IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. G 32 of 2014

BETWEEN:

BILIKA HARRY SIMAMBA

PLAINTIFF

AND

CAYMAN ISLANDS HEALTH SERVICES AUTHORITY

DEFENDANT

IN CHAMBERS

Appearances: Mr. Bilika Harry Simamba, in person.

Mr. Michael Wingrave of Dinner Martin for the Defendant

Before: The Hon. Justice Ingrid Mangatal

Date of Hearing: 13 July 2017

Date Ruling Delivered: 19 July 2017

Date Ruling Circulated: 25 July 2017

HEADNOTE

Case Management - Overriding Objective of Dealing with Cases Justly - Court's Duty to allot an appropriate share of the Court's resources to a case, while taking into account the need to allot resources to other proceedings - the Court's inherent jurisdiction to stay proceedings.

RULING

1. This matter has undergone a number of twists and turns. There are two unresolved summonses. The summons which was filed first in time was the Plaintiff's summons for directions. However, both parties agreed with the Court that the Defendant's summons to

strike out the Plaintiff's Statement of Case and for summary judgment filed 2 September 2015, had to be dealt with first.

2. The first hearing took place on 3 December 2015. At that time I had hoped to deliver judgment within the first quarter of 2016, but I unfortunately was not able to do so, based upon the volume of work that I had at the time.

3. One of the bases for the application to strike out and for summary judgment was the fact that the Plaintiff had not obtained any medical evidence in support of his medical negligence claim. The Plaintiff has since obtained medical evidence. It should be noted that at the hearing in December Mr. Wingrave had indicated in his written Skeleton Arguments that it would be inappropriate for the issue of whether or not section 12 of the ***Health Services Law (2010 Revision)*** confers an immunity on the Defendant against claims other than those resulting from bad faith to be litigated in the context of this case. This was stated expressly to be because that matter had already been the subject of argument in the case of ***Thompson v CI HSA et al,*** Cause No. 190 of 2013, and that judgment was expected in the next month or two.

4. However, before judgment could be handed down on the Defendant's application in the instant case, the first preliminary issue judgment of Williams J was handed down in the case of ***Thompson v CIHSA & Dr. Alexander*** (unreported) ("***Thompson 1***"). ***Thompson 1*** was handed down on the 19th February 2016. It was held that claims in tort for damages against the Defendant and its employees are barred in the absence of bad faith.

5. That judgment having been delivered, it was of overarching relevance to the instant claim, which is also a claim against the Defendant for damages for negligence in respect of two separate allegations of breach. The Defendant understandably wished to add the ground arising out of ***Thompson 1*** to the application to strike out/for summary judgment and in any event, this Court had of necessity to be cognizant of the judgment and ratio in ***Thompson 1*** as one obvious potential consequence of the decision was that the Plaintiff's claims would be barred.

6. I therefore required the parties to attend before the Court, which they did on 8 April 2016. At that time I was informed that the Plaintiff in ***Thompson 1*** intended to appeal that decision and also that the further preliminary issues were likely to be tried ("***Thompson 2***"). Those issues concerned the position as regards human rights. At that time I agreed to adjourn the Defendant's application until October 2016, pending the outcome of the second preliminary issue and/or appeal of ***Thompson 1***.

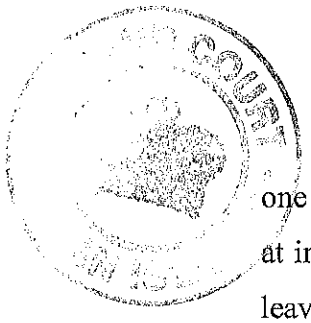
7. The hearing of ***Thompson 2*** commenced on 5 September 2016 and lasted for approximately one week. Further issues were added to argument at that hearing, including argument on the amendment of the law giving rise to immunity, and the question of whether that amendment operated retroactively.

8. The instant matter came back up before me on 4 October 2016, at which time I was informed that the hearing had taken place and that the judgment of Williams J was expected in a few months. At that time the Plaintiff had argued for the strike out application to be determined before the final outcome in ***Thompson*** was known. At that time I rejected the Plaintiff's application, and stayed the summonses, with liberty to apply.

9. On 4 January 2017, the Plaintiff sent an email to the Court, requesting that the application be relisted. The Defendant resisted that application by email dated 5 January 2017. I rejected the Plaintiff's application, by email dated 6 January 2017, as I felt it was appropriate to await the outcome in ***Thompson 2***.

10. The Plaintiff sent a further email to the Court on 10 April 2017. The Defendant replied that the judgment in ***Thompson 2*** was expected shortly. At that time, the Plaintiff indicated that he would wait.

11. ***Thompson 2*** was handed down on 24 April 2017. On 27 April 2017, the Court wrote to the parties, seeking to set the matter down for case management with a time estimate of



one hour. This was later expanded to two hours. Skeleton arguments were directed, aimed at indicating how best to proceed with this matter. I understand that a summons seeking leave to appeal both judgments, in ***Thompson 1*** and ***Thompson 2*** has been filed and that a timetable is being discussed for dealing with the application.

