

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2015/CLE/gen/00150
BETWEEN**

**EMMANUEL WALLACE
Plaintiff**

AND

**PUBLIC HOSPITAL AUTHORITY
Defendant**



BEFORE: The Honourable Justice Petra M. Hanna-Adderley
APPEARANCES: Mr. Edwin Knowles for the Plaintiff
Miss Luanna Ingraham of the Attorney General for the
Publics Hospital Authority
HEARING DATE: July 29, 2022

RULING

Hanna-Adderley, J

Introduction

1. By a Generally endorsed Writ of Summons filed on May 6, 2015, the Plaintiff commenced an action against the Defendant for personal injury due to the negligence of its servants and or agents, which resulted in the amputation of the Plaintiff's left leg from just above the knee. In or about September, 2020 the matter was settled between the parties in the sum of, inter alia, \$789,361.16 in damages from the Defendant to the Plaintiff.
2. On December 31, 2020 the Court ordered payment of an interim payment in the sum of \$250,000.00 by way of the payment of \$50,000.00 by December 28, 2020, payment of the balance of \$200,000.00 in 4 monthly instalments of \$50,000.00

beginning January 28, 2021 and that the balance of \$539,386.31 be paid as soon as possible.

3. Suffice it to say the payments were not made on time but the \$250,000.00 was paid by the time the Plaintiff returned to Court pursuant to an Ex Parte Summons for Leave to Commence Committal Proceedings filed May 5, 2021. By an Order filed June 14, 2021 the Defendant was ordered to pay to the Plaintiff the balance owed on the debt of \$539,386.31, by way of monthly instalments of \$50,000.00 commencing June 12, 2021 and payable every 28th day of the month continuing on June 28, 2021 until the ordered payment was met in full.
4. Once again payments were not made on time and the parties were again before the Court pursuant to an Ex Parte Summons for Leave to Commence Committal Proceedings filed January 31, 2022. On April 8, 2022, the Defendant was ordered to pay the Plaintiff, by Consent, the sum of \$147,615.23 and the Plaintiff's costs arising from the interlocutory actions for Leave to Commence Committal Proceedings was settled in the sum of \$5,500.00.
5. On June 2, 2022 the Plaintiff filed another application by Ex Parte Summons for Leave to Commence Committal Proceedings for nonpayment of the sums contained in the Consent Order. By the time the application came on for hearing on July 29, 2022 the Defendant had paid to the Plaintiff the sums of \$134,000.00 and only \$17,000.00 is currently outstanding on the debt.
6. The Plaintiff is now seeking his costs not only for the costs incurred as a result of this application for leave but the Court is being asked to revisit the Consent Order and to award to the Plaintiff all of the costs incurred in every interlocutory application made since the matter was settled, up to and including the application filed on June 2, 2022. The Defendant's position is that no order for costs should be made.

Submissions

7. Mr. Edwin Knowles, of Counsel for the Plaintiff, submitted that he filed documents in this application on June 2 and 10, 2022. The documents were served on the Attorney General's Office and like in the past, this prompted the Defendant to make

a payment before the matter came on for hearing. That this event in part superseded the application and \$17,000.00 plus is still owed. He believed that this will be paid either at the end of July or August. Before the Plaintiff issued proceedings Mr. Knowles said that he invited the Attorney General's Office to continue to make the same payments that the Court had recommended. That the Plaintiff thought that this would have been sensible to continue without having to return to Court. It was not adopted. That even though Miss Ingraham had initially corresponded with him and even though he and Miss Ingraham had had conversations on the 5 and 6 May, it was not adopted. That based on his experience he felt that if he did not do anything the Plaintiff would not have received payment. Once the Plaintiff filed the application in June a substantial sum was received. Because the Attorney General did not respond and did not keep the Plaintiff up to date with what was happening the Plaintiff was forced to issue an additional Summons. Mr. Knowles referred the Court to pages 8-12 of the Plaintiff's Affidavit in Support and submitted that due to the level of costs incurred in this matter the Plaintiff is now asking this Court to take all of the costs incurred in trying to enforce the order for payment into consideration in granting costs in this matter. That Miss Ingraham has not served any documents or evidence or Skeleton Arguments that would give an explanation as to why the Plaintiff has to waste the resources of this Court again. That the Plaintiff is asking for costs.

8. Miss Luanna Ingraham of the Attorney General's office, of Counsel for the Defendant objected to Mr. Knowles seeking costs in this matter. She submitted that the delay in making payment has not been egregious, was not serious. That the Consent Order was filed on April 29, 2022. That it is now July 29, 3 months later and the application was made on June 2. That the Plaintiff waited just a month before filing the application. She asked the Court to look at the Plaintiff's conduct. That the Plaintiff has not been very patient or accommodating. It is not true that the payment was made because of the application. That she sent an email to the Permanent Secretary requesting to have Mr. Wallace's name added to the list of outstanding payments so that payment could be made. That the matter of the

damages has been resolved. That the only payment outstanding is costs. That the Attorney General was able to make the payment before the new budget. It had nothing to do with the application. The application was filed on June 2, 2022 . We received it by our receipt stamp on June 22. There is a system in place. It goes through the front desk, to our Registry and then it goes up the chain to the Director of Legal Affairs, she is the last person it goes to, she stamps it, it was stamped June 25 by her. Payment was made the July 4.

