

**THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE**

**SAINT VINCENT AND THE GRENADINES**

**SVGHCV2009/0387**

**BETWEEN:**

**JOHN BAYLISS FREDERICK**  
Legal Representative of St. Paul's Sanctuary

**CLAIMANT**

**-AND-**

**KELECTRIC COMPANY LIMITED**

**DEFENDANT**

Appearances: Ms Samantha Robertson for the Claimant, Mr Richard Williams for the Defendants.

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2015: Mar. 9  
Apr. 15  
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**JUDGMENT**

**BACKGROUND**

[1] **Henry, J. (Ag.):** St. Paul's Sanctuary ("the Sanctuary") is an unincorporated charity operating in Saint Vincent and the Grenadines formed with the objective of carrying on a religious retreat on its 15 acre parcel of land at Chateau, Owia. Mr John Bayliss Frederick is the Managing Trustee and legal representative for the Sanctuary. It appears that Kelectric was awarded a contract by the government to undertake road works part of which might have required compulsory acquisition of a portion of that land to facilitate the works. In 2006<sup>1</sup>, the Sanctuary leased the entire property to Kelectric Company Limited ("Kelectric") for three years. After the expiry of the lease, the Sanctuary brought

action against Kelectric<sup>ii</sup> seeking special damages and general damages. Judgment was entered for the Sanctuary for the special damages portion of the claim.<sup>iii</sup> Trial of the general damages component was adjourned<sup>iv</sup> and the parties ordered to file written submissions.<sup>v</sup> At the trial, Mr Frederick was the only witness who gave evidence.<sup>vi</sup> He relied exclusively on the contents of his witness statement.<sup>vii</sup> He was not cross-examined. The Sanctuary is seeking general damages for Kelectric's breaches under the lease.

## **ISSUES**

[2] The only issue in this matter is whether the Sanctuary is entitled to general damages from Kelectric and if so how much.

## **ANALYSIS**

### **Issue – Should Kelectric pay general damages to the Sanctuary?**

[3] In its statement of claim, the Sanctuary itemized 12 breaches of the lease by Kelectric<sup>viii</sup> namely:

- i) failure to pay rent;
- ii) holding over of possession of leased property;
- iii) failure to re-establish the northern boundary;
- iv) destroying fruit trees;
- v) failure to drain catchment area;
- vi) failure to put up retaining wall, lay out and construct drain to prevent silting and slippage;

- vii) failure to complete construction of a road from filled in area on foreshore;
- viii) failure to construct back wall to shore up farm house;
- ix) failure to clean up and repair farm house;
- x) failure to repair water supply system; and
- xi) failure to clear up batching plant site; and failure to break up or otherwise remove very large boulders from foreshore.

These breaches were listed in tabular format which included next to each item were statements of what would be required to rectify each and the estimated cost. The prayer for special and general damages is preceded by a statement that despite repeated demands by letters and orally Kelectric has refused to repair and rectify the damage to the lands.<sup>ix</sup>

[4] The Sanctuary withdrew its prayer for rent and possession<sup>x</sup> (items i) and ii)). Accordingly, those items are no longer before the court. While the special damages award of \$12,625.00<sup>xi</sup> was made in respect of the water supply system referred to at item x above, the Sanctuary appears to be claiming damages for that purported breach. The court is therefore required to consider whether the Sanctuary has proved its claim for general damages in respect of any of the alleged breaches in items iii through xii.

[5] General damages are recoverable in respect of injury and damage “arising naturally”<sup>xii</sup> as opposed to where there are “special and extraordinary circumstances beyond the reasonable prevision of the parties.”<sup>xiii</sup> General damages have been described as damage which the claimant must aver has been suffered<sup>xiv</sup> and such damage “...as the law will presume to be the direct natural or probable consequence of the action complained of.”<sup>xv</sup> A claimant who wishes to succeed in a claim for general damages must include a short

description of the nature of the claim,<sup>xvi</sup> a short statement of all the facts on which he relies<sup>xvii</sup> and identify the heads of loss that are being claimed.<sup>xviii</sup> He will not be able to recover as general damages any monetary loss which he has suffered up to the date of the claim<sup>xix</sup> or any particular damage or loss he incurs which is not the “necessary and immediate consequence of the wrongful act” or which is based on a precise calculation.<sup>xx</sup>

