

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**Civil Division**

[Unreported]

Suit No: 640 of 2007

**BETWEEN**

**RICMAR HOLDINGS CORPORATION - PLAINTIFF**

**AND**

**SHELbury CONSTRUCTION INCORPORATED - DEFENDANT**

*Before The Honourable Madam Justice Maureen Crane-Scott, Q.C.  
Judge of the High Court  
(In Chambers)*

**2009: May 5**

**Mr. Bryan Weekes for the Plaintiff**

**Mr. Kevin Boyce in association with Miss. Alana Gore of Messrs.  
Clarke, Gittens & Farmer for the Defendant**

**DECISION**

- [1] **Crane-Scott J:** This application concerns a Summons filed on April 25, 2007 by the Defendant pursuant to section 6 of the *Arbitration Act, Cap. 110* of the Laws of Barbados, seeking a stay of all further proceedings in High Court Action No: 640 of 2007, the parties thereto having by an agreement in writing dated the 24<sup>th</sup> day of June, 2000 agreed to refer to and having commenced arbitration of the matters in respect of which the action is brought.
- [2] The Defendant's application was supported by the following affidavits:
- 1) Affidavit of Christopher Armstrong filed on May 7, 2007;
  - 2) Affidavit of the arbitrator, Henry Taylor filed on July 3, 2007;
  - 3) Affidavit of Kevin John Boyce filed on July 3, 2007.
- [3] The Plaintiff resisted the application for the stay and filed the following affidavits:
- 1) Affidavit of Richard Walters filed on June 8, 2007;
  - 2) Affidavit of Rahim Bacchus, Jnr. filed on August 29, 2007;
  - 3) Supplemental Affidavit of Richard Walters filed on August 29, 2007.
- [4] At the hearing both parties produced lengthy written submissions together with voluminous supporting legal authorities. Following the oral arguments, the Court reserved its decision.

**Background:**

- [5] Generally speaking, the background to the application is not in dispute. The main area of dispute revolves around a) the acts or omissions of the arbitrator in the period immediately prior to the commencement of the High Court proceedings, and b) the effect of actions taken by him just prior to the hearing of the application for the stay and a determination by the Court of the question whether, there is any sufficient reason why the arbitration should not continue in accordance with the contract.
- [6] The Court has found it useful to review the evidence which was adduced by both parties and to briefly highlight the relevant facts and circumstances which led to the current impasse between the parties.
- [7] On the 24<sup>th</sup> day of June, 2000, the Plaintiff and the Defendant entered into a written contract under which the Defendant agreed to carry out certain building renovation works at the Plaintiff's property situate at Dover, Christ Church for the price of \$550,000.00.
- [8] The contract contained a provision whereby the parties agreed to refer to arbitration any disputes or differences concerning the contract. The Laws of Barbados were also declared to be the proper law for the contract. Additionally, the *Arbitration Act, Cap. 110* was expressly declared to apply to any arbitration conducted under the contract.
- [9] Article 4 of the contract provided as follows:

*“If any dispute or difference concerning this contract shall arise between the Employer or the Architect on his behalf and the Contractor such dispute or difference shall be and is hereby referred to the arbitration and final decision of a person to be*

*agreed between the parties or, failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, a person to be appointed on the request of either party by the President or a Vice-President for the time being of the Barbados Institute of Architects.*

*Whatever the nationality, residence or domicile of the employer, contractor, subcontractor or arbitrator, the laws of Barbados shall be the proper law for this contract and in particular the provisions of the **Arbitration Act, Cap. 110**, of the Laws of Barbados shall apply to any arbitration under this contract wherever the same or any part of it shall be conducted.”*

- [10] By letter dated March 8<sup>th</sup>, 2001, (“**Exhibit CA2**”) the Plaintiff’s then attorney-at-law, Mr. Rahim Bacchus jnr, wrote to the Defendant seeking compensation for several alleged breaches of contract. He also notified the Defendant that the Plaintiff would exercise its right under Article 4 of the contract to refer the matter to arbitration unless the matter was amicably resolved.
- [11] Approximately 1 year 10 months later, the Plaintiff served formal Notice of Arbitration on the Defendant by letter dated January 20, 2003. (“**Exhibit CA4**”) The Plaintiff and the Defendant then entered into discussions with a view to agreeing to the appointment of an arbitrator.

