



**IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS**

CL 150 of 2022

BETWEEN:

DUNCANSON & CO. (BERYN DUNCANSON DBA)

Plaintiff

And

**(1) EAST WIND DEVELOPMENT COMPANY LTD
(2) WILLIAM DEAN REEVES
(3) RICHARDSON ARTHUR
(4) JEFFREY HERMAN
(5) RONNIE MOORE
(6) JOHN FLEMING
(7) WILLIAM MADDOX
(8) WB CORPORATE MANAGEMENT LTD
(9) SAUNDERS & CO. (NORMAN SAUNDERS JR. DBA)**

Defendants

CL 97 of 2022

BERYN DUNCANSON (DBA DUNCANSON & CO.)

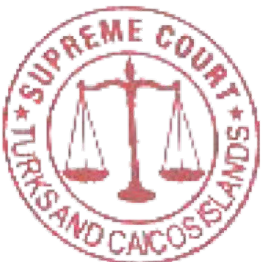
Appellant

And

**(1) THE REGISTRAR OF LANDS
(2) THE ATTORNEY GENERAL OF THE TURKS AND CAICOS ISLANDS
(3) EAST WIND DEVELOPMENT COMPANY LTD.**

Respondents

**Interested Party/
Registered Proprietor**



REASONS

Before: The Honourable Justice Chris Selochan

Appearances: Mr. Beryn Duncanson for the Plaintiff

Mr. Conrad Griffiths KC instructed by Mr. Smith of Griffiths and Partners for the 1st to 7th Defendants

Ms. Clemar Hippolyte of the Attorney General's Chambers for the Respondents

No appearance by the 8th and 9th Defendants in CL-150/22

Hearing Date: 21st June, 2023

Venue: Court Room #1, Supreme Court, Providenciales

Handed Down: 29th June, 2023

Background

1. These proceedings commenced by Originating Summons filed on 11th October 2022 (CL150-22) wherein the Plaintiff claims, inter alia, that there was a written contract with the First Defendant, East Wind Development Company Ltd., for legal services to be provided to the First Defendant. The Plaintiff contends that the Second to Seventh Defendants, being directors of the First Defendant at the relevant time, acted fraudulently by transferring and selling various parcels of land. The Plaintiff is also asking for, inter alia, full disclosure and accounting by the Defendants.
2. As a result of this, the Registrar of Lands has registered restrictions on the dealings with certain lands of the First Defendant pending the outcome of CL150-22. Prior to doing so, the Registrar of Lands had refused to register cautions in respect of these lands and this decision is the subject of an appeal (Civil Appeal CL 97-22), which is also before me.

3. The First to Seventh Defendants have also filed an interlocutory Summons to strike out the Originating Summons filed by the Plaintiff.
4. The matters to be dealt with (“the matters”) are therefore as follows:
 - The Plaintiff’s Summons.
 - The Strike out Summons filed by the First to Seventh Defendants.
 - Civil Appeal CL 97/22.
5. The matters came up for mention before me on 21st June 2023, on which date counsel for the Plaintiff made an oral preliminary submission asking that the matters be adjourned sine die due to the fact that he was going to file judicial review proceedings challenging the decision to assign me to preside over the matters. Counsel for the Plaintiff also submitted a copy of a letter which he said had been sent to the Honourable Chief Justice and was copied to me.
6. The matters had been previously listed before another judge but an application had been made by the Plaintiff for that judge to recuse himself. The application was unsuccessful and the decision was appealed, with the Plaintiff seeking a stay pending the determination of the appeal. The Court of Appeal has yet to rule on the issue but on 7th June 2023 directed that, in the interim, the matters be assigned to another judge.
7. The Plaintiff’s primary submission in respect to his application for an adjournment sine die is that at the time the Court of Appeal gave this directive, I was not yet appointed as a judge of the Supreme Court of the Turks and Caicos Islands and he had in his contemplation other judges to whom the matter should be assigned, even going as far as to name them in open court.

