

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN
3 CIVIL DIVISION
4

5 Cause No: G154/2001
6

7 BETWEEN:

8 DARIC DONAN EBANKS
9 (Suing by his guardians ad litem Wendy L.
10 Watler and Paulette S. Anglin-Lewis)

11 FIRST PLAINTIFF

12 AND:

- 13
- 14 1. CAYMAN CULTURAL
 - 15 FOUNDATION
 - 16 2. THE MINISTRY OF COMMUNITY
 - 17 AFFAIRS, SPORT, WOMEN, YOUTH
 - 18 & CULTURE
 - 19 3. THE ATTORNEY GENERAL

20 DEFENDANTS
21

22 Appearances:

23 Mr. James Kennedy of Samson & McGrath
24 for the Plaintiff

25 Mr. Nicholas Dixey of Mourant Ozannes for
26 the Defendants

27 Mr. Donovan Ebanks, Litigant in Person
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34 Before:

The Honourable Mr. Justice Charles Quin

35 Heard:

29th January 2013
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37 **JUDGMENT**
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- 40 1. There are two Summonses before the Court for resolution. The first is for the
41 hearing of the Plaintiff's Summons dated the 17th December 2012 seeking the
42 following relief:

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- i. That the Defendants be ordered to make an interim payment forthwith in the sum of CI\$100,000.00 to the Plaintiff pursuant to GCR O.29 r.10;
- ii. Costs of the application to be paid forthwith by the Defendants;
- iii. That the Court give directions pursuant to GCR O.29 r.14 as to the future conduct of this matter including the following matters:
 - a) That [there be] a timetable for the following exchanges to take place:
 - a. The exchange of an updated list of documents by both parties;
 - b. The exchange of witness statements;
 - c. The exchange of [experts'] reports to be relied upon at trial
 - iv. That the case be set down for a case management conference within 8 weeks of this hearing.



The Plaintiff's Summons is grounded by the Third Affidavit of one of the two guardians ad litem – Mrs. Paulette Anglin-Lewis (“Mrs. Anglin-Lewis”) – and is opposed by counsel on behalf of the three Defendants.

2. The second Summons, dated the 31st December 2012, is filed by Mr. Donovan Ebanks, father of the Plaintiff, who also asks for a further interim payment to be made to the Plaintiff in the sum of CI\$99,500.00, and for his appointment as the Permanent Receiver. Mr. Donovan Ebanks’ Summons is grounded by his affidavit filed on the 31st December 2012.

1 3. There is no controversy regarding the appropriate approach to be taken by the Court
2 in considering an application for an interim payment. The approach is found at
3 GCR O.29 r.11(1) which reads:

4 *“...the Court may, if it thinks fit ... order the respondent to make an interim*
5 *payment of such amount as it thinks just, not exceeding a reasonable*
6 *proportion of the damages which in the opinion of the Court are likely to be*
7 *recovered by the Plaintiff.”*

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9 4. On the 10th July 2007 the Plaintiff obtained judgment against the Defendants for
10 damages to be assessed. Also, on that date, the late Pastor Al Ebanks was appointed
11 as Interim Receiver of the interim payment of CI\$250,000.00. Since that date, there
12 have been a number of interim receivers, however, at this time, no one fills the role.

13 5. Mrs. Anglin-Lewis’ Third Affidavit sets out the history of interim payments in
14 relation to this matter as follows:



15	>	Order of the 26 th April 2002	-	\$ 95,000.00
16	>	Order of the 10 th July 2007	-	\$ 250,000.00
17	>	Order of the 6 th November 2008	-	\$ 250,000.00
18	>	11 th December 2009	-	\$ 300,000.00
19	>	Total	-	\$ 895,000.00

20 6. This matter came before me on the 18th May 2011. I made an Order for \$302,362.00
21 to be paid to the Plaintiff pursuant to GCR O.29 r.10(1) and that the funds released
22 were to be dispensed in accordance with paragraph 21 of the Second Affidavit of
23 Mr. Donovan Ebanks which is:

24 i. Approximately \$20,000.00 as provision for expert witnesses as follows:

- 1 a) Herrold and Vernon Evalworks – future cost of care report and
2 attendance at trial.
- 3 b) Theo Bullmore and KPMG as accountancy and actuarial
4 experts.
- 5 ii. \$6,500.00 for provision of UK specialist counsel’s advice on quantum
6 and drafting a schedule of costs.
- 7 iii. \$41,000 retainer for Priestleys.
- 8 iv. CI\$15,201.00:
- 9 a) to Charles Adam Ritchie and Duckworth, as pervious Attorney
10 for the Plaintiff;
- 11 b) to Stacy Thompson as Receiver for the Plaintiff; and
12 c) to former UK counsel to the Plaintiff all outstanding fees.
- 13 v. \$16,500.00 for land purchase of West Bay North West, Block 30 Parcel
14 164 alongside fencing to same land.
- 15 vi. \$3,450.00 for car payments.
- 16 vii. \$48,000.00 for past and future monthly payments for the maintenance
17 of the Plaintiff and his child.
- 18 viii. \$2,227.00 for past due medical expenses incurred by Dr. Hamburger.
- 19 ix. \$984.00 for past due medical expenses to Dr. Coello Jemmali.



1 x. Costs of the application to the Plaintiff to be taxed if not agreed.

2 7. Regrettably it appears that, for several reasons, the funds were not disbursed in
3 accordance with my Order of the 18th May 2011.

4 a. I recall the late Mr. Lee Freeman of Priestleys, attorneys at law, appearing on
5 behalf of the Plaintiff at the application on the 18th May 2011. It is both tragic
6 and unfortunate that Mr. Freeman died on the 29th August 2011 – just over three
7 months after the hearing on the 18th May 2011. The Court accepts that Mr.
8 Freeman’s untimely death has resulted in delay and further costs, as the case
9 had to be transferred to other attorneys.

10 b. Other different attorneys have come on the record for the Plaintiff in this
11 matter. As a result of further unnecessary delay and inactivity, this matter has
12 not been conducted as it should have been.

13 8. I stated in my Judgment of the 20th May 2011 that the Court was “*anxious that the*
14 *Plaintiff proceed to prosecute his claim with expedition.*” Further, I also stated that,
15 having made the interim payment, I saw “*...no reason why the Plaintiff, the*
16 *Plaintiff’s counsel, and their experts would not be able to prepare the case for*
17 *hearing within the next twelve months.*”

18 9. Regrettably, almost two years have elapsed and further costs have been expended.

19 10. I note from Mrs. Anglin-Lewis’ Third Affidavit that certain payments to expert
20 witnesses and London counsel were not made, and that funds have now been
21 exhausted.



1 11. I have read the Third Affidavit of Ms. Stacy Thompson (“Ms. Thompson”),
2 attorney at law and the former Permanent Receiver of the funds for the Plaintiff.
3 Ms. Thompson refers to the difficulties befalling this matter due to the illness and
4 ultimate death of Mr. Lee Freeman of Priestleys, former attorneys for the Plaintiff.
5 However, what is extremely regrettable is the dispute between Priestleys and the
6 former Permanent Receiver, Ms. Thompson, which the former Permanent Receiver
7 avers led to the litigation being compromised. It is apparent that the former
8 Permanent Receiver met with significant difficulties in honouring the obligations to
9 pay the living expenses for the Plaintiff and other expenses including:

- 10 i. The fees for Richard Davis in the sum of £1,450.00;
- 11 ii. CI\$20,000.00 for expert witnesses in the fields of future cost analysis,
12 educational/vocational analysis, and, accountancy and actuarial
13 science;
- 14 iii. CI\$6,500.00 for UK Specialist counsel.



