

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCV2024/0084

BETWEEN:

[1] REBECCA ORMOND, A MINOR BY JONAH
ORMOND, HER FATHER AND NEXT FRIEND
[2] CYNTHIA JOSEPH-LAMAZON

Claimants

and

[1] GLENN PROSPER
[2] SHERMAIN PROSPER

Defendants

Appearances:

Ms. Mandi A. Thomas, Counsel for the Claimants
Mr. Wendel Alexander, Counsel for the Defendants

2025: May 14th, 19th, 23rd.

RULING ON CLAIMANT'S APPLICATION FOR BUDGETED COSTS

[1] **MICHEL, M.:** Before the Court is an application by the Claimants for an order pursuant to rule 65.8 of the Civil Procedure Rules (Revised Edition) 2023 ("**CPR 2023**") that a costs budget for these proceedings be set.

[2] The grounds of the Claimants' application are:-

1. The Claimants do not wish to rely on prescribed costs in these proceedings as they are concerned and verily believe that the same will be wholly disproportionate to actual costs incurred and to be incurred.
2. The Claimants estimate that the value of their joint claims, at its highest, will attract prescribed costs of significantly less than \$10,000.00 based on the scale of prescribed costs.
3. The costs set out in the budget are reasonable and proportionate in the circumstances of the Claimants' case and are therefore justified.
4. A cost budget will ensure that the Claimants recover all costs incurred these proceedings.

- [3] The Claimants' application was accompanied by an affidavit in support; a statement of the amount the Claimants wish to be set as the cost budget and how the budget has been calculated; and the written consent of the Claimants.
- [4] The Claimants propose a total costs budget \$24,820.11, comprising fees of \$23,848.11 (inclusive of 17% Antigua and Barbuda Sales Tax ("**ABST**")) and disbursements totaling \$972.00.
- [5] Following a ruling of the Court, the Defendants filed an affidavit in response to the Claimants' application.

Costs Generally

- [6] CPR 65.3 provides the ways in which costs are to be quantified.

"65.3 Costs of proceedings under these rules are to be quantified as follows –

- (a) where rule 65.4 applies – in accordance with the provisions of that rule; and
- (b) in all other cases if, having regard to rule 64.6, the court orders a party to pay all or any part of the costs of another party, in one of the following ways –
 - (i) costs determined in accordance with rule 65.5 ("prescribed costs");
 - (ii) costs in accordance with a budget approved by the court under rule 65.8 ("budgeted costs"); or
 - (iii) (if neither prescribed nor budgeted costs are applicable), by assessment in accordance with rules 65.11 and 65.12."

- [7] Generally, where the fixed costs do not apply (CPR 65.4) costs of proceedings are to be calculated on the prescribed costs basis. The Court, however, may also order that costs be paid in accordance with a budget approved by the Court. The Court may also make an order for assessed costs in appropriate circumstances.

The Law on Budgeted Costs

- [8] The Court is empowered by CPR 65.8 to set a costs budget. The rule provides:-

"Budgeted costs

65.8 (1) A party may apply to the court to set a costs budget for the proceedings.

(2) An application for a costs budget must be made at a case management conference.

(3) The application may be made by either or both parties but an order setting a costs budget may not be made by consent unless all relevant parties are bodies corporate.

(4) An application for a costs budget must be accompanied by

–

(a) a statement of the amount that the party seeking the order wishes to be set as the costs budget;

(b) a statement showing how the budget has been calculated and setting out in particular –

(i) a breakdown of the costs incurred to date;

(ii) the anticipated amount of any expert witness fees and whether or not such fees are included in the budget;

(iii) the disbursements other than expert fees that are included in the budget;

(iv) the fees that are anticipated to be paid to any legal practitioner other than the legal practitioner on record for advocacy (including advocacy by a King's Counsel, a Senior Counsel or more than one legal practitioner), advising or settling any document;

(v) the hourly rate charged by the legal practitioner (or other basis of charging);

(vi) a statement of the number of hours of preparation time (including attendances upon the party, any witness and any other party to the proceedings) that the legal practitioner for the party making the application has already spent and anticipates will be required to bring the proceedings to trial; and

(vii) what procedural steps or applications are or are not included in the budget; and

(c) the written consent from the client in accordance with rule 65.9.

