

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
2015/CLE/gen/0504**

BETWEEN

MARVIN SCAVELLA

First Plaintiff

AND

JEFFREY MAJOR

First Defendant

AND

JOHN ALBURY

T/A MICHAEL ANTHONY JEWELLERS

Second Defendant

AND

INSURANCE MANAGEMENT (BAHAMAS) LIMITED

Third Defendant

Before: The Honourable Mr. Justice Ian Winder

**Appearances: Maria Daxon for the plaintiff
Camille Cleare for the defendants**

7, 11 and 28 October 2019

JUDGMENT

WINDER, J

1. By Summons, the defendant has ask that I revisit the decision made with respect to costs at the conclusion of the application for an interim payment. The Order in respect of the interim payment has not been perfected.
2. In *RTL v. ALD and others - [2015] 1 BHS J. No. 82* and *Dickson v. Old Fort Educational Foundation - [2017] 2 BHS J. No. 83* I considered the Court's jurisdiction to revisit orders made by it. In short, this is an exceptional jurisdiction. I am satisfied, on the authorities, that the facts of this case is exceptional. The parties accept that I did not afford them an opportunity to submit on the question of costs at the conclusion of the interim payment application. More importantly, I granted the plaintiff a relief it did not seek as the Summons dated 29 December 2016 prayed, unusually, for cost to be in the cause. The order I made was for cost to be paid by the defendant to the plaintiff.
3. I will therefore revisit my order on costs.
4. I have now had the benefit of the extensive submissions of both parties and reviewed the file of the action. Firstly, the plaintiff ought to be entitled to his costs as the issue, albeit only of quantum, was challenged. It appears however that the plaintiff is mistaken as to the extent of the costs he may be entitled. It is merely the cost of the application for an interim payment application which arise for consideration in this application, not the costs incurred by the plaintiff, to date. Discussions and meetings geared (including previous counsel for the defendant) towards the settlement of the dispute generally over the past 7 years, as the plaintiff contends, go towards the costs in the entire action not the interim payment application. Those costs are for the end of the action should the plaintiff be successful.

5. I will, having regard to the seniority of counsel and the work done on the application, award costs to the plaintiff in the amount of \$5,000.

Dated the 15th day of January 2020

A handwritten signature in black ink, appearing to read 'I. Winder', written in a cursive style.

Ian R. Winder

Justice