

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW & EQUITY DIVISION**

2011/CLE/gen/01238

BETWEEN:

RENALD FERGUSON

PLAINTIFF

AND

CHARLES EVANS

DEFENDANT

Before: HON. MR. JUSTICE KEITH THOMPSON

**Appearances: Attorney Laurel Hanchell of Counsel for the Plaintiff
Attorney Eugenia Butler of Counsel for the Defendant**

Hearing date: July 21st, 2020

[1] This is an application to strike out the Re-amended Writ of Summons filed on the 11th day of August, A.D., 2016 and all other pleadings and that costs of this application be that of the Defendant. The application is supported by an affidavit of Clinton Clarke, Associate Attorney in the Firm of Providence Law, Attorneys of the Defendant.

[2] The application is pursuant to Order 18 Rule 19 (1), (b) and/or (d):-

Order 18 Rule 19 (1), (b) and (d) provides:

“19(1) – The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that:-

- (a)
- (b) - it is scandalous, frivolous or vexatious; or
- (c)
- (d) it is otherwise an abuse of the process of the court and may order the action to be stayed or dismissed or judgment to be entered accordingly as the case may be.

[3] This case has an interesting history if I may say so. It is a 2011 action.

THE APPLICATION:

[4] The Plaintiff filed a Writ of Summons on the 7th day of September, 2011 claiming damages for personal injuries allegedly sustained by him as a result of a vehicular accident with the Defendant, which occurred on 8th November, 2008.

[5] The Writ was filed by Ian M. Jupp & Co. and an example of the subsequent filings is as follows:-

- a) **Statement of Claim filed on May 29th, 2012 by RAY REYNOLDS & CO. THE ROTHUNDER WESTRIDGE ESTATES OCEANVIEW DRIVE NASSAU, BAHAMAS;**
- b) **A document entitled "NOTICE OF INTENTION OF PARTY TO ACT IN PERSON IN PLACE OF SOLICITOR REMOVED" was filed May 29th 2012 by RAY REYNOLDS & CO. THE ROTHUNDER replacing Ian M. Jupp.**
- c) **On February 05th, 2013 a summons was filed by RENALD ALLEN FERGUSON RAY REYNOLDS & CO. #67 THE ROTHUNDER WESTRIDGE ESTATES, WESTRIDGE & OCEANVIEW DRIVE (another entity).**
- d) **On February 12th, 2013 a document entitled the same as in (b) above was filed by Renald Allen Ferguson replacing one Jason Romer of Halsbury Chambers.**
- e) **On April 15th, 2013 a summons was filed by Lockhart & Co. seeking an order that the Plaintiff be at liberty to amend the Writ of Summons and Statement of Claim.**
- f) **On May 16th 2013 an order was perfected thereby ordering the relief as sought in the Summons at (e) above.**
- g) **A notice of appointment was filed on March 12th, 2013 by Lockhart & Co. replacing the Plaintiff having conduct of the case.**
- h) **On July 01st, 2016 a NOTICE OF CHANGE OF ATTORNEY was filed by L.I.F.E. INTEGRATED FINANCIAL & EQUITY on behalf of the Plaintiff.**

- i) On August 31st, 2016 Re-Amended Statement of Claim was filed by L.I.F.E. Chambers on behalf of the Plaintiff.
- j) On May 30th, 2017 yet another NOTICE OF CHANGE OF ATTORNEY was filed by Cooke-McIver & Co. replacing Halson D. Moultrie.
- k) On November 01st, 2017 a document entitled "NOTICE OF REMOVAL OF ATTORNEY FROM RECORD AT INSTANCE OF ANOTHER PARTY" was filed removing Cook-McIver.
- l) On April 13th, 2018 a Notice of Change of Attorney was filed by E.D.M. LAW GROUP replacing RAY REYNOLDS & CO.
- m) On July 25th, 2019 Tara Knowles appeared before me representing the Plaintiff.
- n) On June 06th, 2020 Renald Ferguson appeared before me pro se.
- o) On June 24th, 2020 Laurel Hanchell appeared before me representing the Plaintiff.

