



12-10-00

1 IN CHAMBERS  
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
3 CAUSE 576 OF 1996

4  
5 BETWEEN: BEATRICE NAOMI FAZIO PLAINTIFF  
6 AND: HYATT BRITANIA CORPORATION LTD. DEFENDANT

7  
8 Before: Justice Anthony Smellie  
9 Dated: 11<sup>th</sup> October 2000

10  
11 DECISION

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13 The defendant seeks to strike out the action on grounds of inordinate and inexcusable  
14 delay on the part of the plaintiff.

15 I accept that there has been inordinate delay; by definition six years must be so regarded.

16 However, I do not find that the delay is inexcusable.

17 I accept from the chronology of events that the matter was never allowed by the plaintiff  
18 "to go to sleep". There were ongoing attempts and discussions for settlement which  
19 ultimately did not succeed because of the worsening nature of the plaintiff's condition.

20 I accept that Mr. Allen as her attorney acted properly in not accepting offers of settlement  
21 made in circumstances where his client's condition had not been finally diagnosed and  
22 assessed and so while the extent of the damages could not be anticipated or advised upon.

23 On the authority of Marlton (an infant) v Lee-Leviten 1968 1 WLR 1214 - delay is

1 excusable if occasioned from the need to ascertain the true nature of the plaintiff's  
2 injuries.

3 The defendant has, in my view, identified no real likelihood of prejudice arising from the  
4 delay.

5 For these and other reasons canvassed during the hearing, the application to strike out for  
6 inordinate and excusable delay is refused.

7 The plaintiff's application to strike out the defence on grounds of failure to meet  
8 discovery obligations is also refused, but a strict limit will now be placed on the time for  
9 compliance by the defence to be backed by an "unless" order.

10 On the plaintiff's summons for directions, directions will also now be given as to the final  
11 steps to be taken in preparation for trial.

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16 Anthony Smellie

17 Chief Justice

18 Dated the 12<sup>th</sup> day of October 2000

