

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2013/CLE/gen/01272

IN THE MATTER of an Indenture of Mortgage made on the 17th day of July, A.D., 1978 between The Bank of Nova Scotia of the one part and Lillymae Beneby now of record in the Registry of Records in 3003 page 271 to 281.

AND IN THE MATTER of a Mortgage Action pursuant to Order 77 of the Rules of the Supreme Court 1978.

B E T W E E N

GATEWAY ASCENDENCY LTD.

Claimant

AND

SCOTIABANK (BAHAMAS) LIMITED

1st Defendant

AND

LILLYMAE THERESA BENEBY

2nd Defendant

Before: **The Honorable Madam Justice Carla Card-Stubbs**

Appearances: Akeira Martin for the Plaintiff/Appellant

No Appearance for the Second Defendant

Hearing Date: February 19, 2024

Appeal against decision of the Deputy Registrar to dismiss applications on non-attendance of counsel – Part 58 CPR The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR') – the Overriding Objective Appeal by way of rehearing – Application for the substitution of parties – Application for the appointment of a representative of the Deceased's estate – Exercise of court's discretion to order substitution of parties – Part 19 CPR

The Appellant appealed the Deputy Registrar's order to dismiss the Appellant's summonses on the ground that the Registrar improperly exercised his discretion when, in the absence of counsel for the Appellant, the Deputy Registrar dismissed the Appellant's applications.

HELD: The Appeal would be by way of rehearing. The Court noted that the Registrar failed to take into account relevant considerations and that dismissal of the summonses was a disproportionate response in the circumstances. On rehearing, the court allowed the substitution of parties sought in the first summons.

RULING

CARD-STUBBS, J

INTRODUCTION

[1.] This is an appeal from the decision of Deputy Registrar Edmund Turner (“Deputy Registrar”) delivered on 26 April 2023, whereby the Appellant’s Summonses were dismissed in the absence of counsel for the Appellant, and costs were awarded against the Appellant in each instance.

BACKGROUND

[2.] The Appeal is brought pursuant to Part 58, Rule 58.1, The Supreme Court Civil Procedure Rules, 2022, as amended (‘CPR’). Rule 58.1 CPR provides as follows.

- 58.1 Appeals from certain decisions of the registrar to judge in chambers
- (1) Except as provided by rule 58.2, an appeal shall lie to a judge in chambers from any judgment, order or decision of the Registrar.
 - (2) The appeal shall be brought by filing a Notice of Appeal and serving a copy thereof on every other party to the proceedings in which the judgment, order or decision was given or made a notice to attend before the judge on a day specified in the notice.
 - (3) Unless the Court otherwise orders, the Notice must be filed —
 - (a) if it is made by a party who was present or represented when the judgment, order or decision of the Registrar was given within five working days after the judgment, order or decision; or
 - (b) if it is made by a party who was not present or represented when the judgment, order or decision of the Registrar was given within five working days after receipt by the party of notice of the judgment, order or decision.
 - (4) Except so far as the Court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought.

[3.] Rule 58.2 CPR is inapplicable in this instance.

[4.] The Appellant sought to have the Court conduct an appeal by rehearing, relying on the

case of **Donnalee Maria Peet v. Michael Baptiste [2019] 1 BHS J No 55**, cited in The Supreme Court Civil Procedure Rules, 2022, Practice Guide, January 2024. An appeal is by way of review or rehearing. **Donnalee Maria Peet v. Michael Baptiste [2019] 1 BHS J No 55** is cited for the proposition that an appeal from the Registrar in such an instance as the present case, is by rehearing. That was an appeal case heard under the now-repealed and replaced Rules of the Supreme Court (R.S.C. 1978, as amended) ('RSC'). There is, in the CPR, no express limitation of an appeal to either review or a rehearing. I accept that the practice prior to the coming into effect of the CPR is an appeal by rehearing and that is the approach adopted in this instance.

