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COMMONWEALTH OF THE BAHAMAS  
IN THE COURT OF APPEAL  
SCCivApp & CAIS No. 94 of 2012

AES Ocean Cay Ltd.  
Applicant/Appellant  
and  
City Services Ltd.  
Respondent

(Stay)

Before: The Hon Mr Justice Conteh, JA

Ms Gail Lockhart-Charles, with Mr Ryan Brown,  
Counsel for Applicant/Appellant  
Mr Stephen Turnquest, Counsel for Respondent

6 June 2012

1 The oral judgment of the court was delivered by

2 Conteh, JA:

3           The judge in effect in this matter granted  
4 summary judgment in favour of the plaintiff, but she  
5 had recognised at paragraphs 73, 74 and 75 of her  
6 ruling that the defendant had by its counterclaim a  
7 triable issue which entitled it to leave to defend. It  
8 is therefore baffling why in the circumstances under an  
9 Order 14 application the learned judge proceeded to  
10 enter judgment in the full amount claimed subject to be  
11 paid within 30 days of her ruling and then subsequently  
12 granted leave to the applicant to appeal. This is not  
13 a tidy way of setting about an Order 14 application,  
14 the whole purpose of which is to avoid trial where, on  
15 the issues joined between the parties on their  
16 pleadings, it is so clear that judgment must  
17 ineluctably be entered for one side or the other. This  
18 evidently manifestly was not the case before the judge.  
19 She proceeded to grant leave to the appellant to  
20 appeal, no doubt mindful of the fact that the Order 14  
21 ruling was an interlocutory one correctly. Therefore,  
22 in the circumstances, to require the appellant to pay  
23 the full sum plus whatever interest thereon if not  
24 agreed and costs to be taxed is, in effect, entering  
25 judgment for the plaintiff, now proposed respondent.

1           In the light of the leave therefore granted by  
2 the learned judge to the appellant, I order that the  
3 entry of judgment be stayed until the appeal in this  
4 matter, which has been granted by the judge herself, is  
5 finally determined. This, of course, is not to say  
6 under Order 14 applications conditions cannot be  
7 attached for defending. But the conditions granted in  
8 this case would certainly seem to pre-empt the final  
9 judgment when issues have been finally joined and  
10 triable inter partes. Accordingly, I grant the  
11 application for stay until the appeal is heard in this  
12 matter.

13           Costs are to be in the cause.

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16           Dated this 6th day of June, 2012

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CONTEH, JA

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