

COMMONWEALTH OF THE BAHAMAS

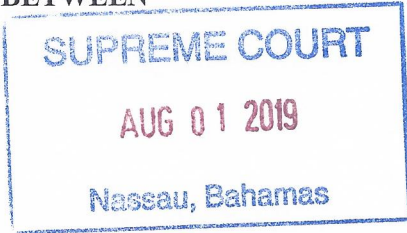
2015/ CLE/gen/No.01451

IN THE SUPREME COURT

2014/CLE/gen/No.01620

COMMON LAW & EQUITY SIDE

BETWEEN



JUNKANOO ESTATES LTD

First Plaintiff

AND

YURI STAROSTENKO

Second Plaintiff

AND

IRINA TSAREVA-STAROSTENKO

Third Plaintiff

AND

UBS (BAHAMAS) LTD. (In Voluntary Liquidation)

Defendant

(Actions and Counterclaim consolidated by Order of the Judge dated 4 November 2015)

AFFIDAVIT OF RENATE RAEBER

I, **RENATE RAEBER**, of the Western District of the Island of New Providence, one of the Islands of the Commonwealth of the Bahamas, make Oath and Say as follows:

1. That I am the former Head of Business Management with UBS (Bahamas) Ltd (In Voluntary Liquidation) ("UBS") the Defendant by counterclaim, and I am now engaged by the Joint Liquidators of UBS as the Liquidation Consultant. I am duly authorized to make this Affidavit on UBS's behalf.
2. The contents of this Affidavit are either within my own knowledge and are true or, where I state the source of the information, the matters so stated are true to the best of my knowledge, information and belief.

3. I make this Affidavit in support of UBS's application made by Summons of even date, seeking an order to vary the trial dates currently set for 23 -27 September 2019 and to fix alternative later dates for the trial of this Action.
4. At a hearing before His Lordship the Honourable Mr. Justice Ian Winder, on 6 July 2018, His Lordship gave certain directions for the conduct of the trial of this Action and further fixed the date of 1 August 2019 for a Pre-Trial Review and the dates of 23 -27 September, 2019 for the trial of the Action. This case management order has not been perfected as the parties have not been able to agree the terms of the same.
5. I am advised by UBS counsel and verily believe that it is impracticable for the trial of this Action to proceed on 23 – 27 Septembers 2019 for the reasons I will set out below.

Further and Better Particulars

6. On 15 February 2019 and 8 March 2019 counsel for UBS wrote to the Plaintiffs requesting further and better particulars of their Statement of Claim. UBS considers such particulars necessary to further formulate its pleadings and to properly prepare its witness statements and expert reports for the trial of this Action. The Plaintiffs however refused to comply with this request and UBS was forced to make an application to compel the Plaintiffs to provide the further and better particulars requested. I am advised that this application is ongoing and has not yet been determined.

Witness Statements

7. At the time of making this Affidavit, I am advised by counsel for UBS that neither the Plaintiffs nor UBS have filed witness statements for the trial of this Action.
8. I would point out that over the last several months, UBS has faced significant challenges securing witnesses to assist its case given that, since it is in liquidation, most of the employees connected with this dispute no longer work for it and are employed elsewhere. These employees are reluctant to become involved in this matter given the Plaintiff's aggressive approach to litigation. Notwithstanding this, UBS is in the process of attempting to prepare its witness statements from some of its former employees. However, given the complexity of the claims made by the Plaintiffs, the volume of documents involved, and the lack of particulars provided by the Plaintiffs, it has not been able to complete its witness statements. Further, given the outstanding further and better particulars, coupled with the schedules and commitments of its witnesses, I am advised that it is unlikely that witness statements will be finalized and filed in less than 6 weeks. This time frame of course

assumes that UBS is successful in its further and better particulars request and that the Plaintiffs provide the requested answers in a timely fashion.

Expert Reports

9. At the moment, UBS is in the process of attempting to locate and retain expert witnesses. Unfortunately, to date, the local persons UBS has approached to act as expert witnesses have declined to act in this matter. Given this, UBS continues to attempt to locate expert witnesses.
10. However, once UBS locates its expert witness, I note that they will not be able, at this stage, to prepare any report given the lack of witness statements and further and better particulars of the Plaintiff's claims. It is necessary that any experts have the parties witness statements so that they can be aware of the evidence the parties are relying on.
11. Further, in UBS's view, the Court needs to make an order that the experts meet and they prepare a joint expert report on the issues they agree and disagree on to narrow the issues in dispute for the Court and the parties.

Trial Bundles

12. While the Plaintiffs have purportedly filed a trial bundle, this bundle has not been served on UBS and was not agreed. Further, I am advised by counsel that based on its brief review of the Plaintiffs' purported trial bundle, this is wholly lacking. I note that the documents produced by UBS in discovery number in the hundreds. I am advised by counsel that most of UBS's documents have not been produced in the Plaintiffs purported trial bundles. If UBS has to produce its own bundle of documents these bundles will be substantial and will take time to prepare.

Statement of Facts and Issues

13. The parties have not agreed a statement of facts and issues in this case.

Appeal

14. The Court of Appeal is currently scheduled to hear the Plaintiff's substantive appeal from Evans J. Summary Judgment Ruling on 10 September 2019. Given this date, the Defendant will have to devote significant time preparing for this appeal in August which will distract it significantly from trial preparation for this Action.

Conclusion

15. Given the above, it is clear that it is impracticable for the trial in this matter to proceed on 23 – 27 September 2019 given the outstanding issues to be completed by the parties. In the circumstances, UBS requests this Honourable Court to exercise its discretion to vary the trial dates in this Action and to fix alternative later trial dates at a time convenient for the parties.

SWORN to this 31st day)
of July A.D., 2019 at)
New Providence, The Bahamas)



Before me,



NOTARY PUBLIC

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW & EQUITY SIDE

BETWEEN

JUNKANOO ESTATES LTD

First Plaintiff

AND

YURI STAROSTENKO

Second Plaintiff

AND

IRINA TSAREVA-STAROSTENKO

Third Plaintiff

AND

UBS (BAHAMAS) LTD. (In Voluntary Liquidation)

Defendant

(Actions and Counterclaim consolidated by Order of
the Judge dated 4 November 2015)

AFFIDAVIT OF RENATE RAEBER

2015/CLE/gen/No.01451

2014/CLE/gen/No.01620

Lennox Paton
LENNOX PATON

Chambers

No.3 Bayside Executive Park
West Bay Street and Blake Road
Nassau, New Providence
The Bahamas

Attorneys for the Defendant by Counterclaim