[6] Mr Frederick’s witness statement referenced and exhibited the lease agreement between the parties. In it, he described the nature of the work that Kelectric undertook on the property and his attempts<sup>xxi</sup> to recover outstanding rent and vacant possession.<sup>xxii</sup> Similarly, he deposed<sup>xxiii</sup> that he wrote to Kelectric outlining the breaches under the lease.<sup>xxiv</sup> In addition to requesting possession and arrears of rent, Mr Frederick referred to in the letter various clauses of the lease agreement which placed an obligation on Kelectric to:

- i) clean up and put the place right – C3<sup>xxv</sup>;
- ii) leave no pools or possibilities of pools on the roadway C6;
- iii) point out to the Sanctuary’s servants/agents, trees which it found necessary to destroy C7; and
- iv) not remove any rock, boulder or stone from the seashore, disturb or interfere with rocks, boulders, stones or gravel on the foreshore or shore or land which the sea touches – C12.

[7] Clause C3 of the Lease is relevant, self-explanatory and states:

*“The Lessee understands and recognizes that the Property shall be the home of a religious Sanctuary AND that it must at the end of the term yield up the same in a state that facilitates landscaping and construction of buildings. AND THE Lessee agrees to remove holes, unsightly disused material garbage waste and other impediments from the property used by the Lessee at or yielding up the property-----“*

While the Sanctuary identifies failure to clean up as one of the breaches committed by Kelectric (at items xi and xi) and Mr Frederick attests that he wrote a letter to Kelectric referring to breach of clause C3 of the Lease Agreement, but nowhere in his testimony does he provide evidence of such breach.

[8] The letter<sup>xxvi</sup> listed several breaches of clause C3<sup>xxvii</sup> including burying of tires, the presence of a huge boulder on the sea-front, cluster of old rusting iron on the northern end of the property, the existence of the attempted road on the foreshore, the roadway constructed on the south of Kelectric's main installation, absence of a wall to shore up the watch house and non-payment for trees.<sup>xxviii</sup> The existence of the letter does not amount to evidence of any breach complained about or highlighted in it. It simply supports the Sanctuary's assertion that a letter was sent. There is accordingly no evidence before the court from which the court can find that Kelectric failed to clean up and repair the farm house or the batching plant site or was at any time otherwise in breach of clause C3 of the Lease Agreement. I therefore cannot find that Kelectric committed the breaches complained of and I make no award for damages in respect of that complaint and prayer.

[9] Clause C6 of the Lease states:

“The Lessee shall measure and or cause to be measured and shall calculate every area portion or square foot of land which it may be obliged to use in the widening and/or to facilitate the widening repair extension of the public road that passes through the property. Such land of the property acquired for the purposes aforesaid shall be the subject of a claim for the purposes of compensation to the Government of Saint Vincent and the Grenadines and the lessee shall within seven days from the happening of the acquisition or the physical incorporating into the roadway of the said land advise the lessor--  
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None of the breaches itemized in the statement of claim appear to invoke this clause. However, in the letter exhibited as “BFL9”, reference is made to that clause in connection with pools and possibilities of pools of water on the roadway. Conceivably, the Sanctuary intended to invoke clause C6 in relation to the breaches described as failure to drain catchment area and construct drain.<sup>xxix</sup> That reference is incapable of being linked to the clause C6 as it makes no mention of those matters. Furthermore, even if it could be so linked, the letter is not evidence of its contents.

[10] Mr Frederick deposed:

*“an area was pointed out to Mr Kelly Glass where after a heavy shower of rains a large ... pond would usually gather on the main road and that area still grows moss, green moss, indicating the lack of drainage” and*

*“At the spot pointed out of loose soil a road, about 90 ft long was cut through the bank of the main road with the steep hill. It now has two drains between six to twelve inches deep, running down to the main road where workers have since shoveled silt over 2 ft across the main road.”*

I am not sure what Mr Frederick was trying to communicate in either statement. What is clear though is that neither statement amounts to description of a breach of clause C6 or any of the other clauses of the lease. In the premises, I make no such finding and make no award of damages in relation to that assertion.

