THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2009/0254

BETWEEN:

GERALD WATT QC trading as

WATT & ASSOCIATES

Claimant

AND

FBO (2000) ANTIGUA LTD

MAKEDA MICHAEL

Defendants

Before:

Master Cheryl Mathurin

Appearances:

Mr. David Dorsette for the Claimant

Mr. Kendrickson Kentish holding for Mr. Sherfield Bowen for the Defendants

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2010: November 18th; December 2nd

RULING

[1] MATHURIN M; The Defendants (FBO) in this matter have applied for a stay of proceedings pursuant to Rule 37.8 of CPR2000. This rule provides that if a Claimant discontinues a claim after a defence has been filed and subsequently files another claim against that Defendant arising out of the same facts as the discontinued claim and has not paid the Defendant's costs of the discontinued claim, the Court may stay the subsequent claim until those costs are paid.

[2] FBO relies on the fact that on 25th January 2008 Mr. Watt filed a claim ANUHCV2008/0056 against FBO for outstanding legal fees in the sum of $156,755.00 to which a defence was filed on the 3rd April 2008. On the 28th April 2010, a notice of discontinuance was filed on behalf of Mr. Watt who on that same day filed a subsequent claim ANUHCV2010/0254 against FBO on substantially the same facts. No costs were paid on that discontinuance.

[3] It is to be noted that at some point during the discontinued proceedings, FBO filed an ancillary claim against the Attorney General of Antigua and Barbuda for indemnity. In order to arrive at the outstanding legal fees which Mr. Watt claimed were due to him, he had submitted a Bill of Costs to be taxed by the Registrar which was done ex parte and without notification to FBO. On the 15th July 2009, the Attorney General and FBO by way of consent agreed that the bills of costs taxed by the Registrar were null and void, the same not having been served on FBO in accordance with the Legal Profession Act of 1997. The claim was subsequently discontinued in April 2010.

[4] The application is opposed by Counsel for Mr. Watt who is asking the Court to exercise its discretion by not awarding any costs. He also states that the consent order between the Attorney General and had the effect of removing the statutory basis for the claim. He states that because the amended Legal Profession Act of 2008 no longer permitted taxations by the Registrar which was the procedure previous to the amendment, the process materially affected the way in which costs were to be retrieved from delinquent clients and in he was in fact compelled to discontinue the proceedings in the circumstances.

[5] That the Court has such discretion is clear. Rule 37.6(1) states that;

> *"Unless the –*
>
> *(a) Parties agree; or*
>
> *(b) Court orders otherwise; (my emphasis)*
>
> *A claimant who discontinues is liable for the costs incurred by the defendant against whom the claim is discontinued, on or before the date on which notice of discontinuance was served"*

Rule 37.7 relates to quantification of costs and states that the general rule is (unless an order for budgeted costs has been made) that costs are to be determined in accordance with the scale of prescribed costs contained in Part 65, Appendices B and C.

[6] Counsel for the Mr. Watt further urges the court to be guided by Rule 64 which details factors the court must take into consideration when it is ordering an unsuccessful party to pay costs of proceedings to an unsuccessful party.

[7] It is clear that since the filing of the defence to the discontinued claim, Mr. Watt was aware that FBO was not disputing the fact that legal fees were owed to him but rather that the sole contention was that the bill of costs presented to them and taxed by the Registrar was null and void because in accordance with the Legal Profession Act of 1997, FBO was not notified of the taxation hearing. The Parties then attempted to settle the matter between themselves on several occasions but it was not settled and the Attorney General as ancillary defendant subsequently agreed that the taxation was irregular as is evident from the consent order of the 15th July 2009. Nothing further appears to have been done after that until a notice of discontinuance was filed in April 2010.

[8] It seems to me that in these circumstances where the issue of costs in ANUHCV2008/0056 remains undecided, it would be prudent and I accordingly order, a stay of these proceedings pending the determination and payment of those costs if any. To facilitate completion of this process, the parties to these proceedings are to make written representations as to costs in ANUHCV2008/0056 within 14 days.

CHERYL MATHURIN

MASTER