**THE EASTERN CARIBBEAN SUPREME COURT**

**SAINT VINCENT AND THE GRENADINES**

**IN THE HIGH COURT OF JUSTICE**

**SVGHCV2018/0001**[1]

**BETWEEN**

**PATRICIA ANNE HUGGINS**

**CLAIMANT**

**and**

**LLOYD BROWNE**

**DEFENDANT**

**Appearances**:

Mr. Richard Williams with him Ms. Danielle France for the claimant/respondent.
Ms. Suenel Fraser of counsel for the applicant/defendant.

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2018: Apr. 30
Jun. 18

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**DECISION**

**BACKGROUND**

[1] **Henry, J.:** Ms. Patricia-Anne Huggins has accused Mr. Lloyd Browne of trespassing on her property at Golden Vale in the State of Saint Vincent and the Grenadines ('the subject property'). She alleged that he did so in or around January 2014 and subsequently. She claimed that he has repeatedly dumped tree cuttings and other waste material on the subject land without her consent.

[1] Claim No. amended pursuant to CPR 42.10(1).

Ms. Huggins filed a Fixed Date Claim Form ('FDCF') in the High Court on 4th January 2018 in which she seeks damages, an injunction and costs.

[2] Mr. Browne filed a Defence[2] denying those allegations and a counterclaim in which he sought damages for nuisance and trespass. On 19th March 2018 Ms. Huggins filed an application to strike out Mr. Browne's defence and counterclaim. Mr. Browne amended his statement of case and filed an amended defence and counterclaim on 12th April 2018 pursuant to Civil Procedure Rules 2000 ('CPR') 20.1(1). It was materially different from the first one.

[3] Ms. Huggins withdrew her application on the hearing date on the ground that Mr. Browne's amended pleadings rendered the application otiose. The Court accordingly dismissed the application. Ms. Huggins then made an oral application for costs pursuant to CPR 64.7. The parties were directed to file skeleton arguments and list of authorities. They did so. The application is dismissed for the reasons set out below.

**ISSUE**

[4] The issue is whether Lloyd Browne should be ordered to pay Patricia-Anne Huggins costs in respect of her application to strike out his defence and counterclaim?

**ANALYSIS**

**Issue – Should Lloyd Browne be ordered to pay Patricia-Anne Huggins costs in respect of her application to strike out his defence and counterclaim?**

[5] The CPR empowers the High Court to make orders for costs in respect of proceedings.[3] The general rule is that it must order costs against the unsuccessful party.[4] Both parties agreed with this statement of the law. Notwithstanding this general rule, the Court may order a successful party

[2] Filed on 6th February 2018.

[3] Rules 64 and 65 of the CPR.

[4] CPR 64.6(1).

to pay the costs of an unsuccessful party.[5] Costs are recoverable by a party only by agreement with the opposing party, by court order or pursuant to a provision of the CPR.

[6] There is no agreement between the parties as to costs in respect of the instant application and no provision of the CPR mandates an award of costs in the particular circumstances of the case. Ms. Huggins submitted that she should receive her costs notwithstanding that her application was not successful. Her counsel Mr. Williams submitted that under CPR 64.6, the Court may award costs even though her application was not successful. Mr. Browne countered that there is no basis on which Ms. Huggins could be awarded costs. He contended that he should receive costs instead.

[7] She contended that in making a determination, the court must have regard to all of the circumstances including the parties' respective conduct. In this regard, she pointed out correctly that the CPR[6] stipulates that the Court takes into account the manner in which they each have pursued a particular allegation, issue or the case; whether a party has succeeded on particular issues but not on the entire proceedings; whether it was reasonable for a party to pursue a particular allegation or raise a particular issue and whether the claimant gave reasonable issue of the intention to issue a claim.

[8] Ms. Huggins rehearsed that her application to strike out Mr. Browne's defence and counterclaim was based on her allegation that it offended CPR 10.5 and amounted to bare denials. She argued that he has since amended it and essentially cured those alleged defects, by providing particulars.

[9] Relying on the case of **The Attorney General et al v Anton Tonge**, Ms. Huggins submitted that the Court of Appeal provided guidance at paragraph 7, regarding instances in which the general rule regarding award of costs may be disregarded. There Pereira CJ stated:

> '… the court would look to see whether party "A" may have behaved unreasonably in the context of the proceedings and is such that notwithstanding being successful, "A"

[5] CPR 64.6(2).

[6] Rule 64.6(5) of the CPR.

should nevertheless either be deprived of his costs or be ordered to pay "B's" costs although "B" was unsuccessful.' [7]

[10] Earlier in the judgment, the learned Chief Justice opined:

> '… the circumstances for departing from the general rule, must either be obvious from all the circumstances such as not to require a stated reason, or otherwise it is expected that a reason or reasons would be expressed for the departure from the general rule.'[8]

[11] Ms. Huggins argued that Mr. Browne acted in an unreasonable manner not in keeping with the CPR. She contended that Mr. Browne's unreasonable conduct was manifested by the filing by him of an unsuccessful application to strike out her claim; filing a defence consisting of bare denials and lodging a counterclaim against her which disclosed no cause of action against her.

[12] Ms. Huggins contended that Mr. Browne made amendments to his statement of case which took into account the grounds laid out in her application to strike. She claimed that Mr. Browne has added another defendant – Eldon Browne to the counterclaim without following the procedure set out in the CPR. She contended that she has expended significant time and resources applying to have offensive and incurably bad statements of case struck out. She argued that the parties would not have been able to proceed if the amendments were not made. She submitted that the Court should therefore award her costs.

[13] Mr. Browne argued that a defendant is permitted by CPR 29.1 to amend his statement of case once prior to case management. He is mistaken. That rule deals with the court's power to control evidence. Mr. Browne contended further that Ms. Huggins incurred no costs since she filed no response to his amended defence. He submitted that Ms. Huggins having not filed any reply or defence to the counterclaim, has incurred no unnecessary expense or inconvenience.

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[7] ANUHCVAP2013/0005 (unreported).

[8] At paragraph 6 of the Anton Tonge case.

[14] Mr. Browne contended that Ms. Huggins' application for costs in the present circumstances is unconscionable, overbearing and completely unfounded. He reasoned that since she withdrew the application he is the successful party and properly entitled to his costs and interest. He submitted that while CPR 64.6(2) empowers the Court to deviate from the general rule and order the successful party to pay the unsuccessful party's costs, there is no reason in the case at bar to justify such a deviation.

[15] Mr. Browne argued that CPR 64.6(6) outlines the criteria to be considered by the judge when deciding who should pay costs, such as the parties' conduct before and during the proceedings. He submitted that the vast majority of cases which have in some way dealt with or touched on this issue have been administrative law or judicial review cases, and the courts have always concluded in those cases that no circumstances existed to justify a departure from the general rule.

[16] Mr. Browne contended that Ms. Huggins would have received his defence and counterclaim on February 7, 2018 and therefore could have filed her application to strike out it out within sufficient time so that the applications by both parties to strike out, could have been dealt with at the same sitting. He argued that he would therefore have only had to file one set of affidavits and submissions, since it is clear from Ms. Huggins' failure to file a reply and defence, that she intended all along to file an application to strike out his defence. There might be some merit to this argument.

[17] Mr. Browne submitted that Ms. Huggins could have informed the court on February 21, of her intention to apply to strike out the defence and counterclaim so that the date for delivery of the reserved decision could have been adjusted to allow the filing of the application and submissions by both parties. He argued that this would have prevented waste of judicial time and obviated the need for him to take so much time off work. If his musings on this are correct, perhaps such an approach would have saved all parties some valuable resources. I do not know. I also would not care to hazard a guess on such matters. They are entirely out of my contemplation.

