

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

SAINT LUCIA

CLAIM NO.: SLUHCV2022/0278

BETWEEN:

PREZ ALEXIS

Claimant

-and-

JAIRO MANAGEMENT LIMITED trading as
SANDALS GRANDE ST LUCIA SPA & BEACH RESORT

Defendant

Before Master Alvin Pariagsingh

Appearances: Ramon Raveneau for the Claimant; and
Vanessa Pinnock for the Defendant

2023: April 05;
May 12.

DECISION ON COSTS

INTRODUCTION:

[1] PARIAGSINGH, M: - The Claimant's claim was to recover an award of the Employment Tribunal (ET) as a civil debt.¹ On the due date for the filing of its defence, the Defendant filed an application² to dispute the Court's jurisdiction pursuant to CPR 9.7.³ Three (3) days before the hearing of the Defendant's application, the Claimant filed a Notice titled "Memorandum of Satisfaction".⁴ In this

¹ Filed on June 17, 2022

² Application filed on July 29, 2022

³ CPR – Civil Procedure Rules 2000

⁴ Filed on November 14, 2022

Notice, the Claimant notified the Court that “the Defendant had satisfied this claim to the satisfaction of the Claimant and the Claimant hereby discontinues this action”.

- [2] At the hearing of the application, there was no agreement on the issue of costs of the claim or the pending application. In fact, at the hearing, both parties sought costs. The Defendant sought costs of the claim and the Claimant sought his fixed costs of the claim in the sum of \$1,000.00.⁵ The parties were invited to file submissions on the issue of costs if discussions between the parties did not yield a settlement of the issue. Despite discussions, the parties have not been able to agree on costs. The Court is now tasked with determining the appropriate order for costs.

DISPOSITION:

- [3] For the reasons set out below, each party shall bear their own costs of this claim and the application to dispute the Court’s jurisdiction filed on July 29, 2022.

REASONS:

- [4] The Defendant submitted that the rules make it clear that under Rule 37.7 CPR the Claimant is liable for all costs up to the time of discontinuance. In answer, the Claimant contends that there was no discontinuance but rather a satisfaction of the claim under CPR 14.2.

- [5] I disagree with Counsel for the Claimant. Firstly, CPR 14 deals with judgment on admission. That was not the position in this case. There was no admission by the Claimant of the debt. Notwithstanding there being no admission, CPR 14.2 which deals with satisfaction is time specific. Satisfaction for the purpose of CPR 14.2

⁵ Recorded in the fourth recital of the order dated November 17, 2022.

applies when the sum claimed, interest and fixed costs is paid “within the period for filing an acknowledgement of service under rule 9.3...”⁶ (emphasis mine).

[6] Any satisfaction after this period cannot form the basis of the procedure set out in CPR14.2 (1). Suffice so say, I find no merit in the Claimant’s argument that the fact that the sums were paid by the Claimant after the period for filing an acknowledgement is not material. No doubt, there can be satisfaction of a debt claimed after the period for filing an acknowledgement of service. This satisfaction will form the basis of an order of the Court or a discontinuance filed pursuant to CPR37.

[7] Secondly, the notice filed by the Claimant states that “the Defendant has satisfied this claim to the satisfaction of the Claimant....”.⁷ The Claimant cannot approbate and reprobate his position on satisfaction of this claim. His document states that the claim has been satisfied to his satisfaction. The Claimant cannot now in the absence of reserving his position on costs or qualifying his satisfaction as not including costs, advance a different position or an altogether new position on the issue of costs. The Claimant is bound by his Notice indicating that he has received full satisfaction of his claim. This includes costs. The Claimant is accordingly not entitled to any costs on this claim from the Defendant.