8. Counsel for the Plaintiff also raised other issues, including a newspaper report in respect of the date my appointment as well as what he contends was a requirement on my part to make certain disclosures in respect of possible previous professional affiliations to a judge of the Court of Appeal and the Registrar due to our shared nationality.
9. Counsel for the Defendants, Mr. Griffiths KC, resisted the Plaintiff's application, submitting, inter alia, that it was not credible and had no reasonable prospect of success. He pointed out that no issue of bias was raised, that I had been duly appointed with a valid instrument of appointment and that the matters had been properly assigned to me. He also submitted that if the matters are adjourned sine die, the First Defendant will suffer great prejudice due to the restrictions placed by the Registrar of Lands, particularly since the Plaintiff has given no undertaking in damages.
10. Counsel for the Registrar of Lands, Ms. Hippolyte, adopted the submissions made by Mr. Griffiths KC, adding that the Plaintiff's submissions were highly inappropriate and bordered on abuse of process, and that I had been duly appointed with matters being assigned to me in the usual manner.
11. In order to give consideration to the Plaintiff's application as well as to examine the directive of the Court of Appeal, this Court adjourned the matters to 29th June 2023 at 1:00 p.m. for the Court's decision on the application. The following direction was given:
 - a. Counsel for the Plaintiff is to provide a copy of the Judicial Review Application by 4:00 p.m. on Thursday 22nd June 2022 to the Court and both parties.

12. However, in the interest of saving judicial time and progressing the matters, a date was set to deal with the matters should the Plaintiff's application fail. This date, being 27th July 2023 at 9:30 a.m., took into account the court's calendar as well as the diaries of counsel for all parties.
13. The draft application for Leave for Judicial Review was provided to the Court via email shortly after 4:00 p.m. on Thursday 22nd June 2022.

Court's Analysis

a. Recusal

14. It is noteworthy that the Plaintiff's application did not take the form of a recusal application, although certain elements of the oral submission by counsel for the Plaintiff contained traces of same. I will therefore deal briefly with the issue of recusal.
15. In *Mengiste and another v Endowment Fund for the Rehabilitation of Tigray and others; Chubbs v Endowment Fund for the Rehabilitation of Tigray and others*¹, Arden LJ said at paragraph 2:

"Judicial recusal occurs when a judge decides that it is not appropriate for him to hear a case listed to be heard by him. A judge may recuse himself when a party applies to him to do so. A judge must step down in circumstances where there appears to be bias or, as it is put, "apparent bias". Judicial recusal is not then a matter of discretion."

¹ [2013] EWCA Civ 1003

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16. In *Porter and another v Magill*², Lord Hope of Craighead (at paragraph 103) approved the test for apparent bias as being whether the relevant circumstances, as ascertained by the court, would lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal had been biased.
17. In his submission, counsel for the Plaintiff has merely raised the possibility of a previous professional affinity between the Registrar of the Supreme Court and me as well as between a Court of Appeal judge and me because of our shared nationality. These issues raised by counsel for the Plaintiff in no way cross the threshold of ‘apparent bias’, but rather amount to mere speculation, and the recusal of this judge therefore does not arise.
18. I wish to add that I am mindful of my obligation to make voluntary disclosure of any matter which may amount to a conflict of interest. At this time, no such matter arises.

b. The date of appointment of this judge

19. Counsel for the Plaintiff has raised the issue of the date of my appointment, drawing reference to a media report which suggested a particular appointment date in February of 2023.
20. However, the appointment was published in *The Gazette (Vol. 174 No. 34) dated 9th June 2023 as G.N. 387* as taking effect from 1st June 2023. There is no ambiguity

² [2002] 1 All ER 465

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here and this is the source from which any information with respect to the date of my appointment should be obtained, rather than a media report.

c. What the Court of Appeal directed

21. Having addressed the issues of recusal and my judicial appointment, I shall now examine the directive of the Court of Appeal, which is critical to the determination of this application.

22. Attached to the letter submitted to the Court by counsel for the Plaintiff on 21st June 2023 is a Note of the Recording in CL/ AP/08/23 of Wednesday 7th June 2023, being the hearing of the appeal in the recusal application in respect of the former presiding judge. I have examined what was said by the Court of Appeal on 7th June 2023 and provide the following extract:

The Registrar: Duncanson & Co. Appellants and East Wind Development Company Limited and Others.

The President: Thank you very much, gentlemen and lady.

This is really the decision of the Court on this matter. The Court has not been able to reach a decision overnight. Accordingly, the Court will grant a temporary stay pending its decision or until the matter is transferred to another Judge whichever comes first. Counsel shall forthwith seek to have the matter transferred to another Judge. The substantive proceedings concern a breach of contract, with possible limitation and fraud issues, manifestly capable of being handled by another judge. Mr. Duncanson has represented to the Court that he consents to any other judge hearing the matter. In fact, the most recent appointment which took effect on the 1st of June has been designated by the C[hief] J[ustice] as a

General Jurisdiction Judge and he or any of the other judges can hear the matter subject to their calendars. (Emphasis mine).

