

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division

2010/CLE/gen/00798

BETWEEN

LILLIAN MCPHEE
(As Administrator of the Estate of Thelma Mackey)

Plaintiff

AND

WARREN STUART

Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mrs. Onan Lamour-Williams of Providence Law Chambers for the Plaintiff
Mr. Sidney Dorsett of Miriam J. Curling & Co. for the Defendant

Hearing Date: Heard on submissions on 30, 31 January 2018

(Costs – Costs awarded to successful party - Costs are in the discretion of the Court – Reasonable costs – Factors to be considered – Conduct of the Defendant)

RULING

Charles J:

[1] On 31 October 2017, this Court found in favour of the Plaintiff and granted her the relief which she sought in her Statement of Claim. As the successful party, she was awarded her costs to be taxed if not agreed. She submitted her Bill of Costs seeking costs of \$34,636.15 from the Defendant.

[2] Learned Counsel for the Defendant, Mr. Dorsett submitted that costs should be assessed in accordance with the modern day methods adopted by the Supreme Court of The Bahamas based upon precedent and not on an hourly basis as postulated by Counsel for the Plaintiff, Mrs. Lamour- Williams. Unfortunately, Mr.

Dorsett did not provide any authority to support his argument. In his very concise submission, Mr. Dorsett suggested that costs should either be cut in half or not allowed but gave no reason for this submission.

[3] Costs have always been a vexed issue. As a general rule, the unsuccessful party should pay the costs of the successful party. In this case, there is no reason for the Court to depart from this principle. Costs must also be reasonable.

[4] In determining what is reasonable costs, a convenient starting point is Order 59, rule 3(2) of the Rules of the Supreme Court (“RSC”) which provides:

“If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.”

[5] In civil proceedings, costs are entirely discretionary. Section 30(1) of the Supreme Court Act provides:

“Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid.”

[6] Order 59, rule 2(2) of the RSC similarly reads:

“The costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that Court shall have full power to determine by whom and to what extent the costs are to be paid, and such powers and discretion shall be exercised subject to and in accordance with this order.”

[7] Costs are always in the discretion of the Court. The Judge is required to exercise his/her discretion judicially, that is, in accordance with established principles and in relation to the facts of the case and on relevant grounds connected with the case, which included any matter relating to the litigation; the parties’ conduct in it and the circumstances leading to the litigation, but nothing else: see Buckley L.J.

in **Scherer v Counting Instruments Ltd** [1986] 2 All ER 529 at pages 536-537.

[8] In deciding what would be reasonable the Court must take into account all the circumstances, including but not limited to:

- a) any order that has already been made;
- b) the care, speed and economy with which the case was prepared;
- c) the conduct of the parties before as well as during the proceedings;
- d) the degree of responsibility accepted by the legal practitioner;
- e) the importance of the matter to the parties;
- f) the novelty, weight and complexity of the case; and
- g) the time reasonably spent on the case.

[9] Of the circumstances stated above, one stands out, namely the conduct of the Defendant throughout the matter. In the first instance, the Defendant, having failed to file a Defence within the prescribed time for so doing, he nonetheless sought leave from the Court of Appeal to appeal the Judgment in Default of Defence. The Court of Appeal then remitted the matter to this Court for a full trial. Thus, the action which commenced in 2010 was not concluded until 2017. The upshot of this is that the Defendant continues to occupy the premises to the detriment of the Plaintiff who is in the twilight of her life. She is now about 83 years old.

[10] It is my firm view that the Defendant is pursuing a fruitless claim that he was not a tenant of the Plaintiff when the abundance of documentary evidence demonstrates otherwise. The Defendant has been unsuccessful on two occasions before two different judges in the Supreme Court. The Plaintiff was successful on Summary Judgement as well as at the full hearing of the matter and is entitled to her full costs relative to this action. Reference is made to the case of **Performing Right Society Limited v. Barbary Beach Development**

Limited t/a Viva Wyndham Fortuna Beach Resort (2014//CLE/gen/FP/00219).

The Plaintiff brought an action against the Defendant relative to the infringement of certain copyrights. The Plaintiff, sought an order for the defence to be struck out on the ground that it disclosed no reasonable defence pursuant to RSC Order 18, r. 19 (1) and for an order for final judgment pursuant to RSC Order 14, Rule 1.

[11] The Court found that the affidavit evidence of the Plaintiff was uncontroverted. Subsequently, the Court struck out the defence as having failed to set out any triable issue or dispute and found that the Plaintiff has a right to summary judgment in this matter. The Court also granted injunctive relief to the Plaintiff as well as full costs relative to the action.

[12] It is for all of these reasons that I find that the Plaintiff is entitled to the full costs associated with this trial. Accordingly, I will order that the Defendant pays to the Plaintiff the full costs of \$34,636.15.

Dated this 9th day of February, A.D. 2018

Indra H. Charles
Justice