COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2016/CLE/gen/00956

BETWEEN

MARGO THOMPSON

Plaintiff

-AND-

MUNROE & ASSOCIATES

Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Michael W. Horton for the Plaintiff
Mr. K. Miles Parker of Cedric L. Parker & Co. for the Defendant

Hearing Dates: 11 December 2020 and 19 February 2021

Negligence – Professional negligence – Whether the Defendant firm was liable for a Writ being struck out – Whether the Plaintiff sued the proper law firm - Whether a firm is liable for negligence which occurred during it existence even after its dissolution – ss. 10, 11 and 13 of the Partnership Act, Ch. 310

By Writ of Summons filed on 27 May 2016 and Statement of Claim filed on 23 June 2017, the Plaintiff sued the Defendant firm for negligence in conducting her personal injury action against her former employer which she says resulted in her claim being struck out and statute-barred. The Defendant denied liability.

The Plaintiff alleged that the Defendant law firm represented her in an action against her former employer for personal injuries sustained in 2005. She said that the Defendant was negligent in that it failed to serve the Writ of Summons or apply for extension of time or to have the limitation period overridden before the expiration of the Writ. Her claim against her former employer is now statute-barred and she sued the Defendant. The Defendant denied liability and denied having represented the Plaintiff in the filing and/or carriage of the action and asserts that it only became involved in the action in November 2011, when it sought to assist the Plaintiff therein by applying to renew the Writ of Summons; Up until that time, the Plaintiff was represented by Lockhart & Munroe. The Defendant effectively averred that it was the wrong party.

HELD: dismissing the Plaintiff's claim for negligence against the Defendant and making no order as to costs. The Defendant is to reimburse the Plaintiff the sum of $300 which she paid to the Defendant to renew the expired Writ which was statute barred.

1. The Defendant firm is not the proper Defendant for the Plaintiff's claim since that firm did not omit to do the things alleged in the particulars of negligence.

2. The Plaintiff ought to have sued the Firm of Lockhart & Munroe since it was they who failed to serve the Writ and/or apply for leave to extend it. They were the attorneys on record at the appropriate time.

3. The Plaintiff still had a claim against her former attorneys Messrs. Lockhart & Munroe notwithstanding that it had been dissolved by the time she became aware of the negligence complained of – Sections 10, 11 and 13 of the Partnership Act, Ch. 310.

JUDGMENT

Charles J:

[1] This is an unfortunate case. On or about 2 November 2005, the Plaintiff ("Mrs. Thompson"), whilst employed as a hotel maid at the British Colonial Development Company Limited ("British Colonial") sustained personal injuries which she alleged occurred when the service elevator which she was in, plunged from the sixth floor to the ground floor of the hotel during a general electrical power outage. As a result, she suffered debilitating injuries requiring her to seek medical attention from doctors both here and in the United States.

[2] As a result of her accident, she wanted to know what legal redress might be available to her against British Colonial. She approached the now dissolved law firm of Lockhart & Munroe ("L&M") with the intention of engaging the legal services of Mr. Wayne Munroe now a Queen's Counsel ("Mr. Munroe"). Mr. Munroe was one of the three partners at that firm and there were a number of associate lawyers in that firm whom the partners supervised and rendered their advices to. Mrs. Thompson was unsuccessful in seeing Mr. Munroe but she spoke with an associate lawyer, Jairam Mangra ("Mr. Mangra"). She paid a consultation fee and shortly after, a retainer, to L&M.

[3] On 24 October 2008, L&M filed a Writ of Summons on Mrs. Thompson's behalf against British Colonial claiming damages for personal injuries suffered by her in Action No. CLE/gen/01760B of 2008 ("the 2008 Action"). The firm of L& M was subsequently dissolved on 31 August 2009. Mr. Munroe then formed his own law firm, Munroe & Associates ("M&A"). Mrs. Thompson's file was transferred to M&A but there is conflicting evidence as to exactly when the file was transferred. At M&A, she was unsuccessful in seeing Mr. Munroe but she saw one of the associates of that firm.