[5.] The Appeal concerns the decision of the Registrar to dismiss two summonses filed by the Appellant. The Appellant sought (1) by the first summons, filed July 25, 2022, a substitution of parties and (2) by the second summons, filed March 28, 2023, to have persons appointed as Administrators of the Second Respondent's estate.

NOTICE OF APPEAL

[6.] By Notice of Appeal filed on May 25, 2023 and pursuant to Part 58 of the Supreme Court Civil Procedure Rules ("CPR") 2022, the Appellant seeks an order that:

- i. The 26th April Order be Set Aside;
- ii. The 26th April Order for Gateway to pay to the Defendant costs in the amount of \$1,500.00 occasioned by the dismissal of the 28th March, 2023 Summons be set aside; and
- iii. The Appellant's Summons filed 25th July, 2022, be restored and Gateway be substituted as a party to the action;
- iv. The 26th April Order for the Appellant to pay to the Defendant costs in the amount of \$1,500.00 occasioned by the dismissal of the said Summons to be set aside;
- v. The Respondent do pay to the Appellant the Costs of the Appeal and the Costs from the Court below;
- vi. The Order to pay costs be stayed pending the outcome of the appeal; and
- vii. The Court grants such other relief as it may deem necessary.

[7.] The grounds of appeal are set out as follows:

1. The Learned Deputy Registrar improperly exercised his discretion to dismiss the Summons filed 25th July, 2022 and the Summons filed 28th March, 2023 (the "Dismissed Summons"), in the absence of Counsel for the Appellant.
2. The Learned Deputy Registrar misdirected himself in law by incorrectly finding that he was functus officio prior to the perfection of the 26th April Order.

3. Despite being verbally and informed by Counsel for Gateway in writing of its intention to make an application to restore the Dismissed Summons, in addition to being served with Gateway's Summons to restore the Dismissed Summons on 4th May, 2023, the Learned Deputy Registrar perfected the Order on 5th May, 2023.
4. Counsel for the Defendant, failed to provide Gateway with the signed 26th April Order as signed by the Learned Deputy Register after its execution. The 26th April Order was not filed until 10th May, 2023 and it was not served on Gateway until 19th May, 2023.

[8.] The Appellant relies upon the Affidavit of Byran S. Woodside filed 25 May, 2023, the Affidavit of Kelvin Briggs filed 22 July, 2013 and the Affidavit of Tamika Thompson filed 25 July, 2022 in support of the appeal.

APPEAL BY REHEARING

[9.] In **Donnalee Maria Peet v. Michael Baptiste [2019] 1 BHS J No 55**, the learned judge, Honourable Madam Justice Indra Charles as she then was, explained the jurisdiction and nature of an appeal by rehearing thus, at paragraphs 10 to 12:

Jurisdiction to re-hear appeal

10 It is not disputed that an appeal from the Registrar to a Judge in Chambers is dealt with by way of an actual rehearing of the application which led to the order under appeal, and the Judge treats the matter as though it came before him for the first time: see **Commentary 58/1/2 of the Supreme Court Practice 1970**.

11 The Judge hearing the appeal, in exercising his discretion, is in no way fettered by the previous exercise of the Registrar's decision but will of course give it such weight it deserves. In *Evans v Bartlam* [1937] 2 All ER 646 at 649, Lord Atkin puts it this way:

“I wish to state my conviction that, where there is a discretionary jurisdiction given to the court or a judge, the judge in chambers is in no way fettered by the previous exercise of the master's discretion. His own discretion is intended by the rules to determine the parties' rights, and he is entitled to exercise it as though the matter came before him for the first time. He will, of course, give the weight it deserves to the previous decision of the master, but he is in no way bound by it. This, in my experience, has always been the practice in chambers, and I am glad to find it confirmed by the recent decision of the Court of Appeal in *Cooper v Cooper* [1936] WN 205; *Digest Supp.*, with which I entirely agree”. [Emphasis added]

12 Therefore, I shall consider this case as an actual rehearing being of the opinion that Registrar Misiewicz did not give sufficient reasons for me to give her decision the weight it deserves.

[10.] A judge is entitled to consider the matter anew – unfettered by the Registrar’s decision. I will therefore consider the matters of the applications that were before the Deputy Registrar.