(5) A party may apply to vary the terms of an order made under this rule at any time prior to the commencement of the trial but

no order may be made increasing the amount of the budgeted costs unless the court is satisfied that there has been a change of circumstances which became known after the order was made.”

- [9] It is clear, however, based on the provisions on budgeted costs under Part 65 of CPR 2023 that the Court must be satisfied that each party fully understands the consequences of the order that is being sought. CPR 65.9 is instructive in this regard:-

“Client’s consent to application for budgeted costs

- 65.9 (1) The court may not make an order for budgeted costs unless –
- (a) the court satisfies itself that each party fully understands the consequences of the order that is being sought as to –
 - (i) the party’s liability for costs to the party’s own legal practitioner, whether the party obtains an order for costs against any other party or not;
 - (ii) the party’s liability to pay costs in the budgeted sum to the other party if that other party obtains an order for costs against the party; and
 - (iii) what the party’s liability might be under paragraphs (i) and (ii) if rule 65.5 applied;
 - (b) the consent under sub-paragraph (c) is in a separate document which –
 - (i) deals only with the question of budgeted costs;
 - (ii) gives an estimate of the total costs of the proceedings as between the legal practitioner and the client;
 - (iii) is signed by the party in person;
 - (iv) states the legal practitioner’s estimate of what the prescribed costs appropriate to the proceedings would be; and
 - (v) sets out the basis of that estimate including the amount of any hourly charge;
 - (c) there has been filed a document recording the express consent of the party in person to the application and to any order made as a consequence of the application; and
 - (d) the party seeking the order is present in person when the application is made except where–
 - (i) that party is a body corporate; or
 - (ii) for some exceptional reason this is impracticable.
- (2) The written consent of the client must not be disclosed to the other party.

(3) This rule also applies to any other party personally who consents to or does not oppose an order for a costs budget.”

- [10] The Court is of the view that the provisions under CPR 68.9 have been satisfied on the present application so that the Court is empowered with the discretion to make an order for budgeted costs.
- [11] It is recognised in this jurisdiction that the applicable rules on budgeted costs do not prescribe the circumstances when a costs budget should be made and that the considerations for setting a costs budget are “at large”.¹ In **Yvonne Martin v Caribbean Distribution Ltd trading as Christo’s Supermarket**, Glasgow M [Ag.] opined however, that the considerations would be ‘circumscribed by the guidance given by the rules on assessing costs. In particular, in respect of all deliberations on costs in which the court has a discretion, the court must take into account all the circumstances pursuant to Part 65.2 (3) of the CPR 2000.’
- [12] Glasgow M [Ag.] in **Yvonne Martin** further opined that in setting a costs budget, reasonableness is at the core of the assessment exercise. Thus, the Court must decide whether the sum proposed is reasonable and proportionate.
- [13] In considering the Claimants’ application, the Court was further assisted by detailed guidance on the budgeted costs regime in the persuasive Court of Appeal judgment from Trinidad and Tobago in **Kumar Mahabir v Sarim Al-Zubaidy**.² The Trinidad Court of Appeal made it clear that on a budgeted costs application, an applicant must illustrate what are the prescribed costs in the matter for the Court to determine whether setting a budget would be appropriate for that case. This is an important factor in the Court’s consideration of whether the proposed costs budget is reasonable and proportionate.
- [14] At paragraph 64 of **Kumar Mahabir**, the Trinidad and Tobago Court of Appeal further opined as follows:-

“64 The Court when exercising any discretion in the case to set a costs budget must give effect to the overriding objective. The overriding objective is to enable the Court to deal with cases justly. In determining whether a costs budget is appropriate, the Court must consider whether to do so, that the parties will be kept on equal footing; it will save expense; it is proportionate to

¹ Milhawke Holdings (Bequia) Ltd et al v Jorg “Stanley” Dornieden et al SVGHCV2010/0301 (delivered 14th October 2012, re-issued: 19th November 2013, unreported) at para 50; Yvonne Martin v Caribbean Distribution Ltd trading as Christo’s Supermarket ANUHCV2012/0805 (delivered 27th June 2014, unreported).