9. Miss Ingraham submitted that the Plaintiff's conduct has not been accommodating. A substantial amount, a lump sum of \$134,000.00 was paid by July 29. There was nothing in the Consent Order to say that the amount had to be paid by a certain time, unlike the first order. The Consent Order does not have a specific time that the sums had to be paid and the Consent Order specified a certain amount for the costs of the interlocutory applications. There was no deadline for the payments to be paid.
10. Mr. Knowles submitted in final Reply that Miss Ingraham received the Summons but has not responded by way of Affidavit evidence. That he received no response from Miss Ingraham. That she could have written to him after she made payment late in June and they could have agreed to vacate this matter. She failed to engage in correspondence with him. What was the Plaintiff supposed to do? The Plaintiff was compelled to bring the application. That the Plaintiff served the Defendant with a 14 page Affidavit and Skeleton Arguments but he has to guess what Miss Ingraham intends to say. The Plaintiff did not know that payment was coming. Mr. Knowles asked the Court to consider a request for all of the costs. The payments were never paid on time. Payments coincided with an application being made. That he sent emails and correspondence out and to Miss Ingraham and got zero response. The Plaintiff asks the Court to award him 2/3 of what it is asking for.
11. With leave Mrs. Ingraham submitted that the Plaintiff is asking the Court for other costs in addition to the costs for this application. That those applications have been dealt with in the Consent Order in the sum of \$5,500.00 (See the April 29, 2022 Order). The Order has been perfected and filed. The lack of communication was

not intentional. That she was on vacation when the emails came in and Mr. Knowles would have seen that.

12. With leave, Mr. Knowles submitted that multiple emails were sent before she went on vacation. That he got no response. That the Plaintiff was left in the dark. That Miss Ingraham should be making an application for relief from sanctions.

Analysis and Conclusions

The Law

13. Pursuant to Order 59 of the Rules of the Supreme Court the Court has the power to make orders for costs. The Court has a wide discretion particularly in cases involving contempt of court proceedings.
14. I accept Miss Ingraham's Submission that these are not contempt proceedings. The Plaintiff's application is for Leave to commence contempt proceedings. But as argued by Mr. Knowles, as can be seen by the introduction hereinbefore-mentioned, payments by the Defendant have always been forthcoming after being brought back before the Court on applications for leave to commence committal proceedings since December 31, 2020 when the matter was formally settled. Further, a balance in respect of the costs is still due, albeit a small one. Mr. Wallace has been a patient and accommodating Plaintiff in the circumstances, contrary to Miss Ingraham's submissions in this regard. I am not, however, minded to revisit the previous interlocutory applications and the costs orders made therein. Counsel came to an agreement of \$5,500.00 for those costs in a Consent Order and I can find no real justification for revisiting the sums agreed to by Counsel. I am not however satisfied with the reasons given by Counsel for the Defendant for the almost 2 months delay (before the filing of the application on June 2, 2022). I accept Mr. Knowles submission that had the Defendant communicated the reasons for the delay and the fact that Miss Ingraham was on leave the Plaintiff may have taken a different stance. It is clear from both Counsel that there was no communication from the Defendant during the almost 2 months before the filing of the application. The Plaintiff ought not to be prejudiced by any internal processes in the Attorney

General Office. It may be that the internal processes need to be revisited and expedited.

15. I hereby award the plaintiff his costs accessioned by the application filed on June 2, 2022. Mr. Knowles has asked for two thirds of the costs set out in the Plaintiff's Affidavit filed on June 10, 2022. Miss Ingraham has submitted that no costs ought to be ordered at all. I indicated at the hearing that if I determined that costs should be awarded I would fix them and I have done so as follows:

Plaintiff's Costs for his application filed June 2022

Item	Date	Particulars	Dis. (\$)	Hours	Prof. Charges (\$)	Prof. Charges Allowed
2	4/6/2022 5/6/2022	Preparation of Affidavit for Emmanuel Wallace dated June 2022. Re: 2015/CLE/gen/FP/00150	Estimated 180		2,000.00	2,000.00
3	1/6/2022	Preparation of Certificate for Emmanuel Wallace dated June 2022. Re: 2015/CLE/gen/FP/00150. 2 Pages x 4 = \$8.00	8.00	0.50	250.00	250.00
4		Court appearances before the Madam Justice Adderley. Including preparation the day before leading up to the hearing		2.00	1,000.00	1,000.00
5		Court appearances before Madam Justice Adderley. Including preparation the day before leading up to the hearing. 08.08.22		2.00	1,000.00	500.00
6		Conference call(s) with Attorney of the Defendant as to the Court Order.		0.25	125.00	125.00
7		Preparation of Order for Emmanuel Wallace dated June 2022. Re: 2015/CLE/gen/FP/00150. After consultation with Counsel for the Defendant.		2.50	1,250.00	750.00

8		Attending to service of Order on the Defendant		0.25	125.00	125.00
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TOTAL DISBURSEMENTS	\$ 200.00
TOTAL DISBURSEMENTS ALLOWED	\$ 200.00
TOTAL PROFESSIONAL CHARGES	\$17,750.00
TOTAL PROFESSIONAL CHARGES ALLOWED	\$ 9,750.00
<u>TOTAL ALLOWED</u>	<u>\$ 9,950.00</u>

Disposition

16. The Defendant shall pay the Plaintiff's costs occasioned by this application which I have fixed in the sum of \$9,950.00.

This 8th day of August, 2022


Petra M. Hanna-Adderley
Justice