

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law and Equity Division  
2018/CLE/gen/00166**

**IN THE MATTER of The Constitution and Bylaws (hereinafter referred to as “The Constitution”) of the Airport, Airline & Allied Workers Union**

**AND**

**IN THE MATTER of a meeting of the Executive Council of AAAWU of the 31<sup>st</sup> day of January, A.D., 2018**

**BETWEEN**

**JEWEL FOUNTAIN  
(President, Airport, Airline and Allied Workers Union)**

**Plaintiff**

**And**

**SUSAN PALMER  
ESTHER CLARKE  
PAMELA BAIN  
CHAUNCEY THOMPSON  
CHRISTOPHER MOSS  
ANISHKA CARTWRIGHT  
WILLAMAE STUART  
LARONE DAVIS  
AMANDA JOFFRE  
ALTONYA MUNROE**

**(Members of AAAWU’s Executive Council, respectively the Secretary general, treasurer, trustee, trustee, trustee, branch chair, asst. secretary, chief shop stewards (2), and branch secretary)**

**Defendants**

**BEFORE: The Honourable Mr. Justice Bernard Turner**

**APPEARANCES:** Mr C. Alexander Dorsette for the Plaintiff  
Ms Erica Munroe for the Defendants

**HEARING DATES:** 6, 13, 20, 23, 29 March, 2, 17 & 24 May & 15 June  
2018.

## **DECISION**

### **TURNER J**

There is a long, difficult and unfortunate history of discontent between members of the Executive Council of the Airport, Airline and Allied Workers Union (AAAWU). The present Plaintiff is the President of the said union, the Defendants are all members of the Executive Council. This contention is gleaned from the multiplicity of recent actions filed in respect of a plethora of issues by the present parties to this action, and the long history is revealed by the fact that decisions of this court have been given as long ago as ten (10) years, and probably longer related to strife within the Executive Council. Some of the names of the litigants have changed, but others remain. In *The Airport, Airline and Allied Worker’s Union and others v Harding and others, No. 00033 of 2007*, Isaacs J. (as he then was) observed at paragraph three (3) of his decision, in relation to a judicial review action brought by certain of the members of the union in respect of the decision of the Registrar of Trade Unions to supervise and oversee a secret ballot for union elections, that:

**“This matter has a torturous history and I do not propose to go into it beyond saying that all of the parties to this action save for the**

**Seventh and Eighth Respondents are members of the Union. Indeed the First through Third Applicants and the First Second, Fourth and Fifth Respondents are elected members of the Union's Executive Council. The Secretary General and his assistant, the Treasurer and a Trustee of the Union have been at odds with the management style of the President of the Union and others of the Executive Council of the Union.”**

He later observed, at the end of paragraph five (5) that:

**“I was advised from the Bar table that there are other actions extant in relation to the impasse between the parties.”**

In the intervening years, other actions have been launched by union protagonists against other members and executives.

2. By an Originating Summons, filed 15 February 2018, and amended 24 May 2018, the Plaintiff in the instant matter, the President of the AAWU, sought declarative and injunctive relief in the following terms:

- i. **A DECLARATION** that pursuant to Article 9, the President is in charge of the day to day management of the office, and that the executive council has no authority to vote at council meetings to usurp or interfere with this constitutional provision;
- ii. **A DECLARATION** that pursuant to Article 9 or otherwise, the Union staff is answerable to the President and not the council;
- iii. **A DECLARATION** that pursuant to Article 9, only the President may appoint assistants to the Union and or affix the

remuneration of such appointees, subject to the approval/confirmation by the council;

- iv. **A DECLARATION** that the defendants' purported appointment of Patricia Rahming on 31st January, 2018 is void ab initio;
- v. **A DECLARATION** that pursuant to Article 11 (4) and having particular regard to Article 9(10) the secretary general may not sign any letters on behalf of the union, unless such signing is with the approval of the President;
- vi. **A FINAL INJUNCTION** restraining the defendants from interfering with the Plaintiff's control of the office;
- vii. **A FINAL INJUNCTION** restraining the defendant's from changing the locks to the union office and or restricting or attempting so to restrict the President's access to and control over the office;
- viii. **A DECLARATION** that the executive council meeting of 11th January, 2018 and any and all resolutions purportedly made therein is null and void ab initio and the defendants are restrained from enforcing or attempting to enforced any purported resolutions resulting therefrom;
- ix. **A DECLARATION** that all officers of AAWU including the Secretary General and the Treasurer are to provide assistance to the President of AAWU when called upon and are to report to the President as required.
- x. **AN ORDER** that Susan Palmer is to forthwith inform the President of any and all communication written or otherwise that

comes to her attention or is addressed to her in her capacity as the Secretary General of AAWU;

- xi. **AN ORDER** that the Defendants are to forthwith comply with the terms of Charissa Sweeting's letter of employment dated 20th June, 2012 and signed by Nelerene Harding, President of AAWU as she then was;
- xii. costs; and
- xiii. Such further or other relief as the Court deems just and equitable.

