GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.32 OF 2003

BETWEEN:

CLEVELAND DONALD

Appellant

and

THE ATTORNEY GENERAL

Respondent

Before:

The Hon. Mr. Adrian D. Saunders	Chief Justice [Ag.]
The Hon. Mr. Michael Gordon, QC	Justice of Appeal
The Hon. Mr. Joseph Archibald, QC	Justice of Appeal [Ag.]

Appearances:

Mrs. Celia Edwards for the Appellant
Mr. Darshan Ramdhani for the Respondents

2004: June 29;
July 26.

JUDGMENT

[1] SAUNDERS, J.A.: This case raises a short procedural point. It revolves around an interpretation of the phrase "the value of the claim" as found in Part 65 of the Civil Procedure Rules (CPR). I would have thought that the Rules provided a complete and unambiguous answer to the question posed but the issue has produced litigation right up to the level of the Court of Appeal. We have been asked to provide a written opinion so that practitioners can be guided in the future.

[2] The underlying facts are simple. Mr. Donald is a landowner. In 1980 the Government acquired some of his lands. He had problems obtaining compensation. It is not necessary to delve into those problems. In order to get the monies due to him he filed suit and on 21st November, 2002 Mr. Justice Barrow ordered the Government to pay to him the sum of $383,250.00. That sum

represented the value of the lands acquired. The court also ordered the Government to pay interest on that sum for the 22 years that had elapsed since the land acquisition. The interest stood at $632,363.50 as at 31st December, 2002. In separate proceedings, the Master was asked to assess the costs to be awarded. This was a case where the costs to be awarded fell under the prescribed costs regime of the Civil Procedure Rules. The fundamental question the Master had to decide was whether the interest awarded should be regarded as forming part of the value of the claim. Mr. Donald's lawyers naturally thought that the interest awarded should be included in the figure representing the value of the claim. The Government argued to the contrary. The Master agreed with the Government and held that the true value of the claim was the amount of the judgment excluding interest. The Master also determined that Mr. Donald should receive 75% of the prescribed costs because the amount of compensation was agreed by the parties. Mr. Donald has appealed the Master's refusal to disregard the interest in assessing the value of the claim. The Government has cross-appealed the order that 75% should be awarded. The Government argues that only 60% should have been awarded.

[3] Mr. Donald was a claimant in the court below. CPR 65.5(2) states that, in the case of a claimant, the value of the claim is the amount agreed or ordered to be paid. I cannot fathom how it is that there should have been any doubt that the interest awarded here was an amount "ordered to be paid". Ordinarily, the rules[1] require a party in a filed claim form to expressly state that interest is being sought and to set out the basis of entitlement, the rate and the period for which it is claimed. A claim for pre-judgment interest is as vital to a litigant as the principal sum to which the interest attaches. Indeed, in this particular case, the interest was almost double the quantum of the principal sum. Section 27 of the West Indies Associated States Supreme Court (Grenada) Act makes it clear that pre-judgment interest falls to be considered as part of the judgment on one's claim. In all the circumstances I regret

[1] *CPR 8.6(4)*

that I must disagree with the conclusion of the learned Master as to the quantum upon which the costs should be based.

[4] As to the 75% ordered, we have been asked to reduce that percentage to 60% but I would not interfere with the manner in which the Master exercised his discretion. The Master had all the relevant material before him. He noted that the case ended well after the case management stage had been reached and that at that stage, the parties had gone to the trouble of preparing experts' reports.

[5] In light of certain comments we have heard throughout the jurisdiction, I believe it is appropriate to make a few brief observations on the general issue of prescribed costs under CPR. These comments are additional to those made by the Rt. Hon. Chief Justice, Sir Dennis Byron, in Rochamel Construction Limited vs. National Insurance Corporation[2]. The Rules do not intend that once a claim is to be concluded after trial the prescribed costs regime should inflexibly be applied in order to determine the costs payable. A perusal of the Rules will indicate that opportunities are afforded parties to vary the consequences of a mechanical application of the prescribed costs. For example, CPR 65.5(4) and CPR 64.6(3) entitle the court to award a proportion only of the costs detailed in the Scale of Prescribed Costs. Further, CPR 65.6 provides for a party at a case management conference to apply to the court for an order that prescribed costs should be calculated on a higher or lower figure than the likely value of the claim. And of course it is always open for a party to apply to the court to set a costs budget[3]. If regard is paid to these provisions of the Rules when appropriate circumstances arise, there can hardly be scope for the complaints that we have heard.

[2] St. Lucia Civil Appeal No. 10 of 2003
[3] See CPR 65.8

[6] We would allow this appeal and disallow the cross-appeal. In all the circumstances we will make no order as to the costs of this appeal.

Adrian D. Saunders
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal

[Sgd.]

I concur.

Joseph Archibald, QC
Justice of Appeal [Ag.]