

UBS v Junkanoo EST LTD, et. Al - 2014/CLE/gen/01620 & 2015/CLE/gen/1451

1 THE COURT: Yes, Mr. Marco Turnquest and
2 Chazille Cargill for UBS and Mr. Phil Lundy for Junkanoo
3 Estates, and Mr and Mrs. Starostenko in the consolidated
4 action 1451 of 2015 and 1620 of 2014.

5 Yes.

6 MR. TURNQUEST: Yes, my Lord, well the
7 plaintiffs have filed --

8 THE COURT: Just give me the name of your
9 clients.

10 MR. TURNQUEST: UBS -- well I'm not saying UBS.
11 The plaintiff have, the Starostenko's have filed two
12 applications one for summary judgement, the other for
13 strike out application. My Lord, we certainly intend to
14 file a strike out application. We haven't filed that
15 strike out application as yet, should the matter proceed
16 we will do. It's a question of how does the Court want
17 to proceed with that in terms of --

18 THE COURT: So for you it's just a possible
19 strike out application?

20 MR. TURNQUEST: Yes, my Lord.

21 THE COURT: Mr. Lundy, what do you have?

22 MR. LUNDY: On behalf of Junkanoo Estates, no
23 application.

24 THE COURT: Mr. and Mrs. Starostenko, you have
25 a summary judgement application you're looking at?

26 MS. STAROSTENKO: Yes, we created this
27 memorandum because you mentioned last time when Mr. Lundy
28 couldn't be here, different applications when we saw our
29 court file, unfortunately, many applications are not in
30 chronology. So, in order to bring more clarity in this
31 court we created this memorandum, which we know in The
32 Bahamas rarely use it, but we saw it in United we were

M.T.
Strike out

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1 preparing by order for us for case management conference,
2 and we're asking our Lord to -- in order to be recorded
3 which applications are before court, before court now
4 from us are our applications the 5th of July.

5 THE COURT: What is that for? That's
6 yesterday?

7 MS. STAROSTENKO: Yes, sir. This is for this
8 memorandum to be recorded and then the same day
9 applications under Order 31.

10 THE COURT: Just give me the name of
11 applications that you have.

12 MS. STAROSTENKO: Yes, for this memorandum to
13 be recorded first of July. Second --

14 THE COURT: Sorry, memorandum to what?

15 MS. STAROSTENKO: Memorandum to be recorded in
16 court proceeding.

17 THE COURT: No, if you want to record something
18 you file it.

19 MS. STAROSTENKO: We file it, sir. Memorandum
20 is filed. You're explaining there is no use for any
21 files, it's filed.

22 THE COURT: You file it, it's apart of record.

23 MS. STAROSTENKO: Yes, my Lord. So we file it
24 also yesterday and as an application we're asking the
25 Court to make unless order because as other side show
26 disregard for the court rules, our seven notices for
27 production of documents they have not received any. At
28 this point the other side have not even right now to
29 oppose it.

30 THE COURT: Okay, which applications do you
31 have? You have applications? You filed summonses?

32 MS. STAROSTENKO: Yes, sir, it is an

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1 application filed yesterday under Order 31 A, Rule,
2 21(1).

3 THE COURT: You filed it yesterday?

4 MS. STAROSTENKO: Yes, sir.

5 MR. TURNQUEST: My Lord, we haven't seen that.

6 MS. STAROSTENKO: And we have no gas to drive
7 to Lennox Patton.

8 THE COURT: You said 5th of July?

9 MS. STAROSTENKO: Yes, my Lord, I am reading
10 from memorandum. This application, we basically file it
11 yesterday to summons.

12 THE COURT: You serve the copy to the other
13 side?

14 MS. STAROSTENKO: No, my Lord, because it is
15 from the court rules we can do it now because this is
16 something which is basic on documents. Rule 21 of
17 Supreme Court says whereby his failure to comply --

18 THE COURT: Which rule?

19 MS. STAROSTENKO: 21, my Lord, Order 21, Rule
20 one. "Whereby his failure to comply with any of these
21 rules or any court order in respect of which no sanction
22 for non-compliance has been imposed. Any other party may
23 apply to the court for an unless order is defined in
24 paragraph 7." It says, "In application under paragraph
25 one maybe made without notice, but must be accompanied by
26 evidence of affidavit a draft order."

