

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

2010/CLE/gen/01137

BETWEEN

**RICHARD ANTHONY HAYWARD
SUSAN JANE HEATH
GILES EDWARD HAYWARD
RUPERT CHARLES HAYWARD
FRANCESCA ROSE CHELSOM
EMMA LOUISE CAMERON
ALEXANDER JAMES WROUGHTON HEATH
NICHOLAS CHARLES EDWARDS HEATH**

Plaintiffs

AND

**STRIKER TRUSTEES LIMITED
PROMETHEUS SERVICES LIMITED
RICHARD W DEVRIES
KEITH GRIFFITHS
SIR JACK ARNOLD HAYWARD (died 13/1/15)
LADY JEAN MARY HAYWARD (died 12/5/15)
FREDERICK ARTHUR LEBLANC CAMERON (a minor)
IAN BARRY
PATRICIA RUTH BLOOM
AMY BLOOM CLOUGH
JULIUS TREVOR BETHEL
JONATHAN HAYWARD**

Defendants

Before Hon. Mr Justice Ian Winder

Appearances:

Ferron Bethell with Camille Cleare for the Plaintiffs

Meryl Ginton for the Applicant Julius Trevor Bethel

Christopher Jenkins with Ramone Gardiner for the Judicial
Trustee

7 October 2019

WINDER, J

This is the application of Julius Trevor Bethel (Bethel) for leave to appeal and a partial stay of the decision of this court dated 10 April 2019.

1. The application was made by Summons dated 26 July 2019 and supported by the affidavit of Bethel filed on 26 July 2019. The Summons seek leave to appeal and for a partial Stay of the decision of the Court.
2. It is perhaps appropriate to outline a brief chronology of the events in this dispute for a better understating of the context of the application:

<11 Mar 16	Action assigned to Charles J, who had appointed judicial trustees
11 Mar 16	Order made by Winder J., purportedly by consent, as Charles J was ill on the day the parties were to present the application. Matter heard and entire file returned to the office of Charles J.
>Mar 19	Bethel sought to set aside the Dec 2016 made by Winder J. As order was made by Winder J., Counsel for Bethel requested that Winder J hear the application. File of the action retrieved by Winder J.
11 Mar 19	Winder J sets aside March 2016 Order. Matter adjourned to 4 Apr 19 determine consequential orders arising from the decision to set aside the Order.
18 Mar 19	Order granted by Winder J upon the Judicial Trustee's (JT's) ex parte application for leave to serve a new action out of the jurisdiction seeking to bring trust assets under the control of the JT and for permission to audit the accounts of the trust and for a forensic accounting.
3 April 19	Attorney Robert Adams writes to the Court, and raises for the first time, a possible conflict by the Court in hearing the matter any further having read confidential information which was laid over during the 11 March 2016 hearing.
4/10 April 19	Winder J recuses himself from any further hearing of the action save for settling consequential orders. Directed that the file be returned to Charles J.
17 April 19	Bethel files Notice of Appeal Motion.

3. According to Bethel, in his affidavit in support of the application:

5. Whilst I take no objection to Mr. Justice Winder's recusal, I believe that His Lordship has nonetheless occasioned me damage by failing and/or refusing to make a Declaration that the Ex Parte Order made by him on 18th March 2019 ("the Ex Parte Order") be set aside or stayed pending an inter partes hearing.
6. The Ex Parte Order having been made after the 11th March 2019, and after the conditions necessitating Mr. Justice Winder's recusal came into fruition, I was entitled to have the said Order set aside as of right. Having failed to make an Order, which would also have been consequential to the Principal Order and Mr. Justice Winder's recusal, His Lordship has permitted the Judicial Trustee to continue acting in thereof, cloaked with the protection afforded him by the leave and/or liberty granted him therein, which is directly at odds with my furtherance pending application for his removal and the result of which can only be the expenditure of moneys of the Discretionary Trust, of which I am a beneficiary, by the Judicial Trustee who is demonstrably not impartial towards me (relative to the other beneficiaries or relative to the Plaintiffs in this action) or the claims in this action.
7. Moreover, Mr. Justice Winder indicated that he refused to hear my application for stay of the Ex Parte Order, on the ground that such an Order was not consequential to the Principal Order, and thus was not an Order he could make having recused himself. However, this did not prevent him from making another Order that the file in this action be returned to the Honourable Madam Justice Indra Charles ("Justice Charles") for, inter alia, directions as to trial.
8. It is my belief that, if Mr. Justice Winder had power to make an Order giving directions as to how and before whom the action should continue, he was equally empowered to declare the Ex Parte Order void, as both Orders are equally consequential to his recusal.
9. In any event, I take objection to Mr. Justice Winder making an Order directing the matter to Justice Indra Charles, or any other Judge of the Supreme Court, when, I am informed by my attorneys and verily believe, that such administrative decisions and properly made by the Listing Office and/or the Chief Justice.
- ...
12. Another Consequential Order made by Mr. Justice Winder was that all distributions made by the Judicial Trustee to persons who are not beneficiaries are to be repaid but that such repayment is to be suspended pending the determination of this action.
13. Whilst I agree that the distributions made to non-beneficiaries must be repaid, I believe that such repayment ought not to have been