² TT 2021 CA 68 at para. 69.

the value of the claim, the importance of the case, the complexity of the issue and the financial position of the parties. This is not a high threshold to cross but a filtering exercise to ensure that entertaining the budget would be a reasonable and proportionate exercise of the Court's discretion.

65 The concept of proportionality is a critical feature of the overriding objective. Indeed, as discussed above, it also lies at the heart of costs considerations. The considerations the court will take into account in Part 1 CPR to determine whether to exercise a discretion gives effect to the overriding objective is not exhaustive.”

The Claimants' Position

[15] The Claimants' position on the costs budget is that liability having been admitted early in the proceedings, it was hoped that this matter would have been settled, but it was not. In preparation for the trial of the issue of damages, the 1st Claimant became concerned about the increasing costs in pursuing this matter and whether the Claimants would be awarded sufficient costs at the end of the matter. The Claimants contend that based on the nature of the claim, prescribed costs according to CPR 2023 may not be adequate and that on review of the matter as a whole, they find that prescribed costs would be wholly disproportionate in compensating them for the expense to which they have been put in pursuing their legal rights.

The Defendants' Position

[16] The Defendants in their affidavit in response to the Claimant's budgeted costs application contend that the Claimants' proposed costs budget is unreasonable and that and in any event, costs should be awarded in the normal course on the prescribed costs basis.

Discussion

[17] I believe in assessing the reasonableness of the proposed cost budget, as outlined in the above authorities, it is important to consider the cost award in these proceedings on the prescribed costs basis. This is because in the circumstance of this case costs would generally be awarded in accordance with the prescribed costs regime.

- [18] Having read the Claimants' statement of case and written submissions, taking the Claimants' case on the assessment of damages at its highest, the maximum prescribed costs award to the Claimants on the face of their case would be as follows:-

1st Claimant

At home medical assistance	\$1,200.00
General damages for pain, suffering and loss of amenities	\$15,000.00
General damages for future medical expenses	\$2,180.00

2nd Claimant

Out of pocket expenses	\$ 460.00
Loss of earnings	\$15,000.00
General damages for pain, suffering and loss of amenities	\$25,000.00

Total Award: \$58,840.00

55% of Prescribed costs in accordance with CPR 65.5 and Part 65 appendices B and C: **\$6,229.30**

- [19] The Claimants' proposed costs budget is \$24,820.11. This is far more than any potential award of costs to the Claimants on the prescribed costs scale.
- [20] I am cognizant that the Court must also consider whether in all the circumstances, an application for budgeted costs gives effect to the overriding objective and that proportionality and reasonableness is an important consideration in the exercise
- [21] I note that the Claimants' application for budgeted costs was made at quite a late stage in these proceedings, at the point when directions for an assessment of damages had been given following judgment on liability by consent. However, a notable revision to the budgeted costs provisions in CPR 2023 was that the rule no longer stipulates that an application for a costs budget must be made at or before the first case management conference. The revised rule simply provides that the application must be made at a case management conference. This to my mind gives greater flexibility in the timing of such applications. Whilst the timing of the application is no bar, it is a matter that will be considered further.
- [22] The Claimants basis for their budgeted cost application is their concern about the increasing costs of the litigation and that prescribed costs may not be adequate. In her affidavit in support of the application, the 2nd Claimant stated that liability was admitted by the Defendants at an early stage in the proceedings and the Claimants hoped that the Defendants would have made greater attempts to settle the matter out of court. She stated that the Claimants wrote to

the Defendants before and during the proceedings regarding settlement and the parties were referred to mediation and the Claimants had high hopes that the matter would be settled and therefore did not think to apply to the Court for a costs budget at an early stage.

