

EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHCV2013/1037

BETWEEN:

CHARLES ANTHONY

Claimant

and

GERARD WILLIAMS

Defendant

Appearances:

Mr. Horace Fraser for the Claimant

Ms. Renée St. Rose for the Defendant

2018: October 12.

JUDGMENT

[1] WILKINSON J.: The uncontested evidence is that Mr. Anthony instructed Mr. Williams in SLUHCV2007/0913 Charles Anthony v. Imbert Simon and there was no written or oral retainer arrangement between the Parties. A dispute has arisen **as to Mr. Williams' fees and disbursements.**

[2] In SLUHCV2007/0913 Charles Anthony v. Imbert Simon Mr. Anthony claimed the sum of \$219,178.91 for breach of a construction contract to build a retaining wall at the new Psychiatric Hospital on the Millennium Highway in the Quarter of Castries, together with interest at the daily rate of \$33.77 from 23rd November 2007, until date of payment. Judgment in default of acknowledgement of service was entered on 17th February 2010, with damages to be assessed. On 7th March

2012, an order was made assessing damages at \$205,406.25 with interest at the rate of 6 percent from the 25th October 2007, costs at \$2500.00, a sum for service of proceedings at \$200.00 and court fees at \$50.00. On 2nd July 2012, an order was made **varying the Court's order of 7th March 2012**, by deletion of the costs awarded therein and insertion of an award of prescribed costs in the sum of \$28,175.78.

- [3] In regard to the variation of the costs awarded on 2nd July 2012, the order records that the Court had heard Mr. Williams and that he had indicated to the Court, that the Court had erred in the amount of cost awarded on 7th March 2012, as that award was pursuant to Appendix A – Fixed Costs instead of Appendix C (6) which specifically provided for prescribed costs where there was a default judgment which included an assessment of damages.
- [4] Disclosed was a Scheme of Ranking document filed in SLUHCV2008/1047 The Bank of Nova Scotia v. Imbert Simon. Mr. Simon was the owner of a parcel of land which under a judicial sale was sold to the said Bank for \$1, 2910,010.00. From that sum various creditors of Mr. Simon are recorded as having their claims allowed. Mr. Anthony is recorded as being allowed 2 sums, \$273,710.89 and \$23,624.43 for a total sum of \$297,335.32. It is unclear from the documents what the separate sums represent as they vary from both the sum assessed as damages (the first sum in the scheme was larger, perhaps interest was included) and the sum awarded as prescribed costs (the second sum in the scheme was less).
- [5] From the sum of \$297,335.32, Mr. Williams paid Mr. Anthony \$134,598.57 and delivered to him 3 invoices of totalling \$135,112.32 (\$92,507.73, \$37,077.09, \$4527.50). Mr. Williams retained \$153,756.25 as legal fees and expenses. There was a net difference of \$8,980.50 between what was received, paid to Mr. Anthony and retained by Mr. Williams. Further there is a net difference of \$18,643.93

between the total of the 3 invoices and the sum paid to Mr. Anthony, so the net was that Mr. Anthony appeared to have been short paid based on the invoices.

- [6] According to Mr. Anthony, he was surprised by the sum he received and queried the sum. Mr. Williams in response told him to get out of his office and that there was nothing he could do about the money deducted as fees and to not return. He was given a criminal suit file which belonged to Mr. Andy Alexis, it was a matter on which he had instructed Mr. Williams. Mr. Anthony said that he asked Mr. Williams for his file in connection with Mr. Simon's **suit** and Mr. Williams refused to give him the file.
- [7] At the time when SLUHCV2007/0913 Charles Anthony v. Imbert Simon was filed and for some time thereafter, the documents disclosed that Mr. Williams was a partner in the firm of The Law Offices of Fraser & Williams. The documents disclosed show the first such document being at 5th March 2007, when a demand letter was issued to Mr. Imbert Simon, it was issued on the letterhead of The Law Offices of Fraser & Williams. According to Mr. Williams he ceased to be a partner in that firm in early 2010. On review the disclosures filed later in SLUHCV2007/0913 Charles Anthony v. Imbert Simon, Mr. Anthony filed an affidavit on 5th October 2010, by The Law Offices of Gerard R. Williams.
- [8] The present suit before the Court commenced on 10th December 2013, when Mr. Anthony filed an application supported by affidavit seeking interim orders of: (i) Mr. Williams deposit the sum of \$153,756.25 with the chambers of Fraser & Company **to be held in escrow in their clients' account until further order of the court**, (ii) alternatively that Mr. Williams be directed to pay the sum \$153,756.25 into an account as identified by the Court to be held in escrow until further order of the court, (iii) Mr. Williams be directed to hand over **Mr. Anthony's** file concerning his claim with Mr. Imbert, and (iv) costs.

