

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law & Equity Division**

**2014/CLE/gen/01740**

**BETWEEN**

**RUDOLPH BARRY KERR**

**Plaintiff**

**AND**

**MARCIA KERR  
ANN KERR MACKEY  
VANESSA MACKEY  
AMANDA MACKEY  
THOMAS MACKEY JR.  
RICARDO MILLER  
EARL MUNROE  
ELWOOD MAJOR**

**Defendants**

**Before Hon. Mr. Justice Ian Winder**

**Appearances: Regina Bonaby for the Plaintiff**

**Geoffrey Farquharson for the Defendants**

**17 May 2022**

**DECISION**

## **WINDER, J**

1. This is my brief decision on the Defendants' application to continue an interim injunction granted by Brathwaite J on 4 May 2022 and/or for fresh injunctive relief. Full reasons will be provided in due course.

2. The action relates to ownership and possession of certain property situated along West Bay Street in the Delaport area of New Providence. The injunction was granted on 4 May for a 14 day period. Upon being granted the injunction the Defendants had undertaken to provide certain material which, although referred to in the affidavits supporting their application, were not provided to the Court. The material was relied upon to secure the interim injunction. The Defendants admit the undertaking which was given and their failure to so provide the material as it had undertaken.

3. The trial in this action was fixed for hearing on 29 and 30 November 2021. Those trial dates were aborted due to medical reasons associated with their counsel. Directions with respect to the trial were given since 23 November 2020 and have, in large measure, not been complied with by the Defendants. It is a cardinal rule that the Court ought not to hear parties in breach of its orders and undertakings.

4. Notwithstanding their continuing breach, other representations made in the application leads me to believe that the Defendants have been less than full and frank on the ex parte application also disentitling them to the continuance of injunctive relief. In any event I was not satisfied on the evidence that the balance of convenience lies with the Defendants.

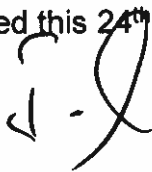
5. The Defendants' application is refused.

6. This action is 8 years old and must proceed to trial or otherwise be disposed of. I order that all outstanding directions be complied with on or before 3 August 2022. Failing

full compliance of the outstanding directions, the Defence and/or Statement of Claim (as the case may be) will be struck out.

7. The trial of this action will proceed on 17 and 18 October 2022.

Dated this 24<sup>th</sup> day of May 2022.

A handwritten signature in black ink, appearing to read 'I. R. Winder', written over the date line.

Ian R. Winder

Justice