[11] Clause C7 authorized Kelectric to destroy fruit trees on the property. The only precondition to such destruction was that Kelectric indicates to the lessor or his servant or agent which fruit trees would be destroyed. Clause C7 of the lease provides:

*“Whatever plants crops fruit-trees (sic) cultivation or garden by the lessee found to be necessary to be destroyed shall be pointed out to the Lessor or his representative or his representative (sic) or worker-----“*

The Sanctuary claims damages for the fruit trees which have been destroyed.<sup>xxx</sup> Mr Frederick attested that 37 fruit trees were destroyed of which 27 could have been transplanted.<sup>xxxi</sup> He does not indicate who destroyed them. He deposed *“I noticed on visits to the lands that most of my fruit trees were no longer visible.”*<sup>xxxii</sup> It is not clear from that statement whether visibility of the fruit trees was obscured or what if anything was done to them and by whom.

[12] There is no evidence before the court what if any fruit trees Kelectric destroyed nor is there any evidence of failure by Kelectric to notify the Sanctuary in advance of such alleged destruction. The Sanctuary has accordingly failed to discharge its burden to prove such destruction without notice. Its claim for damages must therefore fail in this regard. I accordingly make no award on this limb.

[13] The Sanctuary claims that Kelectric violated clause C12 of the lease.<sup>xxxiii</sup> It provides:

*“The Lessee shall not permit any person whomsoever or whatsoever to remove any rock boulder stone shells jetsam flotsam or drit-wood (sic) from the sea-shore AND shall not itself or by its servants agents or employees drill mine disturb or in any way interfere with the rocks boulders stones gravel sand and earth on the foreshore or shore or land the sea touches-----“*

Mr Frederick attested:

*“Over-sized boulders were pushed towards the sea and hang perched-like „helter-skelter“ along the foreshore compelling the re-establishing of a walk-way or road along the foreshore.”* He added

*“The Farm-House was built on a foundation shored by two massive boulders. The Company removed the boulders, pushing them towards the sea leaving the Farm-House 3ft on a sheer bank from the main road. A back wall is frighteningly needed to keep up the Farm-House.”*

He concluded:

*“The boulders are still lying where they had come to rest on the foreshore.”*

[14] The prohibition contained in clause C12 prevents the removal of boulders or rocks from the **“seashore, foreshore, shore or land the sea touches”**. (bold mine) Mr Frederick’s testimony does not indicate where the subject boulders were removed from. The court is not at liberty to speculate, or to determine whether Kelectric moved them from any of the restricted areas. No finding is made and no award ordered in respect of this allegation.

[15] The Sanctuary claims that Kelectric is in breach of its obligation under the lease to re-establish the northern boundary.<sup>xxxiv</sup> Mr Frederick testified:

*“the defendant Company without notice whatever to the Claimant/Lessor dug up the northern boundary of the lands leased and filled in what was hitherto a ravine or gutter approximately 32 feet deep. The adjoining neighbours have since established a road over and include more than 25 feet of the Claimant’s land.”*

No such requirement is imposed by the lease. I therefore make no finding of breach of the terms of the lease and no award in damages.

[16] The Sanctuary claims further that Kelectric failed to put up a retaining wall, lay out and construct drain to prevent silting and slipping of bank made by building road.<sup>xxxv</sup> There is no evidence of this before the court. In any event, such a claim if sustainable would qualify as special damages for which compensation would



be assessed pursuant to clause C5 of the lease. I therefore make no finding of a breach and no award in damages.

- [17] The Sanctuary complains also that Kelectric violated the terms of the lease by failing to complete construction of a road from a *“filled in area along the foreshore.”*<sup>xxxvi</sup> Mr Frederick deposed:

*“From about the month of February 2007 I noticed on visits to the lands that ...a road was cut at a spot I requested Mr Kelly Glass not to cut because the soil in that area was prone to slippage.”*

The lease imposes no such obligation on Kelectric and there is no evidence that such prohibition was incorporated into the lease as a binding obligation. In those circumstances, I cannot find that there has been a breach in this respect and I make no award in damages.

