an examination of the Claimant. Indeed, I did not understand Mrs. Farquharson-Seymour to dispute this. She also eventually expressed a willingness for her client to be examined by another orthopedic expert selected by the Claimant from a panel or list to be prepared by H&J.

23. I next turn to the reasons put forward by the Claimant for refusing to be examined by Dr. X. There is no challenge to Dr. X's qualifications, competence or integrity. The only objection to him performing the examination seems to be (and I put it no higher than that) based on some previous experience(s) counsel for the Claimant had with him in her professional capacity in other unrelated litigation. This concern was never fully explained and no details were provided. In any event, it is wholly unsupported by evidence. I am therefore of the opinion that no substantial objection to Dr. X conducting the examination has been demonstrated. Any possible objection appears to be purely illusory. The refusal to submit to the examination, in the circumstances, is in my view unreasonable.

24. This should effectively be the end of the matter. I nonetheless recognise that there are competing rights engaged. For the reasons already outlined, I would merely indicate that in my view the balance lies heavily in favour of H&J being allowed to have the Claimant examined by its nominated doctor. This also aligns with the overriding objective as it would assist in ensuring that the parties are on an equal footing. It surely cannot be just for a defendant in such circumstances to be denied the opportunity to have the claimant examined by his nominated doctor for the purposes of conducting his defence. Practically speaking, this may also aid in the consideration of any settlement.

Disposition

25. For the reasons set out, I order that all further proceedings in the action are to be stayed unless and until the Claimant submits to a medical examination on behalf of H&J by Dr. X. The costs of this application are to be paid by the Claimant to H&J. These will be summarily assessed unless otherwise agreed.



Farquharson J.
17 February 2026

Postscript

The Court records with profound sadness the recent passing of Mrs. Farquharson-Seymour, who appeared for the Claimant throughout the course of proceedings in this action. The Court extends its sincere condolences to her family and to her colleagues at R.A. Farquharson & Co..