[11.] I note that the grounds of appeal largely concern the exercise of the discretion of the Registrar. To the extent that this Appeal is by way of rehearing, it is not necessary to venture into detailed pronouncements on the exercise of the discretion of the Deputy Registrar. I note the submissions made by the Appellant regarding the exercise of the Deputy Registrar’s discretion. I note that the order of the Deputy Registrar was a dismissal of the summonses.

[12.] The circumstances on affidavit evidence by the Appellant, is that the summonses were dismissed due to the absence of counsel at the time that the applications were called up for hearing. The Appellant relies on the Affidavit of Byran S. Woodside filed 25 May, 2023. The Appellant’s case is that counsel for the Appellant, Mr. Woodside, was reportedly appearing before a judge in the Supreme Court and subsequently, in a hearing before another Deputy Registrar, near the Deputy Registrar’s chambers.

[13.] I have considered the uncontroverted affidavit evidence of the Appellant and consider that counsel’s non-attendance was not shown to be contumelious, deliberate, or part of a pattern of disregard for the court’s process. There is no indication that the Registrar considered the prejudice to the Appellant if the applications were dismissed. The evidence of the Appellant by way of Affidavit evidence of Byran Woodside filed November, 2023 is that

8. The last payment being 25th November 2010, if the 25th July Summons is not restored, the Appellant would be statute barred from bringing another claim against the Second Respondent.

[14.] Dismissal in this case would, in effect, drive the Appellant from the judgment seat because of the expiry of the relevant limitation period. A dismissal of an application as a result of non-attendance is a severe sanction, especially in a case where an application raises the spectre of limitation issues. In my opinion, dismissal of the summonses was a disproportionate response in circumstances where options exist that would allow for

the summonses to be heard on their merits. Such available options included standing down the matter or granting a brief adjournment.

[15.] The Overriding Objective of the CPR required the Registrar to deal with the case justly and proportionately. Justice in this context required more than administrative efficiency. It required the Registrar to balance case management against the parties' right to a fair opportunity to be heard. In my judgment, that balance was not properly struck in this case.

[16.] I consider that the exercise of the Deputy Registrar's decision to dismiss the summonses merely on counsel's non-appearance did not reflect a consideration of relevant factors such as the Overriding Objective of the CPR, the reason for the Appellant's absence, the prejudice to the Appellant if the applications were dismissed, and whether dismissal was an appropriate sanction. It is my opinion that, in those circumstances, the Registrar's discretion was improperly exercised.

[17.] Since the dismissal of the summonses was as a result of a party's absence, there was no substantive hearing recorded and, therefore, there are no available reasons for the orders made by the Registrar. In embarking on the rehearing, I have before me no reasons from that decision to which I can properly attach some weight. I proceed to consider the matters afresh.

DIRECTIONS TO THE PARTIES

[18.] On October 11, 2023, this court gave directions to the parties concerning the hearing of this appeal. The parties were at liberty to file affidavits and were to file their skeleton submissions within a certain time period. Counsel for the Appellant and Counsel for the Second Defendant both appeared at the directions hearing. I note that no new affidavits were filed and no submissions were lodged by the Second Defendant. There was no appearance for the Second Defendant at the hearing of the Appeal.

FIRST APPLICATION - Application to substitute party (July 25, 2022 Summons)

[19.] The issues arising on this application are:

1. Whether Gateway Ascendancy Ltd. should be substituted as plaintiff in place of Scotiabank (Bahamas) Limited;
and
2. Whether amendment of the originating summons and consequential directions should be granted.

