

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT LUCIA

SLUHCVAP2022/0010

BETWEEN:

[1] BETHELIA FRANCIS
[2] JANICE SNAGGS

Appellants

and

OMEGA CARIBE LIMITED
(trading as OASIS MARIGOT ST. LUCIA)

Respondent

Before:

The Hon. Mr. Mario Michel

The Hon. Mde. Margaret Price-Findlay

The Hon. Mr. Trevor Ward

Justice of Appeal

Justice of Appeal

Justice of Appeal

Appearances:

Mr. Horace Fraser and Mr. Lorenzo Francis for the Appellants

Ms. Maureen John-Xavier for the Respondent

2023: March 22;
July 6.

Interlocutory appeal – Striking out – Prescription – Claims made against non-existent entity – Applications to amend claim to substitute the defendant – Whether the amendment was sought after the matter was prescribed – Articles 2122 and 2129 of the Civil Code – Costs quantification – Prescribed costs – Appellate interference with costs award - Whether the master erred in the exercise of his judicial discretion in calculating the costs by basing the value of the claim on the special damages claimed only

Ms. Bethelia Francis and Ms. Janice Snaggs (together “the appellants”) were guests at the Marigot Hotel in St Lucia. On 3rd April 2019, they were on board a cable trolley leading to their hotel room when a cable burst causing them to fall downhill. As a result, they suffered several injuries. They filed claim forms naming Oasis Marigot St. Lucia as the defendant and claimed special damages, general damages as well as costs.

The respondent in an amended acknowledgement of service indicated that their name was ‘Omega Caribe Limited’, a limited liability company, and not Oasis Marigot St Lucia. The respondent subsequently sought to strike out the claims on the ground that the appellants filed a claim against a non-existent entity. This prompted the appellants to file amended claim forms and statements of claim substituting the defendant as, ‘Omega Caribe Limited trading as Oasis Marigot St. Lucia’. The respondent applied to strike out the claims stating that the court should not exercise its jurisdiction to entertain it.

On 1st June 2022, the master delivered his ruling, finding that the amendment sought by the appellants was to add a new defendant, that is, a limited liability company being a separate legal entity, and it was done well after the matter was prescribed. The master decided that the court did not have the jurisdiction to entertain the matter and it was accordingly dismissed. The master also awarded the respondent costs based on the special damages claimed only, which amounted to \$8,975.50 in respect of Ms. Francis and \$8,157.37 in respect of Ms. Snaggs.

The appellants appealed to this Court. Their primary argument was that Omega Caribe Ltd and Oasis Marigot St. Lucia were one and the same and therefore, the proper party was served within the prescribed time, and on that date of service, time stopped running. The respondent submitted that service was made on a non-existent entity and time continued to run, therefore, when the appellants sought to correct the error, the claim had already been prescribed. The issue for the Court on appeal was whether the master erred in concluding that the claim was prescribed thereby preventing the appellants from substituting another defendant in the claim.

The respondent counter-appealed against the master’s decision on costs on the basis that the master erred in the exercise of his judicial discretion when he failed to calculate the costs payable on both the special damages as well as the quantified general damages pleaded by the appellants.

Held: dismissing the appeal and affirming the order of the learned master dated 1st June 2022; dismissing the counter-appeal and affirming the costs order of the learned master dated 5th July 2022; and making no order as to costs, that:

1. Where a claim is filed against a person or entity which does not exist in law, the claim from the outset is a nullity, as opposed to a mere irregularity. Since the claim has not been properly constituted, any attempt by the claimant to amend the claim cannot be entertained as the court has nothing before it which it can grant permission to amend. Therefore, the appellants’ initiation of proceedings against Oasis Marigot St. Lucia, which was not person known to law, gave rise to claims that were incompetent from the outset. Accordingly, the learned master was

correct in finding that the effect of the amendments sought by the appellants was to add a new defendant altogether to the proceedings after the matter was prescribed.

Ingall v Moran [1944] KB 160 applied; **Lucy v WT Henleys Telegraph Works Co. Ltd (ICI Ltd., Third Party)**; **Wild v Siemens Brothers & Co. Ltd.** [1969] 3 All ER 456 applied; **Bryan James v The Attorney General** SLUHCVAP2013/0023 (delivered 22nd April 2014, unreported) distinguished.