3. The sixth named Defendant, Ms. Anishka Cartwright (and described as a branch chair) not being served, was eventually removed from the instant action.

4. The Plaintiff also sought, by an Ex Parte Summons also filed 15 February 2018, interim injunctive relief. The application sought:

1. **An interlocutory Order** restraining the Defendants from enforcing or attempting to enforce the decision(s) and or resolution(s) of the council to appoint Patricia Rahming, until further order;

2. **An interlocutory order** restraining the defendants by injunction from causing or in any way encouraging Ms. Rahming to perform or to attempt to perform any function at the Union office in accordance with the appointment by the council of 31st January, 2018, until further order;

3. **An interlocutory Order** that the Defendants whether by themselves their servants or agents be restrained by injunction from changing or tampering with any of the locks to the Union premises,

impeding, restricting or inhibiting the President of the AAWU, in any way whatsoever, howsoever arising from accessing or entering upon union property or union premises until further order;

4. **An interlocutory order** restraining the defendants and each of them by injunction from giving or attempting to give any instructions to the office administrator, until further order;

5. **An interlocutory Order** restraining the defendants and each of them whether by themselves, their servants or agents, from interfering in any way whatsoever howsoever arising, with the Plaintiff's day to day control of the Union office, until further order;

6. **An interlocutory Order** restraining the first Defendant Susan Palmer from signing and sending out of the Union's office or on the Union's behalf any letter correspondence document or communication, electronic or otherwise of any kind whatsoever without the expressed approval of the Plaintiff, until further order;

7. **An order** that the costs of and occasioned by this application be the Plaintiff's costs in any event.

5. I ordered the ex parte application to be made inter partes and on 29 March 2018 granted the interim injunctive relief, the draft order to be prepared by counsel on behalf of the Plaintiff.

6. As with every other issue in this highly contentious internecine union executive squabble, even the terms of the order became contentious and I eventually signed, on 3 May 2018, a draft order prepared by counsel on behalf of the Defendants in the matter. The terms of that Order read:

**IT IS HEREBY ORDERED THAT-**

- 1. The Interlocutory Injunction as prayed for by the Plaintiff in respect of paragraphs 1, 4, 5 and 6 of the Ex-Parte Summons is granted in favor of the Plaintiff for a limited period of time;**
- 2. With respect to paragraph 2 of the Ex-Parte Summons, Ms. Patricia Rahming is not to perform any other duties in the office of the Airport, Airline & Allied Workers Union and shall cease said duties as of the 28<sup>th</sup> day of March A. D., 2018;**
- 3. Ms. Rahming is to be paid for the work carried out by her on behalf of the Airport, Airline & Allied Workers Union from the 1<sup>st</sup> day of February A. D., 2018 to the 28<sup>th</sup> day of March A. D., 2018;**
- 4. With respect to paragraph 3 of the Ex-Parte Summons the President along with the Treasurer and the General Secretary ought to be provided with a key to the Airport, Airline & Allied Workers Union's office;**
- 5. The Court expects that the parties will act in good faith with respect to the Plaintiff signing the cheques exhibited in the Affidavits of Susan Palmer and Esther Clarke;**

**IT IS FURTHER ORDERED THAT:-**

- 1. The Defendants will provide to the Plaintiff a copy of the video recording of the Minutes of the Executive Council meeting of the 31<sup>st</sup> day of January A. D., 2018 on or before Friday the 6<sup>th</sup> day of April A. D, 2018;**

- 2. The Plaintiff will be provided with a copy of the key for the Airport, Airline & Allied Workers Union's office upon payment for the same;**
- 3. The Defendants are given leave to file and serve a Counterclaim and any other accompanying documents on or before the 13<sup>th</sup> day of April A. D, 2018;**
- 4. The Plaintiff may provide a response to the Defendant's Counterclaim and have the same filed and served on or before the 20<sup>th</sup> day of April A. D., 2018;**
- 5. The hearing of the Originating Summons along with the Defendant's Counterclaim will take place on the 24<sup>th</sup> day of May A. D., 2018 at 10:00a.m.;**
- 6. Any further submissions are to be served on or before the 14<sup>th</sup> day of May A. D., 2018; and**
- 7. The Court will reserve the question of cost for the Interlocutory Injunction upon hearing the Originating Summons and the Defendant's Counterclaim.**

7. Those terms are set out since they feature in a subsequent application which this decision addresses.

8. Shortly after the interim injunction was granted, the Defendants filed, on 18 April 2018, a summons seeking to have the entire action struck out.