15 12. Mrs. Anglin-Lewis states in her Third Affidavit that the following experts are
16 necessary to present the Plaintiff's case, namely:

- 17 i. Dr Hamilton - \$ 500.00
- 18 ii. Dr. Triggs - \$ 1,000.00
- 19 iii. Harold and Vernon Evalworks - \$13,880.00
- 20 iv. KPMG - \$10,000.00

- 1 13. What is clear is that there may be some overlap between what the former Permanent
2 Receiver, Ms. Thompson, says was not paid to the expert witnesses and what Mrs.
3 Anglin-Lewis says the expert witnesses need immediately, in terms of the fees and
4 expenses, in order to prosecute the Plaintiff's claim.
- 5 14. I herein instruct the *guardians ad litem* and the Plaintiff's attorneys to produce an
6 accounting of what is due to the expert witnesses as set out in the former Permanent
7 Receiver's affidavit as read with Mrs. Anglin-Lewis' Third Affidavit.
- 8 15. Mrs. Anglin-Lewis' estimate of \$25,380.00 does not include any provision for legal
9 costs for either Samson & McGrath or for leading counsel, and also may not
10 include the costs related to the attendance of any of the experts at trial.
- 11 16. From the evidence before me I accept that funds are also needed for an up to date
12 medical examination of the Plaintiff and for the Plaintiff's ongoing maintenance –
13 estimated to be four thousand CI dollars (CI\$4,000.00) per month.
- 14 17. The Third Affidavit of Mrs. Anglin-Lewis exhibits a helpful draft schedule of
15 damages – covering general damages, special damages. The Draft Schedule also
16 estimates a total claim of \$3,201,835.50. This estimate is supported by a review of
17 the medical evidence to date and an estimate of various amounts that would be
18 awarded under both general damages and special damages.



1 *DEFENDANTS' POSITION*

2 18. Mr. Dixey on behalf of the Defendants opposes the application for an interim
3 payment and submits that it should be dismissed. The Defendants dispute the extent
4 of the injuries and the loss and damage that the Plaintiff claims. Additionally, the
5 Defendants state that there is likely to be significant evidence and argument under
6 all heads.

7 19. The Plaintiff's claim exceeds three million dollars (CI\$3,000,000.00) and the
8 Defendants submit that the likely award would come within CI\$800,000.00 to
9 CI\$1,300,000.00. In other words, Mr. Dixey contends that the interim awards from
10 2002 to 2011 – amounting to \$1,197,362.00 – are reaching a “danger zone” as the
11 Plaintiff's final award after trial could be less than the sum of the interim payments.

12 20. Although there is always some degree of uncertainty as to future losses, I am
13 satisfied on the evidence before me that the interim awards amounting to
14 \$1,297,362.00 do not exceed a reasonable proportion of the damages which the
15 Plaintiff is likely to recover. However, when I made my Order on the 20th May
16 2011, I did not anticipate that there would be any need for further interim payment
17 applications.





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CONCLUSION

21. It is now imperative that the Plaintiff prosecutes this case with all due diligence and expedition. Accordingly, and pursuant to GCR O.29 r.14, I order an early trial of this action.

22. I find no reason why this case would not be heard within the next 8 months. Having read the evidence and heard the submissions in support of the two applications I am prepared to award the sum of CI\$25,380.00 for the necessary evidence to be produced by the expert witnesses referred to in Mrs. Anglin-Lewis' Third Affidavit.

23. I order the sum of CI\$32,000.00 for the necessary care and maintenance for the Plaintiff, Daric Ebanks. This should be paid to the Plaintiff or his father, Mr. Donovan Ebanks, on a monthly basis.

24. I order the sum of \$25,000.00 to be paid to the Plaintiff's attorneys, on account.

25. It is my opinion that the two *guardians ad litem* – Mrs. Anglin-Lewis and Ms. Wendy Watler (“Ms. Watler”) – are capable of safeguarding the funds to be disbursed as a result of any interim Order. The Plaintiff is their nephew and both *guardians ad litem* have sworn in their joint affidavit dated the 23rd February 2011 that they will use “their best efforts and bring to bear our skill and judgment in assessing and instructing the Plaintiff's attorneys as regards as how we might best advance his welfare and these proceedings.”

26. Furthermore, both *guardians ad litem* are “successful Caymanian businesswomen” and therefore have the relevant professional experience to safeguard and use the funds to prosecute this claim to its conclusion.



1 Mr. Donovan Ebanks goes on to state,

2 *"I believe this is reckless and not in the best interests of the Plaintiff."*

3 32. As I will not be the Judge hearing this trial I feel that, in light of Mr. Donovan
4 Ebanks' criticism and the unfortunate history of the prosecution of this case I feel
5 obliged to state that I find the work produced by counsel for the Plaintiff, Mr.
6 Kennedy, to be professional, well prepared and in the best interests of the Plaintiff.

