

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV 567/2005

CHARSIE LYMAN
FREDERICK LYMAN

Claimants

V

ANDREW GEORGE

Defendant

Appearances:

Miss Dabreo for Defendant
Miss Isabella Shillingford & Mr. Ogilvy for Claimants

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2006: MARCH 3
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DECISION

MASON J:

Reserved from 15th February, 2006

[1] When this matter came before the Court on 15th February, 2006, the Court did not have the benefit of properly dealing with it because the Court's file was missing.

- [2] Having now had the opportunity of reviewing the process and the chronology of the matter, the Court is dismissing the application to set aside the Notice of Discontinuance.
- [3] I am of the opinion that this application was an attempt by the Claimants to seek to revive a claim that had been struck out and to allow the Claimants to continue would amount to an abuse of the Court process.
- [4] I accept the submission by the Defendant that he has the right under Part 37.2 (1) to discontinue the counterclaim and that by doing so he sought to bring the matter to an end.
- [5] The Defendant under this rule does not need the permission of the Court or the Claimants consent, Parts 37.4 and 37.6 as referred to by the Claimants would only be relevant if Part 37.2 had been invoked i.e. if permission of the Court and consent of the Claimant were necessary.
- [6] When the claim was struck out by the Master, costs should have been determined at that point.
- [7] The Master not having awarded costs, this Court is of the opinion that prescribed costs should have been given to the Defendant.

ORDER

Application to set aside Notice of Discontinuance is hereby dismissed.

The Defendant will be allowed prescribed costs in the matter.

Cost of this application in the sum of \$500.00 are also awarded to the Defendant.

SANDRA MASON Q.C.

High Court Judge