

BERMUDA SUPREME COURT

Denise Ribaroff -v- (1) Basil Williams (2) Christopher Dillon (3) John Eckert (4) Arun Puri (5) James Wise and Fiduciary Partners Trust Company Limited (as Trustee of the Concordia Employee Benefit Trust) Third Party [2014] SC (Bda) 11 CIV (20 February 2014)

THIRD PARTY NOTICE - JOINT LIABILITY - ORDER
15 RULE 4(3) - DIRECTIONS - JOINDER

On 22 August 2013, the Plaintiff issued a Generally Endorsed Writ of Summons against the Defendants seeking damages estimated at approximately US\$4.8 million for breach of a Sale and Purchase Agreement.

After entering an appearance on or about 12 September 2013, the Defendants issued a Third Party Notice against Fiduciary Partners Trust Company Limited ("Fiduciary"). This sought a contribution in respect of any damages which might become payable to the Plaintiff by the Defendants on the grounds that Fiduciary was jointly or jointly and severally liable under the sale and purchase agreement with the Defendants in respect of the relevant obligations.

After entering an appearance, the Fiduciary filed its Defence and Counterclaim to the Third Party Notice. In the interim, the Defendants issued a Summons seeking directions under Order 16 Rule 4 ("Third Party Directions"). Paragraph 4 of the Fiduciary's Defence admitted that the Third Party "*owed joint or several obligations to the Plaintiff... as alleged in paragraph 2 of the Third Party Notice*".

In this application, the Defendants sought an Order under Order 15 Rule 4(3) that the proceedings be stayed until the Fiduciary is joined as a Defendant on the grounds that there are causes of action relied upon by the Plaintiff, based on contractual

obligations for which the Defendants and Fiduciary would be jointly, but not severally liable.

In summary, the Chief Justice held that the Defendants' Summons was liable to be dismissed provided that Fiduciary (the Third Party) undertook not to pursue the plea (outlined in its Defence and Counterclaim to Third Party Notice) that it can only be strictly liable if the Plaintiff joins it as a Defendant to the main action.

In giving judgment, it was noted that the English rule from which Order 15 Rule 4(3) is derived was revoked over 25 years ago and so no post-CPR persuasive authority exists which sheds light on the way in which the Court's powers under this rule should be exercised. The Chief Justice held that Order 15 Rule 4 (3) of the Rules of the Supreme Court confers on this Court the discretionary power to stay an action, on the application of a defendant, where the plaintiff refuses to join as a defendant a party not before the Court which is jointly liable with the defendant in respect of the claim before the Court. A defendant is not entitled to such relief as of right where the existence of a joint debt can be demonstrated. The exercise of the relevant discretion will be fact-sensitive and subject to the usual case management powers conferred by Order 1A of the rules.

The Chief Justice confirmed his hope that the present decision will enable similar joinder issues to be resolved more expeditiously and pragmatically in the future.

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