At this juncture the application and its supporting affidavit are no longer relevant because on 3rd February 2015, Mr. Anthony sought leave to withdraw the application and same was granted by order of 3rd February 2015.

[9] On 9th April 2014, Mr. Anthony filed a claim form which was intituled to show that he was filing his claim pursuant to the Legal Profession Act Cap 2.104 sections 37, 39 and 42. There was filed an affidavit in support. 8 days later Mr. Anthony filed an amended claim form by way of a fixed date claim form supported by a further affidavit. By his amended fixed date claim form he sought the following relief: (a) a declaration that Mr. Williams was guilty of misconduct as an attorney-at-law before the Honourable Court by overbilling Mr. Anthony in the sum of \$153,756.25, (b) a declaration that Mr. Williams was in breach of his duty of trust owed to Mr. Anthony, (c) an order directing that Mr. Williams pays to Mr. Anthony the sum of \$153,756.25 unlawfully extracted as fees from Mr. Anthony, (d) an order directing Mr. Williams to render a true and proper bill of costs for his legal services, (e) that the Court do punish Mr. Williams appropriately for his impropriety and misconduct as an attorney-at-law, (f) costs, (g) interest, and (h) such further or other relief as to the Court seems just. Mr. Williams filed an affidavit in response. The Court for the moment leaves aside the matters deposed to in the respective affidavits.

[10] On 8th November, 2013, Mr. Anthony filed an application before the Disciplinary Committee pursuant to the Legal Profession Act Cap. 2.04 seeking redress for Mr. **Williams'** misconduct in relation to fees. Up to date of filing his claim in these proceedings, there was no notice of hearing before the Disciplinary Committee. He subsequently withdrew his application before that Committee.

[11] When the matter came on for hearing on 16th April 2014, there were submissions from Counsel for Mr. Williams on whether the correct procedural documents had been filed to commence disciplinary proceedings. The Court ordered:

1. Mr. Charles Anthony's **file is to be delivered to his Counsel on or before** 4.00p.m on April 17th 2014.
2. The decision on the preliminary issue of what is the correct procedure is reserved.
3. The application is adjourned to a date to be fixed by the Court.
4. Mr. Anthony is to draw, file and serve this order.

[12] On 17th November 2014, the Court delivered its oral decision on the preliminary issue. The Court ruled that the documents of the amended fixed date claim form and affidavit in support could be deemed the complaint before the Court and the Court would proceed under its inherent jurisdiction. The Court further stated that it would adopt as its procedure, the procedure set out in the Supreme Court (Legal Profession Disciplinary) Rules published at February 10th 2014, to provide certainty of the proceedings. The Court made the following order:

1. Mr. Williams is to file and serve his answer within 28 days.
2. The hearing of the application for interim relief is adjourned to February 3rd 2015.
3. The matter is adjourned to February 3rd 2015, for the case management conference.
4. Costs to Mr. Anthony in the sum of \$750.00.

[13] Further affidavits were exchanged.

[14] The matter next came on for hearing on 3rd February 2015, and thereafter the Court made the following order:

1. Leave is granted to withdraw the application of the Complainant filed December 10th 2013.
2. Costs to the Respondent on the withdrawal of the application in the sum of \$750.00.
3. The Respondent is to file an affidavit exhibiting ~~all of~~ his bills of costs and other documents showing the sums which the Court is being asked to assess the costs of on or before February 28th 2015.
4. The Complainant is to file any rebuttal affidavit within 14 days.
5. The matter is adjourned to October 7th 2015, for hearing of Counsel on the affidavits and exhibits.
6. The Complainant is to draw, file and serve this order.

[15] On 2nd March 2015, Mr. Williams filed an application supported by affidavit seeking a single order: (i) leave to file his bill of costs on or before the 31st March, 2015. The sole ground of his application was that he had **delivered Mr. Anthony's** file to him and so he **wished to conduct a survey of the Court's file**. His application was supported by affidavit. He filed a second affidavit on 31st March 2015, and on the said 31st March **2015, he filed an estimate of Mr. Anthony's** bill of costs which itemised work done and was for a total sum of \$137,210.14.

[16] On 2nd October 2015, Mr. Anthony filed an affidavit in response disclosing letters, affidavits, orders and other documents filed by both of the Chambers with which Mr. Williams had been associated with during the course the hearing of SLUHCV2007/0913 Charles Anthony v. Imbert Simon.

[17] On 7th October 2015, the Court was informed that Mr. Anthony had filed an affidavit and submissions on 2nd October 2015, but the Court had not had sight of either. Mr. Williams sought leave to file an affidavit in reply to **Mr. Anthony's** affidavit. The Court made the following order:

1. Leave is granted to the Defendant to file an affidavit in response to the **Claimant's filed October 2nd 2015.**
2. The hearing of the matter is adjourned to April 13th 2016 at 11.00a.m.
3. The Claimant is to draw, file and serve this order.