27 THE COURT: So, I'll set that down for hearing
28 then.

29 MS. STAROSTENKO: Thank you, my Lord.

30 THE COURT: What other summons you have
31 outstanding?

32 MS. STAROSTENKO: For this case we created this

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1 memorandum for our Lord to assist. Then we have summons
2 of 4th of July.

3 THE COURT: Day before yesterday?

4 MS. STAROSTENKO: Yes, sir. Of the rules of
5 Supreme Court, Order 26, rule 1. For an order A, giving
6 leave to serve on the defendants interrogatories to
7 methods in question between the parties. B, requiring
8 that the Defendants to answer interrogatories on
9 affidavit accompanied by a copy of proposed
10 interrogatories hereby in on July four.

11 THE COURT: So is this is only two?

12 MS. STAROSTENKO: No, sir. An application
13 filed on June 15th under Order 24, rule 11, rules of
14 Supreme Court for an order for the defendant to produce
15 by inspection by the Plaintiff's documents in an
16 unredacted form specified in schedule 1 through 7. And
17 requested by Plaintiffs seven request that we made
18 accordingly order 24, rule ten. This applications are
19 supported by skeleton of 15th June, 2018, and 11 May,
20 2013, but basically 15th June, 2013, which incorporates
21 both skeletons.

22 Then we have two more applications. The
23 applications of 11 June, 2018, for an order that the
24 plaintiff be granted final judgement in this action
25 pursuant to order 14, rule 1 on the rules of the Supreme
26 Court for the leave claimant in claims of the statement
27 and claim failing by the Plaintiffs of November 14th
28 2007. This supported by evidence in affidavit of 11,
29 June, 2013 an skeleton arguments in bundle of authorities
30 dated 11th June 2013. And the last applications today
31 before court is application filed on 8th June 2013,
32 pursuant to order 18, rule 19 of the rules of the Supreme

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1 Court for an order that certain paragraphs of the defence
2 filed by the Defendant on 28th November, 2017, be struck
3 out on the grounds that they do not disclose reasonable
4 defence and the relevant claims. And this is supported
5 by skeleton arguments in bundle of authorities dated 8th
6 June 2018.

7 THE COURT: So that's five applications?

8 MS. STAROSTENKO: Yes.

9 THE COURT: Sorry, six applications.

10 MS. STAROSTENKO: One of this applications made
11 without hearing 5th of July which is memorandum then the
12 other applications we are asking for this unless order of
13 5th of July.

14 THE COURT: How long do you think these
15 applications will take you?

16 MS. STAROSTENKO: I think we can finish our
17 case once we receive the documents.

18 THE COURT: No, no. You have to apply for an
19 order that they produce the documents. You have six
20 applications, how long do you think you will take to
21 argue your side and the other side, a day, two days?
22 Because you have six applications.

23 MS. STAROSTENKO: Yes, my Lord, the second
24 application is without hearing. What I want to explain
25 if I can --

26 THE COURT: Which application without hearing?
27 I'm not hearing any application without hearing.
28 Everything you want you have to apply for.

29 MS. STAROSTENKO: Because it's by rules.

30 THE COURT: You said maybe made without
31 hearing, Order 21?

32 MS. STAROSTENKO: Yes.

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1 THE COURT: Which rule in Order 21?

2 MS. STAROSTENKO: Order 21, Rule 21, 1, 2, 5, 7
3 for an unless order. There are rules of the court which
4 each party --

5 THE COURT: One second, please.

6 It says the application maybe made without
7 notice, not without hearing. Without notice means that
8 you don't have to -- you can raise it with ex-parte or
9 without ex-parte without notifying the other side in
10 advance, but I'm not hearing any application unless
11 everybody is getting an opportunity to respond. So I
12 will set all of these applications down I just need to
13 know from you how long do you think they will take to
14 argue.

