

5/10/11

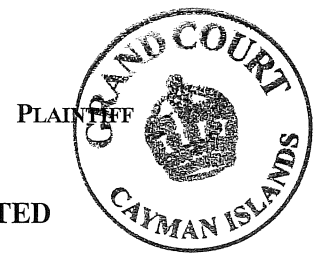
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN**

Cause No: 0121/2011

BETWEEN:

BRENNINI SABRE, INC.



AND:

- 1. PIRATES CAVES LIMITED**
- 2. GIL STERN**
- 3. PATRICIA ROHLEDER**
- 4. DAVID ROHLEDER**
- 5. ILLA STERN**

DEFENDANTS

Appearances:

**Mr. David Dinner of Bodden & Bodden for
the Plaintiff**

**Ms. Sheridan Brooks of Brooks & Brooks
for the Second Defendant**

**Mr. George Giglioli of Giglioli & Co. for the
Third and Fourth Defendants**

Before:

The Hon. Mr. Justice Charles Quin

SUPPLEMENTARY RULING ON COSTS

- 1. On the 5th May 2011 this Court acceded to an application made on the 14th April 2011 by the Third and Fourth Defendants to lift an inhibition on Bodden Town Block 44B Parcel 4, and to strike out the proceedings against the Third and Fourth Defendants. In concluding my Judgment, dated the 5th May 2011, I stated that I would be prepared to hear counsel for the parties on the question of the costs of the application, at their earliest convenience.

1 6. The letter of the 6th April 2011 from the attorneys for the Third and Fourth
2 Defendants also made it clear, in the second paragraph at page 2, that the
3 substantive provisions of the Draft *ex parte* Summons did not refer to the Third and
4 Fourth Defendants, and further, that if the Third and Fourth Defendants were
5 joined, they would seek their costs on an indemnity basis.

6 7. On the 7th April 2011 Henderson J., on hearing counsel for the Plaintiff and on
7 reading 21 documents set out in Schedule 2, made the following Order:

8 1. *That the Second Defendant be restrained by himself, his servants and*
9 *agents or otherwise howsoever from acting or purporting to act as*
10 *director of the First Defendant Pirates Caves Limited*

11 2. *(a) That the Second Defendant be restrained by himself, his servants*
12 *and agents or otherwise howsoever from charging, selling,*
13 *transferring, encumbering, leasing, stratifying or in any way*
14 *diminishing the value of that residential property in Bodden Town,*
15 *Grand Cayman, located at 53 Manse Road, and more specifically*
16 *described as Bodden Town, Block 44B Parcel 4 and any stratification*
17 *thereof; and*

18 ***(b) That the Court do make an order pursuant to s.124 of the***
19 ***Registered Land Law (2004 Revision) inhibiting until further order, the***
20 ***registration of any dealing with that residential property in Bodden***
21 ***Town, Grand Cayman, located at 53 Manse Road, and more***
22 ***specifically described as Bodden Town, Block 44B Parcel 4 including***
23 ***any stratification of the said parcel.***

24 3. *That the First Defendant by itself, its servants or agents, be restrained*
25 *from in any way parting with possession of, charging, transferring,*
26 *encumbering or diminishing the value of any property and assets until*
27 *such time as the matter is brought back before the Court on an inter*
28 *partes basis.*

29
30 8. The Plaintiff undertook to issue and to serve on the Defendants, the Writ of
31 Summons, together with the Injunctive Order, and further, undertook to serve a

1 Summons for the return date and a copy of the affidavits and exhibits containing the
2 evidence relied upon by the Plaintiff.

3 9. The Plaintiff did not serve its *ex parte* application, nor did it issue or serve the Writ
4 of Summons or any affidavits on the Third and Fourth Defendants.

5 10. The Plaintiff failed to issue any Writ of Summons. In addition, the Plaintiff failed to
6 serve any Writ or affidavit evidence and failed to provide the Third and Fourth
7 Defendants with a copy a note of the evidence and material facts which were put
8 before Henderson J. at the hearing on the 7th April 2011.

9 *Plaintiff's Submissions on Costs*

10 11. The Plaintiff acknowledged that the overriding principle in awarding costs in a
11 proceedings is that the costs follow the event, unless ordered by the Court as set out
12 in GCR O.62 r.4(2).

13 12. The Plaintiff submits that no order for costs on an indemnity basis, in favour of the
14 Third and Fourth Defendants, is appropriate because the Plaintiff has not conducted
15 these proceedings in an improper, unreasonable or negligent manner.

16 13. Further, the Plaintiff argues that no order for costs, in favour of the Third and
17 Fourth Defendants, for the period before the 18th April 2011 would be just, because
18 the Plaintiff set out in its written submissions the urgent nature of the injunction
19 sought inhibiting the transfer of the property.

20 14. Finally, the Plaintiff argues that if costs are to be ordered in favour of the Third and
21 Fourth Defendants, they should be on a standard basis and confined to the period
22 between the 18th April 2011 and the 28th April 2011.

1

Analysis and Conclusion

2 15. As I stated in paragraph 1 of this Judgment, on the 5th May 2011 I lifted the
3 inhibition referred to in paragraph 2(a) of Henderson J's Order dated the 7th April
4 2011, and I struck out the proceedings against the Third and Fourth Defendants.

5 16. In my Judgment I found at paragraph 35 that the Plaintiff failed to file any affidavit
6 evidence and further failed to provide a note of the sworn testimony, or a note of
7 the evidence and material facts relied upon at the hearing before Henderson J. on
8 the 7th April 2011.

9 17. At paragraph 40 in my Judgment I found that the Plaintiff had failed to honour its
10 undertaking given to Henderson J. to issue and serve the Defendants with the Writ
11 of Summons as soon as practicable. I highlighted the fact that the Plaintiff had
12 failed to even issue its Writ of Summons at all and, adopting the language of the
13 learned editors of the Supreme Court Practice, the Plaintiff's failure to honour these
14 undertakings constitutes a grave breach of the Plaintiff's attorneys' duty to this
15 Court.

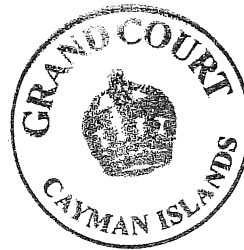
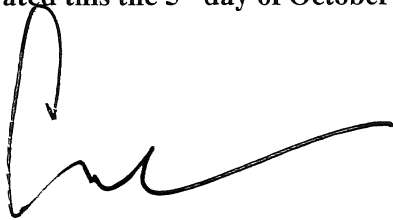
16 18. At paragraph 41 I found that the Plaintiff was in breach of its third undertaking
17 namely, to serve on the Defendants a Summons for the return date, together with a
18 copy the affidavits and exhibits.

19 19. In addition, no affidavits have been or served on the Third and Fourth Defendants.
20 The Plaintiff had failed to file any evidence with the Grand Court Registry, or serve
21 the Third and Fourth Defendants with any affidavit evidence – in breach of the
22 provisions of GCR O.41 and Practice Direction 1 of 1999.

1 26. Accordingly, I make an order that the costs of the Third and Fourth Defendants be
2 paid by the Plaintiff, and that they are to be taxed on an indemnity basis in
3 accordance with GCR O.62 r.4(11).
4
5

6 **Dated this the 5th day of October 2011**

7
8
9



10 **Honourable Mr. Justice Charles Quin**
11 **Judge of the Grand Court**