COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

PUBLIC LAW DIVISION

2012/PUB/jrv/0014

IN THE MATTER of an application for leave to apply for Judicial Review pursuant to Order 53 Rule 3 of The Rules of the Supreme Court

AND IN THE MATTER of the Industrial Relations Act, Chapter 321 of the Statute Laws of The Bahamas

AND IN THE MATTER of the failure and/or refusal of the Registrar of Trade Unions to enforce the provisions of the Industrial Relations Act

AND IN THE MATTER of Section 15(1)(b)(iv) and (2), 21(1) and 30 of the Industrial Relations Act

AND IN THE MATTER of the Constitution of the Bahamas Hotel Maintenance and Allied Workers Union

BETWEEN

WEST BAY MANAGEMENT LIMITED
(trading as "Sandals Royal Bahamian")

Applicant

AND

THE REGISTRAR OF TRADE UNIONS

First Respondent

AND

BAHAMAS HOTEL MAINTENANCE AND ALLIED WORKERS UNION

Second Respondent

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Dwight Glinton of Lennox Paton for the Applicant
Mr. David Whyms for the First Respondent
Mr. Obie Ferguson Jr for the Second Respondent

Hearing Dates: 04 October, 12 November, 21 November 2018

Costs – Applicant being successful party – Court ordered Applicant to produce Bill of Costs for Taxation – Order not perfected – No exceptional circumstances shown - Challenge by Respondents as to who should be condemned in costs – Should each party bear their own costs –Apportionment of costs

Costs must be reasonable in all the circumstances – Section 30 (1) of the Supreme Court Act - Order 59 Rules 2(2) and (3)(2) considered – Applicable principles – Discretion – Reasonableness of costs – Factors to be considered - Complexity of case - Conduct of parties before and during litigation – Time reasonably spent – Attendance of Queen's Counsel - Numbers of lawyers required – Degree of responsibility by legal practitioner – Whether matter could have been discontinued sooner - Overriding duty of all parties to the Court

The present application concerns the vexed issue of costs and who should pay it. On 4 May 2012, Sandals commenced this action for Judicial Review against the Registrar of Trade Unions and the Maintenance Union for an order to have the Registrar cancel the registration of the Maintenance Union for several breaches of the Industrial Relations Act ("the IRA"). Upon preliminary objections being made, Barnett CJ dismissed the Judicial Review action on the grounds that Sandals had not brought the application promptly and it did not have sufficient interest in the matter. Sandals appealed to the Court of Appeal. By a majority verdict, the Court of Appeal set aside the decision of Barnett CJ and remitted it to the Supreme Court for a hearing of the Judicial Review action.

This Court embarked on a Case Management Conference. On 22 August 2017, the Court gave directions with a Pre-Trial Review date of 7 November 2017 and trial dates of 18-21 December 2017.The trial dates were vacated and new trial dates were given. The trial commenced on 8 May 2018. During the course of the trial, the Maintenance Union produced a Certificate of Compliance dated 16 November 2017 which was issued by the Registrar. It became clear that the order that Sandals sought in the Judicial Review had now become academic. The Court directed the parties to settle this matter. The following day, the parties agreed that the matter be discontinued and the Court ordered that Sandals submit, by electronic means, a Bill of Costs for taxation by the Court and that each party provide submissions electronically to the Court for a subsequent hearing on 4 October 2018. That Order had not been perfected.

On 4 October 2018, the issue of costs took an unprecedented turn. Instead of arguing that Sandals should be paid reasonable costs instead of the figure sought in its Bill of Costs, both parties argued against the payment of any costs and implored the Court to make an order that each party bear their own costs.

The Maintenance Union took its arguments a step further and submitted that it was an improper party to the proceedings and therefore, Sandals ought to pay its costs or that each party bears their own costs.

Sandals argued that the Maintenance Union was properly joined because of its wrongful actions and it would be directly affected by any order to cancel its registration. In any event, says Sandals, the Maintenance Union is estopped from raising this issue because if it were improperly joined, it could have made an application without delay to be struck out rather than actively participating in the proceedings and complains only when the issue of costs arose.

HELD, finding that both the Registrar of Trade Unions and the Maintenance Union will pay the Costs to Sandals

1. As a general rule, the unsuccessful party should pay the costs of the successful party. The Court may depart from this general principle if there are reasons to do so. In this case, there is no reason for the Court to depart from this well-established principle.