7 33. Furthermore, Mr. Kennedy is an experienced counsel who is aware of his
8 obligations to his client and aware of his obligations as an officer of this Court.

9 34. It can never be "reckless" for a Plaintiff's attorney to conduct out of Court "without
10 prejudice" negotiations with counsel for the Defendants. In fact, it is my view that a
11 Plaintiff's counsel would be failing in his professional duty to his client if he did
12 not explore this option.

13 35. Having read the Skeleton Arguments and the Schedule of Damages produced by
14 counsel for the Plaintiff, and the affidavits of *guardians ad litem*, it may be that
15 they will come to the view that it is in the best interests of the Plaintiff to reach a
16 fair and reasonable out of Court settlement with the Defendants. I do not know
17 what, if anything, will be the outcome of the "without prejudice" negotiations, but I
18 find that counsel for the Plaintiff and his two *guardians ad litem* are the best
19 persons to make that judgment call and to decide what is in the best interests of the
20 Plaintiff.

21 36. If, however, the Plaintiff's action is not settled, then it is imperative that the case is
22 expedited to its conclusion as soon as reasonably possible.

1 37. The Court rejects Mr. Donovan Ebanks' application to be appointed as Permanent
2 Receiver. The Court is of the view that Mr. Donovan Ebanks does not have the
3 requisite professional qualifications or relevant experience to discharge that role. I
4 now strongly urge Mr. Donovan Ebanks to do everything he can to support the
5 Plaintiff, the *guardians ad litem*, and the Plaintiff's attorneys in bringing about a
6 final resolution of this claim. Should Mr. Donovan Ebanks continue to oppose and
7 criticise the Plaintiff's counsel, this will inevitably lead to unnecessary further delay
8 and an escalation of costs which is certainly not in the best interests of the Plaintiff.

9 38. I order that the interim sum of CI\$82,380.00 be transferred to the Interim Receivers
10 and *guardians ad litem* for the Plaintiff. For the avoidance of doubt their duties
11 shall be as follows:

12 i. To disburse the funds in accordance with my Ruling and pay the
13 Plaintiff or his father, Mr. Donovan Ebanks, CI\$4,000.00 per month
14 from the interim award.

15 ii. To act as *guardians ad litem* on behalf of the Plaintiff for the purpose
16 of providing instructions to Mr. James Kennedy of Samson & McGrath
17 in and about the conduct of this litigation;

18 iii. To always act in what they, in their sole discretion, consider to be in the
19 best interests of the of the Plaintiff;

20 iv. To consult and take into account, so far as reasonably possible, the
21 Plaintiff and his father for the purpose of carrying out their duties as
22 *guardians ad litem*;



- 1 v. To, in the event that a settlement of these proceedings is agreed, apply
2 to the Court for approval of the terms of the settlement;
- 3 vi. To administer the funds held on behalf of the Plaintiff from time to
4 time and to sanction their disbursement in the conduct of this litigation,
5 and otherwise, for the benefit of the Plaintiff, and to administer such
6 funds on behalf of the Plaintiff subject to the approval of the Court.

7 39. I also order:

- 8 a. That there be an early trial of this action pursuant to GCR O.29 r.14
- 9 b. That the parties exchange and file updated lists of documents within thirty (30)
10 days from the date of this Judgment;
- 11 c. That the parties exchange and file witness statements within sixty (60) days of
12 this date;
- 13 d. That the parties exchange and file expert reports within sixty (60) days of this
14 date;
- 15 e. That this matter be set down for a Case Management Conference (CMC) within
16 four (4) weeks of this hearing, and further CMCs every four weeks thereafter
17 until the trial.

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1 f. That there be general liberty to the parties, Mr. Donovan Ebanks and the
2 Interim Receivers to apply for further directions to this Court on seven (7)
3 days' notice to the parties.

4 g. That the Plaintiff's costs be costs in the cause.

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8 **Dated this the 26th March 2013**

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13 **Honourable Mr. Justice Charles Quin**
14 **Judge of the Grand Court**