[20.] On July 25, 2022, the Appellant filed a summons seeking, inter alia, leave to substitute parties and make a consequential amendment to the initiating document, i.e., the Originating Summons. The summons, filed on behalf of the Applicant, Gateway Ascendancy Ltd., sought by way of relief:

1. An Order pursuant to Order 15 Rule 8(2) of the Rules of the Supreme Court 1978, for an Order that Scotiabank (Bahamas) Limited, the Plaintiff herein, cease to be a party to the action and that Gateway Ascendancy Ltd. be added as a party to the action as Plaintiff;
2. An Order pursuant to Order 20 Rule 10 of the Rules of the Supreme Court 1978, under the inherent jurisdiction of the Court that Originating Summons filed herein on the 22nd day of July, A.D., 2013 be amended in the manner shown on the draft Amended Originating Summons attached hereto and thereon coloured **RED**; and
3. An Order pursuant to Order 31A Rule (18)(2)(s) that further directions be given for the determination and management of this action and for its just resolution.

[21.] Notably, the summons referred to the now-replaced RSC. At the time that the matter was listed for hearing before the Deputy Registrar, the CPR was in effect. The relevant Part of the CPR, at the time of the rehearing on Appeal, was Part 19 as amended by SI 17/2023. Rules 19.1, 19.2 and 19.3 read:

19.1 Scope of this Part.

This Part deals with the addition or substitution of parties after proceedings have been commenced.

19.2 Change of parties.

- (1) The Court may add, substitute or remove a party —
 - (a) on application by a party; or
 - (b) without an application.
- (2) A claimant may add a new defendant to proceedings without permission at any time before the case management conference by filing at the court office, an amended claim form and statement of claim.
- (3) Parts 5, 7, 9, 10 and 12 apply to an amended claim form referred to in paragraph (2) as they do to a claim form.
- (4) The Court may add a new party to proceedings without an application, if —
 - (a) it is desirable to add the new party so that the Court can resolve all the matters in dispute in the proceedings; or
 - (b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new

- party so that the Court can resolve that issue.
- (5) The Court may by order remove any party if it considers that it is not desirable for that person to be a party to the proceedings.
 - (6) The Court may order a new party to be substituted for an existing one if —
 - (a) the Court can resolve the matters in dispute more effectively by substituting the new party for the existing party; or
 - (b) the existing party's interest or liability has passed to the new party.
 - (7) The Court may add, remove or substitute a party at the case management conference.
 - (8) The Court may not add a party, except by substitution, after the case management conference on the application of an existing party unless that party can satisfy the Court that the addition is necessary because of some change in circumstances which became known after the case management conference.

19.3 Procedure for adding, and substituting or removing parties.

- (1) An application for permission to add, substitute or remove a party may be made by —
 - (a) an existing party; or
 - (b) a person who wishes to become a party.
- (2) An application for an order under rule 19.2(6) may be made without notice but must be supported by evidence on affidavit.
- (3) A person may not be added or substituted as a claimant unless that person's written consent is filed with the Court office.
- (4) An order for the addition, substitution or removal of a party must be served on —
 - (a) all parties to the proceedings;
 - (b) any party added or substituted; and
 - (c) any other person affected by the order.
- (5) If the Court makes an order for the removal, addition or substitution of a party, it must consider whether to give consequential directions about —
 - (a) filing and serving the claim form and any statements of case on any new defendant;
 - (b) serving relevant documents on the new party; and
 - (c) the management of the proceedings, and subject to such directions rule 19.2(2) applies.
- (6) These Rules apply to a new defendant as they apply to any other defendant where —
 - (a) the Court makes an order for the addition or substitution of a new defendant; and
 - (b) the claim form is served on the new defendant.

[22.] The *premise* for the substitution of parties is no different under the new CPR than it was under the RSC on which the Appellant based its application. The object of the provisions is to have the proper parties for the disposition of the matter before the court. In particular Rule 19(5) provides that the Court may order a new party to be substituted for an existing one if (a) the Court can resolve the matters in dispute more effectively by substituting the new party for the existing party or (b) the existing party's interest or liability has passed to the new party.