Case Management

The Plaintiff's position

12. The Plaintiff, who is an attorney-at-law representing himself, first provided a skeleton argument dated 3 May 2017, which is 36 pages long. This skeleton seemed to be addressing substantive argument, rather than the case management issues at hand. The Plaintiff subsequently filed a 2nd skeleton argument dated 9 July 2017.

13. It was the Plaintiff's position that I should proceed with the Defendant's application before the outcome of the appeal in ***Thompson***. Further, that the reason for awaiting the decisions in ***Thompson 2*** was so that the parties could now argue matters they had not argued at the initial hearing, and also so that they could address matters not dealt with in ***Thompson 1*** and ***Thompson 2***. It was also the Plaintiff's submission that his case is different from the ***Thompson 2*** case, because the question of whether the amending section 12 of the ***Health Services (Amendment) Law 2016*** would apply to pending cases where no ruling on the issue of immunity had been made (such as this one) was not settled, since in ***Thompson 1*** the ruling had already been made.

The Defendant's Position

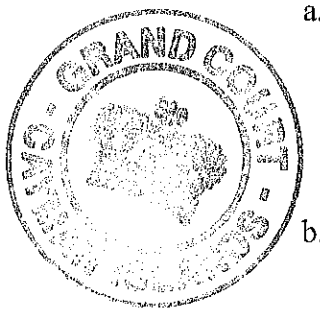
14. Mr. Wingrave, who appeared for the Defendant, pointed out the advantages and disadvantages of the two courses of action open to the Court being to stay the Defendant's application pending the outcome of the appeal in ***Thompson***, or to press on with the Defendant's application now.

15. He referred to my decision in the case of ***In the Matter of China Shanshui Cement Group Limited*** [2015 2 CILR 255] as authority for the proposition that in the Cayman Islands, Judges of the Grand Court are required to follow previous decisions of the Grand

Court, unless convinced that the previous decision is wrong. It is to be noted that in that case I was convinced that a previous decision was wrong. However, in ***China Shanshui*** there was no appeal of the earlier decision, and nor was it under appeal at the time when submissions were made before me. In that case there was therefore no discussion such as the one that has to take place here, i.e. whether to await the determination of the Court of Appeal in respect of an appeal of the previous decision.

16. Counsel also cited the case of ***Lornamead Acquisitions Limited v Kaupthing Bank HF*** 2011 EWHC 2611 (Comm.) as authority for the proposition that the same standard of being convinced that the previous decision is wrong has to be met before departing from it, even where the previous decision under review is still to be dealt with by the Court of Appeal.

17. It is the defendant's position that the interests of justice would favour staying the instant case pending the appeal in ***Thompson*** for the following reasons:



a. Re-arguing all of the issues in ***Thompson 1*** and ***Thompson 2*** will require (in the Defendant's estimation) around eight full Court days. Further, that it will plainly take a substantial time for any judgment to be produced.

b. Deployment of the above judicial resources, not to mention the costs to the Defendant, of hearing all of these issues seems disproportionate where there is likely to be an appeal on the points engaged and authoritative decision by the Court of Appeal.

c. While in the UK, judicial resources may be such that deployment of Court resources in the above way may be reasonable, the resources of the Cayman Islands are far more restrictive and different considerations therefore apply.

d. There is a real risk that the Court may not be in a position to accommodate an eight-day hearing before any appeal comes on in any event, since even one hour hearings in the Grand Court Civil Division are now being listed for September and October

18. I can fully understand the Plaintiff's eagerness to have his matter determined, and his frustration with awaiting further decisions in ***Thompson 1*** and ***Thompson 2***. However, in all of the circumstances it does seem to me that it would not be the best use of the Grand Court's scarce resources, nor would it be cost-effective, for me to press on with determining the Defendant's application to strike out in advance of the determination of appeals in ***Thompson***.

19. It seems clear that any such hearing would take at least a week, and I would have to be considering in detail the Judgments of a Judge of co-ordinate jurisdiction whilst those Judgments will likely be under consideration by the Court of Appeal in due course, in relation to extremely important areas of the Law. The Court of Appeal's determinations will be authoritative and binding on the Grand Court and it plainly would be inappropriate for me to press on to a hearing in advance of the Court of Appeal's determination.

20. Further, given my present caseload, it is very unlikely that such an extensive hearing could be fixed before the end of the year.

21. In all of the circumstances, I am of the view that the most just way of dealing with this case is to stay the proceedings, pending the determination of any appeals in the Court of Appeal in the ***Thompson*** case. Costs are to be costs in the Cause. I would expect that the Attorneys involved in the ***Thompson*** case will take steps to have the appeals set down for hearing at an early convenient date, assuming leave is granted.

THE HON. JUSTICE MANGATAL
JUDGE OF THE GRAND COURT