[4] The 2008 Action was never served on British Colonial by L&M but it was later served by M&A, after which it was struck out by the Registrar upon an application by the attorneys for British Colonial.

[5] Mrs. Thompson then sued M&A for professional negligence. She vehemently argued that, notwithstanding that she never spoke directly to Mr. Munroe at either L&M or M&A, she was, at all material times, represented by him and that M&A acted negligently resulting in the 2008 Action being struck out.

[6] On the other hand, M&A contended that it is not liable for her loss since she was represented by L&M as opposed to M&A when the negligent omissions occurred. M&A says that they did not represent Mrs. Thompson until 23 November 2011 when she engaged them to renew the Writ.

Factual matrix

[7] Most of the facts are not in dispute and are gleaned from the oral evidence as well as the documentary evidence adduced and exhibited at this trial. To the extent that some of the facts may be in dispute, then what is expressed must be taken as positive findings of fact made by me.

[8] Mrs. Thompson was the Plaintiff in the 2008 Action. M&A is a law firm carrying on the business of law practice in The Bahamas since 4 August 2009. The principal of M&A is Mr. Munroe.

[9] On or about 4 January 2007, Mrs. Thompson retained the law firm of L&M to sue her former employer, British Colonial, for personal injuries which occurred on their premises on 2 November 2005 in the 2008 Action.

[10] Mrs. Thompson went to L&M with the intention of being represented by Mr. Munroe. At the time, Mr. Munroe was one of three partners of that firm. The other partners were Mr. Elliott Lockhart QC ("Mr. Lockhart") and Mr. Norwood Rolle. Mrs. Thompson did not see Mr. Munroe. Instead, she met with Mr. Mangra. She paid a consultation fee of $200 to L&M.

[11] Subsequently, Mr. Mangra advised her that the firm required a retainer fee of $1,000 which she paid to L&M on 4 January 2007.

[12] She made several visits to L&M between 2007 and 2008, but never met with Mr. Munroe. She only communicated with Mr. Mangra.

[13] On 24 October 2008, L&M filed a Writ of Summons in the 2008 Action on Mrs. Thompson's behalf.

[14] The law firm of L&M was dissolved as of 31 August 2009. Mr. Munroe established his own law firm of M&A which was registered on 16 July 2009 and became operational on 4 August 2009.

[15] Mrs. Thompson alleged that sometime in early 2008, she visited L&M without an appointment to speak with Mr. Munroe or his Assistant, Mr. Mangra and she was advised that Mr. Munroe was no longer working from that office and that her file was taken by him to his new firm, M&A.

[16] She then visited M&A to see Mr. Munroe but was unsuccessful. However, according to her, a receptionist at M&A confirmed that M&A had her file.

[17] She made other visits to M&A but was never successful in seeing Mr. Munroe. Instead, she was seen by an Associate at M&A, Chernenka Rolle ("Ms. Rolle").

Ms. Rolle was called to the Bahamas Bar on 31 October 2009 and commenced her employment with M&A on 1 November 2009.

[18] On 7 November 2011, Mrs. Thompson paid a cash fee of $300 to M&A toward the renewal of the Writ in the 2008 Action.

[19] In the intervening period, the Writ, which was filed on 24 October 2008, had expired on 23 October 2009. The Writ had not been served on British Colonial by that date nor had it been renewed before its expiration.

[20] On 23 November 2011, M&A filed a Notice of Change of Attorney in the 2008 Action. On the same day, M&A filed an application for leave to extend the Writ.

