

COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

HCVAP 2008/007

BETWEEN:

**[1] THE ATTORNEY GENERAL OF THE COMMONWEALTH
OF DOMINICA**

**[2] MINISTER OF EDUCATION, HUMAN RESOURCE
DEVELOPMENT, SPORTS AND YOUTH AFFAIRS**

Appellants

and

[1] STEWCO CONSTRUCTION COMPANY LTD.

[2] STEWART PARIS

Respondents

Before:

The Hon. Mr. Michael Gordon, QC

Justice of Appeal [Ag.]

Appearances:

The Attorney General's Chambers for the Appellants

Letang & Ducreay for the Respondents

2008: December 16

JUDGMENT

[1] **GORDON, J.A. [AG.]:** This is an appeal against the decision of the learned judge to award prescribed costs on an application for entry of default judgment on a claim for damages for breach of contract.

[2] The respondents, the claimants in the court below, were contracted by the government to complete construction of a development complex. Certain works were completed and, in accordance with the contract, a statement of the estimated

value of the works completed was submitted for the approval of the engineer. The engineer approved the sum of \$811,428.37 to be paid to the respondents. In breach of contract, the appellants/defendants (“the appellants”) refused to pay the approved sum or any sum.

- [3] By a claim form dated 21st June 2007, the respondents claimed damages for the specified amount of \$811,428.37, interest and prescribed costs pursuant to rule 65.5 of the **Civil Procedure Rules 2000 (CPR 2000)**. By a statement of claim of that date, the respondents also claimed general damages for additional losses suffered in consequence of the breach of contract. No defence was filed and the respondents made an application for permission to enter default judgment. The claim for general damages was abandoned.
- [4] It would appear that the appellants paid a portion of the claimed debt, leaving an outstanding sum of \$260, 219.64, excluding interest. It is against this amount that a prescribed costs award of \$24, 525.00 was made, having been reduced by 45% pursuant to Appendix C of Part 65 of the **CPR 2000** which applies to a claim concluded prior to trial.
- [5] The issue for determination on this appeal is whether the learned judge erred in awarding prescribed costs as opposed to fixed costs.
- [6] As a general rule, a party is entitled to prescribed costs only if the fixed costs regime does not apply. Fixed costs are applicable to a claim for a specified sum of money as provided in Appendix A of Part 65. Notably, Appendix A, Part 1 contemplates the application of fixed costs on a claim for a specified sum of money where default judgment under Part 12 is entered.
- [7] The issue as to whether a prescribed costs award was correct in the circumstances turns on whether the claim was for payment of a specified sum of money.

- [8] It is clear that the claim as originally entered was for both a specified sum of money and for an unspecified amount being a claim for general damages, which would have been subject to assessment. However, upon application for default judgment, the claim for general damages was abandoned so that that which was claimed was the balance due on the specified amount claimed, being \$260,219.64. In the circumstances, the fixed costs regime is applicable. The learned judge accordingly erred in awarding prescribed costs.
- [9] I would therefore allow the appeal, set aside the decision of the learned judge and award fixed costs in the sum of \$2500.00 to the respondents. Costs on the appeal are awarded to the appellants in the sum of \$1667.00, being two thirds of the amount awarded in the court below.

Michael Gordon, QC
Justice of Appeal [Ag.]