

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

2020/CLE/GEN/01025

BETWEEN

**ASHLEY REID-PASCARELLA
JEFFREY PASCARELLA**

Plaintiffs

AND

**WEST BAY MANAGEMENT LIMITED
(D/BA/SANDALS ROYAL BAHAMIAN SPA & RESORT OFFSHORE ISLAND)
SANDALS RESORT INTERNATIONAL LTD
MORAL ADDERLEY**

Defendants

Before: The Honourable Justice Camille Darville Gomez

Appearances: Mr Carl Bethel for the Plaintiffs

Miss Chizelle Cargill and Tonesa Munnings with her for the
Defendants

Hearing Date: March 23, 2022

**Practice and Procedure – Rules of the Supreme Court – Order 31A rule 25 – Unless
Orders – Relief from Sanctions**

DARVILLE GOMEZ, J

1. I gave my oral decision in this matter on May 3, 2022 granting the relief sought by the Plaintiff and promised to put my reasons in writing later which I now do.
2. On March 18, 2021 the Honourable Madam Justice Tara Cooper-Burnside (Acting) granted an order for security for costs to the Second Defendants against the

Plaintiffs who are ordinarily resident outside of the jurisdiction in the following terms:

- (i) The Plaintiffs within 28 days do give security for the First Defendant's cost in the sum of Fifteen Thousand Dollars (\$15,000).
 - (ii) The security sum shall be paid either by payment into Court or payment into a joint bank account held in the names of both counsel for the Plaintiffs and counsel for the First Defendant.
 - (iii) All further proceedings in this Action as against the First Defendant, be stayed until security is given.
 - (iv) The Court of its own motion grants leave to the Plaintiffs to amend their Statement of Claim filed 9 December, 2021.
 - (v) The Plaintiffs' Amended Statement of Claim filed 16 March, 2021 shall stand as their Amended Statement of Claim.
 - (vi) The Plaintiff shall pay to the First Defendant the costs of any Amended Defence filed by the First Defendant, such costs to be taxed if not agreed.
 - (vii) The Plaintiffs shall pay to the First Defendant the costs of and occasioned by the application for Security for Costs, such costs to be taxed if not agreed.
3. The Plaintiffs did not comply with this order and by Summons filed on September 1, 2021 the First Defendant applied for an Order that unless the Plaintiffs do pay within 7 days of the date of the order granting this application, security for the First Defendant's costs, pursuant to the Order made herein on 18 March, 2021 the action commenced by the Plaintiffs against the First Defendant shall be dismissed with costs to the First Defendant. It was supported by an Affidavit of Tonesa Munnings filed on the same date.
4. This Summons was heard on November 29, 2021 simultaneously with a Summons filed on May 3, 2021 by Keod Smith for leave to withdraw as counsel for the Plaintiffs pursuant to Order 63, rule 5(1). Mr Smith was given leave to withdraw as counsel for the Plaintiffs and the Court made the following Unless Order as sought by the First Defendant:
- (i) The Plaintiffs do on or before the 18 December, 2022 give security in the sum of Fifteen Thousand (\$15,000) for the First Defendant's costs in this action by lodgment into Court of the said sum.
 - (ii) Until such lodgment has been made and notice thereof given to the First Defendant all proceedings in this action against the First Defendant shall remained stayed.
 - (iii) In default of the making such lodgment within the time aforesaid, the Plaintiff's action against the First Defendant shall be struck out without further Order, with costs to be paid by the Plaintiffs to the First Defendant, such costs to be taxed if not agreed.

5. The Plaintiffs failed to comply with this Order and sought by Summons filed on December 21, 2021 to obtain an extension of time to comply with the Court's Order made on November 29, 2021. The First Defendant objected.
6. In the Plaintiffs' supporting Affidavit there were exhibits of the names of the attorneys and the firms contacted, copies of whatsapp messages to prospective attorneys and confirmation that a wire transfer for the security for costs in the sum of \$15,000 had been received by Halsburys Chambers.
7. I have accepted the evidence of the Plaintiff and find that their delay in complying with the Order granting them additional time to comply with the order for security costs was neither intentional nor contumelious.
8. However, while I have found some sympathy with the Plaintiffs' plight in retaining local counsel, I am mindful that the power to extend time "*when there has been non-compliance with a peremptory order of the court must be used with caution and usually on stringent conditions*" (per Sawyer, P in **Mega Management Limited v Southward Ventures Trust et al v Dawson Roberts and Lori Lowe SCCivApp No. 4 of 2007**).
9. I must consider the prejudice and hardship of the Second Defendant and in particular the expense to which it has been subjected as a result of the Plaintiffs non-compliance with these court orders.
10. The Second Defendant already has three orders for costs in its favour as follows:
 - (i) The first costs order was made with respect to the security for costs application. West Bay Management has filed and served its Bill of Costs claiming costs in the sum of \$22,310.50;
 - (ii) The second costs order was made with respect to the Plaintiffs' application to amend their Statement of Claim. West Bay Management has filed and served its Bill of Costs claiming costs in the sum of \$2,850;
 - (iii) The third costs order was made with respect to the application for the Unless Order. West Bay Management has filed and served its Bill of Costs claiming costs in the sum of \$10,428.
11. Therefore, the total costs of these three applications is \$35,588.50 however, the court is mindful that this figure represents untaxed costs that would be reduced by at least one third on taxation. Though, and in any event, it is pellucid that the existing sum for security for costs will be insufficient given the existing cost orders against the Plaintiff and further and more importantly, that this action is in its infancy stage and more interlocutory applications may become necessary.
12. Accordingly and in the circumstances, I make the following orders:

- (i) Leave is granted to extend the time for the payment of the security for costs in the sum of \$15,000 by the close of business on May 6, 2022;
- (ii) Additional security for costs in the sum of \$15,000 to be paid by no later than May 23, 2022;
- (iii) Costs to the Second Defendant of this application fixed at \$3,500 to be paid no later than May 23, 2022.

Dated the 17th day of May, 2022



Camille Darville-Gomez
Justice