

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CIVIL DIVISION  
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5 Cause No: G154/2001  
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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 Appearances:

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

24 In attendance: The Plaintiff, his father and  
25 the Interim Receivers/Guardians Ad Litem

26 Mr. Hector Robinson and Ms. Alexandra  
27 Bethell of Mourant Ozannes for the  
28 Defendants

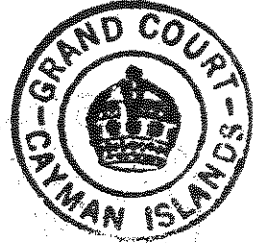
29 Before:

30 The Honourable Mr. Justice Charles Quin

31 Heard:

32 12<sup>th</sup> February 2014

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39 JUDGMENT  
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1           1.       The Plaintiff issued a Summons on the 17<sup>th</sup> December 2013 seeking a further  
2                   interim payment in the sum of CI\$200,000.00 or such sum as it seems appropriate  
3                   pursuant to GCR O.29 r.10. The Plaintiff's Summons is grounded by the Fourth  
4                   Affidavit of Paulette Anglin-Lewis ("Mrs. Anglin Lewis") dated the 6<sup>th</sup> December  
5                   2013, and the Exhibits therein attached.

6           2.       The Defendants strenuously oppose the application and the position of the  
                  Defendants is set out in the Second Affidavit of Derrymore Lyon ("Mr. Lyon")  
                  dated the 7<sup>th</sup> February 2014.

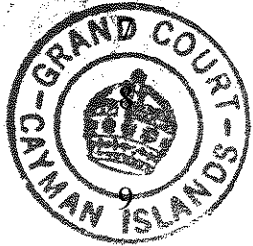
**BACKGROUND**

10          3.       I refer to my Judgments dated the 18<sup>th</sup> May 2011 and 29<sup>th</sup> January 2013 which set  
11                   out the background to this matter.

12          4.       On the 10<sup>th</sup> July 2007 the Plaintiff obtained Judgment against the Defendants for  
13                   damages to be assessed. Also, on that date, the late Pastor Al Ebanks was appointed  
14                   as Interim Receiver of the interim payment of CI\$250,000.00.

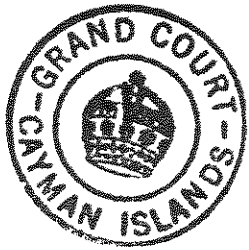
15          5.       Owing to the sad and untimely deaths of the first Interim Receiver, Pastor Al  
16                   Ebanks, and the Plaintiff's former attorney, Mr. Lee Freeman of Priestleys, and  
17                   other unfortunate circumstances this matter has been the subject of delay, increased  
18                   costs, and, several changes in attorneys representing the Plaintiff and the  
19                   Defendants.

20          6.       The Court records its gratitude to the incumbent Interim Receivers – Ms. Watler  
21                   and Mrs. Anglin-Lewis – who have willingly agreed to act as *guardians ad litem*  
22                   for the Plaintiff and as Interim Receivers of the funds distributed by the Defendant  
23                   pursuant to the Orders of this Court.



1 7. In Mrs. Anglin-Lewis' Fourth Affidavit she refers to the history of the Interim  
2 Payment applications contained in her Third Affidavit dated the 18<sup>th</sup> January 2013  
3 and to Mr. Donovan Ebanks' Affidavit dated the 19<sup>th</sup> November 2013.

4 8. In her Fourth Affidavit Mrs. Anglin-Lewis sets out the history of the previous  
5 interim awards in this action.



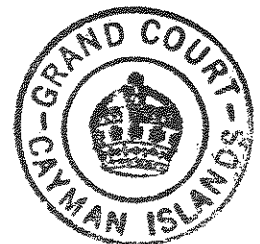
AWARD #	DATE	JUDGE	CIS AWARD	TOTAL
#1	26 <sup>th</sup> April 2002	Kellock J.	\$95,000.00	
#2	10 <sup>th</sup> July 2007	Chief Justice	\$250,000.00	
#3	6 <sup>th</sup> November 2008	Quin J.	\$250,000.00	
#4	11 <sup>th</sup> December 2009	Quin J.	\$300,000.00	
#5	18 <sup>th</sup> May 2011	Quin J.	\$302,362.00	
#6	26 <sup>th</sup> March 2013	Quin J.	\$82,380.00	
#7	21 <sup>st</sup> November 2013	Quin J.	\$4,000.00	
				\$1,283,742.00

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7 9. Mrs. Anglin-Lewis deposes to the fact that she and her Co-Interim Receiver, Mrs.  
8 Watler, have made the payments to the Plaintiff in accordance with my Order dated  
9 the 26<sup>th</sup> March 2013. However, Mrs. Anglin-Lewis says the Plaintiff is not working  
10 and the fund is almost exhausted. Mrs. Anglin Lewis avers that the Plaintiff needs  
11 funds to support himself until the conclusion of this case.