15 MS. STAROSTENKO: This method is not about
16 contract in document and without security, in
17 securities --

18 THE COURT: This is case management, you say
19 you have applications to be heard at case management I
20 will have set a time line and set dates for you to have
21 your applications heard. You say you have six
22 applications.

23 MS. STAROSTENKO: Yes, my Lord. What I want to
24 explain, my Lord, what I'm trying to explain is that our
25 case, our facts are based on document evidence. So, to
26 the other party, reproduce all of the documents take two
27 or three hours to read it and it will be clear. Nothing
28 to discuss as witnesses in this case the documents will
29 speak more it's about logistics, contracts it's not
30 technical, its regulated, for this reason, my Lord, I
31 hardly consider we need to discuss some applications
32 because there are documents which will speak clearly.

1 THE COURT: Each application ask for an order,
2 you're asking me to order something. You have to argue
3 that I should make this order. They will argue why I
4 should or should not make the order. So I need to set a
5 time line or a date for you to argue whether I should
6 make any of these six orders that you're asking for. How
7 long do you think these applications will take when they
8 are heard?

9 MS. STAROSTENKO: I think for defence for
10 summary judgement it has to be at least one day for each.

11 THE COURT: For each of the six, so you need
12 six days?

13 MS. STAROSTENKO: No, the first four can be
14 done in one hearing they are all technical, but we need
15 documents to show the courts what are the facts then it
16 would be easier, it will save time, which is very
17 essential for us in this case. My Lord, will appreciate
18 the balance --

19 THE COURT: See, you should have given them
20 copies of the application so they will know how long they
21 will take.

22 MS. STAROSTENKO: They were filed, my Lord.

23 THE COURT: You only filed this yesterday and
24 you just served them, how do they have it?

25 THE COURT: So how long do you think you will
26 need for these applications?

27 MS. STAROSTENKO: My Lord, for this
28 applications a day all four applications we can finish
29 it, but applications for summary judgement I think will
30 request one day for each because I'm assuming I hope they
31 will have to say something. So far they produce no
32 evidence no documents they did nothing, only speak badly

1 about us. They understand nothing about trading so they
2 can't speak to what it is about.

3 THE COURT: You have a copy of the application
4 so they can see?

5 MS. STAROSTENKO: Yes, my Lord.

6 MR. LUNDY: My Lord, while they doing that it's
7 just five applications, the first one for just for the
8 court reporter to be here, so just five applications.

9 MS. STAROSTENKO: My Lord, the application of
10 4th of July we made the seven. The only one they don't
11 have, the application of fourth of July, only one
12 application we did not service. The last application
13 unless order which can be done without notice so this is
14 only one application we did not serve on them yesterday.

15 THE COURT: Can you give them a copy, please.

16 MS. STAROSTENKO: Yes. So they perfectly have
17 a picture and know what it is about. We hope the court
18 maybe minded to save time and the Court to grant us this
19 unless order because parties cannot disregard court rules
20 once we produce seven request for the documents by court
21 rules must answer once they did not answer.

22 THE COURT: Sorry, this the notice to produce?

23 MS. STAROSTENKO: Yes.

24 THE COURT: That's the order you're saying
25 they've not complied with?

26 MS. STAROSTENKO: Yes, my Lord, we made seven
27 notices.

28 THE COURT: That's not a court order.

29 MS. STAROSTENKO: Yes, sir, but you're asking
30 we made request by rules they did not oppose it they did
31 not make any defence, ignore it, for this reason now
32 we're asking a court order for them to comply with court

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1 rules and to show this documents to us by court rules.
2 We are asking now this order from the court because they
3 did not comply with the court rules and we prepared a
4 draft of this order. If you can give me one second.

