

IN THE EASTERN CARIBBEAN SUPREME COURT

HIGH COURT OF JUSTICE

SUIT NO. SLUHCV2012/0610

BETWEEN

LESLIE FONTENELLE

Claimant

and

1. THE FIRE SERVICE ASSOCIATION
2. DAHER BROADCASTING SERVICE LIMITED
3. HELEN TELEVISION SYSTEM LIMITED
4. CHOICE CHANNEL 39 LTD

Defendants

Appearances:

Leslie Prospere of Counsel for the Claimant  
Cynthia Hinkson-Ouhla of Counsel for the First Named Defendant  
Diana Thomas of Counsel for the Second Named Defendant  
Dexter Theodore of Counsel for the Third Defendant  
Levie Herelle of Counsel for the Fourth Named Defendant

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2013: 11<sup>th</sup> April;  
12<sup>th</sup> April  
25<sup>th</sup> April

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DECISION ON THE QUANTIFICATION OF COSTS

INTRODUCTION

[1] TAYLOR-ALEXANDER, M: An action for defamation brought by the claimant in these proceedings was subsequently discontinued at the stage of the case management conference. The decision to discontinue was as a consequence of the posture taken by some of the parties to the litigation who were involved in

related proceedings before a Commission of Inquiry convened to investigate allegations of fraud and corruption within the management of the fire services of St. Lucia. These allegations had caused a rift between management and the rank and file officers and had undermined one of the island's essential services. Apparently and for the greater good of the country both the management of the fire services and the rank and file officers, agreed to cease the feuding between them, resulting in the culmination of the Commission of Inquiry.

- [2] The claimant in conciliation, chose to withdraw these current proceedings, which had been bought against the association representing the rank and file officers and three television stations who the claimant alleged, had in their news broadcast repeated statements made by the president of the Fire Service Association, defamatory of the claimant.
- [3] The first named defendant being integrally involved in the inquiry was aware of the conciliation made by the parties to the inquiry. The second, third and fourth named defendants were not involved in the inquiry and any decision relating to the discontinuance of the proceedings was not initially with their agreement. They were collateral beneficiaries. Nevertheless and on discontinuance their costs incurred as a result of defending the proceedings fell to be determined.
- [4] The claimant has appealed to all of the parties to forgo any application for costs. On the 9<sup>th</sup> of April 2013 the second defendant bowed out of the proceedings agreeing to waive its costs and it executed an order for discontinuance by consent. The first named defendant shortly followed suit. It was a party to the Commission of Inquiry and had agreed to cease feuding. Its decision to agree the discontinuance of these proceedings with no order as to costs was in keeping with its promise.
- [5] The third and fourth named defendants being under no bond as it were, to withdraw quietly and adamant that they have incurred unjustifiable costs, wish to

have their have costs paid in keeping with prescribed costs pursuant to CPR 2000 part 65.5(2).

[6] The general rule on the applicable costs for discontinuing a claim where there has been no agreement of the parties is contained at CPR 2000 part 37.7 as amended by The Civil Procedure Amendment Rules No 92 of 2011, which provides that unless an order has been made for budgeted costs under rule 65.8 the costs payable on discontinuance are to be determined in accordance with the scale of prescribed costs contained in CPR 2000 part 65 Appendices B and C.

[7] Every case requires the consideration of the courts discretion and in so doing the court is required to give effect to the overriding objective. CPR rule 1.2 provides:-

*"The court must seek to give effect to the overriding objective when it —*

*(a) exercises any discretion given to it by the Rules; or*

*(b) interprets any rule"*

[8] CPR rule 1.1 provides for those factors which the court must consider when it seeks to give effect to the overriding objective. Those factors are not exclusive, but the court must nevertheless have regard to only relevant considerations. See the case of **Scherer and Another v Counting Instruments Limited and another** [1986] 2 All ER 529.

[9] I wish to make a preliminary observation. Counsels in the proceedings submitted that the claim not being for a monetary sum, prescribed costs are to be calculated on a value of \$50,000.00 pursuant to CPR part 65.5 (2) (iii). part 65.5 (2) provides as follows:—

*"In determining such costs the value of the claim is —.*

*(a) in the case of a claimant — the amount agreed or ordered to be paid;*

*(b) in the case of a defendant —*

*(i) the amount claimed by the claimant in the claim form; or*

- (ii) if the claim is for damages and the claim form does not specify an amount that is claimed — such sum as is agreed between the party entitled to, and the party liable for, the costs or, if not agreed, a sum stipulated by the court as the value of the claim; or*
- (iii) if the claim is not for a monetary sum — the amount of EC\$50,000 unless the court makes an order under rule 65.6(1) (a)."*

[10] I am of the view that this case is largely one for damages arising out of the tort of defamation and therefore the correct provision to determine the value of the claim is part 65.5(2) (b) (ii) and not 65.5 (2) (b) (iii). Part 65(5) (2) (iii) is reserved for cases where a party seeks relief other than a monetary sum and where subparagraph 65.5 (2) (b) (i) and (ii) are inapplicable.