[21] Also, in the intervening period, a dispute arose between Elliott Lockhart QC ("Mr. Lockhart") and Mr. Munroe which was arbitrated by Mr. Philip E. Davis QC. In a written Ruling dated 30 November 2011, it was agreed that:

> **1. The partnership of Lockhart & Munroe (the Firm) be and hereby dissolved as of 31 August 2009;**
>
> **2. Consequent upon this dissolution each of the parties is at liberty to carry on the practice of law independent of each other under a style or name that may include his name;**
>
> **3. <u>The files and accounts of the dissolved Firm should remain in the custody and control of Elliott (Lockhart) save as hereinafter provided;</u>**
>
> **4. <u>The files of the firm would be released by Elliott upon a written request by the client to whom the file relates and upon the receipt of such written request Elliott shall be obliged to forward such file as directed by the clients;</u>**
>
> **5. In circumstances where a file is forwarded to Wayne and or a file remains with Elliott any receivables due to the firm in respect of such file will follow the file. The intent being that files remaining with Elliott will entitle Elliott to collect any and all receivables due thereon; any file forwarded to Wayne entitles Wayne to collect any and all receivables due thereon. In either case the collection of such receivables would be free of any liability to the other.**
>
> **6. ….".**

[22] On 13 March 2012, leave to extend the Writ was granted.

[23] Sometime in 2012, Mrs. Thompson alleged that she spoke to Mr. Munroe for the first time at a "community meeting" and according to her, he seemed to have had a good knowledge of her case. Mr. Munroe did not recall this meeting.

[24] On 28 August 2012, Lennox Paton, appearing as Attorneys for British Colonial, filed an application to set aside the Order of 13 March 2012 granting leave to extend the Writ. Put differently, they applied to have the Writ struck out.

[25] In the interim, in a letter dated 24 October 2012 from Mr. Sidney Cambridge of Mr. Munroe's Chambers to the attorneys for British Colonial, Mr. Cambridge wrote:

> **"…We write to advise that Mr. Wayne Munroe is now an Acting Justice of the Supreme Court as of the 15th October, 2012 and will act in such capacity until the 31st December, 2012. We further advise that this matter is one of several matters that he must personally deal with because of the complexity involved, he has exclusive carriage of the same…."**

[26] The application for the striking out of the Writ was eventually heard and on 23 August 2013, Registrar Meeres ruled that the Writ of Summons was struck out. At paragraph 13 of the Ruling, the learned Registrar stated that:

> **"Having reviewed the law, the submissions and the cases on point the Court is of the opinion that the Order made herein on the 26th March, 2012 be set aside and pursuant to Order 2 Rule (2) of the Rules of the Supreme Court that the Writ of Summons and all subsequent proceedings herein be set aside on the ground that the validity of the Writ of Summons has expired."**

The issues

[27] The key issues which arise for determination are:

1. Whether M&A represented Mrs. Thompson in her claim for personal injuries against her former employer, British Colonial in the 2008 Action which was dismissed and;

2. Whether M&A was responsible for the negligence alleged by Mrs. Thompson.

The evidence

Margo Thompson

[28] Mrs. Thompson gave evidence on her own behalf and Mr. Munroe gave evidence for M&A. She filed a Witness Statement on 7 September 2020 which stood as her evidence in chief at trial. She testified that on or about 2 November 2005, whilst employed by British Colonial, she was in the service elevator on the premises of British Colonial when she sustained personal injuries. Sometime during the month of November 2006, she made an appointment to see Mr. Munroe at the Chambers of L&M to see what legal redress she might have as a result of the accident.

[29] On 14 December 2006, the day of her appointment, she was advised that Mr. Munroe was dealing with another matter but his Assistant, Mr. Mangra would see her. She paid a consultation fee of $200 for that visit and on 4 January 2007, she paid a retainer of $1,000.

[30] She made several further visits to see Mr. Munroe and each time, Mr. Mangra would relay to her Mr. Munroe's instructions: to obtain medical reports or other information. She was never able to speak with Mr. Munroe face to face. She said that he informed her on one of her visits that a Writ had been filed but beyond that, she heard nothing more about the progress of the case.