2. Costs are in the discretion of the Court and must be reasonable: see Section 30(1) of the Supreme Court Act; Order 59 Rules 2(2) and 3(2) of the Rules of the Supreme Court.

3. In determining what is reasonable costs, 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. *McPhee (as Administrator of the Estate of Thelma Mackey) v Stuart* [2018] 1 BHS J. No. 18 referred to.

4. Although the Court has the power to vary its own order prior to perfection, no exceptional circumstances arose in this case to justify the Court altering the Order which it made on 9 May 2018. *RTL v ALD and others* [2015] 1 BHS J. No. 82*; Re Barrell Enterprises and others* [1972] 3 All ER 631 *and Hong Kong Zhong Qing Development Company Limited v (1) Squadron Holdings SPV0164HK Ltd, et al* 2016/CLE/gen/01295 (unreported) applied.

5. The Maintenance Union was a proper party because of its alleged wrongful actions. It is a party to be directly impacted by this Order to cancel its registration. In any event, even if the Maintenance Union was improperly joined (which is not the finding of this Court), by actively participating in this action and not seeking an order to be struck out, it waived any right to dispute being named as a party: see *Twinberrow v Braid* [1878] W.N. 169; *Vallance v Birmingham Land Corp.* (1876) 2 Ch. D. 369 and *Butler v Rice* [1910] 2 Ch. 277.

6. Costs including the costs of this application will be apportioned as follows: The Registrar shall pay two-thirds (2/3) and the Maintenance Union shall pay one-third (1/3) of the taxable costs. Costs will be taxed by the Registrar of the Supreme Court.

RULING

Charles J

Introduction

[1] The issue of costs has always been a vexed one. This case is no exception. After the parties have agreed to settle the matter by way of an Order for Discontinuance on 8 May 2018, they are now at odds as to who should be condemned in costs.

Background facts

[2] The background facts are not in dispute. On 4 May 2012, West Bay Management Limited, trading as Sandals Royal Bahamian ("Sandals") commenced this action for Judicial Review against the Registrar of Trade Unions ("the Registrar") and the Bahamas Hotel Maintenance & Allied Workers Union ("Maintenance Union") (together "the Respondents") for an order, principally, to have the Registrar cancel the registration of the Maintenance Union. The grounds for the application were that several breaches of the Industrial Relations Act, Ch. 321 of the Statute Laws of The Bahamas ("the Act") and the Maintenance Union Constitution had been committed by the Maintenance Union and/or its purported executive.

[3] On 22 February 2013, Barnett CJ (as he then was) heard Sandals' application for Judicial Review and dismissed it on the grounds that the application was not made promptly and Sandals did not have sufficient interest in the matter. The Order dismissing Sandal's application was filed on 7 May 2013.

[4] On 26 April 2013, Sandals filed a Notice of Motion for an application in the Court of Appeal (Action 2013/SCCivApp/128) seeking an extension of time to file an appeal against the Order of Barnett CJ. On 3 February 2014, the Court of Appeal delivered its ruling in relation to Sandals' application seeking permission to appeal out of time. Leave was granted to Sandals. Having examined the prospects of success, the Court of Appeal opined that Sandals' appeal against the refusal of the Court below to hear its Judicial Review application had good prospects of success.

[5] On 4 February 2014, Sandals lodged and served its Notice of Appeal in the Court of Appeal. Sandals' substantive application to appeal the Order of Barnett CJ was heard on 9 and 25 March 2015 respectively. On 1 April 2015, the Court of Appeal, by a majority, allowed the appeal, set aside the decision of Barnett CJ and remitted the matter to the Supreme Court for the hearing of the Judicial Review. The Court of Appeal issued a Certificate of Order dated 1 April 2015 perfecting its Ruling. A Written Ruling was delivered on 31 October 2016.

[6] A Notice of Referral to Case Management Conference was filed on 5 February 2016 and a Case Management Conference was held on 24 April 2017. On 22 August 2017, detailed directions were given with a Pre-Trial Review date of 7 November 2017 and trial dates of 18 to 21 December 2017. The trial dates were subsequently vacated. The hearing of the Judicial Review was set to commence on 8 May 2018 with a time estimate of three days.

