

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

2017/CLE/gen/00323

BETWEEN

BANQUE HAVILLAND (BAHAMAS) LTD
(formerly known as Pasche Bank & Trust Limited)

Plaintiff

AND

(1) CHRISTOPHE MAZURIER
(2) GILLES SCHANEN
(3) JEAN-BAPTISTE NEEL
(4) PFO FINANCIAL ANALYSIS AND CONSULTANCY LLC

Defendants

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. David Quest QC with him Mr. Marco Turnquest with him Ms. Chizelle Cargill of Lennox Paton for the Plaintiff
Mrs. Tara Archer-Glasgow with her Mr. Audley Hanna Jr and Mr. Trevor Lightbourn of Higgs & Johnson for the First, Third and Fourth Defendants
Second Defendant present and appearing pro se

Hearing Date: 26 July 2021

Procedure – Application for adjournment pending resolution of the action – Settlement discussion in final stage – Whether Court should adjourn a trial which was set down for hearing three years ago as settlement discussion takes place

RULING

Charles J:

[1] By generally indorsed Writ of Summons filed on 17 March 2017, the Plaintiff (“Bank Havilland”) commenced this action against the Defendants claiming damages for breach of fiduciary and common law duties owed by the First Defendant (“Mr. Mazurier”), the Second Defendant (“Mr. Schanen”) and the

Third Defendant (“Mr. Neel”) in their capacity as directors of Bank Havilland in (1) causing, procuring and/or permitting Bank Havilland to enter into a “Business Introducer Agreement” with Palms Fo Limited (previously the Fourth Defendant in these proceedings) and the Fifth Defendant, now the Fourth Defendant (“PFO”) on or about 1 October 2014; (2) causing, procuring and/or permitting Bank Havilland to enter into a ‘Business Introducer Agreement’ with PFO on or about 1 July 2016; (3) causing, procuring and/or permitting Bank Havilland to make payments to Palms Fo and/or PFO pursuant to the said agreements. Bank Havilland’s claims against Palms Fo and PFO arise in connection with their knowing receipt of monies paid pursuant to the ‘Business Introducer Agreements’ and it seeks a declaration against these two Defendants that such monies are held in constructive trust for the benefit of Bank Havilland.

- [2] A Re-Amended Statement of Claim was filed on 14 December 2020 pursuant to an Order of the Court dated 10 December 2020.
- [3] The Defendants have filed their Amended Defences and there is an Amended Defence and Counterclaim filed on behalf of PFO.
- [4] This action first came before me on 24 July 2018 for Case Management Conference. On that day, I gave directions and fixed the trial for 2 weeks to commence on Monday 26 July 2021. It was a fact that, on that day, the Court had no available dates in its calendar for a 10-day trial before July 2021. The Court was also aware that Mr. Schanen was seriously unwell in Germany.
- [5] From 24 July 2018, this matter had been actively case-managed. The parties appeared before me on at least eight previous occasions with a view to get ready for the trial to commence on Monday 26 July 2021. By no stretch of the imagination could either party say that they did not have sufficient time to prepare for the trial. Normally, trials ought to be heard between 12 to 18 months but given the complexity of the matter, the length of the trial and the fact that the Defendants allegedly live in different countries and in different continents, such as Dubai, United Arab Emirates, Germany and Geneva, Switzerland, the Court was also prepared to give all parties sufficient time.

