

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.7 OF 1997

BETWEEN:

PARRY HUSBANDS

Appellant

and

WAREFACT LIMITED

Respondents

Before:

Ianthea Leigertwood-Octave

Chief Registrar

Appearances:

Appellant in person

Mr. Dexter Theodore for the Respondent

2003: August 12;
September 5.

DECISION

The Background

[1] This is a matter in which the right of a Queen's Counsel [Mr. Husbands] in St. Lucia to sue for fees or enforce a claim to them by action, was canvassed before the High Court, the Court of Appeal and the Privy Council.

[2] These proceedings, which relate only to the issue of costs, follow the judgment of the Privy Council delivered on 19th March 2003. The Privy Council, in allowing Mr. Husband's appeal in part, ordered that:

1. The Trial judge's order that Warefact have its costs against Mr. Husbands should stand.
2. Mr. Husbands pay Warefact the costs of his appeal to the Court of Appeal.
3. Warefact pay Mr. Husbands the costs of its cross-appeal.

4. Warefact pay the costs of Mr. Husband's appeal to the Privy Council insofar as they were incurred before 1 February 2003.
5. Mr. Husbands pay Warefact the costs of his appeal to the Privy Council insofar as they were incurred after 1 February 2003.

Quantification of costs

- [3] On 8th August 2003, Mr. Husbands filed what was described as an application for taxation of costs incurred between the last judgment of the Court of Appeal of the Eastern Caribbean Supreme Court dated 26th January 1999, and that of the Privy Council dated 19th March 2003.
- [4] The original claim in this matter was filed in 1995. When the judgments of both the High Court and the Court of Appeal were delivered in June 1997 and November 1998 respectively, the provisions of Order 62 of the Rules of the Supreme Court 1970 were applicable in relation to costs.
- [5] The Eastern Caribbean Supreme Court Civil Procedure Rules 2000 [CPR 2000], which came into effect on 31st December 2000, repealed the 1970 Rules. When the parties came before the Chief Registrar on 12th August 2003, they agreed that the provisions of Part 65: *Costs-Quantification* of CPR 2000 applied.
- [6] With the agreement of the parties, prescribed costs were quantified in accordance with Part 65.5 and Appendices B and C and Part 65.13, which deals with costs in the Court of Appeal. Prescribed costs were quantified as follows:
1. Warefact is entitled to prescribed costs in the High Court in the sum of \$22,634.70.
 2. Warefact is entitled to prescribed costs in the Court of Appeal in the sum of \$22,687.10.
 3. Mr. Husbands is entitled to the prescribed costs of Warefact's cross appeal in the sum of \$12,493.00.
- [7] The quantification of the costs awarded to the parties in relation to proceedings before the Privy Council were not dealt with as those matters fall within the jurisdiction of the Registrar of the Privy Council. It should be noted that counsel

for Warefact did provide a copy of the certificate of its taxed costs in the Privy Council in the sum of £20,512, 65.

The "Other" Costs

[8] When the quantification of prescribed costs was completed, Mr. Husbands indicated that there were still costs of nearly \$300,000.00, which could not be classified as prescribed costs and to which he was entitled. In reply, counsel for Warefact submitted that all relevant costs had been considered either in these proceeding or before the Privy Council and that there were no outstanding matters.

[9] Mr. Husbands also indicated that he was not prepared to argue the point fully at this time as he had confused the hearing date and was without his papers. The parties agreed that this point did not require further oral argument and Mr. Husbands was permitted to file his written submissions by 20th August 2003 and Warefact would be at liberty to file a reply by 22nd August.

[10] In the summary of his submissions filed on 20th August 2003, Mr. Husbands itemized his claim, which amounted to \$298,384.00. The individual items claimed are as follows:

1. Preparation of case over 7 year period	\$88,000.00
2. 2 Applications for leave before the Court of Appeal	\$80,000.00
3. Solicitors' costs	\$40,000.00
4. Award by Trial Judge	\$73,697.00
5. Mr. Husband's costs on Warefact cross appeal	\$16,687.00

[11] I will now deal with Mr. Husband's arguments in support of these claims.

[12] Under the head **The Judgment of the Privy Council**, Mr. Husband argues that he is entitled to prescribed costs in the Court of Appeal in the sum of \$25,030.65 and not \$12,493.00, as quantified by the Chief Registrar.

- [13] The Privy Council awarded Mr. Husband costs of Warefact's cross appeal to the Court Appeal. Part 65.13 of CPR 2000 applies to the quantification of costs in the Court of Appeal. It provides that unless the parties agree otherwise or an order for budgeted costs has been made, the costs of an appeal must be determined in accordance with Parts 65.5, 65.6, 65.7 and Appendix B but **must** be limited to two thirds of the amount that would otherwise be allowed.
- [14] Part 65.5[2] is applicable in determining the value of Warefact's claim in the cross appeal. The value of claim was \$73,697.50 being the amount the trial judge found to be due to Mr. Husbands for the work he had done for Warefact. A calculation under Appendix B quantifies prescribed costs on claim as \$18,739.50, two-thirds of that being \$12,493.00. I therefore find that the amount quantified is correct in accordance with the provisions.
- [15] Mr. Husband's also contends that he was entitled to the costs of applications to the Court of Appeal for leave to appeal to the Privy Council in the sum of \$80,000.00 and which fell outside the scope of prescribed costs.
- [16] I agree with Mr. Husband's submission to the extent that under Part 65.2[d], the making or opposing of any application except at a case management conference or pre-trial review is excluded from prescribed costs. I do not agree however that Mr. Husbands is entitled to the costs of those applications as the Privy Council awarded costs in the Court of Appeal to Warefact. I also find no merit in Mr. Husband's submission that these costs were incurred between proceedings before the Court of Appeal and the Privy Council.
- [17] I am of the view that these proceedings only involve a strict quantification of prescribed costs and as such particulars of offers to settle costs between the parties are irrelevant and the submissions on this point are disregarded.

[18] On the issue of fairness, Mr. Husbands seems to be referring to costs which were certified at the Privy Council level, as he refers to an award of £10,000. It is clear that I have no power to disturb this award.

Conclusion

[19] I do not agree that Mr. Husbands is entitled to any other costs than those quantified on 12th August 2003 and in the sums quantified. I will however re-issue my order, as it incorrectly refers to Mr. Husband's and not Warefact's cross appeal.

Ianthea Leigertwood-Octave
Chief Registrar