

**SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE
(CIVIL)**



CLAIM NO 260 OF 2004

BETWEEN:

ANDRE MARSHALL

Claimant

AND

**[1] THE CHAIRMAN AND MEMBERS OF
THE PUBIC SERVICE BOARD OF APPEAL**

Through its members:-

**NORMAN KEIZER of Montrose
JONATHAN PITT of Gibson Corner
REGINALD TELEMAQUE of Kingstown
MONICA DACON of Prospect**

**[2] THE ATTORNEY GENERAL OF
SAINT VINCENT AND THE GRENADINES**

Defendants

Appearances:

On written submissions of
Ms Nicole Sylvester and
Ms Patina Knights of
Caribbean International Law Firm

.....
2009: June 29
July 3
.....

Decision on Assessment of Costs

[1] **LANNS, MASTER:** On 5th October 2007 Mr Justice Frederick Bruce-Lyle made an order in the following terms

"I order ... that the reliefs sought by the Claimant in paragraphs Two to Fourteen of his application filed on 21st May 2004 are granted.

I further order that damages are to be assessed, and the Defendant will pay the Claimant's costs in the sum of \$10,000."

[2] The application for assessment came before me.

[3] In a decision on the assessment of damages handed down by me on 17th October 2008, I indicated "I propose to award Mr Marshall Costs in accordance with CPR 65. 12 unless agreed." I then ordered "...The parties shall make written submissions on costs within 14 days of today's date for consideration on 13th November 2008, unless agreed."

[4] Costs were not agreed. Accordingly, the Claimants filed their submissions on 10th November 2008. The Defendants filed no submissions.

[5] For some reason unknown to me, the assessment hearing was not listed for 13th November 2008. Apparently, the file languished in the Registry until 22nd April 2009 when I summoned the parties before me for a status hearing.

[6] At that hearing, the Defendants' learned solicitor (Ms Fife) indicated to the court that costs had already been paid. Learned solicitors for the Claimant (Ms Sylvester and Ms Knights) denied this. It turned out that Ms Fife was referring to the costs of \$10,000.00 ordered against the Defendants in the judicial review proceedings before Mr Justice Frederick Bruce-Lyle.

[7] On 22nd April 2009, in pursuance of CPR 26.9 (3), I made the following order in the presence Ms Nicole Sylvester and Ms Patina Knights for Claimant and Ms Michele Fife for the Defendants:

- "...The Defendants are permitted to file an application for an extension of time within which to comply with the order of the court as contained in the judgment on assessment dated 17th November 2008 in relation to the written submissions on costs and for relief from sanctions
- The application is to be filed within 7 days of today's date.
- The assessment will be heard on 5th June 2009 at 1:00pm."

[8] On 5th June 2009, when the matter was called up, Ms Patina Knights appeared for the Claimant. There was no appearance of or for the Defendants and there was no communication to the court as to the reason for the non - appearance of the parties or their legal representative. In flagrant disregard of the court's order, Ms Fife had again failed to comply with an order of court in that she had not filed the application as ordered, and she had not filed any submissions.

[9] It was only when the clerk of court (Ms Caesar), upon my direction, contacted Ms Fife by phone that she indicated to the clerk that she had a domestic emergency and cannot attend court. I proceeded to exercise my case management powers by making an order in the following terms:

- Unless the Defendants within 10 days of today's date comply with the order of the master dated 29th April 2009, the master will proceed with the assessment and the Defendants will not be allowed to participate in the assessment.
- The Defendants must within 10 days of the date of this order file and serve submissions in relation to the assessment of costs of the assessment hearing
- The Claimant must file and serve reply if necessary within 7 days of receiving the submissions of the Defendants.

[10] The Defendants failed to fully comply with the order of 5th June in that while they filed their submissions on 16th June 2009, they did not file the application to be relieved from sanctions, and thus, the court, in accordance with the order made on 5th June 2009, has declined to hear the Defendants on the assessment of costs and has paid no attention to their submissions. The Claimants were content to rely on their written submissions, and chose not to supplement or expand upon them with oral submissions. This is the assessment.