[6] On June 24th, 2020 the Court decided that the matter had lingered and languished far too long in the system and that it would allow the Plaintiff the opportunity to have the matter move forward by ordering that an Unless Order be agreed between the parties. The parties were to return July 01st, 2020 at 1:00 p.m. to lay over the Unless Order.

DRAFT UNLESS ORDER:

COMMONWEALTH OF THE BAHAMAS

2011/CLE/GEN/01238

IN THE SUPREME COURT

Common Law & Equity Division

B E T W E E N

RENALD A. FERGUSON

Plaintiff

AND

CHARLES EVANS

Defendant

UNLESS ORDER

Before the Honorable Justice Keith Thompson

Dated the 1st July A.D. 2020.

UPON HEARING Mrs. Eugenia T. Butler of Counsel for the Defendant and Mr. Larell Hanchell of Counsel for the Plaintiff;

IT IS HEREBY ORDERED AND AGREED BETWEEN THE PARTIES as follows:

1. Due to his Lordship's retirement from the Supreme Court, the proceedings shall be transferred from His Lordship, Justice Keith Thompson to another Justice of the Supreme Court forthwith;
2. That The Plaintiff is at liberty to file a Re-Amended Statement of Claim if he chooses, which Re-Amended Statement of Claim is to be filed by the **2nd November, 2020**;
3. That the Defendant is at liberty to file an Amended Defence by the **30th November, 2020**;
4. An Agreed Bundle of documents is to be filed by the Plaintiff by the **21st December, 2020**;

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5. The Plaintiff is to prepare a trial Bundle which will include all relevant pleadings and serve the same on the Court and the Defendant by the 21st December, 2020:
6. If necessary, any Non-Agreed Bundles are also to be filed by the 11th January, 2021:
7. Any additional Witness Statements are to be filed by the 25th January, 2021:
8. The succeeding judge, once appointed, shall confirm the date and time for the **PRE-TRIAL REVIEW:**
9. The succeeding judge, once appointed, shall confirm the date and time for the **TRIAL:**
10. The Directions herein, inclusive of the Pre-Trial and Trial hearing dates, once fixed, represent the final directions for trial in this matter:
11. **SHOULD THE PLAINTIFF FAIL AND/OR REFUSE TO ABIDE BY THE DIRECTIONS HEREIN, THIS ACTION SHALL BE STRUCK OUT AND STAND WHOLLY DISMISSED FORTHWITH WITH COSTS AWARDED TO THE DEFENDANT: SUCH COSTS TO BE TAXED IF NOT AGREED:**
12. That the Defendant is not to unreasonably delay these proceedings, or do anything which may unreasonably delay the proceedings, ~~or refuse to do anything which may cause the Plaintiff to delay these proceedings:~~
13. That costs be in the cause should the matter proceed to trial.

BY ORDER OF THE COURT

REGISTRAR

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This Order was drawn up by Messrs. Providence Law, Samana Hill, Village Road, Nassau, The Bahamas, Attorneys for the Defendant.

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COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division

BETWEEN

RENALD A. FERGUSON

Plaintiff

AND

CHARLES EVANS

Defendant

UNLESS ORDER

2011/CLE/gen/01238

PROVIDENCE LAW
Samana Hill
No. 16 Village Road (North),
Nassau, Bahamas
Attorneys for the Defendant.
NAW/etb/2794.0029

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- [7] This is a 2011 action and I was made to understand that at the insistence of the Plaintiff the Unless Order was carried over into 2021. This being totally unacceptable and not a good use of judicial time, the court then decided that it would entertain the summons to strike out after that was put to the court by the Defendant. The summons to strike out was heard on July 28th 2020.