- [12] The parties failed to reach agreement on an arbitrator, and ultimately, on 16<sup>th</sup> September 2005 (some 2½ years following service of the Notice of Arbitration) the President of the Barbados Institute of Architects (acting pursuant to Article 4 of the contract) appointed Mr. Henry Taylor of Henry L. Taylor Associates Ltd to act as arbitrator in the dispute - (“**Exhibit CA7**”).
- [13] On October 18, 2005, just over 1 month after his appointment, the arbitrator contacted the parties with a view to readying the matter for hearing before him - (“**Exhibit HT1**”). A time-table was fixed for the provision of information and the parties’ opinions were sought regarding the appropriate procedures to be adopted for resolving the dispute.
- [14] Almost immediately, the attorneys-at-law for both parties informed the arbitrator that they were unable to comply with the time table set out in his letter. See (“**Exhibit HT2**”), and (“**Exhibit HT3**”). The parties then entered into settlement negotiations independently of the arbitrator.
- [15] Five months later, by a letter dated April 5, 2006 (“**Exhibit HT5**”) and another dated June 13, 2006, (“**Exhibit HT6**”) the arbitrator contacted the parties enquiring as to the status of their settlement negotiations. In the latter communication the arbitrator informed the parties that if the dispute was not settled within 7 days, he would issue an *Order for Directions* to continue the formal arbitration proceedings.
- [16] On June 14, 2006 the Defendant’s attorneys-at-law responded by letter (“**Exhibit HT7**”) and informed the arbitrator that the parties had failed to reach an agreement for settlement of the dispute.

- [17] By letter dated June 19, 2006, (“**Exhibit HT8**”) the Plaintiff’s attorney-at-law also replied to the arbitrator. He confirmed that the parties had been unable to reach agreement for settlement of the dispute and also requested the arbitrator to proceed with an *Order for Directions*.
- [18] By letter dated July 26, 2006, (“**Exhibit HT9**”) (a full 3½ years following service of the Notice of Arbitration) the arbitrator issued an *Agenda* for the Preliminary Meeting in the arbitration.
- [19] On August 16, 2006, the attorneys-at-law for the respective parties attended the Preliminary Meeting before the arbitrator to discuss the format and agree the terms of the arbitration.
- [20] The evidence reveals an unfortunate lack of clarity and a degree of confusion about exactly what, if anything was agreed at the Preliminary Meeting of the parties held in August 2006 with the arbitrator.
- [21] In his affidavit, the arbitrator states nothing about his having set a time-table at the August meeting for the formal filing of documents by the parties. For some reason however, following the August meeting, the Defendant appears to have believed that it had been required to file its case. Accordingly, on August 31, 2006 the Defendant’s attorneys-at-law forwarded a document entitled *Outline of the Respondent’s Case* to the arbitrator under cover of its letter dated August 31, 2006. (**Exhibit “CA17”**).
- [22] No documents were filed by the Plaintiff following the August meeting.
- [23] Both parties are, however, agreed that following the August meeting, another meeting of the parties was held at the arbitrator’s offices on

September 21, 2006 at which further discussions were held regarding the conduct of the arbitration process.

- [24] According to the arbitrator's evidence, a clear time-table for the filing of the arbitration documents by the respective parties was fixed by him at the September meeting, as follows:

November 16, 2006	- Plaintiff to file its Claim;
January 11, 2007	- Defendant to file its Defence;
February 8, 2007	- Plaintiff to file its response to Defence;
March 8, 2007	- Defendant to file its further response.

- [25] According to the evidence, following the September meeting, three procedural issues still remained unresolved. According to the arbitrator, these issues were deferred for further deliberation and failing agreement, for ultimate resolution by him at a third meeting of the parties which he scheduled for October 19, 2006.
- [26] The October 19, 2006 meeting did not take place since, according to the arbitrator, he was "*urgently called away on business.*" The cancelled October meeting was, it seems, never re-scheduled.
- [27] On November 15, 2006, the Plaintiff's attorney-at-law wrote to the arbitrator (**Exhibit CA18**). He informed the arbitrator that he had been advised that the unresolved preliminary matters should be sorted out before the parties embarked on the arbitration process. He requested the arbitrator, *inter alia*, to re-schedule another meeting of the parties to discuss the deferred issues and to issue an amended *Agenda* for the approval of all parties beforehand.