[23.] The Application was supported by the affidavit of Tamika Thompson, also filed July 25, 2022. That affidavit is useful in setting out the background of the matter and the context of the application. The affiant avers, in part:

1. I make this Affidavit in support of the application commenced by Originating Summons filed herein on the 22nd July, 2013 against the Defendant, Lillymae Theresa Beneby (hereinafter referred to as "the Defendant") pursuant to Order 77 of the Rules of Supreme Court.
2. I further make this Affidavit in Support of Summons filed herein for the following relief, namely,
 - i. An Order pursuant to Order 15 Rule 8(2) of the Rules of the Supreme Court 1978, for an Order that Scotiabank (Bahamas) Limited, the Plaintiff herein, cease to be a party to the action and that Gateway Ascendancy Ltd. be added as a party to the action as Plaintiff;
 - ii. An Order pursuant to Order 20 Rule 10 of the Rules of the Supreme Court 1978, under the Inherent Jurisdiction of the Court that Originating Summons filed herein on the 22nd day of July, A.D., 2013 be amended in the manner shown on the Draft Amended Originating Summons attached hereto and thereon coloured RED; and
 - iii. An Order pursuant to Order 31A Rule (18)(2)(s) that further directions be given for the determination and management of this case and for its just resolution.
3. The Defendant was originally a customer of the Scotiabank (Bahamas) Limited and was indebted to Scotiabank (Bahamas) Limited by virtue of a loan facility more particularly described below.
4. By a Mortgage made between the Defendant and The Bank of Nova Scotia dated the 17th day of July, A.D., 1978 (hereinafter referred to as "the said Mortgage") the Defendant as security for the sum of \$15,000.00 as Beneficial Owner granted and conveyed to The Bank of Nova Scotia all the hereditaments and premises more particularly described and set out in the Schedule to the said Mortgage to hold the same unto and the use of The Bank of Nova Scotia in fee simple subject to the right to redeem. The said Mortgage was exhibited to the Affidavit of Kelvin Briggs at "Exhibit KB-1".
5. By a Further Charge made between the Defendant and The Bank of Nova Scotia dated the 23rd day of November, A.D., 1978 (hereinafter referred to as "the said First Further Charge") the Defendant as security for the sum of \$5,000.00 as Beneficial Owner granted and conveyed to The Bank of Nova Scotia all the hereditaments and premises more particularly described and set out in the Schedule

to the said Mortgage to hold the same unto and the use of The Bank of Nova Scotia in fee simple subject to the right to redeem. The said First Further Charge was exhibited to the Affidavit of Kelvin Briggs at "Exhibit KB-2".

6. By a Second Further Charge made between the Defendant and The Bank of Nova Scotia dated the 4th day of March, A.D., 1980 (hereinafter referred to as "the said Second Further Charge") the Defendant as security for the sum of \$13,000.00 as Beneficial Owner granted and conveyed to The Bank of Nova Scotia all the hereditaments and premises more particularly described and set out in the Schedule to the said Mortgage to hold the same unto and the use of The Bank of Nova Scotia in fee simple subject to the right to redeem. The said Second Further Charge was exhibited to the Affidavit of Kelvin Briggs at "Exhibit KB-3".
7. By a Third Further Charge made between the Defendant and The Bank of Nova Scotia. dated the 2nd day of October, A.D., 1989 (hereinafter referred to as "the said Third Further Charge") the Defendant as security for the sum of \$12,000.00 as Beneficial Owner granted and conveyed to The Bank of Nova Scotia all the hereditaments and premises more particularly described and set out in the Schedule to the said Mortgage to hold the same unto and the use of The Bank of Nova Scotia in fee simple subject to the right to redeem. The said Third Further Charge was exhibited to the Affidavit of Kelvin Briggs at "Exhibit KB-4".
8. By a Fourth Further Charge made between the Defendant and The Bank of Nova Scotia. dated the 24th day of May, A.D., 1996 (hereinafter referred to as "the said Fourth Further Charge") the Defendant as security for the sum of \$19,200.00 as Beneficial Owner granted and conveyed to The Bank of Nova Scotia all the hereditaments and premises more particularly described and set out in the Schedule to the said Mortgage to hold the same unto and the use of The Bank of Nova Scotia in fee simple subject to the right to redeem. The said Fourth Further Charge was exhibited to the Affidavit of Kelvin Briggs at "Exhibit KB-5."
9. On the 4th day of May, 2016, Scotiabank (Bahamas) Limited executed a Transfer in favour of Gateway Financial Ltd. ("the said GFL Transfer"). The Defendant's mortgage with the Plaintiff was among those transferred by way of the said GFL Transfer. There is now produced and shown to me a true copy of the said GFL Transfer which is exhibited and marked "TT-1."
10. On the 19th day of February, 2018, Gateway Financial Ltd. executed a Transfer in favour of Gateway Ascendancy Ltd. ("the said GAL Transfer"). The Defendant's mortgage with the Plaintiff was among those transferred by way of the said GAL Transfer. There is now produced and shown to me a true copy of the said GAL Transfer which is exhibited and marked "TT-2."
11. In breach of the terms of the said Mortgage, the Defendant failed or refused to pay as agreed or on demand the monthly payments or the balance outstanding...