The Schedule of Costs

[11] The Claimant has filed a schedule of costs, in the amount of \$8,090.00. It includes costs for legal fees and disbursements, court appearances, and costs for work done in relation to the assessment of damages hearing as well as in relation to the assessment of costs hearing.

The law

[12] CPR 65.12 (1) provides that 'this rule applies where costs fall to be assessed in relation to any matter or proceedings, or part of a matter or proceedings, other than a procedural application'. There can be no doubt that this assessment of costs is in relation to a 'proceeding' that is, the assessment of damages hearing.

[13] CPR 65.12 (2) provides "if the assessment relates to part of court proceedings it must be carried out by the judge, master or registrar hearing the proceedings". This provision has been complied with since the assessment of costs is being carried out by the master who heard the assessment of damages.

[14] **In Norgulph Holdings Limited Incomeborts Limited v Michael Wilson Partners Limited**, British Virgin Islands Civil Appeal No 8 of 2007, the Court of Appeal at page 9 paragraph 17 noted that "paragraphs (3), (4) and (5) of rule 65.12 provide the procedure for obtaining an assessment of costs when the assessment does not fall to be carried out at the hearing of proceedings."

[15] In this case, costs were awarded at the assessment of damages stage, but not assessed at the hearing, so I am satisfied that rule 65.12 is applicable.

[16] **In Michael Wilson & Partners, Limited v Temujin International Ltd et al – British Virgin Islands Claim No BVI006/0307**, Her Ladyship, Madame Justice Indra Hariprashad-Charles, in considering an application for assessment of costs found it necessary to emphasize

“Ultimately, the court must allow such sum that is reasonable taking into account the matters set out in CPR 64.6 (6) and CPR 65.2 (3). The latter sets out the non-exclusive list of factors that the court is required to take into account in assessing costs namely

- a) any order that has already been made;
- b) the care, speed and economy with which the case was prepared;
- c) the conduct of the parties before as well as during the proceedings;
- d) the degree of responsibility accepted by the legal practitioner;
- e) the importance of the matter to the parties;
- f) the novelty, weight and complexity of the case;
- g) the time reasonably spent on the case; and
- h)”

[17] Taking into account the matters set out in CPR 64.6(6) and CPR 65.2 (3), I assess the Claimants costs at 85% of the costs claimed, that is \$6876.50.

[18] In coming to that determination, I take into account the fact that the Claimant did not succeed on all of his heads of claim, but nevertheless achieved overall success.

[19] In deciding what would be reasonable, I also considered that the matter was not a complex matter. I also took into account, pursuant to sub-rule 3(a) that an order as to costs in the judicial review proceedings had already been made but which, seemingly had not yet been paid to date. Apart from those three factors, I can find no reason which justifies depriving

the Claimant of his full costs as claimed. I find that counsel for the claimant acted responsibly and expeditiously, at all times, with care, skill and economy in preparing for the assessment hearings.

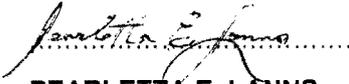
[20] However, I find that counsel for the Defendants acted conversely especially in relation to the assessment of costs proceeding which is essentially part of the assessment of damages proceeding. It appears that they made absolutely no attempt to agree costs. Costs were incurred unnecessarily by the Claimant for failure of the Defendants counsel to appear at hearings and to file submissions in a timely manner, and this failure has otherwise led to the time of the court and claimant's counsel being wasted. I need not delve further into the unsatisfactory and unbecoming conduct of the Defendants counsel.

The Order

[21] **IT IS ORDERED** that

The Defendants must pay the Claimant costs of the assessment of damages proceedings in the sum of \$6876.50, such costs to be paid within one month of today's date, or at some other period of time as subsequently agreed between the Claimant and the Defendants.

[22] I am grateful to Claimant's learned counsel for their industry.


PEARLETTA E. LANNS
Master