- [28] The arbitrator concedes that he received the Plaintiff's letter by fax. In his affidavit, he apologized for his failure to respond, but says that he did not respond as he was extremely busy attending to certain business projects. He also stated that he fully expected the Plaintiff to comply with the time-table for filing of the arbitration documents which had been set at the September meeting. He expressed the opinion that although the preliminary matters had not been finalized, they would not disrupt the agreed agenda and the continuation of the arbitration proceedings.
- [29] What exactly transpired after receipt of the Plaintiff's letter to the arbitrator of November 15, 2006 has, it seems, also become quite contentious.
- [30] On the one hand, the Defendant states that the letter dated November 15, 2006 is the last correspondence which the Defendant received from the Plaintiff before the Plaintiff instituted action on April 13, 2007, by Writ and Statement of Claim filed in the High Court, against the Defendant claiming, *inter alia*, damages for breach of contract arising out of the contract of June 24, 2000. According to the Defendant, at the time the Plaintiff's action was instituted, the Defendant was and remains ready and willing to do all things necessary to enable all the matters in dispute to be determined by arbitration in accordance with the contract and the directions of the arbitrator.
- [31] On the other hand, the Plaintiff states that as far as the Plaintiff is concerned, the arbitrator ceased to act in any way in the arbitration proceedings since November 2006.

- [32] The Plaintiff placed into evidence, copies of 3 reminder letters, (“**Exhibit RW1**”) (“**Exhibit RW2**”) and (“**Exhibit RW3**”), which, the Plaintiff alleges, were issued to the arbitrator by its then attorney-at-law, Mr. Rahim Bacchus jnr and which were alleged to have been copied to the Defendant’s attorneys-at-law and to which the arbitrator had not responded. In the light of the arbitrator’s inaction, the Plaintiff is of the view that arbitration process has broken down and states further that it has lost all confidence in the arbitrator to carry out his functions in the matter.
- [33] For its part, the Defendant denies that (“**Exhibit RW1**”) (“**Exhibit RW2**”) and (“**Exhibit RW3**”) were ever received by its attorneys-at-law or by the arbitrator as alleged. Supplemental affidavits were then filed by one of the Defendant’s attorneys-at-law and by the arbitrator, Mr. Henry Taylor, denying that copies of the 3 reminder letters had ever been received.
- [34] The fact that the arbitrator met with the Defendant’s attorneys-at-law without the Plaintiff’s prior knowledge or consent and facilitated the preparation and filing by the Defendant’s attorneys-at-law of the affidavit intended to corroborate the Defendant’s claim that the 3 reminder letters had never been received, has become another circumstance which, according to the Plaintiff, has led to its loss of confidence in the arbitrator and the arbitration process as a whole.

**Discussion:**

- [34] *Jurisdiction:* The Court has examined section 6 of the *Arbitration Act*, together with the extract from *Halsbury’s Laws of England, (4<sup>th</sup> Edition) Vol.2 paragraph 621*. Based on the evidence, the Court is satisfied that it has the necessary jurisdiction to make an order staying

the legal proceedings herein inasmuch as the Defendant has established the statutory pre-conditions for the exercise of the Court's discretion as set out in section 6 of the *Arbitration Act*, as follows:

1. *The legal proceedings in this action [H.C.A. 640 of 2007] were commenced by Writ of Summons;*
2. *The Plaintiff and the Defendant are both parties to an enforceable arbitration agreement, specifically, Article 4 of the written building contract dated June 24, 2000, under which they agreed to refer all disputes or differences concerning the contract to arbitration;*
3. *The subject matter of the legal proceedings relates to alleged breaches of the said building contract by the Defendant and as such falls within the scope of the arbitration agreement; and*
4. *After filing the Acknowledgment of Service on April 16, 2007, the Defendant/applicant took no other steps in the legal proceedings.*

[35] *Burden on Plaintiff*: Having also examined the legal authorities submitted by Counsel for the Defendant, the Court is aware that in the face of a binding arbitration agreement, the *prima facie* leaning of the Court is to stay the action and leave the Plaintiff to the tribunal to which he has agreed unless the party opposing the application to stay can satisfy the Court that there is good reason why he should not be bound by the agreement to arbitrate. *Russell on the Law of Arbitration, 18<sup>th</sup> Edition, p. 153*. See also *Heyman v. Darwins Ltd (1942) 1 All ER 337 @ 356*.

