

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMON LAW AND EQUITY DIVISION**

**2017/CLE/gen/00937**

**BETWEEN**

- (1) MARIA IGLESIAS ROUCO**
- (2) LUCIA MARIA IGLESIAS**
- (3) JAVIER JESUS IGLESIAS ROUCO**
- (4) FERNANDO IGLESIAS**
- (5) INDIRA IGLESIAS**
- (6) ALEJANDRO IGLESIAS**
- (7) PABLO IGLESIAS**

**Plaintiffs**

**AND**

- (1) JUAN JOSE SANCHEZ BUSNADIEGO**  
(In his capacity as Judicial Administrator of the Spanish Estate of Jesus Iglesias Rouco)
- (2) SURF 'N' TURF LTD**
- (3) DELTEC BANK & TRUST LIMITED**
- (4) INGRID IGLESIAS ROUCO**
- (5) HOLOWESKO PYFROM & FLETCHER**  
(A law partnership)
- (6) ALTUS LIMITED**

**Defendants**

**Before:** The Honourable Madam Justice Indra H. Charles

**Appearances:** Mr. Christopher Jenkins and Mr. Sebastian Masnyk of Lennox Paton for the Plaintiffs  
Mrs. Gail Lockhart-Charles and Mrs. Lisa Esfakis of Gail Lockhart Charles & Co for the 2<sup>nd</sup> Defendant, Surf 'N' Turf Ltd.

Mr. Leif Farquharson of Graham Thompson for the 3<sup>rd</sup> Defendant, Deltec Bank & Trust Limited  
Mr. Ryan Brown of RBO Advisors for the 4<sup>th</sup> Defendant, Ingrid Iglesias Rouco  
Mr. N. Leroy Smith and Mr. Jonathan Deal of Higgs & Johnson for the 5<sup>th</sup> Defendant, Holowesko Pyfrom & Fletcher (a law firm) and the 6<sup>th</sup> Defendant, Altus Limited

**Hearing Dates:** 14, 21, 23 July 2021

**Practice and Procedure – Stay of proceedings pending Ruling of foreign court – Request for stay until Spanish Judicial Administrator can effectively replace the Plaintiffs in these proceedings – Grounds upon which stay may be granted - Whether the Plaintiffs have shown exceptional circumstances to justify a stay**

The Plaintiffs are seven of the eight children of Jesus Iglesias Rouco (“the Deceased”). They claim ownership of 7/8 shares in Surf ‘N’ Turf Ltd (“the Company”), which were beneficially owned by the Deceased during his lifetime. Their claims are adverse to the claims of their sister, Ingrid Iglesias Rouco (“Ingrid”) who is the last of the Deceased’s eight children.

In May 2021, this Court ruled that the Judicial Administrator, who was appointed by the Spanish Court as the representative of the Deceased’s Estate, should be joined as a Plaintiff in these proceedings. At that time, this Court indicated that no further applications should be heard until he was so joined to these proceedings. Since then, he has not joined these proceedings as the Plaintiff and no indication has been given as to the time at which he will be able to do so. The Plaintiffs now seek to stay these proceedings until the Judicial Administrator is joined as the Plaintiff. Effectively, he will replace the Plaintiffs. As things currently stand, the Judicial Administrator is the First Defendant in these proceedings and has not submitted to the jurisdiction of this Court in that capacity.

Ingrid’s claim to the shares in the Company is based on a Declaration of Trust executed at Holowesko Pyfrom & Fletcher by Altus Ltd. According to the Declaration of Trust, the shares in the Company were being held for the benefit of the Deceased during his lifetime and for Ingrid after the Deceased’s death. It is the Plaintiffs’ position that the Deceased did not understand the terms of the Declaration of Trust. Consequently, they say, the shares in the Company belong to their father’s Spanish Estate and therefore, they are entitled to 7/8 of the shares in the Company. They say that the Judicial Administrator of the Spanish Estate is more proper to advance that position and it is very likely that the Spanish Court will give him permission to join in these proceedings. The Plaintiffs now apply for these proceedings to be stayed, arguing that their positions could be better advanced by the Judicial Administrator.