2. An action for damages resulting from delicts and quasi delicts are prescribed for 3 years. The debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired. Therefore, the right as well as the remedy is extinguished after the 3 years has passed. There is a clear distinction to be made between the situation where a claim is prescribed and one where the limitation period has expired. In a circumstance where a claim is prescribed, the defendant does not need to plead limitation. Once the evidence shows that the prescribed period has passed, the court has no jurisdiction to hear the matter. Accordingly, the learned master came to the correct conclusion that the claims ought to be dismissed.

Articles 2122 and 2129 of the **Civil Code of Saint Lucia** Cap. 4.01 of the Revised Laws of St Lucia 2013 applied; **Bryan James v The Attorney General** SLUHCVAP2013/0023 (delivered 22nd April 2014, unreported) applied.

3. The appellate court will not interfere with the exercise of the trial judge's judicial discretion unless it is satisfied that the learned judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations or taking into account or being influenced by irrelevant factors and considerations and that as a result of the error or the degree of the error in principle, the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong. This appellate approach applies equally to a trial judge's discretion in awarding costs.

Dufour v Helenair Corporation Limited (1996) 52 WIR 188 applied; **A.E.I. Rediffusion Music Ltd. v Phonographic Performance Ltd** [1999] 1 WLR 1507 applied.

4. General damages are calculated by the court and it is not the claimant's prerogative to dictate the quantum of general damages to the court. As such, where a claimant states a quantified sum for general damages in their claim form and/or statement of claim, the trial judge's calculation of costs associated with that claim may not be based on that quantified sum, but on a quantum arrived through the trial judge's own assessment. Accordingly, the learned the master did not err in calculating the costs awarded to the respondent by basing the value of the claims on the special damages claimed only.

Cornilliac v St. Louis (1965) 7 WIR 491 applied; **The Attorney General of St. Lucia v Godfrey Ferdinand et al** SLUHCVP2018/0032 (delivered 25th June 2020, unreported) applied; **Orin Roberts v Financial and Regulatory Commission** SKBHCV2016/0019 (delivered 14th October 2019, unreported) distinguished; **Harvey McGregor, McGregor on Damages** (19th edn, Sweet & Maxwell 2014) considered.

JUDGMENT

Introduction

- [1] **PRICE-FINDLAY JA:** This appeal arises out of the decision of the learned master on 1st June 2022, wherein both claims of the appellants were struck out and dismissed.
- [2] The appellants, Ms. Bethelia Francis (“Ms. Francis”) and Ms. Janice Snaggs (“Ms. Snaggs”), being dissatisfied with the learned master’s dismissal of their claim, filed a notice of appeal on 18th October 2022.
- [3] The respondent, being dissatisfied with the costs awarded by the learned master, also filed a counter-notice of appeal on 4th November 2022. The counter-appeal concerns the costs award of the learned master on 5th July 2022 where he awarded costs to the respondent in the claim of Ms. Francis in the sum of \$8,975.50, and costs of \$8,156.37 in the claim of Ms. Snaggs, both costs based on the special damages claimed by the appellants.

Brief Facts

- [4] Both appellants were guests at the Oasis Marigot Hotel in Marigot Bay, St. Lucia on 3rd April 2019.
- [5] On the evening of that day, both appellants were on board a cable trolley leading to their room at the hotel, when a cable on the said trolley burst and they fell from the trolley to the ground, a fall of some 50 feet downhill.
- [6] As a result, both appellants suffered several injuries.