- [36] It is well established that once the party moving for a stay has shown that the dispute is within a valid and subsisting arbitration clause, the burden of showing cause why effect should not be given to the arbitration agreement rests upon the party opposing the application. *Russell on the Law of Arbitration, 19<sup>th</sup> Edition, p. 190; Skinner v. Uzelli & Co Ltd 91908) 24 TLR 266 @ 267; Ford v. Clarkson's Holidays Ltd [1971]3 All ER 454.*
- [37] The case for the Plaintiff: The Plaintiff raised 3 main reasons why it should not be required to abide by the arbitration agreement.
- [38] Firstly, it was contended at paragraph 8 of the Plaintiff's affidavit of June 8, 2007 that the arbitration process had broken down and secondly, that due to the inaction of the arbitrator since November 2006 it had lost all confidence in the arbitrator to carry out his functions in the matter.
- [39] Essentially, the Plaintiff's position at the time it filed the action was that the arbitrator had ceased to act in any way in the arbitration process since November 2006 despite 3 reminder letters which were allegedly sent to the arbitrator on the Plaintiff's behalf on December 15, 2006, January 15, 2007 and February 15, 2007 respectively. *[See paragraphs 31 and 32 above.]*
- [40] The Plaintiff raised a further objection in the supplemental affidavit of Richard Walters filed on August 29, 2007, and alleged that it subsequently had lost faith in both the arbitrator and in the arbitration process by reason of the fact that the arbitrator had (unknown to the Plaintiff or its legal counsel) met with the Defendant and its Counsel with a view to the preparation and filing of an affidavit which was

sworn to by the arbitrator in support of the Defendant's application for the stay.

- [41] In paragraph 3 of the supplemental affidavit of Richard Walters, the complaint is made, *inter alia*, that:

*“I was concerned that the arbitrator, Mr. Taylor, visited the offices of the attorneys-at-law for the Defendant without informing my legal representatives that it was his intention to do so. The said attorney-at-law proceeded to prepare an affidavit for Mr. Taylor to swear. I have no idea what other matters were discussed by them effectively behind my back.”*

- [42] Counsel for the Plaintiff, Mr. Weekes cited the case of *Norbrook Laboratories Ltd. v. Tank* [2006] 2 *Lloyds Rep.* 485 as authority for his contention that the Court should not grant a stay in circumstances where the arbitrator's impartiality is shown to have been impaired or the arbitrator has acted improperly in the matter.
- [43] He urged the Court, in exercising its discretion, to have regard to the principles of natural justice and to find that the conduct of the arbitrator was improper and such as to lead a fair minded and properly informed independent observer to perceive that there was a real possibility of bias and a real possibility of substantial injustice to the Plaintiff if the arbitration were allowed to proceed.
- [44] *The Defendant's response:* In responding to the Plaintiff's allegation that the arbitration process had broken down, Counsel for the Defendant, Mr. Kevin Boyce submitted that the 'breakdown of arbitration principle' which the Plaintiff had invoked, was not relevant

- to the present circumstances inasmuch as the agreed machinery for initiating the arbitration process had been invoked and an arbitrator had been appointed and was in place. He cited *National Enterprises Ltd v. Racal Communications Ltd [1974] 3 All ER 1011* in support of his submission.
- [45] Turning to the Plaintiff's allegation that it had lost confidence in the arbitrator, Mr. Boyce submitted that the Plaintiff had not established a sufficient basis to support this claim. He contended further that that even if (which was not admitted) the arbitrator had received the 3 reminder letters which the Plaintiff alleges were sent to the arbitrator, a delay by the arbitrator of 5 months was not a sufficient reason to support the Plaintiff's case for refusal of the stay.
- [46] In any event, he contended, the Plaintiff by refusing to file its claim with the arbitrator within the agreed time-frame fixed by the arbitrator, had also contributed to the delay in the arbitration and was precluded from relying on the delay or on the doctrine of frustration. In support of this submission, he cited *Estia Compania Navigacion S.A. v. Deutsche Genusmitter G.m.b.H. (The "Estia") 1981 1 Lloyd's Rep 541*.
- [47] Finally, in response to the Plaintiff's assertion that it had lost confidence in the arbitrator and in the arbitration process by reason of the arbitrator's having met with the Defendant's attorneys without the Plaintiff's knowledge and filed an affidavit in support of the stay prepared by the Defendant's attorneys-at-law, Mr. Boyce submitted that the Plaintiff had to do more than merely allege bias.
- [48] He submitted further that no evidence of misconduct, interest or bias on the part of the arbitrator had been led and that the Plaintiff had

failed in its burden to show why the arbitration ought not to continue. Mr. Boyce cited dicta from the cases of *Ekersley v. Mersey Docks & Harbour Board [1894] 2 QB 667* and *The Estia (above)* and an extract from the textbook *The Law and Practice of Commercial Arbitration in England, 2<sup>nd</sup> Edition @ p. 254.*