**HELD: dismissing the Plaintiffs’ application for stay of these proceedings with costs to the Defendants with the exception of Deltec who did not participate with respect to this application.**

1. Under normal circumstances, when a plaintiff brings an action, he should be ready to proceed with it and should not be permitted to conduct the action to a timetable that corresponds only to his own whimsy. Therefore, if a plaintiff wishes to ‘warehouse’ his own case, he will have to demonstrate that there are ‘special’, ‘rare’ or ‘exceptional’ circumstances justifying such a stay. In the present case, the Plaintiffs have certainly not demonstrated any such circumstance. They cannot institute these proceedings then seek a stay of their case until they sort out their disputes in Spain.
2. A plaintiff who seeks a stay of proceedings must show ‘special’, ‘rare’ or ‘exceptional’ circumstances to justify a stay: **Excalibur Ventures LLC v Texas Keystone Inc and others** [2011] EWHC 1624 (Comm) and **Ledra Fisheries Ltd v Turner** [2003] EWHC 1049 applied. The usual approach where a plaintiff is seeking a stay of proceedings brought by it is therefore to refuse the stay. However, an exceptional case might be made out where the proceedings sought to be stayed were started purely to protect the plaintiff’s limitation position. Even where there were such reasons for a stay, a stay should only be granted if the benefits of doing so clearly outweigh any disadvantage to the other party.
3. A stay would not generally be appropriate if the other proceedings would not even bind the parties to the action stayed or finally resolve all the issues in the case to be stayed: **Excalibur Ventures LLC v Texas Keystone Inc and others** [2011] EWHC 1624 (Comm) applied.

## **RULING**

**Charles J:**

### **Introduction**

[1] By Summons filed on 7 July 2021, the Plaintiffs seek a stay of these proceedings pending the final decision of the Spanish Court “*either permitting or directing the Judicial Administrator to take an active role in the Bahamian Litigation, or alternatively directing that the Judicial Administrator shall not take an active role in the Bahamian Litigation*”. In support of their application, the Plaintiffs rely on the Sixth Affidavit of McFallough Bowleg Jr filed on 8 July 2021.

- [2] The Plaintiffs say that the Judicial Administrator can effectively replace them in these proceedings since he is more appropriate to advance their positions as to their alleged interests in the shares in the Second Defendant, Surf 'N' Turf ("the Company"). As things currently stand, the Judicial Administrator is the First Defendant in these proceedings and has not submitted to the jurisdiction of this Court in that capacity or at all.
- [3] On 1 September 2021, I delivered an oral ruling with brief reasons, dismissing the Plaintiffs' stay application. I promised a written ruling. I do so now

### **Brief facts**

- [4] The Company was incorporated by the Fifth Defendant ("HPF"). The shares in the Company are held by the Sixth Defendant ("Altus"), a nominee company of HPF, by and subject to the terms of a Declaration of Trust. Under the Declaration of Trust, Jesus Iglesias Rouco ("the Deceased") was expressed to be the beneficial owner of the shares in the Company during his lifetime. After his death, the beneficial owner was to be the Fourth Defendant ("Ingrid"), the last of the Deceased' eight children.
- [5] Initially, the Company commenced this action in August 2017 to compel the Third Defendant ("Deltec") to transfer certain assets owned by the Company to it. In response to correspondence from certain other claimants (being the other seven children of the Deceased) claiming that the assets were properly the property of the Spanish Estate, Deltec filed an interpleader application in September 2017, which was granted in December 2018. This had the effect of making the seven children the current Plaintiffs.
- [6] The Judicial Administrator was appointed in Spain to represent the Estate of the Deceased but he has not yet joined these proceedings as a Plaintiff. There is no indication when this would happen, if at all.

[7] At a hearing on 28 May 2021, this Court ruled that the hearing of any outstanding applications should await the Spanish Court's Ruling as to whether the Judicial Administrator would be granted permission to participate in this action.

### **Procedural chronology**

[8] On 20 June 2019, this Court held a Directions Hearing. At that time, the trial dates were set down for 27 July - 30 July 2020.

[9] Since July 2020, the Plaintiffs have advised this Court that the Judicial Administrator has been seeking the approval of the Spanish Court to join these Bahamian proceedings as a Plaintiff. The trial dates were then moved to 13 April -15 April 2021 to facilitate the Plaintiffs. In the meanwhile, a flurry of applications has come before the Court.