- [7] Ms. Francis had a laceration on her right eyebrow. She suffered a displaced comminuted fracture of the distal 1/3 of her left patella. She also had an acute soft tissue sprain, soft tissue injuries in the form of superficial abrasions to her forearms and right buttock.
- [8] Ms. Snaggs received injuries to her head, neck and spine. She was diagnosed with a brain concussion, cervical spine strain and abrasions to her eye, hand, arms and legs, a swollen right hip and multiple bruises to her head and face.
- [9] The appellants filed claim forms on 1st April 2022 naming Oasis Marigot St. Lucia as the defendant. Ms. Snaggs claimed a total of \$120,835.06 in special damages and \$471,835.50 in general damages, plus costs.
- [10] Ms. Francis in her claim, claimed the sum of \$103,340.81 in special damages and \$1,714,187.00 in general damages, plus costs.
- [11] On 12th April 2022 the respondent filed an acknowledgement of service where they answered question 5 – ‘Are your names properly stated on the claim form?’ in the affirmative and indicating that they intended to defend the claim.
- [12] On 19th April 2022 the respondent filed an amended acknowledgement of service and changed the answer to question 5. They stated that their name was not properly stated on the claim form and gave their full name as ‘OMEGA CARIBE LIMITED’. There was no other amendment to the acknowledgment of service.
- [13] On 21st April 2022 the respondent made two applications to the court for summary judgment and/or to strike out the claims of the appellants on the grounds that they had filed claims against a non-existent entity, that is, Oasis Marigot St. Lucia. They asserted that the defendant was not a person, a limited liability company, a partnership nor a body corporate. They further asserted that the defendant was not registered with the Companies Registry in St. Lucia.

- [14] The proper party to the proceedings was Omega Caribe Limited, a limited liability company, registered at the Companies Registry as Company No. 134/1989 with registered offices at Marigot Bay, Castries, St. Lucia. The named defendant being an unregistered trade name.
- [15] The applications to strike out having been filed, the appellants on 3rd May 2022 filed amended claim forms and statements of claim naming the defendant as Omega Caribe Limited trading as Oasis Marigot St. Lucia.
- [16] Interestingly, both the amended claim forms and statements of claim were, according to the affidavits of service, served on 2nd April 2022.
- [17] On 20th May 2022, two applications were filed by the respondent for summary judgment and/or to strike out the amended claims or for a declaration that the court should not exercise its jurisdiction to deal with the claims filed on 3rd May 2022.
- [18] Ms. Snaggs filed an affidavit in response to the application on 31st May 2022, in which she set out the facts of the incident.
- [19] The learned master heard the application and gave ruling on 1st June 2022.
- [20] In his ruling the learned master found that the amendment sought by the appellants was to add a new defendant altogether to the proceedings after the matter was prescribed. He found that the amended claim introduced a limited liability company as the defendant, a limited liability company being a separate legal entity. This amounted to adding an entirely new party to the proceedings after the claim had been prescribed.
- [21] He further found that the court could not have jurisdiction pursuant to the **Civil Procedure Rules, 2000** ("CPR") where jurisdiction was circumscribed by the **Civil**

Code of Saint Lucia (“the Code”).¹ The learned master further found that there had been no proper judicial demand made against the substituted defendant prior to time being prescribed and the court therefore had no jurisdiction in the matter.

[22] It is from this ruling that the appellants appeal.

[23] The appellants filed 10 grounds of appeal, but at the hearing, counsel for the appellants informed the Court that there was only one ground of appeal he was going to pursue, that is:

“Whether the learned master erred when he concluded that the claim was prescribed and the appellants were estopped from substituting another defendant on the claim form and statement of claim.”

[24] The appellants posited that the claim filed on 1st April 2022 and served on the respondent on 2nd April 2022 was not prescribed and further argued that the claim having been filed within the prescribed period was a valid claim which interrupted prescription and thereafter time stopped running.

[25] They further argued that Oasis Marigot St. Lucia was the proper party before the court as there is a properly pleaded claim which has a reasonable prospect of success.

[26] The appellants posited that the correct and proper party was served and the application to substitute Omega Caribe Limited for Oasis Marigot St. Lucia was not barred by prescription because the service of the claim stopped time from running.

[27] They further argued that Omega Caribe Limited and Oasis Marigot St. Lucia were one and the same entity and it was merely a misnomer as a result of an error in nomenclature. Omega and Oasis are indivisible.

¹ Cap. 4.01 of the Revised Laws of St Lucia 2020.

[28] The respondent stated that this was a matter where the party against whom the suit was instituted did not exist in law and therefore the suit as filed was a nullity.

[29] The service which the appellants claim, was service on a non-existent entity and therefore time continued to run as a result. By the time the appellants sought to correct the error by amending the name of the respondent, adding a new party to the proceedings, the claim such as it was, was prescribed.