[18] Mr. Browne posited that it was not necessary for Ms. Huggins to file the application to strike out the defence and counterclaim, since he still had time to amend his statement of case before case management. He noted that the Court could have ordered him to amend his statement of case. He

submitted that Ms. Huggins' application is premature for those reasons. He argued that Ms. Huggins has not acted in furtherance of the overriding objective of the CPR to save expense and to have the matter dealt with expeditiously.

[19] He submitted that he was at pains to find any decided cases in which the Courts have deviated from the general rule in circumstances such as these. He drew the Court's attention to the decision in **Cable and Wireless B.V.I Limited v Telecommunications Regulatory Commission** where Byer J. noted:

> 'Indeed there can be no argument that of the heads of judicial review argued under Ground 11(a)-(e) the Claimant was successful on one, namely 11(c) and that on Ground 13 they were completely unsuccessful. However the prayer that was before the Court and being sought by the Claimant, was to have the decision of the Respondent quashed. This prayer is what the Claimant ultimately obtained, notwithstanding that they were not individually successful on each and every ground argued. Having accepted this therefore, this Court is not in a position and does not accept the argument as made by the Respondent seeking costs as against the Claimant.'[9]

[20] Mr. Browne reasoned that since Ms. Huggins withdrew her application, he is the successful party on the whole application, having gotten 'what he prayed for in his reply and submissions', and, as such is entitled to his full costs under the general rule, with interest. On this point, the parties are on common ground and I agree with them.

[21] Mr. Browne urged the Court to adopt the posture of Byer J in the cited case not to deviate from the general rule. He submitted that rather, the Court should grant him costs to be assessed with interest from the date of judgment until full and final satisfaction.

[22] I note that Mr. Browne amended his defence and counterclaim after Ms. Huggins filed her application to strike it out. The amended statement of case has apparently addressed a number of the matters raised by Ms. Huggins in her application. I infer that at some point after filing his

[9] Claim No BVINCV2012.0179 (unreported), at para. 11.

defence, Mr. Browne considered those issues and concluded that it was in his interest to adjust his approach as articulated in his amended pleadings. In doing so, he cast his amended defence in a manner which removed the portions to which Ms. Huggins took objection in her application to strike.

[23] While it is not possible to ascertain the reasons behind his changes, it is reasonable to infer that they were occasioned by an appreciation that the defence and counterclaim was perhaps irregular and potentially defective. In any event, the amendments appear to have effectively neutralized the objections taken by Ms. Huggins in her application to strike. I cannot ignore that the possibility exists that Mr. Browne may have made the changes only after reading Ms. Huggins' application. As it turned out, the amendments cancelled the need for a hearing of the application, resulting in a draw as between the parties and Ms. Huggins' application was dismissed.

[24] Contrary to Ms. Huggins' assertions I do not accept that Mr. Browne's conduct has been unreasonable. He framed his defence and counterclaim as he chose and was entitled to amend it before the case management conference. His application to strike out Ms. Huggins' claim while it might have been without merit, was a course which was open to him. He did not succeed. His lack of success does not translate to unreasonableness.

[25] Ms. Huggins has presented no compelling arguments why the court should deviate from the general rule in CPR 64.6. I am satisfied that there is none. At the same time, Mr. Browne's pleadings were salvaged. He might possibly have obtained the benefit of the contents of Ms. Huggins' application, in which case he should not be rewarded by an order for costs in his favour. Furthermore, he made no application for such an order, except in his submissions. I am satisfied that the circumstances and the justice of this case requires that no order of costs be made. I therefore make none.

**ORDER**

[26] It is accordingly ordered:

1. Patricia-Anne Huggins' application for costs is dismissed.
2. Lloyd Browne shall bear his own costs.

[27] I thank counsel for their written submissions and particularly Ms. Fraser who supplied the Court with an electronic copy in MS Word format.

**Esco L. Henry**
**HIGH COURT JUDGE**

By the Court

Registrar