12 10. Mrs. Anglin-Lewis further avers that the Plaintiff needs the interim payment to  
13 cover his ongoing living expenses and to meet a significant number of outstanding  
14 invoices from his attorneys. Accordingly, the Plaintiff's Scott Schedule of Damages  
15 dated January 2013 has now been revised. There is a helpful Appendix to the  
16 Defendants' Skeleton Arguments which sets out, in column form, the Plaintiff's  
17 initial Schedule of Damages, his Revised Schedule of Damages and the  
18 Defendants' assessment of the Schedule of Damages.

- 1           11.    The heads of claim in the Plaintiff's Scott Schedule, with one notable exception,  
2                    have not changed. However, the total sum claimed in the Revised Schedule is  
3                    almost C\$1,500,000.00 more than the Schedule in January 2013. In particular, the  
4                    Plaintiff's claim for future loss of earnings and for future gratuitous and  
5                    professional care and assistance, have both almost doubled. The reason for this is  
6                    that the Plaintiff has increased the multiplier for future loss of earnings from 24.01  
7                    to 35.88. For the future cost of care the multiplier has been increased from 29.89 to  
8                    58.51.
- 9           12.    The one notable exception discloses a very important change contained in the  
10                   Plaintiff's Revised Schedule. The Plaintiff is now applying a discount rate of 0%  
11                   rather than the customary 2.5%. The Plaintiff relies on the recent Privy Council  
12                   case relating to a Guernsey decision of *Simon v Helmot* [2012] UKPC 5 to justify a  
13                   departure from the discount rate of 2.5%.
- 14          13.    The Cayman Courts have consistently applied a 2.5% discount (see *Wilson &*  
15                   *Wilson v. Ebanks & Ebanks* [2011] 1 CILR 447; *Archer v. UBS* [2009] CILR 531;  
16                   *Rivers v. Brown* [2012] 2 CILR Note 13; and, *Panton v. Seymour* [2006] CILR 91.
- 17          14.    It has to be noted that the *Simon v. Helmot* Privy Council case was decided some  
18                   nine months before the application before me on the 29<sup>th</sup> January 2013, and the  
19                   Plaintiff did not seek to rely upon it at that time.
- 20          15.    It is further noted that the Plaintiff has provided no expert evidence to support a  
21                   discount rate lower than the customary 2.5%.
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1       16.     The Defendants strenuously contend that the discount rate adopted in England of  
2             2.5% and applied in the Cayman Islands should not be disturbed and further, the  
3             Court has not been asked to provide any directions as to whether expert evidence  
4             should be adduced to support this new increase in the Plaintiff's claim.

5       17.     Accordingly, the Defendants submit that the revised schedule should be disregarded  
6             and the only schedule to be addressed is the one that was before on the hearing on  
7             the 29<sup>th</sup> January 2013.

8       18.     GCR O.29 r.1(1)(i) reads:

9                     *"...the Court may, if it thinks fit ... order the respondent to make an interim*  
10                    *payment of such amount as it thinks just, not exceeding a reasonable*  
11                    *proportion of the damages which in the opinion of the Court are likely to be*  
12                    *recovered by the Plaintiff."*

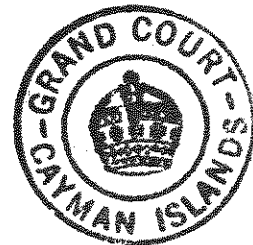
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14       19.     Whether the Plaintiff intends to argue that the current practice of a discount of 2.5%  
15             applied by the Courts of the Cayman Islands should be reduced to 0% is a matter  
16             for the trial Judge hearing the Assessment of Damages claim. It would be wrong for  
17             this Court, in what is now the Plaintiff's seventh application for an interim  
18             payment, to decide upon an issue of such fundamental importance – both in relation  
19             to the customary practice of the Grand Court, and a matter of policy. This issue  
20             could only be decided by the Judge hearing the assessment of damages application,  
21             and only after receiving relevant expert evidence from the parties.

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1           20.     On the 20<sup>th</sup> May 2011 I stated at paragraph 6 of my Judgment:

2                           *“On exercising a cautious approach there is every likelihood of there being a*  
3                           *dispute between the parties as to final assessment of damages and, accordingly,*  
4                           *the Court must approach this application for a further interim award with a*  
5                           *high degree of caution.”*

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7           21.     On the 26<sup>th</sup> March 2013 after a careful review of Mrs. Anglin-Lewis’ Third  
8                           Affidavit and Mr. Donovan Ebanks’ Affidavit, I ordered the interim sum  
9                           CI\$82,380.00 to be transferred to the Interim Receivers, with certain directions as  
10                          to payment set out in paragraph 38. I also directed that there should be an early  
11                          trial of this action pursuant to GCR O.28 r.14. I expect compliance with my  
12                          direction.

13          22.     I am of the view that we are now approaching the danger zone whereby any further  
14                          Interim award could exceed a reasonable portion of the damages, which the  
15                          Plaintiff is likely to recover and, accordingly, I dismiss the Plaintiff’s application.

16          23.     For the last time I urge the parties’ attorneys to make every effort to have the trial  
17                          on the Assessment of Damages heard as soon as reasonably practicable. I order  
18                          what I hope will be a final Case Management Conference – to be heard within two  
19                          months of today’s date.

20          Dated this the 14<sup>th</sup> February 2014

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24          Honourable Mr. Justice Charles Quin  
25          Judge of the Grand Court