That summons reads:



**“LET ALL PARTIES CONCERNED attend before His Lordship the Honourable Mr. Justice Bernard Turner at the Supreme Court Ansbacher Building situate in the City of Nassau, on the Island of New Providence, one of the Islands of the Commonwealth of The Bahamas on Thursday the 17<sup>th</sup> day of May A.D., 2018 at 10:00a.m. o'clock in the morning on the hearing of an application by the Defendants Pursuant to Order 18 Rule 19 (1) (d) of the Rules of the Supreme Court 1999 and/or the inherent jurisdiction of the Court for an Order that the Plaintiff's action be struck out and/or dismissed on the grounds that it is an abuse of the court's process.”**

The decision which follows concerns that application, but I would wish to deal with another application, brought by the Defendants in the instant matter.

### **Contempt Action**

9. The Defendants were granted leave, on 2 May 2018, to commence committal proceedings against the Plaintiff on the assertion that the Plaintiff was in contempt of the Court’s order dated 29 March 2018 (the order set out above, and filed on 3 May 2018). That ex parte summons for leave was filed on 30 April 2018.

10. The Statement filed in support of the application for leave to commence committal proceedings, after reciting the terms of the requested interim interlocutory relief and the terms of the actual order made (both of which are recited herein), asserted:

**“3.3 That the Plaintiff to this date refuses to sign the cheques for Patricia Rahming which the court ordered was to be paid notwithstanding the fact that the Plaintiff got an injunction that terminated the services of Patricia Rahming. Ms. Rahming is now**

**threatening to take the matter to court to recover monies owed to her by the AAWU Union.**

**3.4 That the Court ordered the parties to act in good faith when it came to signing all of AAWU cheques. The Plaintiff to date refuses to sign the cheques exhibited in the Affidavits of Susan Palmer and Esther Clarke dated the 15<sup>th</sup> and 20<sup>th</sup> March, 2018 along with any of the other cheques that were prepared by the Treasurer to pay the Union's expenses.**

**3.5 That while the court granted paragraph 6 of the Plaintiff's Summons which prevented Susan Palmer, the General Secretary for AAWU from sending out any and all correspondence on behalf of the Union without the Plaintiff's approval, it never prevented her from carrying out her duties. However, the Plaintiff has now taken over the duties of the General Secretary and now sends out all of the Union's correspondence and calls meetings without the General Secretary's knowledge hereby preventing the General Secretary from carrying out her duties as per the Union's constitution.**

**3.6 That for the reasons mentioned herein above the Defendants now seek the leave of this honourable court to apply for an order of committal as against the Plaintiff for her failure to obey the court's Order.”**

11. That matter was given a return date of 17 May 2018 and argued on that date. At the conclusion of the submissions on whether the Plaintiff was

guilty of contempt of court for failure to comply with the terms of the court order of 29 March 2018, I ordered that:

- i) the parties were to follow a protocol in respect of the issuance and signing of cheques,
- ii) Ms. Rahming was to be paid in respect of the work which she had in fact performed,
- iii) honorarium cheques were to be signed and distributed,
- iv) sick benefit cheques for union members were to be signed and distributed
- v) cheques for monthly expenses were to be signed and distributed,
- vi) Ms. Charissa Sweeting was to be paid,
- vii) the President and Treasurer were to meet in respect of the cheques for Willamae Stuart and Anishka Cartwright,
- viii) the issue of loan cheques to be determined at a later date,
- ix) the issue of Ms. Munroe's retainer (counsel on behalf of the Defendants) to be determined at a later date.

12. Having considered the application for the Plaintiff to be committed for contempt of court, I considered that whereas there had been a breach of the court's orders as found in the order of 29 March 2018 by the Plaintiff, that this breach was not a willful act of contempt of the court's orders, but behavior brought about due to the apparent acrimonious nature of the relationship between the Plaintiff and the Defendants, with whom she is required to have some interaction, since they collectively constitute the mind and management of this Union. Nothing would be served by any further action in respect of this particular contempt matter, except to 'bloody the nose' of the Plaintiff.