- [18] The Sanctuary alleges that Kelectric failed to construct a back wall to shore up the Farm-House and therefore was in breach of the terms of the lease. Mr Frederick’s evidence is that Kelectric moved two large boulders from the foundation of the farm house which were shoring it up thereby leaving the farm house on a sheer bank. He described it as a dangerous situation which must be remedied by erection of a back wall. Clause C8 of the lease provides:

*“If existing house is knocked down or demolished the Lessor shall pay a reasonable amount to the Lessor as cost of the building-----”*

It is no part of Kelectric’s case that the farm house was either knocked down or demolished. There is accordingly no assertion by Kelectric which would activate the compensation component of clause C8. Kelectric is therefore not entitled to recover general damages for this alleged breach.

- [19] Mr Frederick completes his witness statement by stating simply:

*“The need for back walls; the trench dug with no outlet for surface water; the break up of the sewer system to the farm house; the compulsion to re-establish the northern boundary to the lands; the un-compacted surfaces of roads cut.”*

It is difficult to attempt to relate any of those descriptions to any breaches under the Lease.<sup>xxxvii</sup> To do so would amount to speculation in which I refrain from engaging.

[20] Neither party provided any reliable evidence to the court regarding the approximate monetary amounts ascribed to the matters for which the Sanctuary was seeking general damages. Based on the available materials it appears that the claim likely would be topped at roughly \$20,000.00. I accordingly stipulate that figure as the value of the claim for general damages.<sup>xxxviii</sup> Kelectric being the successful party is entitled to recover costs from the Sanctuary.<sup>xxxix</sup> The Sanctuary will be ordered to pay prescribed costs to the successful party.<sup>xl</sup>

## **ORDER**

[21] It is accordingly ordered:

1. The Sanctuary’s claim for general damages in relation to Kelectric’s alleged destruction of fruit trees and its purported failure to:
  - (i) re-establish the northern boundary;
  - (ii) drain catchment area;
  - (iii) put up retaining wall, lay out and construct drain to prevent silting and slippage;
  - (iv) complete construction of a road from filled in area on foreshore;
  - (v) construct back wall to shore up farm house;
  - (vi) clean up and repair farm house;
  - (vii) repair water supply system; and

(viii) clear up batching plant site; and failure to break up or otherwise remove very large boulders from foreshore;  
is dismissed.

2. The claimant John Bayliss Frederick Legal Representative of Saint Paul's Sanctuary shall pay to the defendant Kelectric Company Limited, prescribed costs of \$3000.00.<sup>xii</sup>

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**Esco L. Henry**  
**HIGH COURT JUDGE (Ag.)**

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<sup>i</sup> On August 16<sup>th</sup>, 2006, by Deed of Lease registered as Deed No. 4890 of 2006.

<sup>ii</sup> By Fixed Date Claim Form filed on November 26, 2009.

<sup>iii</sup> By judgment of Joseph J. (Ag.) dated February 14, 2012, in the amount of \$12, 625.00.

<sup>iv</sup> Ibid. at paragraph 13 of the judgment; to a date to be fixed by the Registrar.

<sup>v</sup> See Order of Thom J. (as she then was) dated October 10, 2012.

<sup>vi</sup> Which took place on March 9, 2015.

<sup>vii</sup> Filed on June 25, 2010.

<sup>viii</sup> See paragraph 8 of the statement of claim.

<sup>ix</sup> To Messieurs Ram Goolam (described as Kelectric's Manager in John Bayliss Frederick's witness statement) and Kelly Glass referred to in the Statement of Claim as Kelectric's Chief Executive Officer and General Manager.

<sup>x</sup> Supra. at paragraph [13] of Joseph J. (Ag.)'s judgment of February 14, 2012.

<sup>xi</sup> Supra. at note iii.

<sup>xii</sup> See **Hadley v Baxendale [1949] A. C. 196 at 221**.