[11] Despite this finding I have proceeded on the basis of the submissions of the parties that the value of the claim should be considered to be \$50,000.00 and as such would attract an award of costs for each of the defendants in the sum of \$4,125.00.

[12] I had given the parties an opportunity to agree a sum in costs. Discussions did not yield success and I thereafter invited the parties to be heard on the issue of an appropriate award.

#### **The claimant's submission**

[13] The claimant submits that the court should apply its discretion to award costs other than the sum of \$4,125.00. He maintains the strength of his case and submits that the statements allegedly and made defamatory of him, had been made recklessly and discredited him both here in St. Lucia where he is a senior public servant and in the diaspora. Despite the strength of his case, he alleges that his decision to discontinue the proceedings was made in the interest of the greater good of the country and for the continued smooth operation of the island's fire services. He submits that the decision to discontinue was made despite the irreparable damage

that he feels he has suffered to his reputation which ordinarily would require vindication.

#### **Submissions of the Third Named Defendant**

- [14] The third named defendant reminds the court that in the exercise of its discretion it was not restricted to prescribed costs and pursuant to CPR part 65.3 the court could grant an award greater than the prescribed costs. Mr. Linford Fevrier, managing director of the second named defendant empathised with the claimant's submissions but felt aggrieved that the proceedings were taken out against the third name defendant. In his view the third named defendant spent man hours in preparation for its defence and had retained very senior counsel in view of the serious charges levied and its need to protect the company's reputation which it has worked assiduously to build. The action brought, questions the very integrity of its operations which it is required to defend.

#### **Submissions of the Fourth Named Defendant**

- [15] The fourth named defendant relies on the submissions made by the third named defendant which bears relevance to its own posture it being a media house who spends tremendous time and expense ensuring the quality of its broadcasts and the integrity of its operation. It did not take kindly to being made a party to the proceedings, especially as it maintains that it had been forthright with the claimant from the outset, even before the institution of the proceedings and subsequently, in informing the claimant that it had never published any broadcast in relation to the matter that is the subject of these proceedings. The fourth named defendant had from early on in the proceedings supplied transcripts of its broadcast to the claimant which involved significant inconvenience in both labour time and costs.
- [16] The production of the transcripts was made pursuant to an order for specific disclosure and was done to facilitate an application to strike out the claim brought by the fourth named defendant on the basis that the claimant could not sustain a

claim against it for publication. This court had issued a decision striking out the application on the basis that it sought a premature determination of an issue that ought properly to be determined at the trial of the proceedings. I had also awarded costs to the claimant in the sum of \$750.00. In so far as the fourth named defendant now seeks by an award of costs on discontinuance to recover the costs of that application, this court will not countenance such an attempt to undermine its earlier ruling.

[17] With exception to the reservations I have made at paragraph [16], I consider all the submissions made to be relevant to the determination of costs. I found the request for consideration of the greater good of the country to be most compelling. The proceedings at the Commission of Inquiry indirectly impacted the entire country and had been concluded in the most conciliatory fashion. It would not auger well for these proceedings to linger with a regretful after taste when the issue had been put on such a positive footing.

[18] Additionally this matter had not been tried on its merits and as such the outcome was unknown. Each party has been saved the tremendous costs associated with the litigation of a claim in defamation, and have avoided an outcome that may have resulted in the payment of even more significant costs and damages.

[19] In this jurisdiction the practice has always been to make a higher award of costs where the proceedings were attended by senior counsel and where as in this case the attention of all counsel to the proceedings was outstanding.

[20] Having considered all of the above, I have chosen to apply my discretion to discount the strict application of the general rule by 27% on the award to the third named defendant, and by 35% on the award to the fourth named defendant resulting in costs to the third and fourth named defendants in the sum of \$3,011.25 and \$2,681.50 respectively both to be settled within 21 days hereof.

**V. Georgis Taylor-Alexander**

**High Court Master**