13. On the issue of costs for this application, I find that the Defendants are entitled to costs for the contempt application, on the basis that this action was required to cause the Plaintiff to comply with the order of the court, to be taxed, if not agreed.

14. Having said the foregoing, it is important for all of the parties to realize that the orders of a court are to be scrupulously followed and that willful failure to follow such orders can have onerous consequences.

### **Striking out Action**

15. Order 18, Rule 19(1)(d) reads:

**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) it discloses no reasonable cause of action or defence, as the case may be; or**

**(b) it is scandalous, frivolous or vexatious; or**

**(c) it may prejudice, embarrass or delay the fair trial of the action; or**

**(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.**

**(2) No evidence shall be admissible on an application under paragraph (1) (a).**

**(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.**

16. The Defendants in this matter referred the Court to the decision of Winder J. in **Beckford and others v Registrar of Trade Unions of the Commonwealth of The Bahamas and others No. 48 of 2014** on the principles to be applied in consideration of such an application. Winder J. stated beginning at paragraph 16:

**16. In the case of West Island Properties Limited v. Sabre Investment Limited and others - [2012] 3 BHS J. No. 57 the Bahamas Court of Appeal has provided some guidance on the question of striking out actions under Order 18 rule 19 (1). Allen P., delivering the majority decision of the Court, at paragraphs 15, 30-32 and 57, stated:**

**15 In the case of Drummond-Jackson v. British Medical Association [1970] 1 W.L.R. 688, Lord Pearson determined that a cause of action was reasonable where it had some chance of success when considering the allegations contained in the pleadings alone. That is, beginning at page 695, he said the following:**

**"Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases.**

**....**

**the power should only be used in plain and obvious cases - is correct according to the intention of the rule for several reasons. First, there is in paragraph (1)(a) of the rule the expression "reasonable cause of action," to which Lindley M.R. called attention in *Hubbuck & Sons Ltd. v. Wilkinson, Heywood & Clark Ltd.* [1899] 1 Q.B. 86, pp. 90 - 91. No exact paraphrase can be given, but I think "reasonable cause of action" means a cause of action with some prospect of success, when (as required by paragraph (2) of the rule) only the allegations in the pleading are considered. If when those allegations are examined it is found that the alleged cause of action is certain to fail, the statement of claim should be struck out. In *Nagle v. Feilden* [1966] 2 Q.B. 633 Danckwerts L.J. said, at p. 648:**

**'The summary remedy which has been applied to this action is one which is only to be applied in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process of the court.'**

**Salmon L. J. said, at p. 651: 'It is well settled that a statement of claim should not be struck out and the plaintiff driven from the judgment seat unless the case is unarguable.' Secondly, subparagraph (a) in paragraph (1) of the rule takes some colour from its context in subparagraph (b) "scandalous, frivolous or vexatious," subparagraph (c) "prejudice, embarrass or delay the fair trial of the action" and subparagraph (d) "otherwise an abuse of the process of the court." The defect referred to in subparagraph (a) is a radical defect ranking with those referred to in the other subparagraphs. Thirdly, an application for the statement of claim to be struck out under this rule is made at a very early stage of the action when there is only the statement of claim without any other pleadings and without any evidence at all. The plaintiff should not be "driven from the judgment seat" at this**

very early stage unless it is quite plain that his alleged cause of action has no chance of success. The fourth reason is that the procedure, which is (if the action is in the Queen's Bench Division) by application to the master and on appeal to the judge in chambers, with no further appeal as of right to the Court of Appeal, is not appropriate for other than plain and obvious cases.

....

That is the basis of rule and practice on which one has to approach the question whether the plaintiffs statement of claim in the present case discloses any reasonable cause of action. It is not permissible to anticipate the defence or defences - possibly some very strong ones - which the defendants may plead and be able to prove at the trial, nor anything which the plaintiff may plead in reply and seek to reply on at the trial."

.....

30 Concerning Order 18; rule 19(1)(d) R.S.C., both Bramwell B. and Blackburn J. in the cases of *Castro v. Murray* Law Rep. 10 Ex. 213;218 and *Dawkins v. Prince Edward of Saxe-Weimar* 1Q. B.D. 499; 502 respectively, underscored the fact that the court possessed a discretion to stop proceedings which are groundless and an abuse of the court's process. The discretion, as Mellor, J. in *Dawkins v. Prince Edward of Saxe-Weimar* indicated, must be exercised carefully and with the objective of saving precious judicial time and that of the litigant.