[10] At a hearing on 17 September 2020, Mr. Jenkins who appeared as Counsel for the Plaintiffs, advised the Court that, on 30 July 2020, the Spanish Judicial Administrator's application to the Spanish Court to join these proceedings had been rejected on the ground that the Judicial Administrator was acting prematurely.

[11] On 16 November 2020, this Court ordered that the Judicial Administrator should participate in the Bahamian proceedings and that he should apply to the Spanish Court for permission to do so within twenty-eight days thereafter.

[12] On 27 Jan 2021, Mr. Jenkins advised that the Judicial Administrator had not received permission to actively participate in these proceedings.

[13] On 10 March 2021, the Judicial Administrator, HPF and Altus Limited were joined as Defendants.

[14] Applications for Security for Costs were made by the Company, Ingrid, HPF and Altus at various times from 30 April 2021 through 26 May 2021.

[15] On 28 May 2021, this Court ruled that it would await the Spanish Court’s Ruling as to whether the Judicial Administrator would be granted permission to participate in this action before hearing any further applications.

[16] By a Ruling dated 3 June 2021, the Spanish Court declared that the shares in the Company held by Altus form part of the Spanish Patrimony to be divided equally between the eight heirs, subject to any decision of the Bahamian Court on the issue.

[17] On 7 July 2021, the Plaintiffs filed the present application for stay of these proceedings.

### **The law on stay**

[18] The Court has the jurisdiction to grant a stay under section 16(3) of the Supreme Court Act and under the Rules of the Supreme Court (“the RSC”) Order 31A Rule 18 (1) and (2)(c),(d), and (s). The Court also has an inherent jurisdiction to stay proceedings.

[19] Section 16(3) of the Supreme Court Act states as follows:

**“Nothing in this Act shall affect the power of the Court to stay any proceedings before it, where it thinks fit to do so, either of its own motion or on the application of any person whether or not a party to the proceedings.”**

[20] Order 31A Rule 18 of the RSC provides, in material part, as follows:

**“18. (1) The Court’s powers in this rule are in addition to any powers given to the Court by any other rule, practice direction or enactment.**

**(2) Except where these Rules provide otherwise, the Court may-**

**(c) adjourn or bring forward a hearing to a specific date;  
(d) stay the whole or part of any proceedings generally or until a specified date or event;**

**(s) take any other step, give any other direction or make any other order for the purpose of managing the case and ensuring the just resolution of the case.”**

[21] Order 35 Rule 3 of the RSC concerns proceedings at trial. It states:

**“3. The judge may, if he thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit.”**

[22] Allen Sr.J in **St. George and others v Hayward and others** [2007] 4 BHS J No 10 outlined considerations which the Court should have regard to in deciding whether it is appropriate to order a stay of proceedings. At paragraph 13, she stated:

**"1. The importance of the proceedings and their likely adverse consequence to the party seeking the adjournment.**

**2. The risk of the party being prejudiced in the conduct of the proceedings if the application were refused.**

**3. The risk of prejudice or other disadvantage to the other party if the adjournment were granted.**

**4. The convenience of the Court.**

**5. The interests of justice generally in the efficient dispatch of court business.**

**6. The desirability of not delaying future litigants by adjourning early and thus leaving the court empty.**

**7. The extent to which the party applying for the adjournment had been responsible for creating the difficulty, which led to the application".**

[23] It is well established that where a plaintiff is the party seeking a stay of the proceedings, he must adduce ‘special’, ‘rare’ or ‘exceptional’ circumstances justifying the stay because he is the one who has commenced the proceedings. In **Excalibur Ventures LLC v Texas Keystone Inc and others** [2011] EWHC 1624 (Comm), at paragraphs 75 to 78 Mrs. Justice Gloster DBE said the following about the circumstances under which a plaintiff would be granted a stay:

**“[75] In circumstances where a claimant is applying to stay proceedings voluntarily brought by it, it needs to show that there are ‘special’, ‘rare’ or ‘exceptional’ circumstances to justify a stay. As**

Neuberger J (as he then was) observed in *Ledra Fisheries Ltd v Turner* [2003] EWHC 1049 at para 12:

**‘ . . . it appears to me that, where a claimant has brought a claim against the same defendant for essentially the same relief arising out of the same facts in two jurisdictions, then, absent special circumstances, it would be wrong for the court to grant a stay of one set of proceedings at the instigation of the claimant, the very person who has brought both sets of proceedings.’**