[7] The matter came on for hearing on 8 May 2018. During the course of the hearing, learned Counsel Mr. Ferguson Jr. who appeared for the Maintenance Union, presented an unfiled affidavit of Donnell Ferguson, President of the Maintenance Union ("Ms. Ferguson"), which exhibited a Certificate of Notice of Results of Contested Union Elections dated 24 June 2015 (Exhibit "DF1") and a Certificate of Compliance issued by the Department of Labour dated 16 November 2017 (Exhibit "DF2"). Ms. Ferguson's affidavit was filed later on that same day.

[8] In light of these Certificates, the Court indicated that it appeared that the matter had become academic and directed that the parties attempt to settle it. The following day it was reported to the Court that the agreed position was to discontinue the action. My manuscript reads:

> "**ORDER:**
>
> **(1) Consent Order that matter be discontinued.**
>
> **(2) The Applicant (Sandals) is to submit its Bill of Costs to the Respondents and to the Court by electronic means on or before 14 May 2018.**

(3) The Respondents are to provide submissions on costs by 28 May 2018.

(4) Adjourned to Monday 11 June 2018 at 2.30 p.m."

[9] To date, this Order has not been perfected because of disagreement between the parties.

[10] The issue of costs was not heard on 11 June 2018 as the Court was in a trial. It was eventually heard on 4 October and 12 November 2018 respectively. It took an unprecedented turn. Instead of arguing that Sandals should be paid reasonable costs instead of the extravagant figure sought in its Bill of Costs, both parties argued against the payment of any costs. They insisted that the Court did not award costs to Sandals and implored the Court to make an order that each party bears their own costs.

The law

Part of Ruling on Costs already entered

[11] On 9 May 2018, the Court ordered that Sandals submits its Bill of Costs for Taxation to the Court and to both Counsel and that the Respondents provide submissions. The intention behind this Order was two-fold namely (i) for the Respondents to counter the amount claimed by Sandals and (ii) to consider each Respondent's apportionment of costs.

[12] The Order stemmed from the fact that the Judicial Review proceedings were now moot in light of Ms. Ferguson's affidavit and the exhibits. It was clear from the exhibits that, on or about 22 November 2017, both the Registrar and the Maintenance Union were privy to the Certificate of Compliance. It was issued by the Registrar to the Maintenance Union. Neither saw it fit to bring it to the Court's attention and indeed, the attention of Sandals. Yet, they continued to waste precious judicial time defending the Judicial Review proceedings.

[13] The Court need not reconsider its Order that costs should be awarded to Sandals. Sandals was the successful party. It is a well-established principle of law that costs

follow the event and, in my opinion, there is no good reason to depart from this principle.

[14] For completeness, I shall carry on. Learned Counsel Mr. Glinton submitted that the Order of the Court made on 9 May 2018, even though not perfected, should remain as the Respondents have shown no exceptional circumstances to justify it being altered. In that regard, he helpfully provided the leading authority of **Re Barrell Enterprises and others** [1972] 3 All ER 631. In **Re Barrell**, Russell LJ opined at page 636**:**

> **"When oral judgments have been given, either in a court of first instance or on appeal, the successful party ought save in most exceptional circumstances to be able to assume that the judgment is a valid and effective one."**

[15] This Court considered a similar issue in **Hong Kong Zhong Qing Development Company Limited v (1) Squadron Holdings SPV0164HK, Ltd et al** [2016/CLE/gen/01295] on 14 March 2017. In a written judgment delivered on 4 May 2017, the Court stated as follows (at paragraphs 8 -14):

