

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

2017/CLE/gen/00717

BETWEEN

BOLINGBROKE LIMITED

Plaintiff

AND

SUMMIT INSURANCE LIMITED

First Defendant

AND

INSURANCE MANAGEMENT (BAHAMAS) LIMITED

Second Defendant

AND

ISLAND HERITAGE INSURANCE CO. LTD.

Third Defendant

Before Hon. Chief Justice Sir Ian R. Winder

**Appearances: Vanessa Smith with Miguel Darling for the Plaintiff
Camille Cleare with Viola Major for the First and Third
Defendants**

DECISION

WINDER, CJ

1. On 1 March 2023 I gave judgment in this insurance claim. Paragraphs 38-40 of the Judgment provided as follows:

Conclusion

38. *In the circumstances therefore, the value of Bolingbroke's assessed claim (without deduction for underinsurance is as follows:*

1) Buildings Claim (\$1,016,000.00 less deductible of \$450,000)	\$571,735.26
2) Contents Claim (unproven)	<u>\$-----</u>
	\$566,000.00

39. *Taking into account the underinsurance, the true value of the claim is as follows:*

$$\frac{4,500,000}{7,234,000} = 0.622 \quad x \quad 566,000 = \$352,052$$

40. *Judgment is therefore given for Bolingbroke in the amount of \$352,052.*

2. The Court and the parties accept that the deductible ought to have been accounted for after resolving the question of underinsurance rather than before as was treated with in the 1 March 2023 judgment. In the result the appropriate calculation ought to have been the following:

Claim of \$1,016,000 taking into account the underinsurance

$$\frac{4,500,000}{7,234,000} = 0.622 \quad x \quad \$1,016,000 = \$632,015.48$$

Applying the Deductible of \$450,000:

$$\$632,015.48 - \$450,000 = \$182,015.48$$

The appropriate judgment amount ought to therefore have been the sum of \$182,015.48.

3. The parties have now made submissions as to the appropriate order for Costs. Each party claims to have been the successful party. The Plaintiff asserts that it has expended \$305,398.96 plus \$22,202.40 in disbursements in the prosecution of the claim whilst the Defendants asserts an expenditure of \$436,411.39 in defending against the claim.

4. In finding for the Plaintiff in the amount of \$182,015.48, the court has determined that it has a measure of success. The Plaintiff however has lost on a number of the issues fought in the action. 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, that costs should follow the event and that the successful party ought to be paid their costs unless there are cogent reasons to depart from this rule. In my view however, the Plaintiff lost as many issues as it won. The amount awarded is a mere fraction of the sum claimed. Each party ought therefore to bear their own costs in pursuing the action. This accords with a recent decision of the Court of Appeal in the case of ***Douglas Ngumi v Carl Bethel [2020] 1 BHS J No 103*** (confirmed on appeal to the Privy Council) where the appellant Ngumi was successful in obtaining an award of \$750,950 (up from the \$641,000 awarded by the trial judge). In the appeal Ngumi had contended for a sum of \$11,000,000 and the Court of Appeal determined that the appropriate Order for costs would be for no order as to costs.

Dated the 27th day of June 2023



Sir Ian R. Winder
Chief Justice