suspended, as this can only serve to scatter or dissipate assets of the Trust, which will remain depleted for an indefinite period of time and, especially in light of the fact that some, if not all, of the persons who received distributions are not citizens or residents of The Bahamas, put the Trust in a position of having to take action to seek the return of such moneys from those persons, whose ability to repay the money is unknown at this time, and may become more precarious over time. This could cause substantial additional loss and damage to the trust, who would be required to take out proceedings for the recovery of the moneys and the interest accumulating thereon in the interim.

...

4. Bethel, through his attorneys, says at paragraphs 6 and 7 of the submissions:

...

6. As set out in the Affidavit, the Applicant lodged a Notice of Appeal in the Court of Appeal on 17th April 2019, which Notice was served on the parties. Consequently, it is submitted the other parties would not be prejudiced by the grant of extension of time in which to appeal, as they have always been aware of Mr. Bethel's intention to appeal.
7. Further, the parties have already settled the Record of Appeal, which record was filed together with the Bond to Secure Due Prosecution of the Appeal. The parties have made several appearances before the Court of Appeal, in which, admittedly, the bulk of submissions were laid on the point of whether, in the circumstances, the Applicant was required to seek leave to appeal; but, in the course of doing so, the Court has already heard submissions on the over-arching issues raised on the substantive appeal, which would help to expedite the hearing of such an appeal.

5. I am not satisfied that Bethel's submissions that the appeal subsists subject to this application is accurate. The written ruling of the Court of Appeal demonstrates that there was no valid appeal before the Court of Appeal. It does not appear that this is simply a matter, as Bethel seem to suggest, of picking up where he left off. It would appear that a fresh appeal is necessary.

6. Bethel identifies the decisions, the subject of the appeal, into two discrete areas, which I will gladly adopt for the purposes of this ruling:

- (a) The decision to recuse [myself] from hearing or determining certain urgent interlocutory applications pending before [me];

- (b) The decision to unconditionally suspend the repayment of moneys disbursed by the Judicial Trustee to the Plaintiffs and various members of the Hayward family since making of the 11th March 2016 Order.
7. In relation to the recusal Bethel, interestingly, says at paragraphs 14 and 15 of his submissions, that:
14. Not having read the Opinion on Settlement prepared on behalf of the minor child ('the Opinion'), it is impossible for the Applicant to know exactly what information was included therein, but it is reasonable to assume, that such an opinion would likely have included, inter alia, information relevant to the claims' prospect of success relative to the proposed Terms of Compromise.
 15. Consequently the Applicant cannot take issue with Justice Winder's Decision to recuse himself as the trial Judge in the action. However, the Applicant submits, Justice Winder having already been seized of various applications, ought to have given separate consideration as to whether he was disqualified from hearing them rather than decline jurisdiction to hear those applications.
8. The matter had always been assigned to **Charles J.** It was merely as a result of her unavailability, on the day fixed for the hearing of the purported application by consent, that I was call upon to hear the matter. As the record will reflect it was never formally transferred to me. I consider that an appeal against the exercise of my discretion to decline to hear the inter partes application after recusing myself must be of little merit. Bethel accepts that he takes no issue with my recusal and therefore must accept that the decision made, at the ex parte hearing on 18 March 2019, took place prior to the decision to recuse.
9. The application to set aside remains extant to be heard by another Supreme Court judge. In addition to the finding that there is no substantial merit in the appeal I am also satisfied that it does not raise any point of general public importance.
10. On the decision to suspend the repayment of moneys disbursed by the Judicial Trustee until the determination of the action, I will give leave to appeal. Bethel

should be allowed to raise the question before the Court of Appeal if he believes that the Court was wrong. I cannot say that such an appeal is unmeritorious.

11. I did not accept the plaintiff's preliminary objection that there is no power to hear an appeal outside of the 14 day period following the Court's order. I am able to decide only the question of leave, I can therefore extend the period within which I decide this issue, which for the purpose of the record I have done. In ***UBS v Junkanoo Beach*** the Privy Council determined that it should send the appellants back to the Supreme Court to seek to obtain leave from Evans J. Implicit in such a direction is the power in Evans J, recognized by the Privy Council, that Evans J had the power to grant leave if he deemed it appropriate.
12. The Court of Appeal will have to determine if it will extend permission to Bethel to appeal outside of the 14 days limited by the Act. That is not a matter for me.
13. In the circumstances I will grant leave on the limited basis as outlined above. I will not grant a stay. I make no order as to costs.

Dated the 6th day of December 2019



Ian R. Winder

Justice