[30] The respondent further asserted that Part 19 of the CPR did not assist the appellants as limitation is a different concept in law to prescription.

Discussion

[31] The appellants commenced this action on 1st April 2022 against Oasis Marigot St. Lucia. This is an unregistered trade name and is not a person or entity recognised by law. The claim was in negligence – a tort.

[32] Article 2122 of the Code states that an action for damages resulting from delicts and quasi delicts are prescribed by 3 years. Article 1.5 states that the terms ‘delict’ and ‘quasi delict’ indicate an injurious act or incident which in the absence of a contract gives rise to an obligation towards the injured person on the part of another person.

[33] Article 2122 of the Code provides that:

“2122. The following actions are prescribed by 3 years;

1. For seduction, or lying-in expenses;
2. For damages resulting from delicts or quasi-delicts, whenever other provisions do not apply;
3. For wages or salaries of employees not reputed domestics and who are engaged or hired for a year or longer period;
4. For sums due to schoolmasters and teachers, for tuition, and board and lodging furnished by them.”

[34] Article 2129 provides:

“2129. In all the cases mentioned in articles 2111, 2121, 2122, 2123 and

2124, the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired except in the case of promissory notes and bills of exchange, where prescription is precluded by a writing signed by the person liable upon them.”

- [35] It is accepted that the limitation rules are procedural in nature, however in St. Lucia under the Code, the right as well as the remedy is extinguished after the relevant time has passed. Article 2129 uses the words ‘the debt is absolutely extinguished and no action can be maintained after the delay for prescription’.

Was the error in naming Oasis Marigot St. Lucia as defendant the sort of matter where the learned master could have allowed the substitution sought?

- [36] Firstly, the naming of Oasis Marigot St. Lucia as a defendant gave rise to a claim against an entity which did not exist in law. It was not a partnership, a company nor did it have any persona known to law.
- [37] In **Ingall v Moran**,² the plaintiff issued a writ claiming to sue in a representative capacity as administrator of his son’s estate. He took out letters of administration 2 months after filing the writ. It was held that the action was incompetent at the date of its inception by issue of the writ.
- [38] Referring to the incompetent action, Scott LJ opined:
- “It was born dead and could not be served... all subsequent proceedings in the supposed action, including the judgment of the learned county court judge, were likewise nugatory, for, if the action and the pleadings were bad, there was no valid action before the learned judge to try...”³
- [39] By analogy here in this matter, the appellants sued a non-existent entity, Oasis Marigot St. Lucia, therefore from the outset of these proceedings they were incompetent. The proposed defendant was not a defendant at all. The action was

² [1944] KB 160.

³ Ibid at 165.

not properly constituted since the purported defendant could not and was not a proper defendant.

[40] This was not the mere correction of a mis-spelt name, in the instant case what was sought was the substitution of a new and different party as the defendant.

[41] In **Lucy v WT Henleys Telegraph Works Co. Ltd (ICI Ltd., Third Party); Wild v Siemens Brothers & Co. Ltd.**,⁴ Megaw LJ stated:

“I am unaware of any case in which leave to amend a writ has been given in such circumstances: namely where the joinder of a new defendant would be calculated to defeat a right as to limitation which he would have had if an action were to be brought by the plaintiff against him alone.”⁵

[42] Limitation is a procedural issue and does not deal with substantive rights. The benefit a defendant derives from limitation statutes are not substantive benefits but merely give the defendant the right to plead as a defence the limitation period, preventing the claimant from prosecuting his claim.

[43] However, when one examines article 2122 both the right and the remedy become extinguished and there is no need for the defendant to plead limitation. Once the evidence shows that the prescribed period has passed the court has no jurisdiction to hear the matter.

[44] It is clear that in the case at bar, the learned master, had he allowed the amendment, would have been giving the appellants permission to substitute a new defendant and thus would have given the appellants permission to institute proceedings out of time.

[45] Further, having already determined that the original filing was a nullity, there was nothing before the learned master which he could have granted permission to

⁴ [1969] 3 All ER 456.

⁵ Ibid at 468.

amend. The sole remedy open to the appellants was to file a new claim, but time had been prescribed and that option was no longer available to them.