[24.] The Appellant's case, in a synopsis, is that the interest in the mortgage and further charges and the entitlement to enforce same, now lay in the Appellant.

[25.] The Court's power to substitute parties and amend proceedings exists to ensure that litigation is conducted by and against the proper parties and that the real matters in controversy may be determined fairly and efficiently. Where a party's interest in pending proceedings has been assigned or otherwise passed to another entity, the Court

may permit substitution so that the proceedings continue in the name of the person now entitled to the benefit of the claim.

[26.] The matter before me is a mortgage action brought against the named Defendant/Respondent on an allegation of a default of a mortgage obligation. The Appellant seeks to be added as a party in the present action and to cease to have Scotiabank (Bahamas) Limited as a party.

[27.] The mortgage obligation arose between the Defendant and The Bank of Nova Scotia. The Appellant's case is that it is the rights and benefits of the mortgage were acquired by way of subsequent transfers from the original mortgagee to Gateway Ascendancy Ltd. The affidavit expressly sets out a chain of transfer from Scotiabank (Bahamas) Limited to Gateway Financial Ltd. on 4 May 2016, and from Gateway Financial Ltd. to Gateway Ascendancy Ltd. on 19 February 2018. The affidavit evidence is deficient as it fails to address the link and references to the Bank of Nova Scotia and to Scotiabank (Bahamas) Limited. Nonetheless, the recorded transfers as exhibited in the Thompson affidavit sufficiently records the subsequent transfers of the mortgage and further charges which I find to be transfers of the mortgages and further charges in dispute and which formed the original obligation between the Defendant and The Bank of Nova Scotia. There is no answer or response to such averments.

[28.] I am satisfied that the interest formerly held by The Bank of Nova Scotia and made the subject of this mortgage action is now vested in Gateway Ascendancy Ltd. It follows that Gateway Ascendancy Ltd. is the proper party to continue the proceedings. I am also satisfied that Scotiabank (Bahamas) Limited has transferred away its relevant interest and is not a proper party to these proceedings.

[29.] In the circumstances, I find that the substitution of the Appellant and the removal of the First Defendant is appropriate and necessary for the just disposition of this case.

[30.] The application to amend the originating summons is for a consequential order. Once the interest of the First Defendant has been transferred, the amendment is required to reflect the substituted parties now properly concerned with the dispute.

[31.] In the circumstances, this court orders the substitution of Gateway Ascendancy Ltd as the Claimant and the removal of Scotiabank (Bahamas) Limited as a party.

Costs

[32.] In relation to costs on this application, the parties will bear their own costs in the proceedings below and on this appeal.

March 28, 2023 Summons - Application to appoint Representative of Defendant's Estate

[33.] After the institution of the action, the Defendant died. The Claimant then filed an application to appoint a representative of the Deceased's estate for the purpose of the litigation. However, at the time that the application was listed, an order had already been made on the application of the Defendant's estate.

[34.] In dismissing the March 28, 2023 summons, the Registrar awarded costs against the Claimant. The Claimant submits that:

Accordingly, the Appellant submits that given Counsel for the Second Respondent's failure to file the Order which led to the Appellant filing the 28th March Summons in vain, the Second Respondent should not have been awarded costs.