<sup>xiii</sup> **Per Lord Wright in Monarch S.S. Co. v. Karlshamns Oljefabriker** where he was commenting on the distinction between the two as explained in **Hadley v. Baxendale**, supra.

<sup>xiv</sup> **Per Lord Dunedin in The Susquehanna [1926] A.C. 655 at 661**.

<sup>xv</sup> See **Ströms Bruks Aktie Bolag v. Hutchinson [1905] A.C. 515 per Lord MacNaghten**.

<sup>xvi</sup> In accordance with Civil Procedure Rules 2000 ("CPR") Part 8.6 (1) (a) which provides:

"8.6 (1) The claimant must in the claim form-

(a) Include a short description of the nature of the claim;"

<sup>xvii</sup> Ibid. at CPR 8.7 (1) and (2) which state:

"8.7 (1) The claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies.

(2) The statement must be as short as practicable."

See also **Charmaine Bernard (Legal Representative of the Estate of Reagan Nicky Bernard) v. Ramesh Seebalack [2010] UKPC 15** at paragraph 15, per Sir John Dyson SCJ where he quoted with approval dicta of Lord Woolf MR in **McPhilemy v Times Newspaper Ltd [1999] 3 All E.R. 775 at 792J** where he said:

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*“the need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party’s witness statements, will make the details of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader. This is true under the old rules and the new rule.”*

<sup>xviii</sup> **Charmaine Bernard (Legal Representative of the Estate of Reagan Nicky Bernard) v. Ramesh Seebalack [2010]** UKPC 15, Per Sir John Dyson SCJ at paragraph 16 where he said:

“But a detailed witness statement or a list of documents cannot be used as a substitute for a *short* statement of *all* the facts relied on by the claimant. The statement must be as short as the nature of the claim reasonably allows. **Where general damages are claimed, the statement of case should identify all the heads of loss that are being claimed.**” (bold mine)

<sup>xix</sup> **Ilkiw v Samuels [1963] 1 W.L.R. 991.**

<sup>xx</sup> **Perestrello v United Paint Co. Ltd [1969] 3 All ER 479 at page 485I per Lord Donovan** where he opined:

“Accordingly, if a plaintiff has suffered damage of a kind which is not the necessary and immediate consequence of the wrongful act, he must warn the defendant in the pleadings that the compensation claimed will extend to this damage, thus showing the defendant the case he has to meet...”

<sup>xxi</sup> Through letters and conversations.

<sup>xxii</sup> Between March 3, 2008 through to November 26, 2009 (when the claim was filed).

<sup>xxiii</sup> Ibid. at page 3 para. 1 of the witness statement.

<sup>xxiv</sup> In letter exhibited to the witness statement as “BLF9” dated April 2, 2009.

<sup>xxv</sup> The clauses in the lease agreement are identified by the alpha-numeric “C” and a number.

<sup>xxvi</sup> Exhibited as “BFL9” to the witness statement filed on June 25<sup>th</sup>, 2010.

<sup>xxvii</sup> See paragraph 4 of page 3 of the letter.

<sup>xxviii</sup> It also referenced arrears of rent and non-functioning watch house toilet and water supply.

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<sup>xxix</sup> See items v and vi at paragraph 3 of the judgment.

<sup>xxx</sup> Item 8 iv of the statement of claim.

<sup>xxxi</sup> See paragraph 5 on page 3 of the witness statement filed on June 25, 2010.

<sup>xxxii</sup> Ibid. at paragraph 5 on page 2 of the witness statement.

<sup>xxxiii</sup> Items 8 xi and xii of the statement of claim.

<sup>xxxiv</sup> Item 8 iii of the statement of claim.

<sup>xxxv</sup> Item 8 iv of the statement of claim.

<sup>xxxvi</sup> Item 8 vii of the statement of claim.