[46] As set out clearly in **Bryan James v The Attorney General**⁶ by Blenman JA (as she then was):

“There is a clear distinction to be made between the situation where a claim is prescribed and one where the limitation period has expired. When a claim is prescribed, not only is the right to bring the claim extinguished, but the remedy is also extinguished.”⁷

[47] In this matter, based on the conjoint effect of articles 2122(2) and 2129 of the Code, this claim became prescribed on 3rd April 2022, as a result, it was not possible for the appellants to in effect bring a new claim against the proper party to the suit, that is, Omega Caribe Limited, after that date.

[48] The learned master in my view came to the correct conclusion that where a claim is prescribed, the court has no jurisdiction to hear the matter and it ought to be dismissed.

[49] The appellants rely on the Court of Appeal decision of **Bryan James** as authority that Omega Caribe Limited and Oasis Marigot St. Lucia are one and the same person in law and are indistinguishable one from the other.

[50] In that case the Comptroller of Customs was the named defendant in the proceedings. The appellant sought to substitute the Attorney General as the correct and proper defendant. The Court held that the nature of the claim or cause of action giving rise to a claim against a public officer as a servant or agent of the Crown was in effect a claim against the Crown. The substitution of the Attorney General as the defendant did not change the fact that it was a claim against the Crown.

⁶ SLUHCVP2013/0023 (delivered 22nd April 2014, unreported).

⁷ Ibid, at held note 3.

- [51] The **Crown Proceedings Act**⁸ provides that the Attorney General is to be the representative of the public officer in any proceedings instituted against such public officers. The Attorney General is to stand in the shoes of that public officer. It is not a separate and distinct cause of action being brought against the Attorney General outside of that created by the delict or quasi delict of the servant or agent of the Crown.
- [52] The situation of this matter differs markedly to that of **Bryan James**. In this matter, the party originally sued, Oasis Marigot St. Lucia, is not a person or entity known to law. It simply did not exist.
- [53] It is clear to my mind that in this case the substitution of a company, a duly registered company, which is a separate and distinct person, amounted to the institution of a fresh cause of action against the company against whom the cause of action laid. The appellants had no cause of action against Oasis Marigot St. Lucia at the time the claim was brought or at any time for that matter.
- [54] In this matter, there could not be said to be proceedings which commenced within the prescribed time against Omega Caribe Limited as the person or party against whom the original suit was filed did not exist and therefore, there was no suit at all. Any period of prescription would have to be calculated from the time when the proceedings were instituted against a proper party, a party clothed with a legal personality.
- [55] The appellants when they purported to file and serve their amended claim forms and statements of claim on the respondent did so after the 3-year period provided for in article 2122 of the Code. The naming of Oasis Marigot St. Lucia was not merely an irregularity, it was a nullity, the claim was not a properly constituted claim at the time when the proceedings commenced. The substitution of Omega Caribe Limited in place of Oasis Marigot St. Lucia was in effect a fresh cause of

⁸ Cap 2.05 of the Revised Laws of St Lucia 2020.

action against a wholly new party and, the prescribed period having expired, both the right and the remedy had been extinguished and were incapable of being revived.

- [56] For the stated reasons, I would dismiss the appeal and affirm the order of the learned master.

Counter-Appeal

- [57] The respondent filed a counter notice of appeal with respect to the costs ordered by the learned master.

- [58] In the judgment below, the learned master invited the parties to make submissions on costs. Thereafter, on 5th July 2022, he ordered the following:

“The Claimants are to pay the Defendant’s costs of these claims together quantified on the prescribed scale at 45% on the value of the claims (being total special damages claimed by each Claimant) in the sum of \$15,131.87 apportioned as follows:

- a. Berthelia Francis total special damages claimed \$103,340.81 – costs payable = \$6,975.50; and
- b. Janice Snagg total special damages claimed \$120,835.86 – costs payable = \$8,156.37.”⁹

- [59] The respondent contends that the learned master erred in calculating the costs in the matter below solely on the special damages pleaded by the appellants. The learned master ought to have calculated the costs on both the special damages pleaded as well as the quantified general damages pleaded by the appellants in their claim. Having not done so, the respondent submits, the learned master fell into error.