> **"8.For unexplained reasons, the Order made on 14 December 2016 had not been perfected by the time of the hearing on 7 February 2017. But the transcript of proceedings speaks for itself.**
>
> **9. It is not disputed that the Court has the discretion to vary an order it has made before perfection. However, that discretion is not unfettered. As a matter of principle, a judge retained control of a case to the extent of being able to reconsider the matter of his own motion or to hear further argument on a point which has been decided even after judgment had been handed down (but before it has been perfected). The Court has the power to permit pleadings to be amended, even if that involved a new argument being put forward, or further evidence being adduced at that stage: per Neuberger J in *Charlesworth v Relay Roads Ltd (in liquidation)* [1999] 4 All ER 397.**
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> **10. However, once the Court has made and perfected an Order, only in exceptional circumstances that a judge should be invited to reverse a reasoned decision, since an appeal is the more appropriate course in such a situation: *Compagnie Noga D'Importation et D'exportation SA v Abacha (No. 2)* [2001] 3 All ER 513, following the approach adopted in *Re Barrell Enterprises and others* [1972] 3 All ER 631, CA (legal practitioners in England described the jurisdiction to alter a judgment before it is perfected as 'the Barrell jurisdiction'). In Re Barrell, Russell LJ stated at p 636:**

"When oral judgments have been given, either in a court of first instance or on appeal, the successful party ought save in most exceptional circumstances to be able to assume that the judgment is a valid and effective one".

11. Thus, it is beyond question that the court's power to review and change its mind on a conclusion at any time before the order is drawn up is well established: *Stewart v Engel* [2000] 1 WLR 2268. Sir Christopher Slade stated at p. 2275:

"Since there must be some finality in litigation and litigants cannot be allowed unlimited bites at the cherry, it is not surprising that, according to the authorities, there are stringent limits to the exercise of the discretion conferred on the court by the Barrell jurisdiction."

12. In addition, in *Compagnie Noga D'Importation*, Rix LJ stated at paras 42-43:

"[42] Of course, the reference to exceptional circumstances is not a statutory definition and the ultimate interests involved, whether before or after the introduction of the CPR, are the interests of justice. On the one hand the court is concerned with finality, and the very proper consideration that too wide a discretion would open the floodgates to attempts to ask the court to reconsider its decision in a large number and variety of cases, rather than to take the course of appealing to a higher court. On the other hand, there is a proper concern that courts should not be held by their own decisions in a straitjacket pending the formality of drawing up the order. As Jenkins LJ said in *Re Harrison's Share [1955] 1 All ER 185 at p. 188*, *[1955] Ch 260 at 276*: 'Few judgments are reserved and it would be unfortunate if once the words of a judgment were pronounced there were no locus poenitentiae.'

[43] Provided that the formula of 'exceptional circumstances' is not turned into a straitjacket of its own, and the interests of justice and its constituents as laid down in the overriding principle are held closely to mind, I do not think that the proper balance will be lost. Clearly, it cannot be in every case that a litigant should be entitled to ask the judge to think again. Therefore, on one ground or another, the case must raise considerations, in the interests of justice, which are out of the ordinary, extraordinary, or exceptional. An exceptional case does not have to be uniquely special. 'Strong reasons' is perhaps an acceptable alternative to 'exceptional circumstances'. It will necessarily be in an exceptional case that strong reasons are shown for reconsideration." [Emphasis added]

13. In *RTL v ALD and others* [2015] 1 BHS J No. 82, Winder J affirmed that the Re Barrell jurisdiction is the law of the Bahamas. He stated at para 37:

> **"The Bahamas however, has not as yet introduced any CPR changes and therefore I find the Barrell jurisdiction remains the state of our law. This position has been confirmed by Barnett CJ in the case of *Re: Petition of Henry Armbrister 2007/CLE/qui/01438 & 2008/CLE/qui/845*. I accept therefore that it is only in the most exceptional circumstances that I ought to revisit a decision made by me…"**
>
> **14. I agree with Mr. Jenkins that, in the present case, no exceptional circumstances arose after 14 December 2016 which would warrant the Court altering its directions given on that day…".**

[16] Learned Counsel Mr. Glinton correctly submitted that the Respondents have shown no exceptional circumstances to justify why the Order that I made on 9 May 2018 ought to be altered. As I stated earlier, it was clearly the intention of the Court to award costs to Sandals. It was on this basis that the Court ordered that Sandals provide a Bill of Costs for taxation.

Submissions by the Registrar

[17] As was evident during the hearing of this application, both Respondents have argued that they should not be condemned in costs and instead, each party should bear their own costs.

[18] On behalf of the Registrar, Mr. Whyms submitted that Sandals knew well in advance of the trial dates that a certain occurrence had overtaken the present judicial review application yet it mercilessly pursued this wholly futile application.