ARGUMENTS OF THE DEFENDANT:

- [8] The Defendant argues that during the course of this matter the Plaintiff has had at least eight attorneys inclusive of but not limited to Ian Jupp & Co., Halsbury Chambers, Lockhart & Co., L.I.F.E. Chambers, Bobbie Cooke-McIver & Co., Erica Darr-Munroe of E.D.M. Law Group, Christina G. Galanos & Co., and Eastwood Chambers to name a few.
- [9] The Plaintiff filed voluminous and erroneous documents inclusive of affidavits without seeking the advice or guidance of his various attorneys. The Defendant further argues that the Plaintiff has failed to comply with at least five (5) distinct orders of the court and that there has been contumelious conduct on the part of the Plaintiff which has resulted in the obstruction of the just disposal of the case. Final directions were given by the court on July 25th, 2019 for trial.

ARGUMENTS OF THE PLAINTIFF IN REPLY:

- [10] The Plaintiff has set out some eleven (11) paragraphs in his reply to the application. In reviewing these arguments the court is of the view that paragraphs 6 and 8 are

the applicable ones. While the court agrees with paragraph 6 it is paragraph 8 that requires attention in this matter.

[11] Order 18 Rule 19/17 in the 1988 White Book provides:

“Para (1), (a) confers upon the Court in express terms powers which the Court has hitherto exercised under its inherent jurisdiction where there appeared to be “AN ABUSE OF THE PROCESS OF THE COURT” This term connotes that the process of the Court MUST BE USED BONA FIDE and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation (See CASTRO V MURRAY (1975) 10 EX.213.)

[12] The Plaintiff’s conduct of this case has been totally unacceptable. Surely when one looks at the sample of the history of the conduct of this matter by the Plaintiff, it begs the application of Order 31A Rule 20(1), (b) which provides.

[13] Order 31A Rule 20 (1), (b) provides:-

“20 (1) – In addition to any other powers under these Rules, the Court may strike out a pleading or part of a pleading if it appears to the Court.

(a)

(b) that the pleading or the part to be struck out is an abuse of the process of the Court or “IS LIKELY TO OBSTRUCT THE JUST DISPOSAL OF THE RPOCEEDINGS.”

[14] In the court’s view there has been more than obstruction and oppression as against the Defendant. Certain affidavits were filed by the Plaintiff even while he had counsel retained. The Defendant in every action must know the case he has to meet. **(See PHILLIPS V PHILLIPS (1878) 4 Q.B.D. 127).**

[15] Additionally, the Plaintiff on numerous occasions has filed documents under the style of **RAY REYNOLDS & CO., RENALD ALLEN FERGUSON, and RAY REYNOLDS & CO. #67, THE ROTHUNDER WESTRIDGE ESTATES WESTRIDGE & OCEANVIEW DRIVE.**

[16] In this regard Sections 20 and 21 of the Legal Profession Act 1992 also beg to be applied.

[17] Sections 20 & 21 provide:-

“20. (1) Save where expressly permitted by this or any other Act, no unqualified person shall act as a counsel and attorney, or as such sue out any writ or process, or commence, carry on or defend any action, suit or other proceedings, in the name of any other person or in his own name, in

any court, or act as counsel and attorney in any case, civil or criminal, to be heard or determined in any court.

(2) Any person contravening this section is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months.

21. Any unqualified person who willfully pretends to be, or takes or uses any name, title, addition or description implying that he is, qualified, or recognized by law as qualified, to act as a counsel and attorney, a registered associate or a legal executive, is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars.”

[18] A person who wishes to represent himself pro se can do so, but he or she cannot hold himself out as an attorney by drafting documents in the style as was done by the Plaintiff.

[19] In light of the circumstances and after having taken into account the entire conduct of this matter, inclusive as to how much judicial time has been spent on this matter, I hereby accede to the Defendant’s application to strike the Plaintiff’s Re-Amended Writ of Summons. I also strongly recommend that the Bahamas Bar Association investigate this matter further as to how the Plaintiff held himself out as counsel and attorney many times in this action and if necessary take action against the Plaintiff.

[20] The Re-Amended Writ of Summons stands dismissed and Costs of the action to the Defendant to be taxed if not agreed.

I so order.

Dated this 5th day of October A.D., 2020.


Keith H. Thompson
Justice