[31] Mrs. Thompson stated that sometime before the summer of 2008, she and her husband visited the Chambers of L&M to speak with Mr. Munroe and/or Mr. Mangra but was informed that Mr. Munroe was no longer working from that office but he had moved to new offices on East Bay Street and had taken her file with him.

[32] Mrs. Thompson asserted that she visited Mr. Munroe's new offices. The receptionist informed her that Mr. Munroe was out of office. She then asked whether their office had her file and the receptionist confirmed that the file was in their office.

[33] She subsequently made several visits to see Mr. Munroe but without success. Then, according to her, Mr. Munroe assigned one Ms. Chernenka Rolle ("Ms. Rolle") to see her. She said that Ms. Rolle updated her on her case and told her that new documents had to be filed because the old ones had expired. She paid a further fee of $300 on 7 November 2011 towards the management of her case.

[34] Mrs. Thompson asserted that she met with Ms. Rolle periodically in 2008, 2009, 2010 and 2011 to find out how the case was progressing. It was not until 2012 that she was able to speak with Mr. Munroe for the first time at a community meeting at the Government High School when he was a candidate for the DNA political party in her residential area. According to her, he was there with Ms. Rolle and when she spoke with him about her case, he appeared to be very familiar with it and he asked Ms. Rolle to fix an appointment so that he and Mrs. Thompson could talk. However, on the date set for the appointment, she again was unable to speak with him.

[35] Mrs. Thompson stated that in August 2013, she and her husband went to see Mr. Munroe at his office and it was then that Ms. Rolle informed her of the Court's Ruling and that her case was "thrown" out. She said that Ms. Rolle stated that nothing could be done. They left the office and later on, she collected her file and sought other legal advice.

[36] Mrs. Thompson insisted that Mr. Munroe was her attorney throughout her personal injury case against British Colonial and she asserted that this fact is supported by the filing by his firm, M&A, of the Notice of Change of Attorney in 2011. She also stated that further support for her statement that Mr. Munroe was her attorney is contained in a letter dated 24 October 2012 from Mr. Sidney Cambridge of Mr. Munroe's Chambers to the attorneys for British Colonial.

[37] Under cross-examination, Mrs. Thompson stated that she engaged the firm of M&A before November 2011. She stated that when she engaged M&A, she was told that the Writ had expired and the only chance that she had to pursue her claim

was to have it renewed. According to her, she engaged Mr. Munroe and not the firm of M&A although she never saw Mr. Munroe. M&A was successful in having the Writ renewed. She maintained that L&M advised her that Mr. Munroe took her file when he relocated. She rejected Mr. Parker's suggestion that M&A never told her that they had her file.

[38] Under re-examination, she re-affirmed that the first time she went to see Mr. Munroe was at L&M.

Wayne Munroe

[39] Mr. Munroe filed a Witness Statement on 30 October 2020 which stood as his evidence in chief at trial. He testified that on 4 January 2007, Mrs. Thompson consulted with L&M for legal representation for personal injury which she alleged took place while at work on 5 November 2005. On 24 October 2008. L&M commenced the 2008 Action on her behalf. The partnership of L&M was dissolved on 31 August 2009. M&A was registered on 16 July 2009 however the firm was not operational until 4 August 2009. According to Mr. Munroe, the files of L&M remained in the custody and control of his former partner, Mr. Elliott Lockhart, QC. There was an agreement between him and Mr. Lockhart that files will be released to M&A on a written request by the client concerned. The arrangement is contained in a written Ruling on Dispute dated 30 November 2011 made by Philip E. Davis QC who was appointed to arbitrate the dispute between Mr. Elliott Lockhart QC and Mr. Wayne Munroe.

[40] Mr. Munroe was unable to specifically state when Mrs. Thompson came to M&A for legal representation. He further testified that M&A had not begun representing Mrs. Thompson until 23 November 2011 when the Notice of Change of Attorney in the 2008 Action was filed. At that time, the Writ had not been served on British Colonial. M&A made a successful application to have the Writ renewed but it was later set aside in a Ruling of Registrar Meeres on 23 August 2013. Shortly thereafter, Mrs. Thompson discharged M&A and retrieved her files from that firm.

[41] Mr. Munroe maintained that he was not retained by Mrs. Thompson and that he merely supervised the juniors who had carriage of the matter as he routinely did.

[42] Under extensive cross-examination by Mr. Horton, Mr. Munroe stated that he does not recall speaking with Mrs. Thompson anytime while at L&M and that the consultation fees of $200 which was collected would not have been his rate in 2008 having been called to the bar for 18 years. He asserted that the consultation fee of $200 was more consistent with Mr. Mangra's rate as his consultation fee at that time was anywhere from $650 to $1,000. He also opined that the retainer of $1,000 was again more consistent with Mr. Mangra's fees. Mr. Munroe explained that a client who pays a consultation fee of $200 and a retainer of $1,000 would not be able to see him. He did not recall instructing Mr. Mangra to take Mrs. Thompson's case. He knew of the case and gave advice and direction on the issue of liability from the use of elevators to Mr. Mangra as he had done a case with similar facts so he shared his knowledge with Mr. Mangra.

[43] When asked about the medical report of Dr. Clyde Munnings dated 3 December 2007 and addressed to Mr. Mangra, Mr. Munroe said that he had never seen any medical reports. He had not seen the medical report of Dr. Jimmy Abubakar either. He insisted that he was not retained to have personal carriage of this matter while at L&M. According to him, Mrs. Thompson paid L&M for the services of Mr. Mangra.

[44] Under cross-examination, Mr. Munroe stated that he did not take Mrs. Thompson's file with him when L&M was dissolved. From his recollection, he would have received it from L&M about the same time that M&A filed a Notice of Change of Attorney as they did that quite promptly. He said that when the Change of Attorney was done, Ms. Rolle was the Counsel who would have had carriage of Mrs. Thompson's matter and Ms. Rolle would have consulted with him and he gave her advice to seek to have the Writ renewed since its validity had expired.

[45] With respect to Ms. Thompson's file moving to M&A, he said that they did not initially have the file because they entered notices of change of attorney promptly after obtaining files to ensure that documents were served at the new address.

[46] Mr. Munroe was extensively cross-examined with respect to why M&A did not serve the Writ when, on 13 March 2012, the Registrar had granted leave to extend the validity of the Writ to another year. He stated that there was a Notice by Lennox Paton to enter a conditional appearance on 16 August 2012 followed by a Summons to set aside the Order granting leave to extend the validity of the Writ which was granted more than two years after the Writ of Summons expired and so, there was absolutely nothing M&A could have done in November 2011 to save the matter. He however admitted that his firm M&A becomes liable for anything done after it became the Attorney on Record for Mrs. Thompson.

Discussion and analysis

Issues: Whether M&A represented Mrs. Thompson in the 2008 Action and whether M&A was negligent

[47] The factual dispute between the parties was concentrated on Mr. Munroe's degree of involvement in the 2008 Action but this issue falls away upon a determination of the issue of whether M&A represented Mrs. Thompson in her claim for personal injuries against British Colonial. Put differently, whether M&A is the proper defendant before this Court.

[48] Learned Counsel Mr. Parker who appeared on behalf of M&A submitted that M&A could not be liable for the 2008 Action being struck out since that firm had only begun representing Mrs. Thompson from 23 November 2011 when it became the attorney of record. Mr. Parker submitted that no professional relationship existed between the parties prior to 23 November 2011 and M&A is therefore not liable for the carriage or conduct of the 2008 Action or anything that occurred prior to that date.

[49] Learned Counsel Mr. Horton, who appeared as Counsel for Mrs. Thompson, did not challenge M&A's assertion that the firm's representation of Mrs. Thompson did not begin until 23 November 2011 although her pleadings and evidence suggested that she was represented by M&A at the outset of that firm's existence. His submissions were however premised on the relationship having been established as at the filing of the Notice of Change of Attorney. He submitted that M&A assumed all defects contained in the file when they became attorneys of record in 2011.

[50] In her evidence, Mrs. Thompson testified that she was represented by M&A from the outset of M&A's existence. She stated that after L&M told her that Mr. Munroe had taken her file with him to his new offices, she visited Mr. Munroe's new offices. She was unable to see Mr. Munroe but the confirmed that the file was in their office. She maintained that Mr. Munroe assigned Ms. Rolle to her case and Ms. Rolle updated her on her case and told her that new documents had to be filed because the old ones had expired. She paid a further fee of $300 on 7 November 2011 towards the management of her case: Mrs. Thompson asserted that she met with Ms. Rolle periodically in 2008, 2009, 2010 and 2011 to find out how the case was progressing.

[51] Her evidence is implausible because Mr. Munroe was able to produce contemporaneous documentary evidence to demonstrate the following: (i) M&A became operational on 4 August 2009; (ii) Ms. Rolle was called to the Bahamas Bar on 31 October 2009 and commenced employment was M&A on 1 November 2009 as an Associate; (iii) On 7 November 2011, Mrs. Thompson paid a fee of $300 to M&A towards the management of her case; (iv) On 23 November 2011, M&A filed a Notice of Charge of Attorney in the 2008 Action and (v) The Ruling of the Arbitrator is dated 30 November 2011 and it focused on files and accounts of the dissolved L&M and that all files are to remain with L&M and to be released by Mr. Lockhart only upon written request by a client. So, on a balance of probabilities, the evidence adduced by Mr. Munroe was more credible than that of Mrs. Thompson. Furthermore, she insisted that she was represented by Mr. Munroe

although she never saw him at L&M or M&A but only at a 'community meeting'. This is astonishing. Moreover, the consultation fee as well as the retainer and the case management fee appeared consistent with that of a junior lawyer or associate but not with an attorney of Mr. Munroe's ilk. In his evidence, he stated that in 2006, he was been called to the Bar for about 18 years.

[52] The short answer is that, by the time M&A took over the 2008 Action on 23 November 2011, the Writ was already unrevivable.

[53] It is also a fact that there was no application by L&M pursuant to RSC Order 63, rule 5 and/or Order 31A, rule 18(2) and/or the inherent jurisdiction for an order declaring that L&M has ceased to be the attorneys acting for Mrs. Thompson in the matter.

[54] It seems clear to me that when the Writ in the 2008 Action expired and the action became statute barred, L&M was still the attorney of record. In addition, Mrs. Thompson insisted that Mr. Munroe represented her at L&M and also at M&A but she chose not to sue him personally which she could have done.

[55] Mr. Horton next argued that when M&A formally came on board as Attorney for Mrs. Thompson, the responsibility for the progress of the case rested with M&A. It came with whatever defects of law or procedure characterized it at the time. He emphasized that the suggestion that Mrs. Thompson should have sued L&M is nothing more than an attempt to obfuscate the issue of liability in M&A. Mr. Horton mentioned the letters dated 24 October 2012 and the second letter dated 13 November 2012, both addressed to Lennox Paton (the attorneys for British Colonial) to suggest that Mr. Munroe represented Mrs. Thompson. This argument is flawed. M&A could not inherit the defects contained in a file which were attributable to L&M. That has never been the law.

[56] Mr. Horton further argued that the 2008 Action having been statute barred due to lack of care and attention did not come to Mrs. Thompson's attention until 2013 when the 2008 Action was struck out. At that point, says Mr. Horton, Mrs.

Thompson no longer had a claim against L&M since that firm had been dissolved. He said that when M&A assumed responsibility for the 2008 Action, it accepted every defect of law and/or procedure contained therein.

[57] On the other hand, Mr. Parker submitted, correctly in my judgment, that M&A is the wrong defendant to Mrs. Thompson's claim. The particulars of negligence alleged by Mrs. Thompson are the failures to have served and or/applied for extension of the Writ before its expiration, which were the reasons for the Writ having been struck out. That being the negligence alleged, the cause of action against whomever lawyer for these failures could not have materialized only upon the Ruling to strike out the Writ. While it is true that Mrs. Thompson only became aware of the negligence in 2013 when the Ruling was delivered and L&M had already been dissolved, she was not prevented from pursuing her claim against L&M.

[58] The failure to have served or applied to renew before October 2009 was the negligence complained of and this occurred when L&M was still the Attorney of record for Mrs. Thompson. The relevant question is not who represented Mrs. Thompson at the time when the 2008 Action was struck out but rather "which firm was negligent?" In other words, which firm failed to do the things that caused the 2008 Action to be struck out? The short answer is L&M.

[59] Mr. Parker correctly submitted that partnerships are liable even after their dissolutions for negligence which occurred during the existence of said partnership. Sections 10, 11 and 13 of that Act provide:

> **"10 Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied, but subject to the prior payment of his separate debts.**
>
> **11. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable**

> **<u>therefore to the same extent as the partner so acting or omitting to act.</u>"**
>
> **13 Every partner is liable jointly with his copartners and also severally for everything for which the firm <u>while he is a partner therein</u> becomes liable under either of sections 11 and 12 of this Act."**[Emphasis added]

[60] Partners of a firm are personally liable; the partners are themselves liable since firms are not companies. Both of the parties' evidence and arguments sought to establish and refute that Mr. Munroe himself represented Mrs. Thompson at both L&M and at M&A. However, having found that M&A is not the proper Defendant for Mrs. Thompson's negligence claim, this brings an end to this unfortunate dispute. Mrs. Thompson ought to have instituted these proceedings against L&M, regardless of the fact that the firm was dissolved on 31 August 2009.

Costs

[61] In civil proceedings, costs are always discretionary. Order 59 rule 2 of the Rules of the Supreme Court ("RSC") states:

> **"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."**

[62] Section 30(1) of the Supreme Court Act states:

> **"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."**

[63] 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."**[Emphasis added]

[64] As a general rule, the successful party is entitled to his costs. However, a judge can depart from the normal practice so long as he or she gives reasons for doing so: **Eagil Trust Co Ltd v Pigott-Brown and Another** [1985] 3 All ER 119 at 122 - per Griffiths LJ.

[65] In exercising its discretion as to costs, it is useful for the Court to bear in mind the following principles set out by Atkin LJ in **Ritter v Godfrey** [1920] 2 KB 47 at page 48. They are as follows:

> **"In exercising his discretion over costs a judge should be guided by the following principles. In the case of a wholly successful defendant the judge must give him costs unless there is evidence (1)that the defendant brought about the litigation, or (2) has done something connected with the institution or the conduct of the suit calculated to occasion unnecessary litigation and expense, or (3) has done some wrongful act in the course of the transaction of which the plaintiff complains."**

[66] Applying the principles to the facts of the present case, it is my firm view that I should depart from the usual order of awarding costs to the successful party, M&A. I do so because Mrs. Thompson, a layperson, brought this action in good faith as a result of the loss of opportunity to pursue her claim against Colonial Hilton. This loss was caused by the dissolution of the initial firm and the fallout associated with the changing of offices, none of which could be attributed to Mrs. Thompson herself.

Conclusion

[67] For the reasons stated above, the Writ of Summons is dismissed with no order as to costs. I will make a further order that the firm of M&A reimburses Mrs. Thompson the sum of $300 which it charged for the renewal of her Writ when it was a fact that the Writ was statute barred and its validity could not have been renewed.

Dated this 22nd day of September 2021

Indra H. Charles
Justice