<sup>xxxvii</sup> Clauses C1 - 2, 4 – 5 and 9 – 11 of the lease state respectively:

“C 1 The property shall be used for the purpose of –

- a) Erecting Offices and such buildings, sheds and conveniences as facilitate the works contracted to be performed by the Lessees-----
- b) Making storage Platforms/Foundations for storing road-making equipment and materials and construction vehicles, tractors, and fuels-storages facilities and such equipment as may be necessary for the Lessee’s use-----
- c) Siting and maintenance of a Stone Crushing Plant and materials storage facilities pertinent to the same including the products of said Plant-----
- d) **Winning** STONE save that all artifacts ornaments pottery implements and things of archaeological and/or historic value shall become the property of the Lessor and in no way claimable by the Lessee or the finders on unearthing or discovering the same-----
- e) Constructing roads and necessary foot-paths to facilitate the foregoing-----

2 The Lessee shall not use the Property or any part of the same for farming and

Agricultural purposes and/or live stock rearing but shall point out and inform the Lessor of such parts of the property that will not be required for use by the Lessee AND shall permit the Lessor his servants agents and employees to cultivate and care such crops and economic trees and plants that may be on the same-----

3...

4 The Lessee has the right to win stone and such other material on the property. But it shall not remove excavate drill or otherwise win lose material whose removal or

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disturbance may provoke or cause landslides and the cascading of over-burden unto lower lands of the property from the higher lands above-----

- 5 AND if the Lessee by its deliberate actions through agents servants workers or employees cause landslides as may affect the property then the Lessor shall have the damage or disfigurement if any to be assessed by a Civil Engineer and request the Lessee to pay any compensation so assessed: AND the lessee shall make good or compensate the Lessor in full for any damage to the property so caused.-----
- 6 The lessee shall measure and or cause to be measured and shall calculate every area portion or square foot of land which it may be obliged to use in the widening and /or to facilitate the widening repair extension of the public road that passes through the property. Such land of the property acquired for the purposes aforesaid shall be the subject of a claim for the purposes of compensation to the Government of Saint Vincent and the Grenadines and the lessee shall within seven days from the happening of the acquisition or the physical incorporating into the roadway of the said land advise the lessor-----
- 7...
- 8...
- 9 The Lessor enjoys a personal easement to the source of the water-supply and across the land of the adjoining neighbor on the southern boundary. This right to the water supply shall be exercised by the lessee directly through the Lessor who undertakes to obtain the requisite permission from the adjoining neighbor for servicing and/or repairing the water-supply whenever requested by the Lessee-----
- 10 The Lessee shall keep al drains and sewers and areas for garbage-disposal on the property free and clear from obstruction and properly cleansed and shall ensure that all rubbish and refuse and waste and other dirty material solid matter or other waste including any noxious mater (sic) or trade waste of effluent from any building or drain on the property which may contaminate the sea or river or any such water-way as may become a nuisance accumulated are removed from and kept there on the property-----  
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- 11 The lessee shall not door omit or suffer to be done any act or thing whereby the waters of any stream or river or sea may be polluted or the composition of them so changed as to render the Lessor liable to action or proceedings by any person whatsoever and the lessee shall dispose of all garbage accumulated on the property in accordance with standard practices and the Public Health Laws of Saint Vincent and the Grenadines-----  
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<sup>xxxviii</sup> Pursuant to CPR 65.5 (1) and (2) (a) which state:

“65.5 (1) The general rule is that where rule 65.4 does not apply and a party is entitled to the costs of any proceedings, those costs must be determined in accordance with Appendices B and C to this part and paragraphs (2) to (4) of this rule.

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(2) The “value” of the claim, whether or not the claim is one for a specified or unspecified or unspecified sum, coupled with a claim for other remedies is to be decided in the case of the claimant or defendant-

(a) by the amount agreed or ordered to be paid; or if the claim is for damages and the claim form does not specify an amount that is claimed, such sum as may be agreed between the party entitled to, and the party liable to, such costs or, if not agreed, a sum stipulated by the court as the value of the claim; or”

<sup>xxxix</sup> Pursuant to CPR 64.6 (1) which provides:

“64.6 (1) Where the court... decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.”

<sup>xi</sup> In accordance with CPR 65.5 (3) which states:

“65.5 (3) The general rule is that the amount of costs to be paid is to be calculated in accordance with the percentages specified in column 3 of Appendix B against the appropriate value.”

<sup>xii</sup> Pursuant to CPR 65.5 (2) (a) and (3).