

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

Cause No.: G 101 of 2015

BETWEEN

CONSTANTINO ANGGAWAY AYDOC & ANALYN FEBRERO AYDOC

PLAINTIFFS

AND

LORIMAR DEVELOPMENT LIMITED

DEFENDANT

IN CHAMBERS

Appearances: Mr. John Fox of Sonia Bush & Associates for the Defendant
Ex parte

Before: The Honourable Mr. Justice Robin McMillan
Heard: 31 July 2020

Judgment Delivered: 31 July 2020

Reasons for Judgment Delivered: 31 July 2020



HEADNOTE

*Application by attorney for declaration that the attorney has ceased to act for a body corporate
– The inability of a body corporate to begin, carry on, or defend proceedings otherwise than by
an attorney – Factors which may lead to refusal of application.*

REASONS FOR JUDGMENT

1. By *ex parte* Summons dated 3 July 2020 Sonia Bush & Associates, attorney on record for Lorimar Development Limited (“the Defendant”), has made an application pursuant to O.67, r.6 of the Grand Court Rules for an Order that Sonia Bush & Associates ceases to be the attorney of record for the Defendant.
2. The history of the substantive proceedings is somewhat complicated. The matter arises from a claim for damages by the Plaintiffs in relation to a building dispute with the Defendant.
3. The matter was tried in the Grand Court in 2017 and the decision was then appealed by the Plaintiffs to the Cayman Islands Court of Appeal. It was then remitted back to the Grand Court for an Assessment of Damages hearing after the earlier Judgment of the Grand Court rejecting liability was overturned on the Appeal and substituted with a Judgment on liability in favour of the Plaintiffs.
4. The Assessment of Damages hearing in turn resulted in a Judgment delivered by the Honourable Ms. Acting Justice Carter on 30 April 2020, with her final Order approved and sealed on 20 May 2020.
5. Following that, the Plaintiffs’ attorneys prepared their Bill of Costs and Detail of Work Done for service on the Defendant. With the Court’s approval dated 19 June 2020, the same learned Judge granted authority for service by e-mail on the Defendant’s attorneys.



6. However, it is not entirely clear whether e-mail service was effected, but in any event by Affidavit filed on 7 July 2020 Ms. Sonia Bush states that she is making an application to come off the record and that her law firm *"is no longer instructed by the Defendant Lorimar Development Limited."* No other grounds are put forward.
7. The Court was unable to see its way to granting the application having reviewed and considered the relevant provisions of the Grand Court Rules.
8. First, O.5, r.6(1) and (2) states:-
- "6. (1) Subject to paragraph (2) and to Order 80, rule 2, any person (whether or not he sues as a trustee or personal representative or in any other representative capacity) may begin and carry on proceedings in the Court by an attorney or in person.*
- (2) Except as expressly provided by or under any Law, a body corporate may not begin or carry on or defend any such proceedings otherwise than by an attorney."*
9. In light of this latter stipulation, the Court does not consider that in the current circumstances it would be consistent with the interests of justice to place both the Plaintiffs and indeed the Defendant itself in such a predicament whereby the Defendant cannot function.
10. It is essential in practical terms that the Defendant continues formally to be represented irrespective of whether the Defendant's attorneys are able to obtain specific instructions or not.



11. Secondly, the Court is also aware that under O.67, r.1 the Defendant may give notice of a change of attorney subject to serving the notice on every other party to the case or matter. This course has not arisen in the present instance, and the fact that it has not arisen is a further factor in the Court determining that the present application should not succeed on the basis of the very limited ground put forward by Ms. Bush in her Affidavit. In other words, the Defendant would be left without any attorney at all.
12. In conclusion, this is an occasion where in coming to its decision the Court must look to the broader interests of justice and to the appropriate maintenance of confidence in the efficacy of our judicial system. The Court must ensure that the normal advancement of the proceeding is facilitated rather than delayed or obstructed, that there is a saving of expense and that the cause or matter is dealt with by the Court in a way that is proportionate.
13. Accordingly, this is one of those relatively unusual occasions on which the Court must refuse the application.



Robin McMillan

THE HONOURABLE MR. JUSTICE ROBIN MCMILLAN

JUDGE OF THE GRAND COURT