5 THE COURT: While she look Mr. Turnquest, how
6 long do you think?

7 MR. TURNQUEST: Minimum two days, probably
8 three days being realistic. We're pretty sure when we
9 were before your Lordship this issue came out about
10 notice and your Lordship was clear that all documents be
11 provided.

12 THE COURT: I'm going to give directions today.

13 MS. STAROSTENKO: Yes, my Lord, in our skeleton
14 there are different authorities, but we were guided also
15 by the words of our Lord, which you gave in the case in
16 2017 ... versus ... company limited it says, "Goes
17 without saying if any document is sought to be relied on
18 in the trial, it must be disclosed of the discovery
19 stage --

20 THE COURT: But we haven't gotten to discovery
21 yet.

22 MS. STAROSTENKO: Sorry, my Lord, we thought
23 that we were in discovery now.

24 THE COURT: No, I will give you directions for
25 discovery.

26 MS. STAROSTENKO: You will appreciate we ask
27 for patience because the bank is in liquidation because
28 paid attorneys and everybody. From this side there are
29 two of us with six children, so it's okay for them to
30 wait one month, two month, one year, for us everyday is
31 like eternity maybe we jump too fast, we apologize, but I
32 hope that you will appreciate the fact this unparalleled

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1 unbalance which we are producing this legal battle. You
2 said that you will give us date for unless order they
3 fail to produce any order.

4 THE COURT: I will give you a date for the
5 hearing of it.

6 It may fall away by the time that date reaches
7 you may have gotten all documents by date of discovery.

8 MS. STAROSTENKO: We hope. It's actually five
9 years we're asking, we exchange numbers they do nothing.
10 It look like originating in The Bahamas.

11 THE COURT: If this thing goes to trial how
12 much trial dates would we need? How much witnesses are
13 you calling at trial?

14 MS. STAROSTENKO: My Lord, we're saying that
15 many of our claims we don't need to go to the trial, it
16 can be decided in summary judgement.

17 THE COURT: I said if. I'm giving directions
18 today that includes everything, if of course your
19 successful at summary judgement then the trial dates
20 won't be needed.

21 MS. STAROSTENKO: We still have trial dates in
22 terms of claims like fraud, which cannot be decided in
23 summary judgement. You obviously have more experience,
24 for us it's all in documents and in numbers. In summary
25 judgement we can save time if UBS don't mind the cost.

26 Mr. Lundy is suggesting two weeks I will rely
27 on his experience and you're experience.

28 THE COURT: Two weeks takes you into 2020.

29 I'm going to set aside one date beginning the
30 23rd of September, 2019, for any potential trial.

31 MS. STAROSTENKO: The date you set for unless
32 order.

1 THE COURT: The way it works, we work backwards
2 we get the trial date then come back to today. So the
3 week beginning the 23rd of September, 2019.

4 Am going to give you the 12th of November, the
5 full day to hear as much of these interlocutory
6 applications as we can get done beginning at 10 a.m.

7 List of documents, parties to produce list of
8 documents by the 30th of August. Parties to exchange
9 list of documents by the 30th of August. That there be
10 inspection of those documents which will take it to the
11 first week in October that inspections be completed by
12 the 4th of October. We'll have the hearing on the 12th
13 of November. We can postpone any issues of agreeing
14 bundles until the new year should give you time to
15 consider the applications. So let's say the parties to
16 agree bundle of documents by the 24th of January, 2019.
17 Parties to file witness statements of any witness they
18 intent to call in the action by the 21st of March, 2019.
19 Parties to agree a statement of facts in issues by the
20 2nd of July. Come back for a pretrial review.

21 MR. TURNQUEST: My Lord, just before that no
22 doubt the parties would want to produce expert evidence.

23 THE COURT: Yes, how many expert witnesses
24 you're looking to call?

25 MR. TURNQUEST: My Lord, two for the time
26 being, probably one.

27 THE COURT: Mr. Lundy.

28 MR. LUNDY: At least one, my Lady.

29 THE COURT: You don't intend to call any expert
30 witnesses.

31 MS. STAROSTENKO: Well, we are expert because
32 in the financial trading experts can only be one person.

1 So if this kind of experts would be tangible experts.

2 THE COURT: Listen, I only want to know whether
3 you have any experts.

4 MS. STAROSTENKO: We are personal experts.

5 THE COURT: Okay, I will give leave for each
6 party to call two expert witnesses. By when? The same
7 time as the witness statements, sufficient time?