We wish to stress that this decision has no implications for the disposition of the matter, the cause, and the merits. That is the decision of the court.

Mr. Duncanson: My Lord, much obliged. In the circumstances, my Lord, there is a question of costs that I would like Your Lordships to address your mind to.

The President: We can't address costs until we...

23. The Court of Appeal had therefore unambiguously listed me as an option to hear these matters and no objection was taken by counsel for the Plaintiff at that time. Counsel for the Plaintiff would therefore have been aware since that time that there was a possibility that these matters would be assigned to me.

24. I have also examined the official Order of the Court of Appeal dated 9th June 2023. The second limb of this Order provides as follows:

Pending this Court's ruling on the Notice of Motion for a Stay, the matters before the Supreme Court in Action No. CL-150/2022 and in Action No. CL-97/2022 may be transferred to any other Judge of the Supreme Court.

25. Again, the Order is unambiguous and at the time it was made in court on 7th June 2023, I had already been appointed as a judge of the Supreme Court of the Turks and Caicos Islands.

d. The application for the adjournment

26. The main issue to be decided by this Court is whether the matters should be adjourned sine die having regard to the fact that there is now a pending action for judicial review which seeks to challenge my assignment to preside over the matters.
27. A court cannot always accede to an application to adjourn a matter where new proceedings are filed which could affect the determination of the matter. If this were the case, it would always be open to a party to an action to file a separate matter to delay proceedings if it would be in his/her/its interest to do so. Clearly, this would be highly undesirable and not in the interests of justice.
28. In deciding this issue, I have addressed my mind to the factors which a Court should take into consideration in deciding whether to adjourn a matter where there is a pending matter which could potentially affect its determination.
29. In the case of *Pride Valley Foods Ltd v Hall & Partners*³, the court (Judge Toulmin) at paragraph 15 looked at what should be considered by the court in circumstances where the Defendant had requested an adjournment of a hearing pending an application by the Defendant to present a petition of appeal to the House of Lords:

“Again there is little or no dispute between the parties as to how I should approach the application for an adjournment. Under CPR Pt 3.1(2)(b) I have power commensurate with the overriding objective to adjourn or bring forward a hearing. A helpful list of possible considerations was given in a judicial review case (now an administrative law case) by Simon Brown LJ in R v Kingston upon Thames Justices, ex parte Martin [1994] Imm AR 172. This list was clearly not intended to be exhaustive. Considerations included:

³ (2002) EWHC 1254 (QB)

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“the importance of the proceedings and the likely consequence to the party seeking an adjournment; the risk of his being prejudiced in the conduct of the proceedings if the application is refused; the risk of prejudice or other disadvantage to the other party if the adjournment is granted; the convenience of the court and the interests of justice generally in the despatch of court business; the desirability of not delaying future litigants by adjourning early and thus leaving the court empty and the extent to which the applicant himself had been responsible for creating the difficulty which is said to require the adjournment in the first place; the extent to which, in short, the applicant brought the problem upon himself.”

30. I have directed my mind to the list of considerations outlined by *Simon Brown LJ* in *R v Kingston upon Thames Justices, ex parte Martin* [1994] Imm AR 172 and have applied them to the instant matters, since I consider them to be relevant to my determination of the application.
31. The possible prejudice suffered by the Plaintiff if his application is refused is that the matters could proceed before me in circumstances in which the Plaintiff has challenged my assignment to these matters. However, I have considered this against the background of the clear directive of the Court of Appeal, to which no objection was made by counsel for the Plaintiff.
32. In respect of the judicial review matter, this court makes no pronouncement on the merits of same, but simply makes the observation that this matter is still at a preliminary stage in that leave has not yet been obtained. To await the ultimate determination of that matter will almost certainly result in an inordinate delay in these matters.

33. The Court has noted the submission of counsel for the Defendants that if the matters are adjourned sine die, the First Defendant is likely to suffer further losses and the Plaintiff has given no undertaking in damages.

34. Taking into account all of these factors, as well as the interests of justice, the Plaintiff has failed to satisfy this Court that the matters should be adjourned sine die.

35. The Plaintiff's application is therefore dismissed and, unless otherwise ordered, the matters shall proceed for hearing on 27th July 2023 at 9:30 a.m.

36. Having been unsuccessful in its application, the Plaintiff shall pay the Defendants' costs for the application, to be taxed in default of agreement.

29th June, 2023



The Honourable Justice Chris Selochan
Judge of the Supreme Court