

BERMUDA SUPREME COURT

PLV Hotel -v- S Mora et al [2016] SC (Bda) 16 Com

RULING ON APPLICATION TO RECONSIDER

This was a Ruling on an Application by the 2nd Defendant to reconsider the Court's earlier grant of an Application for Summary Judgment to the Plaintiff pursuant to Order 14 of the Rules of the Supreme Court. The Application was not opposed on its merits by the Second Defendant, whose counsel gave no evidence in opposition to the merits of the Application, but rather advanced only the argument (without formal application in the proceedings) that Cox Hallett Wilkinson Limited should be restrained from acting for the Plaintiff because of conflicting interests with third parties that counsel for the Second Defendant did not represent. Kawaley CJ found that the Application was not properly before the Court. Further, in addition to the relevant complaint appearing to lack substance, the Second Defendant did not have standing to invoke third parties' confidentiality rights. He suggested that the lack of coherent basis for opposition to the prior application on its merits was due to the fact that its sole purpose was to clothe the Joint Provisional Liquidators of the Plaintiff with the authority to exercise rights held by the Defendants with a view to recovering assets belonging to the Plaintiff.

Pursuant to the Application to reconsider in the present proceedings, counsel for the 2nd Defendant invited the Court to reconsider its decision due to the requirements in the application under Order 14 Rule 1 regarding the filing of a Statement of Claim. It was submitted in response by the Plaintiff that no prejudice flowed from a purely technical irregularity, and that under Order 2 Rule 1 of the Rules, non-compliance with the Rules does not nullify any steps in a civil action.

Kawaley CJ considered the principles governing the exercise of a Court's inherent jurisdiction to reconsider, particularly as outlined in the *English case of R (Compton) -v- Wiltshire Primary*

Care Trust [2008] EWCA Civ 749, that in order to reconsider a case, an applicant must show to the court that there has been some material change of circumstances or that the judge was misled; otherwise, reconsiderations on the basis of the same facts can only be done in the context of an appeal.

The Judge then stated that he had been aware of the lack of Statement of Claim during the application but had seen no need in the context of an application not opposed on its merits to require strict compliance with the rules. He found that the point could have been raised in the initial application, but since it had not been, it was not now open to the second Defendant to rely on it for the purpose of reconsideration. He therefore declined to reconsider the decision on the Application.

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