[19] Mr. Whyms next submitted that the onus was always on all of the parties especially Sandals not to mislead the Court but to be of assistance. He submitted that since the Judicial Review was instituted by Sandals, it was its duty to advise the Court that the Maintenance Union was compliant. He next submitted that the conduct of Sandals is nothing more than egregious and outrageous because it knew or ought to have known that the Maintenance Union was compliant.

[20] Mr. Whyms also seemed to suggest that since the Bill of Costs submitted by Sandals appears unreasonable, the Registrar should not be condemned in costs. This is an extraordinary submission which defies logic.

[21] Mr. Whyms relied on the case of **Thompson v Goblin Hill Hotels Ltd** (2007) Supreme Court Jamaica No. CLT005 of 2012 (unreported) to support his contention. **Thompson** raises allegations of fraud and is wholly distinguishable from the present case.

Analysis

[22] To be succinct, the Registrar did not produce an iota of evidence to demonstrate that Sandals knew that a Certificate of Compliance was issued to the Maintenance Union. Even if Sandals knew (which I did not find), the argument that it is incumbent on Sandals to inform and not mislead the Court is preposterous. It was the Registrar who issued the Certificate of Compliance to the Maintenance Union. The Registrar should have informed Sandals and the Court. As I know it, all parties have a duty to the Court to further the overriding objective of the Rules to actively manage cases. That obligation seems to go further. For example, in **Hannigan v Hannigan** [2000] 2 FCR 650; 2000 The Independent 23 May, CA; [2000] ILR 3 July CA, that duty was said to include an obligation to alert your opponent to the fact that they are using the wrong forms and procedure to pursue a case. Furthermore, it may no longer be appropriate for one party (usually a defendant) to sit back and allow the other party to do nothing: **Khalili Christopher Bennett and Others** (2000) EMLR 996, CA.

[23] Consequently, I find nothing in the submissions advanced on behalf of the Registrar to justify why it should not pay costs to Sandals who is the successful party in these proceedings.

Submissions by the Maintenance Union

[24] Learned Counsel Mr. Ferguson Jr. argued that since Sandals improperly joined the Maintenance Union as a party to these proceedings, Sandals ought to pay the costs associated with joining the Maintenance Union. Learned Counsel next submitted that the Maintenance Union stated at para. 7 (1) of its submissions, that it is not amenable to Judicial Review. In that vein, it relied on the case of **Rodney**

Moncur v Leon Smith et al 2005/PUB/jrv/00009 and 00010. Learned Counsel next submitted that Sandals knew in advance when it filed its Judicial Review on 4 May 2012 that the Maintenance Union was not a proper party.

[25] Learned Counsel further submitted that the Maintenance Union never requested anything from the Registrar or from Sandals and as such, it should not be required to pay any costs since it was improperly joined as a party. He submitted that the Registrar alone could have satisfied the concerns of Sandals which was done on 24 June 2015 and 16 November 2017 respectively. Counsel contended that there is no statutory obligation on the Maintenance Union to inform Sandals that section 30 of the Act had been complied with, and in any event, Sandals never sought such relief from the Maintenance Union.

[26] Mr. Ferguson argued that it is Sandals who made the allegation that the Maintenance Union was not compliant and therefore, Sandals must prove that allegation. He submitted that for Sandals to say that members of the Executive Council have no lawful authority to act on behalf of the Maintenance Union is without any legal foundation.

[27] Mr. Ferguson next submitted that Sandals had no standing to bring Judicial Review proceedings and besides, if there was a dispute, it was between Sandals and the Registrar. Accordingly, the Maintenance Union should not be condemned in costs.

[28] Learned Counsel quoted extensively from a number of other cases involving the same parties in an effort to demonstrate that the Maintenance Union should never have been joined as a party to these proceedings: see paragraphs 1.8 to 1.14 of his written submissions dated 29 May 2018.