- [60] The respondent relies on a decision of the High Court in *St. Christopher and Nevis, Orin Roberts v Financial and Regulatory Commission*,¹⁰ where in interpreting rule 65.5 of the CPR the court stated at paragraph 8 ‘... where the

⁹ See Record of Appeal vol. 1, p. 153.

¹⁰ SKBHCV2016/0019 (delivered 14th October 2019, unreported).

defendant succeeds, prescribed costs will be based on the value of the claim based on the amount claimed by the claimant in the claim form’.

[61] CPR 65.5, which sets out the rules on prescribed costs, states:

“65.5 (1) The general rule is that where rule 65.4 does not apply and a party is entitled to the costs of any proceedings, those costs must be determined in accordance with Appendices B and C to this Part and paragraphs (2) to (4) of this rule.

(2) The “value” of the claim, whether or not the claim is one for a specified or unspecified sum, coupled with a claim for other remedies is to be decided in the case of the claimant or defendant –

(a) by the amount agreed or ordered to be paid; or if the claim is for damages and the claim form does not specify an amount that is claimed, such sum as may be agreed between the party entitled to, and the party liable to, such costs or, if not agreed, a sum stipulated by the court as the value of the claim; or

(b) if the claim is not for a monetary sum it is to be treated as a claim for \$50,000 unless the court makes an order under Rule 65.6(1)(a).

(3) The general rule is that the amount of costs to be paid is to be calculated in accordance with the percentages specified in column 3 of Appendix B against the appropriate value.

(4) The court may –

(a) award a proportion only of such sum having taken into account the matters set out in rule 64.6(4) and (5); and

(b) order a party to pay costs –

(i) from or to a certain date; or

(ii) relating only to a certain distinct part of the proceedings, in which case it must specify the proportion of the fixed costs which is to be paid by the party liable to pay such costs and in so doing may take into account the table set out in Appendix C.”

[62] Based on the reasoning in **Orin Roberts**, the respondent argued that in accordance with Appendices B and C, costs on the value of the claim for Ms. Snaggs ought to be calculated at \$65,446.93, and given the stage of the proceedings, they are entitled to 45% of those costs in the sum of \$29,451.11. As for Ms. Francis the respondent submitted that costs on the value of the claim ought to be calculated at \$118,365.83, and given the stage of the proceedings, they are entitled to 45% of those costs in the sum of \$53,264.62.

[63] The appellants submitted briefly in oral arguments that general damages were in the province of the court only and that none of the parties were at liberty to say what general damages would be awarded by the court. The court having not made any findings in relation to general damages, such damages could not be factored into any computation of costs in those circumstances.

[64] In so far as the respondent counter-appeals against the amount of costs which the learned master awarded, it appeals against an exercise of the master's discretion. The well-known case of **Dufour v Helenair Corporation Limited**¹¹ sets out this Court's approach to appellate interference with the exercise of a judicial discretion. In **Dufour**, the learned Chief Justice Floissac stated as follows at paragraph 8:

"We are thus here concerned with an appeal against a judgment given by a trial judge in the exercise of a judicial discretion. Such an appeal will not be allowed unless the appellate Court is satisfied (1) that in exercising his or her judicial discretion, the learned judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations or by taking into account or being influenced by irrelevant factors and considerations and (2) that as a result of the error or the degree of the error in principle, the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong."

[65] Furthermore, the English Court of Appeal in **A.E.I. Rediffusion Music Ltd. v Phonographic Performance Ltd.**¹² makes clear that the above approach to appellate interference with the exercise of a discretion also applies to an award of costs. Woolfe MR stated as follows:

"It was correctly accepted by the judge that his right to interfere with the tribunal decision on costs was constrained in the same way that this court's discretion is constrained in relation to decisions of judges of first instance. The conventional approach of this court is conveniently summarised by Stuart-Smith L.J. in *Roache v. News Group Newspapers Ltd.* [1998] E.M.L.R. 161, 172 in these terms:

'Before the court can interfere it must be shown that the judge has either erred in principle in his approach, or has left out of account, or taken into account, some feature that he should, or should not,

¹¹ (1996) 52 WIR 188.