31 With respect to the submission of counsel for the appellant, that the learned judge ought to have allowed the pleading to be amended instead of striking out and dismissing the same, the leading case of *Republic of Peru v. Peruvian Guana Company* (1987) L.R. 36 Ch. D. 489, as cited by counsel for the appellant is instructive. Chitty, J., at pages 500 - 501 said the following:

"Then comes the question whether the action should be dismissed. The notice of motion does not ask in terms for

**the dismissal of the action, but it does ask for such other order as may be proper, and there seems to me to be two reasons why I should dismiss the action. First, the pleader has made the best of his case, I am satisfied that he could not state it better than he has stated it...The result, therefore, I think is that no good can come of this litigation, and that in accordance with the jurisdiction conferred upon me by the rule, I ought now summarily to put an end to the thing. I therefore strike out the claim and dismiss the action with costs..."**

**32 Indeed, while the learned judge in this instance also had a discretion to allow the pleading to be amended, the court will usually not do so if it is of the sort that is incurable by amendment. Suffice it to say, that albeit the learned judge did not provide his reasons for not exercising his discretion in the aforementioned manner, we are of the view that the learned judge here, as the judge in the case of the Republic of Peru v. Peruvian Guana Company (supra), obviously felt that counsel made the best of the case and could not state it better than it was already stated.**

**57 Lindley, L.J. in the leading Court of Appeal case of the Attorney-General of the Duchy of Lancaster v. London and North Western Railway Company [1892] 3 Ch. 274, considered a similar order which allowed pleadings to be struck out and dismissed on the ground of being frivolous and vexatious. The learned judge at page 277 said that:**

**"It appears to me that the object of the rule is to stop cases which ought not to be launched - cases which are obviously frivolous or vexatious, or obviously unsustainable"**



17. Applying these principles to the striking out application in this matter, and despite the comprehensive and detailed analysis of the issues in the written submissions of counsel on behalf of the Defendants in this matter, I am unable to see how I could apply the provisions of Order 18, Rule 19(1)(d) and conclude that the action initiated by the Plaintiff is somehow an abuse of the process of the Court.

18. As counsel for the Plaintiff observed, I have already granted an interim interlocutory injunction in respect of this matter, after an inter partes hearing, which indicated that I had previously found that there was a sufficient issue raised on that interlocutory application for the court's intervention.

19. Further, the Defendants have availed themselves of that decision by seeking to enforce an alleged breach of same in the contempt action discussed above.

20. The fulsome nature of the submissions of the Defendants on this issue, going into a detailed examination of the Constitution of the Union and the evidence as to the manner of interpretation of that constitution by previous union leaders, by external union representatives, and by reference to the minutes of executive council meetings all belie an assertion that to bring the issue as to the proper interpretation as to the Union's constitution and the division of authority and responsibility therein, before a court would amount

to an abuse of the court's process. I am unable to accede to such an application.

21. For these reasons, the Applicants/Defendants summons to strike out the entirety of the action is dismissed, with costs to the Plaintiff, to be taxed, if not agreed.

22. I am constrained to make several observations in respect of this matter and the parties thereto. Without seeking to cast any aspersions on any of the attorneys in this matter, I am constrained to observe, because it was somewhat gratuitously, included in one of the many affidavits filed during the course of the several related actions attendant to this matter that counsel for the Plaintiff is the brother of the Plaintiff. The representation of family members, even in contentious litigation is not necessarily precluded by the Bar Code of professional conduct but it is an issue which an attorney should always consider as to whether he or she is able to offer dispassionate advice and counsel to their client.

23. Further, during the course of the many hearings in this matter, which, because of the decision today, is not yet concluded, there has been a palpable animus as between counsel involved in this matter. In that regard, I wish to remind counsel of Rule XVI of the Code of Professional Conduct, as follows, and in particular the portion of the Commentary on the Rule which I have underlined:

#### **RULE XVI RESPONSIBILITY TO LAWYERS INDIVIDUALLY**

**The attorney's conduct towards other attorneys should be characterised by courtesy and good faith.**

#### **Commentary**

**1. Public interest demands that matters entrusted to an attorney be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each attorney engaged in a matter will contribute materially to this end. The attorney who conducts himself otherwise does a disservice to his client and neglect of the Rule will impair the ability of attorneys to perform their function properly.**

**2. Any ill feeling which may exist or be engendered between clients, particularly during litigation, should never be allowed to influence attorneys in their conduct and demeanour toward each other or the parties. The presence of personal animosity between attorneys involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or references between them should be avoided, and haranguing or offensive tactics interfere with the orderly administration of justice and have no place in our legal system.**

A word to the astute should be sufficient.

**Dated this      day of March AD 2019**

**Bernard S A Turner  
Justice**