[76] To similar effect, Mustill LJ held in *Attorney-General v Arthur Andersen & Co.* [1989] ECC 224 at para 13:

**‘ . . . if a plaintiff has thought fit to commence an action, with all the hardship to the defendant which this involves in terms of expense, worry and disruption, he should in general be made to face up to the situation which he has chosen to create, and should not be permitted to conduct the action to a timetable which corresponds only to his own whimsy. Having put his hand to the plough he should continue to the end of the furrow. This is only fairness and common sense.’**

[77] The usual approach where a claimant is seeking a stay of proceedings brought by it is therefore to refuse the stay, but an exceptional case may be made out where the proceedings sought to be stayed were started purely to protect the Claimant's limitation position: see *Attorney-General v Arthur Andersen & Co.* That is not this case.

[78] In *Klöckner Holdings v Klöckner Beteiligungs* [2005] EWHC 1453 (Comm) at para 21, I set out relevant principles governing the grant of a stay of proceedings in favour of proceedings which a claimant had commenced elsewhere. These included the following:

**(i) The court has a wide discretion to stay proceedings, but in circumstances where the claimant itself has voluntarily brought the two sets of proceedings, a stay should only be granted in very rare circumstances.**

**ii) Even where there are such reasons for a stay, a stay should only be granted if the benefits of doing so clearly outweigh any disadvantage to the other party.**

**iii) A stay will not generally be appropriate if the other proceedings will not even bind the parties to the action stayed or finally resolve all the issues in the case to be stayed.**



**iv) A defendant against whom a serious allegation (such as deceit) is made is entitled to an expeditious hearing, and should not be left for years waiting for the outcome of another case over which he (and the court) has no control. An action alleging fraud should come to trial quickly.” [Emphasis added]**

[24] Like in the present case, one of the issues faced by the Court in **Excalibur Ventures LLC** was whether the Court should accede to the plaintiff’s application to stay the commercial proceedings. In that case, there were arbitration proceedings which were also at play. The main consideration for the Court in rejecting the stay application was that there were no exceptional or rare circumstances to justify granting it to the party who commenced the proceedings.

### **Discussion and analysis**

[25] In the present action, the Plaintiffs’ claim is that the Declaration of Trust is invalid by reason of undue influence, thereby disentitling Ingrid to a beneficial interest in the shares pursuant to that deed. As a result, they say that the shares in the Company belong to the Deceased’s Spanish Estate to which they are equally entitled. In that regard, they submit that the Judicial Administrator of the Spanish Estate is the more appropriate party to advance their claim. They have made this application to stay the proceedings pending a Ruling from the Spanish Court permitting the Judicial Administrator to join these proceedings and effectively take their place.

[26] According to learned Counsel Mr. Jenkins, the Ruling of the Spanish Court makes it “virtually certain” that the Judicial Administrator of the Spanish Patrimony will be given the permission by the Spanish Court to take an active (and in fact leading) role in the Bahamian proceedings. He submitted that this Court should again await the Spanish Court’s determination of the Judicial Administrator’s role in these proceedings.

- [27] Mr. Jenkins further submitted that the Judicial Administrator is the most suitable party to argue the Plaintiffs' position (that, collectively, they have a 7/8 interest in the shares in the Company).
- [28] Mr. Jenkins next submitted that if the stay application is refused, both the Plaintiffs and the Judicial Administrator could suffer prejudice as any order made in the various applications for security for costs may have the effect of stifling the claim before he (the Judicial Administrator with control over the entire Spanish Patrimony) is able to take an active role in these proceedings. If the stay is granted and the Judicial Administrator is given the time needed to secure his intervention in the Bahamian Proceedings, he will also have available to him the assets forming the Spanish Patrimony which are capable of realization should he be required to provide security.
- [29] The Defendants (with the exception of Deltec) vehemently opposed the application for a stay.
- [30] Learned Counsel Mr. Deal who appeared on behalf of HPF and Altus properly submitted that notwithstanding that this action was initially commenced by the Company against Deltec seeking to compel Deltec to transfer the assets belonging to the Company to it and the Plaintiffs only became Plaintiffs after they alleged an interest in the shares, they are taken to have initiated the litigation when they filed and served the Statement of Claim. They did so without the participation of the Judicial Administrator.
- [31] As Mr. Deal highlighted, in requesting this stay on the basis of the Judicial Administrator's participation, the Plaintiffs have not, at the very least, offered a time frame as to the Spanish Court's determination of the issue of whether the Judicial Administrator will be able to participate.
- [32] Mr. Deal submitted that, contrary to Mr. Jenkins' assertion, the Defendants have suffered prejudice by the passage of time. The passage of time may itself