Analysis

[29] The primary contention advanced by the Maintenance Union is that it was improperly joined as a party in the Judicial Review proceedings and as such, it should not be condemned in costs. It cannot be disputed that the Maintenance Union actively participated in these proceedings before Barnett CJ in the Supreme

Court; before the Court of Appeal on two occasions and indeed, on at least five hearings before this Court which included two Case Management Conferences, Further Case Management Conference, a Pre-Trial Review and at the hearing of the Judicial Review Proceedings on 8 and 9 May 2018. It also cannot be disputed that during the course of the hearing on 8 May 2018, learned Counsel Mr. Ferguson presented an unfiled affidavit of Ms. Ferguson exhibiting a letter dated 22 November 2017 from the Registrar to Ms. Ferguson stating "Please find enclosed Bahamas Hotel & Allied Workers Union Certificate of Compliance" and a Certificate of Compliance issued by the Bahamas Department of Labour certifying that the Maintenance Union is in compliance with section 30 of the IRA.

[30] Returning to whether the Maintenance Union should have been made a party to these proceedings, the Supreme Court Practice 1988 Order 53 provides some helpful guidance. It reads:

> **"53/1-14/36 Persons directly affected – In addition to the Court whose proceedings are in question the notice of motion or summons should also bear the name, as respondent, of the other party to the proceedings before it, and the affidavit of service should show that he has been served – for example, the police *(R. v. Hereford JJ. (1943) L. T. J. pp.203 – 4)* or, in cases concerning a Rental Tribunal, the tenant or landlord, as the case may be *(R. v. St. Helens Rent Tribunal, ex p. Pickavance, February 12, 1952)*. But the Divisional Court, giving directions on the application for leave, may dispense with service on a particular person or may direct service on another, and in such a case the affidavit of service should state this. In proceedings for a prerogative order in regard to matters of income tax, the directions of the Court should be sought as to whether service should be effected on the Commissioner of Inland Revenue, the Inspector of Taxes or General or Special Commissioners of Income Tax *(R. v. General Commissioners of Income Tax, ex p. Hood-Barrs (1947) 27 Tax Cases 506).*"**

[31] In the Judicial Review filed on 4 May 2012, Sandals sought (i) an Order of Mandamus against the Registrar; (ii) a Declaration that the purported members of the Executive Council of the Maintenance Union were not elected in accordance with the mandate of its Constitution and/or the provisions of the IRA; and (iii) a Declaration that the purported members of the Executive Council have no lawful authority to act on its behalf.

[32] It is my firm view that the Maintenance Union was a proper party to the Judicial Review proceedings because of its alleged wrongful actions and it would have been directly affected by any order to cancel its registration. In the circumstances, I find that Sandals acted properly in joining the Maintenance Union as a party to the Judicial Review proceedings.

[33] In any event, the Maintenance Union waived any right to dispute being named as a party. The Supreme Court Practice 1999 Order 15 guidelines state:

> **"15/6/15 Striking out defendants – A defendant joined improperly (Vacher & Sons v *London society of Compositors [1913] A.C. 107; Sadler v. G.S. Ry. [1895] 2 Q. B. 688)* may be struck out. The plaintiff may be compelled to elect against which of two defendants will proceed where he has improperly joined them *(ibid)*. In *Bainbridge v. Postmaster-General* [1906] 1 K.B. 178, CA, the Postmaster-General was struck out. See also Re Barnato [1949] Ch. 258, CA.**
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> **If defendants improperly joined do not move without delay to be struck out, and take part in the defence, they may be held liable jointly with the other defendant for the costs of the action *(Twinberrow v. Braid [1878] W. N. 169; Vallance v. Birmingham Land Corp. (1876) 2 Ch. D. 369)*; or be deprived of costs if they have taken an active part in the litigation *(Butler v. Rice [1910] 2 Ch. 277)*. If such parties do not sever they are not entitled to relief under this rule *(Mackinlay v. Bathurst (1920) 36 T.L.R. 31).*** [Emphasis added]
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> **The order giving leave to strike out a defendant should provide for his costs *(Wymer v. Dodds (1879) 11 Ch. D. at 437.***
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> **Where plaintiff claimed a declaration negativing a public right of way, the Court refused to strike out a local authority which was in effect conducting the defence, on an allegation that it was threatening to use the way by its agents *(Thornhill v. Weeks (No. 2) [1913] 2 Ch. 464).*"**

[34] Again, it cannot be denied that the Maintenance Union actively participated in the Judicial Review at every stage of these proceedings. Besides filing the affidavit of Lynden Taylor ("Mr. Taylor") on 15 June 2012 and a supplemental affidavit of Mr. Taylor on 7 September 2012 to resist this judicial review application, learned Counsel Mr. Ferguson attended every hearing before the Supreme Court and the Court of Appeal. Not once did he complain that the Maintenance Union was improperly joined. This issue has now surfaced as the Maintenance Union is about

to be condemned in costs. I agree with learned Counsel Mr. Glinton that it seems disingenuous for the Maintenance Union to raise this issue some six years later.