8 MR. TURNQUEST: No, my Lord, after the agreed
9 statement of facts.

10 THE COURT: Well, should be after the witness
11 statements. So I'll do it after the witness statements
12 when your expert will know whether the evidence that's
13 available. How much time after that, after the 21st of
14 March?

15 MR. TURNQUEST: A month.

16 THE COURT: So expert reports due by the let's
17 take it to the 26th of April. So any expert report that
18 you intend to rely on to be filed by the 26th of April.
19 Leave granted for each party to call two expert witnesses
20 if they so desire.

21 MS. STAROSTENKO: Is it any possibility that we
22 can stipulate certain characteristics for this experts
23 because the material of trades. I wouldn't like to avoid
24 some experts if we speak about surgery we know the
25 surgeon is expert, when we speak about trading and
26 securities.

27 THE COURT: Every party has a right to call
28 witnesses they intend to rely on to prove the case that
29 they intend to make.

30 MS. STAROSTENKO: But who we call experts in
31 this material is so important.

32 THE COURT: At the trial each party will ask

1 the court to deem each person they are calling an expert
2 witness and I will have to decide each person is a
3 witness or not. That's done at the trial. Each expert
4 report will identify what their expertise is and
5 experience, then you will know the evidence they intend
6 to lead.

7 MS. STAROSTENKO: So we have an opportunity to
8 eventually to discuss about so-called experts?

9 THE COURT: You can object when the persons in
10 the box.

11 MS. STAROSTENKO: All those persons who work in
12 the bank they know nothing about trading. Like only
13 surgeons --

14 THE COURT: Why do you think they are going to
15 bring a trader?

16 MS. STAROSTENKO: They show unwillingness what
17 they doing about --

18 THE COURT: The trial will be next year and if
19 we get there then we will see where we go.

20 Pretrial review, Thursday 1st of August, 2019,
21 at 9:30. That's good for everyone?

22 MR. TURNQUEST: Yes, my Lord.

23 THE COURT: Any other directions?

24 MS. STAROSTENKO: You say list of documents by
25 August 30th, 2018?

26 THE COURT: Yes.

27 MS. STAROSTENKO: So we will appreciate your
28 directions regarding our seven notices that we made, does
29 it mean by August 30th they have to be answered?

30 THE COURT: No, the list of documents and I
31 expect Mr. Lundy will assist you, it is a document that
32 you will file, listing one to five to however. Every

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1 document that you have in our possession, or that you had
2 in our possession relative to the dispute. You will list
3 that document in a list of documents and you will file it
4 and serve a copy on each of the parties in the action;
5 every party will do the same thing. Once that list have
6 been produced by the 4th of October the parties must have
7 completed inspection of documents, each document on that
8 list provided is not identified as privileged or not
9 precluded for some reason, you will have a right to go to
10 their office and inspect, or receive copy of that
11 document however you choose to do the inspection. The
12 documents you said you want to produce may very well
13 likely be in that list, so we may not need that
14 application.

15 MS. STAROSTENKO: Would if they are not in this
16 list.

17 THE COURT: On the 12th of November you can
18 make an application for specific discovery or go through
19 with your applications to have them and whatever
20 document.

21 MS. STAROSTENKO: Or we will use this
22 application we made today because they have produced
23 nothing.

24 THE COURT: Mr. Lundy, anything else?

25 MR. LUNDY: No, my Lord.

26 THE COURT: Mr. Turnquest.

27 MR. TURNQUEST: No, my Lord, just to point my
28 learned friend scandalous claims which our client
29 obviously denies.

30 THE COURT: So I will see you all on the 12th
31 then.

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