**Exercise of the Court's discretion:**

- [49] Having regard to the manner in which the Plaintiff's objections were framed and in the exercise of its discretion, the Court has found it convenient to deal with the issues under two separate sub-headings as follows: a) the acts or omissions of the arbitrator in the period immediately prior to the commencement of the High Court proceedings on April 13, 2007; and b) the effect of actions taken by the arbitrator after June 2007 and in connection with the Defendant's application for the stay.
- [50] *The arbitrator's acts or omissions prior to the filing of the Writ on April 13, 2007:* The issue for determination is whether the Plaintiff has discharged the burden of showing, on the evidence, that the arbitration process should be dispensed with in favour of the High Court action by reason of the fact that in the period of approximately 5 months immediately prior to the filing of the Writ, the arbitration process had broken down and/or been delayed to such an extent as would justify the Plaintiff's loss of confidence in the arbitrator's ability to carry out his functions in connection therewith.
- [51] Having reviewed the evidence and paid due regard to the submissions of Counsel and the applicable law, the Court is satisfied that notwithstanding the delay in the progress of the arbitration proceedings which ensued following the last meeting of the parties on

September 21, 2006, the inaction of the arbitrator does not by itself constitute a reason for the Plaintiff to have lost confidence in his ability to deal with the matter nor constitute sufficient reason why the arbitration could not have continued as agreed.

[52] In the view of the Court, the mere fact that the arbitrator had for a period of 5 months not responded to the Plaintiff's initial letter of November 15, 2006 (**Exhibit CA18**) requesting the arbitrator to convene a further meeting of the parties for the purpose of resolving the three outstanding procedural issues does not inevitably mean that a breakdown in the arbitration process has occurred. Nor should the arbitrator's delay in responding to the Plaintiff's request for 5 months reasonably have led the Plaintiff to lose confidence in the arbitrator's ability to carry out his functions.

[53] The Plaintiff alleges further that following its initial letter to the arbitrator of November 15, 2006, 3 reminder letters were sent to the arbitrator and that no response was received. The receipt of these 3 letters is hotly contested by the Defendant who in an attempt to answer the allegation, took the highly unusual and controversial step of unilaterally seeking the arbitrator's assistance in filing an affidavit which directly contradicted the Plaintiff's allegation that the letters were sent to and received by the arbitrator.

[54] Having regard to the state of the evidence and in particular to the absence of any cross examination would have tested the witnesses and added weight to one version of events over the other, the Court was left in the invidious position of choosing between two diametrically opposed versions of the facts. The Court found that no weight could be attached to the evidence of the arbitrator inasmuch as his

- independence had been compromised by his having had personal contact with one of the parties unknown to the other.
- [55] Although the Court could, as happened in *The Estia (above)*, have itself requested the arbitrator, as an independent witness, to provide the Court with evidence concerning the matter, this option was unavailable to the Court since it was essentially pre-empted by the Defendant's having unilaterally contacted the arbitrator and filed an affidavit on his behalf.
- [56] In cooperating with the Defendant in this manner, the arbitrator effectively lost his impartiality and became the Defendant's witness. Accordingly, in the interests of fairness, the Court could not properly attach any weight to his evidence.
- [57] Despite the difficulties with the arbitrator's evidence, the Court is of the opinion that even if it were minded to accept the Plaintiff's evidence that 3 reminder letters had been sent to the arbitrator and been received by him, this would still not have justified the Plaintiff's loss of confidence in the arbitrator and the abandonment by the Plaintiff of the arbitration process after a mere 5 month delay.
- [58] Furthermore, the Court is of the view that the wording of the Plaintiff's letter of November 15, 2006 and the 3 reminder letters which allegedly followed, was not strong enough to have alerted the arbitrator of the consequences which could follow if he did not take them seriously.
- [59] In any event, the Court accepts the Defendant's submission that inasmuch as the Plaintiff has itself contributed to the delay in the arbitration process in this case by refusing to file its claim by the November 16, 2006 deadline agreed by the parties and fixed by the

arbitrator at the September meeting, the Plaintiff is precluded from invoking the arbitrator's inaction as a circumstance which has caused him to lose confidence in the arbitrator's ability to carry out his functions.