[35] Furthermore, it is interesting that the Maintenance Union has posited that it was wrongly joined as a respondent because the relief sought in the Judicial Review was against the Registrar. This is not accurate.

[36] **West Bay Management Limited v Minister of Labour and National Insurance, Bahamas Hotel Maintenance and Allied Workers Union and another** 2013/PUB/jrv/00014 was another judicial review matter that involved Sandals and the Maintenance Union. In that action, Sandals was successful in obtaining, among other things, an order for *certiorari* against the Minister of Labour. Evans J, after hearing detailed submissions on costs after the trial, made an order apportioning costs with two-thirds (⅔) to be borne by the Minister of Labour and one-third (⅓) by the Maintenance Union.

[37] To reiterate, I find that the Maintenance Union was a proper party to these proceedings. In light of the fore-going, I find that both Respondents will have to pay reasonable costs to Sandals.

Division of costs between the parties

[38] 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.**"[Emphasis added]

[39] The principle that costs are discretionary is further fortified in Order 59, rule 2(2) of the Rules of the Supreme Court ("RSC") which 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."[Emphasis added]

[40] Then, costs must be reasonable. In determining what is reasonable, Order 59, rule 3(2) of the RSC is helpful. It 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.**

[41] Additionally, there are certain factors that the Court must consider in determining what are reasonable costs. In **McPhee (as Administrator of the Estate of Thelma Mackey) v Stuart** [2018] 1 BHS J. No. 18 at para. 8, this Court enumerated the factors as:

> **"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;**
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> **b) the care, speed and economy with which the case was prepared;**
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> **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.**

Conclusion

[42] In civil proceedings, the successful party is entitled to its costs. Put another way, the unsuccessful party or parties should pay the costs of the successful party. The Court may depart from this general principle if there are reasons to do so. In this case, Sandals is the successful party and there is no reason for me to depart from this well-established principle.

[43] Evidently, this matter arose out of the failure of the Maintenance Union to file proper accounts and to hold elections. This was not disputed by any of the Respondents. It was also not disputed that the Registrar had a statutory right to cancel the registration of the Maintenance Union which was the reason behind its warnings issued to the Maintenance Union to rectify the infractions. This matter was allowed to meander through the Supreme Court and the Court of Appeal for approximately six years before there was documentation by way of the Certificate of Compliance which indicated that the Maintenance Union was in good standing. There is no doubt in my mind that Sandals brought this action at great costs to itself in terms of time and financial resources. Therefore, Sandals should not be made to bear its own costs nor that of any other party as it sought to have violations of the law addressed.

[44] As I reiterated, both Respondents could have brought this matter to an end as early as 22 November 2017 when they were both aware that the Certificate of Compliance was issued. Neither saw it fit to draw it to the attention of the Court or to inform Sandals. The Registrar says that Sandals knew or ought to have known. He did not demonstrate how Sandals ought to have known about the Certificate of Compliance. Then the Maintenance Union opined that there is no statutory obligation for them to inform Sandals. So, they both carried on and wasted precious judicial time. A lawyer owes a duty to his client and correspondingly, to the Court. The duty to the Court is deeply rooted in the oath which each and every one of them took when they were admitted to the Bar. Further, and in accordance with Order 31 A, all lawyers are to assist the Court so that matters are disposed of expeditiously, efficiently and are cost-effective. The Respondents could have done better.

[45] Exercising the discretion that I possess in accordance with the law, my Order will be as follows:

1. Sandals, being the successful party in these proceedings, is entitled to its costs to be taxed if not agreed.

2. Costs including costs of this application will be apportioned between the Respondents as follows:

    (i) The Registrar of Trade Unions will pay two-thirds of the Costs to Sandals; and

    (ii) The Maintenance Union will pay one-third of the Costs to Sandals.

    (iii) Costs will be taxed by the Registrar.

Dated the 21st day of November, A.D., 2018

Indra H. Charles
Justice