- [23] The Claimants' claim is relatively simple. The Claimants were walking along a public road in the vicinity of the Defendants' premises. The Defendants' three dogs ran out the open gate of the Defendants' premises and attacked and injured the Claimants. As a result of the incident and the injuries they sustained, the Claimants initiated these proceedings seeking damages pursuant to section 5 of the **Law Reform (Miscellaneous Provisions) Act**,³ alternatively damages for personal injuries sustained by the Claimants a result of the negligence of the Defendants. The Defendants filed a defence to the Claimants' claim denying liability. The Claimants subsequently filed an application to strike out the Defendants' defence. At the hearing of the strike out application, the Parties consented to judgment being entered for the Claimants on the issue of liability with damages to be assessed by the Court. Thus, the only issue remaining for determination by the Court is the issue of damages to be awarded to the Claimants.
- [24] The Claimants seek special and general damages including general damages for pain, suffering and loss of amenities on their claim. It is trite that special damages are to be strictly pleaded and proved. Further, the well-known principles concerning general damages for pain suffering and loss of amenities as outlined in the seminal case of Cornilliac v St. Louis⁴ would be applicable to the present case. There are no complex legal or factual issues which arise. Neither party has sought to adduce any expert evidence for the assessment of damages and it was explicitly noted during the proceedings that the Claimants would not be seeking to call an expert pursuant to Part 32 of CPR 2023.
- [25] Although the proceedings may be simple, the matter is important to the Parties as the two Claimants are seeking to recover damages for injuries and suffering from the attack by the Defendants' dogs. Although the Claimants have brought a single claim, the damages they seek to recover are separate based on their individual injuries.
- [26] The Defendants were faced with strict liability under the **Law Reform (Miscellaneous Provisions) Act** for the incident and in the alternative, for the tort of negligence on the Claimants' claim, on which they conceded the issue of liability. The Defendants undoubtedly would be seeking to limit any damages to be paid to the Claimants in the circumstances.

³ Cap. 244, Laws of Antigua and Barbuda.

⁴ (1965) 7 WIR 491.

- [27] There were certain criminal proceedings against the Defendants in relation to the same incident relating to the present claim and it was not disputed that the Defendants previously paid certain sums to the Claimants in settlement of their medical expenses. The Defendants however, initially denied liability on the Claimants' claim in their defence and it was only in the face of an application to strike that the issue of liability was consented to.
- [28] After the issue of liability was settled, the Parties were referred to mediation on the issue of the assessment of damages. The Parties, however, did not settle at mediation. Directions were therefore issued for the assessment of damages. The Claimants applied for an extension of time to comply with the directions for assessment of damages, the vacating of the date of the assessment of damages and fixing the date for the assessment as a case management conference. It was at this point in time that the Claimants' application for budgeted costs was made. Thus, the issue of budgeted costs had not been raised earlier in the proceedings.
- [29] There have also been costs orders made against the Defendants or their counsel in favour of the Claimants during the course of these proceeding. Costs were granted to the Claimants consequent upon the adjournment of the first case management conference of this matter due to the absence of the Defendants and their counsel at the first case management conference. Costs were also granted to the Claimants on the strike out application which was not argued on its merits as the Parties consented to judgment on liability. A further procedural costs order against counsel for the Defendants was also made.

Conclusion on Whether an Order for Budgeted Costs should be Made

- [30] I have estimate that the maximum amount the Claimants could recover in costs at the end of these proceedings on the prescribed scale is \$6,229.30. This costs award represents 55% of the prescribed costs that would have been recoverable based on the stage the claim reached, the issue of liability having been concluded at the adjourned case management conference. The Claimants seek a cost budget of \$24,820.11.
- [31] As mentioned previously, this case involves two Claimants separately seeking damages for injuries suffered in the incident in this case. This in my view would present additional work and additional costs which would not be the case in a personal injuries claim involving a single claimant. Multiple witness statements must be taken and filed and two sets of legal submissions appropriate to the injuries suffered by each claimant must be made to the Court. Although the Court has considered what a maximum prescribed costs award to the Claimants

could be, this figure may well end up being lower as the Claimants may not recover the full award of damages they seek.

[32] Further, even though the issue of liability was conceded early in the proceedings, as has already been stated, this concession was prompted by the Claimants' strike out application and the Defendants had initially sought to deny liability, and could have limited their defence to the issue of quantum, thereby saving costs.

[33] Having had regard to all the considerations above, I am of the view that in the present proceedings, and award of costs on the basis of budgeted costs would enable the court to deal with the case justly. It would be a reasonable and proportionate exercise of the Court's discretion as it gives the Court an opportunity to ensure that costs are proportionate in light of all the circumstances of the case.

[34] Although I believe that an order for a cost budget should be made, I am not of the view that the Claimants' proposed costs budget of \$24,820.11 is reasonable and proportionate. The Court ought not to accept a cost budget wholesale and uncritically. The Court must exercise its discretion when setting a cost budget. In the present case, having considered the global proposed costs budget, I am of the view that a much lower costs budget would be appropriate, although higher than prescribed costs.

[35] I agree with Glasgow M [Ag.] in Yvonne Martin and the Court of Appeal of Trinidad and Tobago that in considering the costs budget, the Court should have regard to CPR 65.2. What the Court is aiming to ensure is that the cost budget is reasonable and proportionate.

[36] For the sake of transparency, I set out below the Claimants' costs budget, and identify the items I do not consider reasonable and my reason for doing so. This has enabled the Court to set what it considers to be a reasonable and proportionate cost budget in the circumstances of this case.

Item	Disbursement	Fees	Comments
Letter before action		\$350.00	This item ought to have been claimed as an item of special damage and will not be allowed under the costs budget.
Consultation with clients for 1 hour at \$600.00 per hour with C. Debra Burnette ("CDB")		\$600.00	Reasonable

Disbursement to copy record from the Magistrate's Court	\$30.00		Not reasonably incurred, additionally, photocopying not generally allowed.
Preparation of Claim Form and other ancillary documents including Certificate of Next Friend for 6 hrs at \$400.00 per hour by Mandi A. Thomas ("MAT")		\$2,400.00	For reasons outlined above in this decision, I am of the view that these proceedings are straight forward. I consider the sum of \$2,000.00 to be more reasonable.
Disbursement on filing the Claim Form and Statement of Claim and other ancillary documents including Certificate of Next Friend	\$74.00		Reasonable
Disbursement on filing Affidavit of Service of Claim Form and Statement of Claim and other ancillary documents	\$22.00		Reasonable
Reviewing Defence and discussion with clients and taking further instructions for 30 mins at \$400.00 per hour by MAT		\$200.00	Reasonable
Preparation of Application to strike out the Defence filed 26.4.2024 for 30 mins at \$400.00 per hour by MAT, where costs order of \$300.00 made by the Court on 9.7.2024 to be paid by the Defendants.		\$200.00	Costs order already made on strike out application. The Court will not allow as part of costs budget.
Disbursement on filing Application	\$42.00		Not allowed for above reason.
Attendance in Chambers at First Case Management Conference on 10.06.2024 where matter adjourned and costs order of \$350.00 made to be paid by the Defendants		\$500.00	Not reasonable. The case management conference would not ordinarily last more than 15 minutes and counsel appeared remotely. Additionally, costs were awarded on adjournment and further costs will not be included in the costs budget.

Disbursement on filing Order made 10.06.2024	\$27.00		Reasonable
Attendance in Chambers for further case management on 9.7.2024 and hearing of Application to strike out Defence where procedural costs order of \$500.00 made to be paid by the Defendants.		\$500.00	Not reasonable. The case management conference would not ordinarily last more than 30 minutes and counsel appeared remotely. The application was not contested and costs orders were already made. Further costs will not be included in the costs budget.
Disbursement on filing Order made 9.7.2024	\$27.00		Reasonable
Attendance in Chambers for further case management on 9.10.2024		\$300.00	Reasonable
Disbursement on filing Order made 9.10.2024	\$27.00		Reasonable
Preparation of letter to opposing Counsel setting out details of Claim for 2 hrs and 15 mins		\$900.00	Not reasonable. Counsel for the Defendants would have already been aware of the details of the Claimants' case as the proceedings had already been commenced and there was a pre-action letter. The sum of \$300.00 is more reasonable.
Preparation of Mediation Bundle for 30 mins at \$400.00 per hour by MAT		\$200.00	This would not require any significant involvement of counsel. The bundle generally comprises the pleadings and any other document the Parties intend to rely on. I consider the sum of \$150.00 to be more reasonable
Disbursement on payment of Court ordered Mediation fee	\$400.00		Reasonable for the purposes of efforts to settle the matter.