[8] The Defendant submitted that to depart from the general rule⁸ that the discontinuing party is liable for costs up to the discontinuance would be unusual. Reference was made to the case of *Philomen Bartley v Georianna Bartley*.⁹ I agree with the proposition set out in this authority but find it distinguishable in this case. This authority is based on the applicability of the general rule. The general rule, which is

⁶ CPR 14.2 (1) “If the defendant pays the claimant the sum claimed, together with interest at the statutory rate (if claimed) and the fixed costs as set out on the claim form, within the period for filing an acknowledgment of service under rule 9.3”

⁷ Line 1 of Memorandum of Satisfaction

⁸CPR64.6 (1) – “Where the court, including the Court of Appeal, decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.”

⁹ SLUHCV2011/01258

CPR64.6 (1) is triggered where there is an unsuccessful party. In this case, there has been no determination of any issue by the Court. The matter was settled.

[9] Liability for costs is discretionary. There is no entitlement to costs as of right. Costs is awarded at the discretion of the Court. In exercising the discretion to order costs the Court takes all the circumstances into account including the conduct of the parties' pre and post litigation. The Court takes into account the factors set out in CPR64.6 (5) and (6) and the overriding objective in ordering any party to pay costs.

[10] In this case, the conduct of both parties was wanting. The award of the ET which gave rise to this claim was made on April 26, 2021, that is more than a year before this claim was commenced. A demand was made for payment of the award by letter from Counsel for the Claimant on February 07, 2022. This letter was responded to some three (3) months later with a request for fourteen (14) more days to respond by letter dated May 10, 2022. Even after, the Defendant did not respond in fourteen (14) days. Another month elapsed before the claim was filed in June 2022. An additional nineteen (19) days elapsed from service before the award was paid. That is in my view a totally unacceptable state of affairs in itself.

[11] The application to dispute the jurisdiction of the Court was filed ten (10) days after the sum was paid to the Claimant. The point taken on the application disputing jurisdiction was essentially that the Claimant did not have locus standi to bring this claim having not complied with Sections 450(1) and (2) of the Labour Code.¹⁰ The Defendant telegraphed this point to the Claimant by letter dated July 22, 2022, that is, one month after the claim was filed. The Court was not called upon to determine the application as the matter as the debt was satisfied before the application was heard.

[12] The point taken however was not a frivolous one. In fact, it accords with a decision of this Court given on February 04, 2022 in *Allison St Ange v National Skills*

¹⁰ Labour Code of Saint Lucia 2006

Development Centre.¹¹ I am therefore of the view that the making of the application was not unreasonable. It was open to the Claimant to discontinue the claim since he received the cheque or was served with the application and reduce any liability for costs. He did not do so until November 2022 some four (4) months later.

[13] Having regard to the overall conduct of both parties, it is in my view against the overriding objective that any of them recover costs in this claim. The award of the ET ought to have been settled long before the claim was filed. Absolutely no reason was put forward by the Defendant why the award was not satisfied despite having over a year to satisfy it. The Defendant's actions directly caused the Claimant to incur the costs of instructing a legal practitioner to write letters on his behalf and file the instant claim. In my view that is sufficient for the exercise of my discretion not to award the Defendant with any costs on the claim or the application, regardless of the merits of the application.

[14] The Claimant ought to simply have filed his award in the High Court and proceed to enforce it. There was no need to bring a separate claim. The claim ought to have been discontinued before the application to dispute jurisdiction was filed upon receiving satisfaction of the award and in any event, certainly before the application came on for hearing four (4) months after the Claimant received settlement of the award.

[15] In the circumstances, the fairest order for costs in this claim is that each party bear their own costs of this claim and the application to dispute the jurisdiction of the Court filed on July 29, 2022. I am of the view that the conduct of both parties in this matter is sufficient to exercise my discretion in this manner to order each party to bear their own costs of the application.

¹¹ SLUHCv2021/0391

ORDER:

[16] It is hereby ordered that;

1. Each party bear their own costs of this claim and the Defendant's application to dispute the jurisdiction of the Court filed on July 29, 2022.

Alvin Shiva Pariagsingh
High Court Master

By the Court,

Registrar