[18] The matter next came on for hearing on 4th May 2016. At that hearing the Court heard the respective Parties on the matter of assessment of costs. The following order was made at the conclusion of hearing:

1. The Defendant is granted leave to file written submissions within 14 days.
2. The Claimant is granted leave to respond to the submissions within 14 days **after the Defendant's submissions have been filed.**
3. There will be no further hearings and the Court will render its decision based on the documents filed.
4. The Claimant is to draw, file and serve this order.

Findings and Analysis

[19] As stated prior, there was no written or oral retainer arrangement between Mr. Anthony and Mr. Williams.. It was only at the conclusion of the proceedings that Mr. Anthony became aware of the fees and disbursements payable by him in SLUHCV2007/0913 Charles Anthony v. Imbert Simon.

[20] While according to the pleadings this suit started out as a disciplinary action suit for misconduct, it subsequently evolved and settled into one concerned solely with what was the appropriate fee and disbursements payable to Mr. Williams and sum due for refund to Mr. Anthony. The Court feels this way because there was no cross-examination of the Parties notwithstanding that the affidavits exchanged contained many contradictions and allegations as to how the relationship between

Mr. Anthony and Mr. Williams stood and the various orders that the Court was asked to make. There were allegations of loans, hiring of an excavator owned by Mr. Williams for a hire fee always paid, payments of certain other sums on Mr. **Anthony's behalf**, and finally the matter of Mr. Williams having commenced the proceedings while a partner in The Law Offices of Fraser & Williams before setting up his own firm and so how much of his claimed fees was due to that firm. None of these matters as they connected to SLUHCV2007/0913 Charles Anthony v. Imbert Simon were cleared up by cross-examination.

- [21] This brings the Court to Rule 65 on costs. In SLUHCV2007/0913 Charles Anthony v. Imbert Simon a prescribed costs order was made for \$28,175.78 and it was pursuant to Rule 65 Appendix C (6) which provides that it is costs on a **“default judgment and including assessment of damages”**. A further breakdown of prescribed costs is found at rule 65.7 which describes what is included in prescribed costs and that being all work required to prepare the proceedings for trial including that for instructing an expert (not applicable in this instance), attendance and advocacy at the trial including attendance at any case management conference or pre-trial review (not applicable in this instance since default judgment was based on failure to file an acknowledgment of service).
- [22] Being guided Rule 65.7 and Appendix C, it appears that any further assessment of costs must be pursuant to Rule 65.12.
- [23] As to the matter of the Court conducting any assessment of costs, such is an untidy situation because the Court is without the file of SLUHCV2007/0913 Charles Anthony v. Imbert Simon and only has before it those documents which the Parties have chosen to disclose.

[24] On the matter of assessment of costs, Rule 65.12 provides:

“Assessed costs – general

65.12(1) 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.

(2) If the assessment relates to part of court proceedings it must be carried out by the judge, master or registrar hearing the proceedings.

(3) If the assessment does not fall to be carried out at the hearing of any proceedings then the person entitled to the costs must apply to a master or the registrar for directions as to how the assessment is to be carried out.

(4) The application must be accompanied by a bill or other document showing the sum in which the court is being asked to assess the costs and how such sum was calculated.

(5) On hearing any such application the master or registrar must either –
(a) assess the costs if there is sufficient material available to do so; or
(b) fix a date, time and place for the assessment to take place.

(6) The master or registrar may direct that the party against whom the bill is assessed pay the costs of the party whose bill is being assessed and, if so, must assess such costs and add them to the costs ordered to be paid.” (My emphasis)

[25] The rule makes a distinction on assessment being carried out in relation to part of the court proceedings at the hearing, and assessment being carried out after the hearing. Where the request for assessment is to be carried out after the hearing, the persons with authority to carry out such assessment are the master and registrar. Pursuant to rule 65.12(3) a judge has no authority to conduct assessments post a hearing.

[26] It is clear that at this juncture, the assessment of costs that the Court is being asked to carry out in SLUHCV2007/0913 Charles Anthony v. Imbert Simon is post the hearing. This being so, on the authority of rule 65.12(3) the Court can go no further in this matter which has evolved into an assessment of costs/fees.

[27] It would appear that the Parties in pursuing the matter of assessed costs in SLUHCV2007/0913 Charles Anthony v. Imbert Simon must comply with rule 65.12(3) et seq.

[28] Since pursuant to the Rules there is no issue of limitation on an assessment of costs, the claim will be struck out. Since neither Party assisted the Court by **referring the Court to rule 65.12(3), which identified the Court's limitation, there will** be no order for costs.

[29] **Court's Order**

1. The claim is struck out.
2. No order for costs.

Rosalyn E. Wilkinson
High Court Judge

By the Court

Registrar