- [60] The Court is guided by the observations of *Mustill J.* in *The "Estia"* (*cited above*) who, in discussing the delays inherent in the arbitration process *vis-à-vis* those in the Court system, astutely stated that:

*"very few arbitrators devote all their time to arbitrations, and even these may be very busy; so that a party to an arbitration may simply have to wait patiently until his chosen tribunal has time to deal with his interlocutory application or to set aside a continuous period for the substantive hearing..."*

- [61] The Court also accepts the learning in *Russell on the Law of Arbitration, 19<sup>th</sup> Edition, p. 476* that the remedy for an arbitrator's dilatoriness or inertia has always been to apply under the Act to remove him from office.
- [62] Notwithstanding the general rule, it appears that in a proper case, if a Court is satisfied that the delay which has occurred is such as to make a fair hearing impossible, the Court may intervene to restrain further conduct of the arbitration proceedings. Such was the situation in *The "Estia"* (*above*), where the Court was satisfied that delay by one of the parties in prosecuting its claim in the arbitration proceedings was a factor which when combined with other substantial periods of delay prevented a fair hearing and justified the grant of an injunction restraining further conduct of the reference.

- [63] The Court is satisfied that the 5 month period of delay which occurred in this arbitration process was not such as would have rendered a fair hearing by the arbitrator impossible. Accordingly, the Plaintiff's objections on the ground of breakdown of the arbitration process and loss of confidence in the arbitrator by reason of delay are not accepted.
- [64] The arbitrator's personal contact after June 2007 with the Defendant's attorneys in connection with the Defendant's application for the stay: While the facts and circumstances set out in the Plaintiff's affidavit of June 8, 2007 have not, in the view of the Court, satisfactorily established that the arbitration process had broken down or had been so delayed by the alleged inaction of the arbitrator as to justify the Plaintiff's lack of confidence in the arbitrator in the period immediately prior to the filing of the High Court action herein, the Court is of the view that the personal contact which the arbitrator subsequently had with the Defendant's attorneys-at-law unknown to the Plaintiff, has cast an unfortunate cloud over his impartiality and in his ability in the future to resolve the dispute in a manner in which both parties, and the Plaintiff in particular, would have confidence.
- [61] Although the Plaintiff has not established any actual bias or misconduct on the part of the arbitrator, the Court is of the view that the arbitrator's conduct following June 2007 in meeting with the Defendant's attorneys-at-law with a view to the preparation and filing of an affidavit which essentially supports the Defendant's application for a stay, has regrettably given the arbitrator the unfortunate appearance of having become partisan.

- [62] In the view of the Court, the Defendant's ill-advised and unilateral attempt at self-help has effectively played right into the Plaintiff's hands as there is now considerable merit in the objection which the Plaintiff has since raised with respect to the appearance of partiality on the part of the arbitrator and the resultant loss of confidence by the Plaintiff in the arbitrator and arbitration process as a whole.
- [63] The Court is under a duty to guard a litigant's right to a fair hearing, as guaranteed under the Constitution of Barbados, by a tribunal which is both independent and impartial. As the independence of the arbitrator in this case has been irreparably impaired by the appearance of partiality or bias, the Court is satisfied that a fair hearing before him will be impossible and accordingly the arbitration ought not to be permitted to continue. See *Norbrook Laboratories Ltd v. Tank* [2006] 2 *Lloyds Rep.* 485. Also *The Law and Practice of Commercial Arbitration in England, 2<sup>nd</sup> Edition @ p. 255-personal contacts with the parties.*

**Disposal:**

- [64] For the reasons outlined above, the Court accordingly holds that it is satisfied that there is good and sufficient reason why the dispute should not be referred back to the arbitrator in accordance with the agreement.
- [65] In the circumstances, the Defendant's application for a stay of the High Court action is refused with costs to the Plaintiff certified for one attorney-at-law, to be taxed, if not agreed.
- [66] The Defendant is ordered to file its Defence to the Plaintiff's action within 14 days of the date hereof and the dispute shall proceed to trial

before the High Court in accordance with the Rules of the Supreme Court.

**Maureen Crane-Scott  
Judge of the High Court**