[35.] The Affidavit evidence of Byran Woodside filed November, 2023 shows:

12. The Appellant filed the Affidavit of Brittany Mckenzie on 31 March 2023 in support of the 28th March Summons. The Appellant conducted a search of the Probate Registry. As a result of the search, the Appellant learned that a Certificate as to Grant of Letters of Administration was granted in Probate Action No. 2017/PRO/npr/00334 to both Stephen George Beneby and Gregory Tyrone Beneby Jr. as Administrators of the Second Respondent's estate. The aforesaid Certificate is exhibited as Exhibit "BM-2" to the aforesaid affidavit filed herein.

13. Accordingly, the Appellant filed the 28th March Summons to appoint both sons.

14. Unbeknownst to the Appellant however, Mr. Troy Kellman, Counsel for the Second Respondent, had already obtained an Order appointing Stephen George Beneby as the representative of the Second Respondent's estate. However, the Order was never filed until 10th May 2023 and never served.

15. Accordingly, given Counsel for the Second Respondent's failure to file the Order which led to the Appellant filing the 28th March Summons in vain, the Second Respondent should not have been awarded costs.

[36.] On this appeal, the Appellant seeks to have the Deputy Registrar's order set aside. The Appellant's concern was the award of costs below and the exercise of the Deputy Registrar's discretion as to same. It seems to me that had the Appellant been heard on the March 28, 2023 summons, it would have been dismissed and that a costs order

against the Appellant would have been an appropriate order. It was a superfluous or unnecessary application. The Appellant lays the blame for not knowing of the existing order at the feet of the Second Defendant. The Appellant's contention is that they were unaware of the order. The Appellant made no representation as to what course of action they would have taken after being made aware of the order. The Appellant did not show that they would not have pursued the summons. I also note that there is no evidence that the Defendant's application for that order had been made without notice. The Appellant's submission is that they were unaware of the order. Therefore, on April 26, 2023, the Defendant would have appeared in relation to the said summons. There is no representation by the Appellant that the Appellant was not given the opportunity to withdraw the summons. Indeed, on May 5, 2023, subsequent to the April 26, 2023 order, the Appellant sought to have the summons restored for hearing.

[37.] In any event, this appeal is by way of rehearing. At the rehearing there was no representation that the Appellant wished to withdraw the summons. I find that the summons could not be successfully pursued at this juncture, the application being superfluous. That summons is dismissed. The appeal on this summons is substantively against the costs order. Having reconsidered the matter, I make the following costs order.

Costs

[38.] In the circumstances, my determination is that the Appellant is to pay the Respondent's costs at both this hearing and for costs incurred by the Defendant at the appearance before the Deputy Registrar, fixed in the sum of \$1500 for both hearings.

CONCLUSION

[39.] The Court's order on this rehearing is to grant the relief sought in the July 22, 2022 summons to substitute the parties. The March 28, 2023 summons, including the appeal against the costs order, is dismissed.

ORDER

[40.] For the foregoing reasons, the order and directions of this Court are as follows.

IT IS HEREBY ORDERED THAT:

1. The 26 April 2023 order of the Registrar is set aside in its entirety.

2. Gateway Ascendancy Ltd shall be added as a party to the action, namely the Claimant.
3. Scotiabank (Bahamas) Limited shall be removed as a party to the action.
4. The pleadings in this action shall be deemed amended to reflect the substitution and removal of the parties as provided by this Order.
5. In the matter of the summons filed on 25 July 2022, the parties shall bear their own costs occasioned by the Appeal and the appearance before the Deputy Registrar.
6. In the matter of the summons filed on 28 March 2023 the Appellant is to pay the Respondent's costs occasioned by the Appeal and the appearance before the Deputy Registrar, fixed in the sum of \$1500 for both hearings.

Dated this 15th day of April 2026

A handwritten signature in black ink, appearing to read 'Carla D. Card-Stubbs', with a stylized flourish at the end.

Carla D. Card-Stubbs
Justice