prejudice a fair trial and the effective resistance of the Plaintiffs' claim as, with the passing of time, memories fade and locating witnesses and documents can become more difficult. Furthermore, and more importantly, the Plaintiffs have made serious allegations against HPF involving matters of professional negligence. If a stay is granted, these proceedings will continue to loom over HPF's head with no definite end in sight. Mr. Deal suggested that, in an effort to save time and costs, he is prepared to allow for a 30-day adjournment provided that the Plaintiffs give security for costs.

[33] Both Mrs. Lockhart-Charles and Mr. Brown also argued against a stay of these proceedings. They raised similar arguments to Mr. Deal as to why the Court should not grant a stay. For present purposes, it is not necessary for me to repeat them.

[34] On 16 November 2020, I decided that this action may be best served if the Spanish Judicial Administrator is a party to these proceedings. However, there has been an inordinate delay by the Plaintiffs to put their house in order in Spain. Granted that Covid-19 had some part to play in the delay, many months have passed and nothing much has been done.

[35] Under normal circumstances, when a plaintiff brings an action, he should be ready to proceed with it and should not be permitted to conduct the action to a timetable that corresponds only to his own whimsy. Therefore, if a plaintiff wishes to 'warehouse' his own case, he will have to demonstrate that there are 'special', 'rare' or 'exceptional' circumstances justifying such a stay. In the present case, the Plaintiffs have certainly not demonstrated any 'special', 'rare' or 'exceptional' circumstances. As a result of their intervention, the Court has frozen \$1 million.

[36] Although the allegations of undue influence made by the Plaintiffs here are not as damaging as the fraud or deceit allegations asserted by the Plaintiff in **Excalibur Ventures LLC v Texas Keystone Inc and others [supra]**, they are nonetheless serious allegations. In any event, the Plaintiffs still need to show 'special', 'rare' or

'exceptional' circumstances. Even though the Plaintiffs gave a reason for the stay (that the Judicial Administrator could help them to advance their case better), that did not clearly outweigh the disadvantage to the Defendants, particularly since it appears as though they will have to wait indefinitely. The Court has already enlarged time for the Judicial Administrator to be joined. Additionally, such a Ruling as is anticipated by the Plaintiffs appears speculative. Further, following **Excalibur Ventures LLC v Texas Keystone Inc and others** [supra], a stay would not be appropriate because the Spanish Ruling permitting the Judicial Administrator to join these proceedings which the Plaintiffs admitted would not even finally resolve the issues in this matter. It is also noted that the parties to these proceedings would not be bound by the Spanish Court Ruling and the Spanish Court has itself conceded that its decision would be subject to any decision as to ownership of the assets of the Bahamian Court, which is the substantive issue between the parties.

[37] In my considered opinion, the Plaintiffs cannot institute proceedings and seek to "warehouse" it until they put their house in order in Spain. These proceedings cannot be stayed indefinitely on the basis of a *likelihood* that the Spanish Court will allow the Judicial Administrator to be joined to these proceedings. The Plaintiffs have sued the Defendants so they are expected to be prepared to move forward with their claim. There has been much delay with the progress of this case. Two (2) trial dates have already been vacated.

[38] Mrs. Lockhart-Charles was critical in her submissions that, because of the intervention of the Plaintiffs, the sum of \$1 million remained frozen for over four years now and such a situation does not portend well for a financial jurisdiction like The Bahamas. I agree.

[39] Accordingly, the interests of justice would be best served if these proceedings are not stayed.

**Conclusion**

[40] The Plaintiffs' application by Summons dated 7 July 2021 for a stay is dismissed. The costs of the application shall be paid by the Plaintiffs to the Defendants to be taxed if not agreed.

**Dated this 3<sup>rd</sup> day of November, 2021**

**Indra H. Charles  
Justice**