- [6] Then, on 11 June 2020, the Law Firm of Higgs & Johnson filed a Summons to withdraw as Counsel of record for Mr. Schanen. The Summons was accompanied by an Affidavit of David Hanna of the same date. Mr. Schanen had notice of the proceedings but did not appear. On 17 June 2020, the Court granted leave to withdraw as Counsel of record. The Court also gave Further Case Management Directions including reducing the trial to one week.
- [7] On 7 November 2020, the Court gave further directions including service of all documents on Mr. Schanen at his email address. Mr. Schanen was thereafter invited either by Cisco Webex and/or Zoom to join in the proceedings. He did so but rather sporadically. As he indicated at one of the hearings, he was not very well and as such, he would rely on the other defendants' submissions. He had however filed a witness statement in these proceedings.
- [8] During one of the case management hearings, the Court saw it fit to reduce the length of this trial from two weeks to one week since the calling of experts was dispensed with.
- [9] Fast forward to 10 December 2020. The parties could not agree on a Statement of agreed facts and issues. Learned Counsel, Mr. Turnquest who appeared for Bank Havilland, sought leave of the Court to file its own Statement of Facts and Issues as the parties could not agree on the same. The Court granted his request. The Court also granted leave for Mr. Turnquest to file and serve an amendment to the Amended Statement of Claim. The Defendants were also granted leave to make any amendments to their Defence if they wished to do so. The Court also ordered Bank Havilland to pay costs to the Defendants to be taxed if not agreed. All other directions remained unaltered.
- [10] Then, on 8 June 2021, all parties with the exception of Mr. Schanen appeared by zoom invite. On that date, leave was granted to Bank Havilland to file and serve a second witness statement of Jean Francois Williams by 11 June 2021 and for the Defendants (with the exception of Mr. Schanen) to file and serve their translation (French to English) by 18 June 2021. Quite significantly, the trial dates were confirmed.
- [11] On or about 30 June 2021 (when I was on vacation leave), there was a flurry of

correspondence via email and letters between Counsel and copied to me with respect to a French translator and whether the trial was to be an in-person hearing or a remote hearing. Although on leave, I communicated with the parties on a regular basis with a view that the trial dates are not vacated. There were discussions on who should be a translator and how many of them were needed.

[12] The Court reconvened on 13 July 2021. At that hearing, the matter relating to the interpreter was settled and the Court determined that the hearing would be conducted partly by zoom and partly in-person. It was further decided that there will be one translator located in Monaco where the Defendants would all assemble. At this hearing, it was not revealed to the Court that the parties had begun discussions on settlement, if indeed they had.

[13] During the course of last week, there had been an uptick of Covid cases in The Bahamas necessitating the Court to email all parties to indicate that the trial will be conducted remotely and that zoom invites will be forwarded to all parties. It was at that stage that the Court learnt, for the first time, that the parties were in discussion with a view to resolve this matter amicably (which is always encouraged by the Court). At this time, Bank Havilland had already lodged all trial bundles (13 volumes), an external hard drive with all documents (included pleadings and witness statements of all parties) in readiness for trial. It is safe to say that both parties were ready for the trial to commence on Monday 26 July 2021.

[14] In the intervening period, the Defendants filed a Summons on 21 July 2021 with an affidavit of David Hanna filed on Friday 23 July 2021 seeking an adjournment of the trial. In a nutshell, the affidavit of Mr. Hanna detailed that the Defendants have complied with all directions to date and, up to 18 July 2021, were actively engaged in trial preparation. This was followed by an email that the Defendants have ceased to progress the preparations any further as the parties have been engaged in active negotiations towards a settlement of this action with only technical issues to be resolved. I could only surmise that the only outstanding issue at this stage was for the Defendants to fly to Monaco.

- [15] The matter came on for hearing on Monday 26 July 2021. The parties appeared. They had not reached a settlement. Mr. Turnquest submitted that there was a discrete issue to be resolved and the Court should adjourn to 10.45 a.m. the following day - day 2 of the trial (with the aspiration I believe that the matter will be settled).
- [16] In the meantime, learned Counsel for the Defendants, Mrs. Archer-Glasgow pressed on with her application for an adjournment. She did not indicate to me that, if the matter is not settled what will happen as finding 5 successive days in my calendar is a tall task.
- [17] The position is that the Court does not vacate trial dates.
- [18] In my considered opinion, all parties had more than sufficient time, namely three years, to enter into settlement talks and the Court ought not to countenance dilatory conduct of Counsel even with respect to settlement. For me to adjourn, I have to be absolutely certain that this matter will be settled during the course of this week. If this matter is not settled, the next available week in my calendar is either late 2022 or early 2023. The Court bears in mind that this is a financial jurisdiction and to further adjourn this trial is not only unacceptable but may bring the administration of justice into disrepute.
- [19] In the circumstances, the Court makes the following order:

(1) If a settlement is not reached by 10.45 a.m. on Tuesday 27 July 2021, then the trial of this action will commence and will continue for 5 days.

(2) The Defendants' application for an adjournment filed on 23 July 2021 is denied.

Postscript

- [20] The postscript has been redacted.

Dated this 27th day of July 2021

Indra H. Charles

Justice