Attendance at Mediation for 3 hrs total at \$400.00 per hour by MAT on 26.11. 2024		\$1,200.00	Mediation is a voluntary out of court process which the Parties undertake to settle a matter amicably. Mediation is for the Parties themselves and attendance of counsel is not necessary. I would discount this sum to \$600.00
Attendance in Chambers on 11.12.2024 to report on Mediation		\$300.00	Reasonable
Disbursement on filing Order made 11.12.2024	\$27.00		Reasonable
To review Defendants' counter-proposal and take instructions and preparation of letter in reply for 50 mins at \$400.00 per hour by MAT		\$333.00	I consider the sum of \$300.00 to be reasonable.
Attendance in Chambers on 27.01.25 for further case management		\$300.00	Reasonable
Disbursement on filing Order made 9.10.2024	\$27.00		Reasonable
Meeting with client in preparation of witness statements for 1 hour at \$400.00 per hour by MAT		\$400.00	Reasonable
Preparation of List of Documents and Bundle of Documents for assessment of damages for 3 hours at \$400.00 per hour by MAT		\$1,200.00	This is unreasonable. The preparation of the bundle would require limited instructions to administrative staff from counsel. I consider that the sum of \$300.00 is more reasonable.
Application for Extension of Time to file evidence and submissions with Affidavit in Support made on 27.02.2025 for 1 hour at \$400.00 per hour by MAT		\$400.00	Not reasonable to include as part of the costs budget.
Disbursement on filing of Application and Affidavit in Support	\$34.00		Not reasonable to include as part of the costs budget.
Preparation of three (3) witness statements for assessment of damages		\$2,400.00	I consider the sum of \$1,200.00 to be reasonable. A

hearing for 6 hours at \$400.00 per hour by MAT			reasonable sum has already been considered in relation to meeting to discuss the witness statements.
Preparation of Application for a costs budget for 4 hours at \$400.00 per hour by MAT		\$1,600.00	I would not include the cost of the application as part of the budget. A moderate cost award can be made separately for the application.
Disbursement on filing Application for costs budget and ancillary documents	\$88.00		I would not include as part of the costs budget for the above reasons.
Costs to be incurred to Trial /Assessment of Damages			
Preparation of written legal submissions in support of Claim for 6 hours at \$400.00 per hour by MAT		\$2,400.00	I consider the sum of \$1,600.00 to be more reasonable given the nature of the case.
Disbursement on filing Written Submissions and Bundle of Authorities	\$44.00		Reasonable
Attendance in Chambers for further case management on 8.4.2025 at \$300.00 per day		\$300.00	Reasonable
Disbursement on filing Order made 8.4.2025	\$27.00		Reasonable
To review the Defendants' evidence and written submissions and to prepare client's and Counsel for examination and cross-examination at the assessment of damages hearing for 5 hours at \$400.00 per hour by MAT		\$2,000.00	I consider the sum of \$800.00 to be more reasonable
To preparation and filing of Assessment Hearing Bundle for a minimum of 1 hr at \$400.00 per hour by MAT			This would involve little involvement of legal counsel. I consider the sum of \$150.00 to be more reasonable.
Filing of Assessment Hearing Bundle	\$22.00		Reasonable
To attend assessment of damages hearing at \$1,000.00 for one (1) day			The assessment should be no more than 90 minutes. The sum of

only, to each additional day - \$750.00			\$600.00 is more reasonable.
Disbursement on filing order made at assessment of damages hearing	\$27.00		Reasonable
Total (including disbursements)			<u>\$11,129.00</u>

[37] Considering all the matters outlined above, I am satisfied that the sum of \$11,129.00 is reasonable and proportionate as budgeted costs for these proceedings. I have not been presented with any authority to support a basis for adding ABST on the legal fees and would decline to do so.

Disposition

[38] For the reason I have outlined above, I have concluded that a costs budget should be set but that the costs budget proposed by the Claimants be discounted. I would therefore set the sum of \$11,129.00 as a reasonable and proportionate cost budget for these proceedings.

[39] I would therefore order as follows:-

1. The Claimants' application for budgeted costs is granted.
2. The costs budget is set at \$11,129.00.
3. The Defendants shall pay the costs of this application to the Claimants summarily assessed in the sum of \$750.00.
4. The Claimants shall have carriage of this Order.

[40] I wish to thank learned Counsel for the Parties for their assistance to the Court.

Carlos Cameron Michel
High Court Master

By the Court



Registrar