

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2014/0139

BETWEEN

LENNOX BASCOMBE

CLAIMANT

AND

WOLFGANG DAMM

DEFENDANT

Appearances:

Mr. Roderick Jones for the claimant/respondent.

Ms. Samantha Robertson for the defendant/applicant.

2019: Nov. 11
Nov. 28
Reissued on Nov. 29, 2019¹

DECISION

BACKGROUND

- [1] **Henry, J.:** Mr. Lennox Bascombe and Mr. Wolfgang Damm were embroiled in a legal dispute which was initiated in 2014 by Mr. Bascombe. He alleged that Mr. Damm caused him loss and damage by digging up an access road to his property. The hearing took place on 2nd October 2017 and Mr. Bascombe's application was dismissed. Mr. Damm traveled from Toronto, Canada to Saint Vincent and the Grenadines to attend the hearing. Mr. Bascombe was ordered to pay costs to Mr. Damm to be assessed.

¹ Date in the footnote to para. [2] corrected from '6th February 2018' to '23rd October 2017'.

[2] Mr. Damm filed an application for his costs to be assessed.² He seeks a total of \$5613.85 representing his airfare to and from Saint Vincent and the Grenadines; legal fees; filing fees; printing and copying expenses; and for processing photographs. Mr. Bascombe has accepted that the sum of \$3000.00 ascribed to legal fees; letter before action of \$200.00; filing fees of \$120.00; and \$125.00 for preparation of Notice of Application and supporting documentation; and – a total of \$3445.00.

[3] He challenged the figures represented as being printing and copying costs; airfare between Toronto and Saint Vincent and the Grenadines; and copying of exhibits and photographs. He contended that the attached invoices and boarding passes were not authenticated. Mr. Damm had claimed an aggregate of \$2158.85 in respect of those items. Mr. Bascombe accepted subsequently that \$4.00 correctly represents the fee for obtaining 4 survey plans. He agreed that it should be paid by him.

ISSUE

[4] The issue is what amount should be awarded to Mr. Damm as assessed costs?

ANALYSIS

Issue – What amount should be awarded to Mr. Damm as assessed costs?

[5] Rule 65.12 of the Civil Procedure Rules 2000 ('CPR') provides that the Judge must conduct the assessment of costs in respect of any proceeding conducted by her. The court is required to consider among other things, the parties' conduct before and during the proceedings; the manner in which they have pursued a particular allegation or issue; whether a party has succeeded on particular issues even if not successful on the entire proceedings; whether it was reasonable for a party to pursue a particular allegation and/or raise a particular issue; and whether the claimant gave reasonable notice of intention to issue a claim³.

² Filed on 23rd October 2017. [Corrected on 29th November 2019].

³ CPR 64.6 (6).

- [6] In the absence of agreement between the parties, the court will award a sum it deems reasonable and fair⁴ to the respective parties. Mr. Bascombe has agreed to pay Mr. Damm \$3445.00 in respect of his claims for letter before action (\$200.00); legal costs (\$3000.00) printing and filing fees (\$249.00).
- [7] There is no agreement between the parties as to costs in respect of the airfare (\$2016.85), payment for photographs (\$105.00) or photocopying of a deed (\$7.20), a total of \$2189.00. Mr. Bascombe contended that the printing amounts were inflated and he argued that no certified copies or originals of the invoices and associated documentation were supplied. He relied on the Evidence Act⁵ to question their authenticity. Since the hearing of the application the parties agreed a figure of \$4.00 for the printing and photocopying of the survey plans. The court is satisfied that this should be added to the amount previously agreed, and form part of the assessed costs.
- [8] The law requires that documentary evidence be authenticated if it is to be acted on by the Court. The Evidence Act stipulates how such documents are to be proved and authenticated. Mr. Damm has not complied with those provisions. The Court may not accept the impugned documents as being probative of the assertions regarding the cost of the referenced tickets. I refrain from acting on them. Mr. Damm has not established the price of his round trip ticket from Toronto Canada to Saint Vincent and the Grenadines. I make no order for payment by Mr. Bascombe to him of any such amount.

Costs of the instant application

- [9] Mr. Damm did not include a prayer for costs in the present application. He is entitled to recover his costs. He claimed \$125.00 in respect of the earlier application from which this one flows. It appears to be a reasonable and fair amount. I therefore order that Mr. Bascombe pays costs of \$120.00 to Mr. Damm on this application.

- [26] It is ordered:

⁴ CPR 65.2 and 65.11 (4).

⁵ Cap. 220 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

1. Lennox Bascombe shall pay assessed costs of \$3449.00 to Mr. Wolfgang Damm pursuant to CPR 65.11.
2. Lennox Bascombe shall pay to Mr. Wolfgang Damm costs of this application in the sum of \$120.00.

[27] I am grateful to counsel for their oral submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar