

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law and Equity Division  
2005/CLE/gen/0069**

**BETWEEN**

**WALLACE I ROLLE**

**First Plaintiff**

**AND**

**KRYSTAL D ROLLE**

**Second Plaintiff**

**AND**

**THE TOWN COURT MANAGEMENT COMPANY**

**Defendant**

**Before Hon. Chief Justice Ian R. Winder**

**Appearances: Krystal Rolle KC for the Plaintiffs**

**Kahlil Parker KC with Roberta Quant for the Defendant**

**5 and 24 May, 2022**

**DECISION ON COSTS**

## WINDER CJ

[1.] On 8 April 2022, I dismissed the Plaintiffs' substantive claim for declaratory relief but gave them judgement in the amount of \$25,946.22 with respect to their damages claim. Upon the Defendant's counterclaim, I directed the Defendant make a "proper accounting of the charges levied on the Plaintiffs in the relevant period, as unit owners of Unit A-5, in keeping with their unit entitlement and the sums paid by the other unit owners in the Town Court Condominium."

[2.] At the pronouncement of the judgment, I indicated that I would hear the parties on the question of the appropriate order for costs, by written submissions, within 28 days. Each party laid over written submissions and this is my decision on costs.

[3.] The recent decision of the Court of Appeal in *Sterling Asset Management Ltd. v Sunset Equities Ltd. SCCivApp 152/2021*, provides helpful guidance on the Court's approach to the determination of costs. *Sir Michael Barnett P.*, stated as follows:

5. The general principle is that whilst costs are in the discretion of the court, that discretion must be judicially exercised. The jurisprudence in this matter can be found in the judgment of Buckley, LJ in *Scherer and another v Counting Instruments Ltd and another* [1986] 2 All ER 529:

"...we derive the following propositions. (1) The normal rule is that costs follow the event. That party who turns out to have unjustifiably either brought another party before the Court or given another party cause to have recourse to the Court to obtain his rights is required to recompense that other party in costs. But, (2) the judge has under s 50 of the 1925 Act an unlimited discretion to make what order as to costs he considers that the justice of the case requires. (3) Consequently, a successful party has a reasonable expectation of obtaining an order for his costs to be paid by the opposing party but has no right to such an order, for it depends on the exercise of the Court's discretion. (4) This discretion is not one to be exercised arbitrarily: it must be exercised judicially, that is to say in accordance with established principles and in relation to the facts of the case. (5) The discretion cannot be well exercised unless there are relevant grounds for its exercise, for its exercise without grounds cannot be a proper exercise of the judge's function. (6) The grounds must be connected with the case. This may extend to any matter relating to the litigation and the parties' conduct in it, and also to the circumstances leading to the litigation, but no further. (7) If no such ground exists for departing from the normal rule, or if, although such grounds exist, the judge is known to have acted not on any such ground but on some extraneous ground, there has effectively been no exercise of the discretion. (8) If a party invokes the

jurisdiction of the Court to grant him some discretionary relief and establishes the basic grounds therefor but the relief sought is denied in the exercise of discretion, as in *Dutton v Spink & Beeching (Sales) Ltd* and *Ottway v Jones*, the opposing party may properly be ordered to pay his costs. But where the party who invokes the Court's jurisdiction wholly fails to establish one or more of the ingredients necessary to entitle him to the relief claimed, whether discretionary or not, it is difficult to envisage a ground on which the opposing party could properly be ordered to pay his costs. Indeed, in *Ottway v Jones* [1955] 2 All ER 585 at 591, [1955] 1 WLR 706 at 715 Parker LJ said that such an order would be judicially impossible, and Evershed MR said that such an order would not be a proper judicial exercise of the discretion, although later he expressed himself in more qualified language (see [1955] 2 All ER 585 at 587, 588-589, [1955] 1 WLR 706 at 708, 711)..."

6. This statement has been approved by this Court in a number of cases: see *Amber Murphy v Hot Pancakes et al* SCCivApp. Nos. 95 of 2020 and 52 of 2021 and *Polymers International Ltd. v Philip Hepburn* SCCivApp. No. 8 of 2021.

[4.] Similarly, in the English Court of Appeal decision in *Re Elgindata Ltd [1992] 1 WLR 1207 at 1213*, the applicable principles, in deciding an appropriate order for costs, were stated as follows:

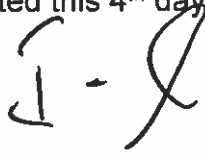
"The principles are these. (i) Costs are in the discretion of the court. (ii) They should follow the event, except when it appears to the court that in the circumstances of the case some other order should be made. (iii) The general rule does not cease to apply simply because the successful party raises issues or makes allegations on which he fails, but where that has caused a significant increase in the length or cost of the proceedings he may be deprived of the whole or a part of his costs. (iv) Where the successful party raises issues or makes allegations improperly or unreasonably, the court may not only deprive him of his costs but may order him to pay the whole or a part of the unsuccessful party's costs."

[5.] The starting point is therefore the general rule. The general rule is that the successful party ought to be paid their costs unless there are cogent reasons to depart from this rule. In this action, notwithstanding the finding as to damages in favor of the Plaintiffs, the Defendant was largely successful. The Defendants not only defeated the Plaintiffs' substantive claim for the five declaratory relief sought, they also successfully obtained an order for the payment of sums due and owing, albeit following an accounting.

[6.] Having regard to the success of the Defendant and the somewhat limited success of the Plaintiff, I find that the appropriate order for costs in the circumstances would be

that the Plaintiff should pay 75% of the Defendant's costs, such costs to be taxed if not agreed.

Dated this 4<sup>th</sup> day of November 2022

A handwritten signature in black ink, appearing to be 'I. R. Winder', written over the date line.

Ian R. Winder  
Chief Justice