¹² [1999] 1 WLR 1507.

have considered, or that his decision is wholly wrong because the court is forced to the conclusion that he has not balanced the various factors fairly in the scale. See per Griffiths L.J. in *Alltrans Express Ltd. v. C.V.A. Holdings Ltd.* [1984] 1 W.L.R. 394, 403 G.”¹³

[66] The learned master determined the value of the claim based only on the special damages which were set out in the appellants’ claim form despite the claim form also quantifying the general damages which the appellants sought to claim as well. I do not agree with the respondent that the learned master was incorrect in adopting this approach for reasons which I will now set out.

[67] It is trite law that the assessment of damages lies within the purview of the court. **McGregor on Damages**¹⁴ is instructive on the differences between special and general damages and states as follows:

“The third meaning of general and special damage concerns pleading. The distinction here is put thus by Lord Dunedin in *The Susquehanna*:
‘If there be any special damage which is attributable to the wrongful act that special damage must be averred and proved, and, if proved, will be awarded. **If the damage be general, then it must be averred that such damage has been suffered, but the quantification is a jury question.**”¹⁵ (emphasis added)

[68] **McGregor** further states:

“The present distinction is set out in regard to personal injury cases by Lord Goddard in *British Transport Commission v Gourley* where he said:
In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as special damage, which has to be specially pleaded and proved. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. **Secondly, there is general damage which the law implies and is not specially pleaded.** This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent

¹³ Ibid at 1523.

¹⁴ Harvey McGregor, *Mcgregor on Damages* (19th edn, Sweet & Maxwell 2014).

¹⁵ Ibid at paragraph 3-005.

disability, compensation for loss of earning power in the future.”
(emphasis added)¹⁶

[69] General damages are calculated by the court taking into account the considerations which are laid out in the oft-cited case of **Cornilliac v St. Louis**,¹⁷ which considerations have been adopted by this Court, as in **The Attorney General of St. Lucia v Godfrey Ferdinand et al**¹⁸ where Fay JA [Ag.] stated at paragraph 24:

“As the learned master correctly recited at paragraph 9 of her judgment, the proper approach to the assessment of a claim for damages is considered in the seminal case of *Cornilliac v St Louis*. In that case, Wooding CJ, sitting in the Court of Appeal of Trinidad & Tobago, held that the court should bear in mind the following considerations when assessing damages:

- (a) the nature and extent of the injuries sustained;
- (b) the nature and gravity of the resulting physical disability;
- (c) the pain and suffering which had to be endured;
- (d) the loss of amenities suffered; and
- (e) the extent to which the claimant’s pecuniary prospects have been materially affected.”

[70] It is clear from the above that general damages are: (a) quantified by the court; (b) not specially pleaded, i.e., not particularised in pleadings; and (c) there are judicial considerations which inform its assessment.

[71] This can only lead to the conclusion that a sum for general damages may only factor into the quantum of costs where such damages have in fact been assessed by the court. Indeed, it is not a claimant’s prerogative to dictate the quantum of general damages to the court. Accordingly, in my view, where a claimant states a quantified sum for general damages in his/her claim form and/or statement of claim, a master’s calculation of costs associated with that claim may not be based on that quantified sum, but on a quantum arrived at by the court through its own assessment.

¹⁶ Ibid.

¹⁷ (1965) 7 WIR 491.

¹⁸ SLUHCVP2018/0032 (delivered 25th June 2020, unreported).

[72] I also consider that the **Orin Roberts** case does not assist the respondent in advancing its counter-appeal. That case dealt with an award of costs based on the incorrect calculation of payment in lieu of notice in a wrongful dismissal claim. More particularly, **Orin Roberts** involved a claim for a specified sum contractually owed to and calculable by the claimant as distinct from the present case which deals with general damages that may only be calculated by the court.

[73] Given the foregoing, I am of the view that the master did not err in calculating the costs awarded to the respondent by basing the value of the claims on the special damages claimed only.

[74] Accordingly, the orders of the Court are as follows:

- (i) The appeal is dismissed, and the order of the learned master dated 1st June 2022 is affirmed.
- (ii) The counter-appeal is dismissed, and the costs order of the learned master dated 5th July 2022 is affirmed.
- (iii) Both the appellants and the respondent having been unsuccessful on their appeals, I will make no order as to costs.

I concur.
Mario Michel
Justice of Appeal

I concur.
Trevor Ward
Justice of Appeal

By the Court

Deputy Chief Registrar