

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2019/CLE/gen/001461

B E T W E E N:

RYAN STRACHAN

Plaintiff

AND

RAYNOR RUSSELL
DONITA RUSSELL

Defendants

Before: Assistant Registrar, Mr. Renaldo Toote

Appearances: Richette Percentie with Lashanda Bain for the Plaintiff
Cheryll Whyms for the Defendant

Hearing Date: 3rd May, 2021

RULING

Interlocutory Order - Interim Payment - RSC Order 29 Rule 10, 12 & 14 – assessment of damages is scheduled to be heard within a reasonable time.

[1]. This is my decision on the Plaintiff's application for an interim payment pursuant to Order 29 rule 10 of the Rules of the Supreme Court ("RSC").

[2]. The Plaintiff's case as stated in his Statement of Claim is that on 17th August, 2017 while driving his 2010 Nissan Note he was rear ended while on the corner of East Street and Lilly and the Valley Corner by a 2006 Nissan Cube driven by the 1st Defendant and owned by the 2nd Defendant.

[3]. On 15th October, 2019 the Plaintiff filed a Writ of Summons.

[4]. On the 3rd May, 2021 this Court gave the Plaintiff leave to amend its Statement of Claim. The amended Statement of Claim pleads (i) Special damages: \$358,583.62; (ii) Loss of Earnings: \$69,212.00; and PSLA: to be assessed.

[5]. The Defendants filed a Defence, however, by an Order dated 16 February, 2021, judgment was granted to the Plaintiff based upon the Defendants admission of facts.

[6]. Having considered the circumstances of the instant case, it would appear to be an appropriate case to which an order for an interim relief ought to be awarded as all of the prescribed ingredients of Order 29 r. 12 of the RSC exist. In particular: (i) an order of admission by the Defendants; and (ii) the Plaintiff obtained judgment against the Defendant for damages to be assessed.

[7]. Corollary to O. 29 r. 12 is O. 29 r. 14 which holds:

The fact that an order has been made under rule 12 shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the action or of any question or issue as to liability or damages until all questions of liability and the amount of the damages have been decided.

[8]. If I concede to the Plaintiff's application, then the effect of rule 14 would ultimately debar me from presiding over of the hearing to assess damages. Simply put, the same court which awards an interim award cannot assess damages. On 16 February, 2021, I fixed the assessment date for Friday 21st May, 2021. Consequently, the summons for an interim relief was made on 24 February, 2021 and I heard the same on 3rd May, 2021. At this time, there was only a three (3) week abeyance period until final conclusion of this matter.

[9]. The Plaintiff argues that the test for the Court to consider when deciding whether or not to grant an interim award is O. 29 r. 12. I agree. However, the Plaintiff must be minded that equity looks at intent rather than form. In other words, the Court will consider the intent and effect of granting the interim relief and weigh it against the entire circumstance.

[10]. The author [Stuart Sime] of "**A Practical Approach, Civil Procedure**, 3rd Edition" stated "when interim payments were first introduced it was thought that, as the procedure was intended to alleviate the hardship that a plaintiff faced in having to wait until trial before being paid anything...".

[11]. I am persuaded that the hearing of the assessment of damages is scheduled to be heard within a reasonable time and as such any alleged undue hardship on the Plaintiff would be minimal. Conversely, if this Court were to accede to the award of payment, the request for hearing the assessment would have to be

relisted and assigned to a different Registrar and it is unlikely that it would be heard within the next 60 days. Ultimately, this would prejudice the Plaintiff and is akin to creating hardship to the Plaintiff.

- [12]. In **Williams v. Insurance Management (Bahamas) Limited and another** [2015] 2 BHS J. No. 67, Gray-Evans, J. had to consider a similar matter concerning the instant issue. Her ruling was analogous to my decision. She reasoned that an application for a second interim payment made in July was unnecessary as the judgment and conclusion of the matter was scheduled to occur in September.
- [13]. The Plaintiff being aware that the effect of a late interim award payment weeks before an assessment hearing would result in a further delay of the trial did not specify the reason to delay the trial.
- [14]. Every party is entitled to the right to be heard within a reasonable time. All of the dates and directions have been set and there appears to be no impediments which would be likely to delay the hearing of the assessment.
- [15]. Therefore, having heard the parties and having considered the Plaintiff's affidavit in support, the submissions and the law, the dispute between the parties on the severity of the Plaintiff's injuries and bearing in mind that the assessment is scheduled to occur on the 21st May, 2021, I am not minded to order an interim payment.
- [16]. In the result, the Plaintiff's application for an interim payment is refused with fixed cost of \$1,000.00 awarded to the Defendant for this application.

Dated this 17th day of May A.D., 2021

[Original Signed & Sealed]

Renaldo Toote
Assistant Registrar