

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMON LAW & EQUITY DIVISION  
2019/CLE/gen/01650**

**BETWEEN**

**JAMAT REINSURANCE COMPANY LTD.**

**First Plaintiff**

**AND**

**CORAL CADILLAC, INC.**

**Second Plaintiff**

**AND**

**ARMANDO CODINA**

**Third Plaintiff**

**AND**

**G&G GLOBAL HOLDINGS LTD.**

**Fourth Plaintiff**

**AND**

**GEORGE STAMOS**

**Fifth Plaintiff**

**AND**

**JOHN RIBEIRO**

**Sixth Plaintiff**

**AND**

**CHUB CAY CLUB ASSOCIATES LTD.**

**First Defendant**

**AND**

**CHUB CAY REALTY LLC**

**Second Defendant**

**AND**

**GEKABI CHUB CAY LIMITED**

**Third Defendant**

GEKABI HOLDINGS LIMITED and/or  
GEKABI CC HOLDING LIMITED

Fourth Defendant

AND

SCOTIABANK (BAHAMAS) LIMITED

Fifth Defendant

AND

CARLSON SHURLAND

Sixth Defendant

AND

SURLAND & CO.

Seventh Defendant

**Before:** The Honourable Madam Justice Tara Cooper Burnside (Ag)

**Appearances:** Barry A. Sawyer for the First Plaintiff  
Carlson Shurland for the Second, Third and Fourth Defendants

**Hearing Date:** 29 March 2021

**Summons to strike out Defence for failure to comply with Order – Whether Defence should be struck out if Order not precise – Appeal does not operate as a stay.**

#### RULING

[1] This is an application by the Second, Third and Fourth Defendants (collectively the “**Defendants**”) for an Order that the claim of the First Plaintiff (“**Jamat**”) be struck out for failing to comply with an Order (the “**Costs Order**”) filed on 13 November 2020 requiring **Jamat** to provide security for the costs of the proceedings. It is made by a Summons filed 9 December 2020.

[2] The Costs Order insofar as it is relevant states, *inter alia*, as follows:

“1. That the 1<sup>st</sup> Corporate Plaintiff is ordered to provide security for costs of the proceedings in the instant matter by paying the sum of \$350,000.00

within fourteen (14) days from the date of service of this Order set out herein.

...

7. All claims of the Plaintiffs herein after stayed pending the payment of such costs in accordance with these orders.
8. If the security as ordered is not provided in accordance with the terms set out herein within the time specified, then those claims of the Plaintiffs not in compliance shall be struck out."

[3] The Defendants' application is supported by an affidavit sworn by Parco R. Deal filed on 9 December 2020, which in summary states as follows:

- (i) At the hearing of the Defendants' application for security for costs, Jamat's Counsel declined an invitation by the Court to make submissions. He stated that he had no contribution to make and would rely on the Court's decision. Additionally, Jamat's Counsel did not offer any excuse for failing to file written submissions and did not make an application for an extension of time to do so.
- (ii) On 30 October 2020, the Court provided written reasons for granting the Costs Order, which order was duly perfected and served on all parties. As such, Jamat's Counsel knew or ought to have known that Jamat was required to provide security for costs in accordance with the terms of the Costs Order.
- (iii) Mr Deal verily believes that Jamat and its Counsel appreciated that Jamat's failure to comply with the Costs Order would result in Jamat's claim being struck out. Further, Mr Deal verily believes that Jamat's failure to apply for a stay of execution of the Costs Order prohibits Jamat from appealing the Costs Order to the Court of Appeal without first complying with its terms.
- (iv) Jamat purported to file a Notice of Appeal in respect of the Costs Order on 27 November 2020 but Mr Deal verily believes that such appeal is out of time. Furthermore, no application has been made by Jamat for an extension of time to appeal.

[4] On behalf of the First Plaintiff, Mr Shurland argues that the terms of the Costs Order ought to have been complied with; for an appeal does not operate as a stay. Therefore, given Jamat's non-compliance, its claim in the action should be struck out in accordance with the Costs Order.

[5] It is not disputed that Jamat has failed to comply with the Costs Order. However, Mr Sawyer argues that the terms of the Costs Order are not clear because it does not specify the manner of payment. He says the Costs Order is inoperative as a result. And as such, there is no requirement for Jamat to seek relief from sanction.

## Relevant provisions of the Rules

[6] Order 23, rule 2 states:

“2. Where an order is made requiring any party to give security for costs, security shall be given in such manner, at such time, and on such terms (if any), as the Court may direct.”

[7] Further Order 31A rule 24(1) and (2) state:

24. (1) Where the Court makes an order or gives directions the Court may whenever practicable also specify the consequences of failure to comply.

(2) Where a party has failed to comply with —  
(a) any of these Rules;  
(b) a direction or any order,

any sanction for non-compliance imposed by the rule, shall have effect unless the party in default applies for and obtains relief from the sanction, and in such case rule 26 shall not apply.

(3) Where a rule, practice direction or order —  
(a) requires a party to do something by a specified date; and  
(b) specifies the consequences of failure to comply,

the time for doing the act in question may not be extended by agreement between the parties.

[8] At first blush, this appears to be a clear case where the sanction of the Court should apply. It is obvious that the Costs Order required Jamat to provide security for costs in the sum of \$350,000.00 within 14 days. The usual method by which security is provided is by payment into Court and if Jamat had any desire to comply with the Costs Order, one would have expected Jamat to seek directions from the Court.

[9] Be that as it may, I am cautioned by the judicious words of Stuart-Smith LJ in *Abalian and Another v Innous* [1936] 2 All ER 834, which were recently considered by Charles J in *Sigma Management Bahamas Ltd v Belgravia International Bank and Trust Limited et al* Supreme Court Action No. 2016/CLE/gen/00511 (unreported).

[10] Stuart-Smith LJ stated (at page 838):

“Speaking for myself, I think that any order dealing with the dismissal of an action unless something is done should be absolutely and perfectly precise in its terms. The dismissal of an action at an interlocutory stage is a very serious matter and may well work serious injustice. If an order is to be made in the

form that, unless one party or another party does something, the action will be dismissed, it is imperative that the thing to be done in order to avoid dismissal of the action should be specified in the clearest and most precise language, so that it may be possible for the party on whom the necessity of doing the act lies—which would normally be the plaintiff—to be in no doubt whatsoever as to the steps which he is to take if he is to avoid his action being dismissed. Looking at it in another way: where the defendant, in reliance on such order, goes to the court and asks it to say that, as a result of the order, the action stands dismissed and is no longer existent, he must be able to show first of all, that the language of the order is sufficiently precise, and, secondly, that the facts which the order contemplates have occurred.”

- [11] In my view this is, at best, a borderline case. However, in the interest of justice, Jamat should be given the benefit of any doubt.
- [12] I therefore dismiss the Defendants’ application and order as follows: (i) Jamat shall provide security for costs required to be provided by the Costs Order by way of payment into Court and (ii) the time for making such payment shall be and is hereby extended to 11 June 2021.
- [13] The Costs of the Defendant’s application shall be costs in the cause.

DATED this 28<sup>th</sup> day of May, 2021



TARA COOPER BURNSIDE  
JUSTICE (AG)