

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT CHRISTOPHER AND NEVIS

CLAIM NO: NEVHCV2016/0049

In the matter of the Title by
Registration Act Cap. 10.19 of
the Revised Laws of the
Federation of St. Christopher
and Nevis

BETWEEN:

PINNEYS HOTEL DEVELOPMENT LIMITED

1st Claimant/1st Applicant

THE NEVIS CLUB COMPANY LIMITED

2nd Claimant/2nd Applicant

and

ALEXIS JEFFERS, MINISTER OF AGRICULTURE, COMMUNICATIONS, WORKS, PUBLIC UTILITIES

1st Defendant

THEODORE HOBSON

2nd Defendant

THE NEVIS ISLAND ADMINISTRATION

3rd Defendant/Respondent

Appearances:

Mrs. M. Angela Cozier for the Claimants

Ms. Rhonda Nisbett-Browne for the 1st and 3rd Defendants

Ms. Kurlyn Merchant for the 2nd Defendant

2022: February 14;
May 6.

JUDGMENT ON ASSESSMENT OF COSTS

[1] **GILL, M.:** The court is tasked to assess the claimants' costs against the 3rd defendant. In judgment in this matter, Moise J. ordered as follows:

"The 3rd defendant will pay costs to the claimants to be assessed upon application by the claimants if not agreed within 21 days from the date of this judgment."

The parties failed to agree on costs and by notice of application filed on 14th May 2020, the claimants seek costs totaling \$305,144.00, strenuously opposed by the 3rd defendant as being unfair, unreasonable, disproportionate and excessive. The 3rd defendant did not appeal the judgment and/or order of the court.

Background

[2] On 27th April 2016, the claimants filed a claim against the defendants and an amended claim on 14th June 2016 claiming the following:

- a) *damages for trespass to the land of the 2nd claimant committed by the 1st and 3rd defendants on the 3rd February, 2015 when the 1st defendant instructed the 2nd defendant to lodge and or caused a caveat to be lodged on the said land without reasonable cause;*
- b) *compensatory damages under and by virtue of section 120 of the Title by Registration Act;*
- c) *damages for unlawful interference by the 1st and 3rd defendants with the contract for the sale of the said land between the 1st and 2nd claimants brought about as a result of the lodgment and maintenance of a caveat without reasonable cause by the 2nd defendant;*
- d) *damages for unlawful interference with a loan contract between the 1st claimant and the St. Kitts-Nevis-Anguilla National Bank Ltd. ("the Bank") when the loan granted by the Bank to the 1st claimant for the purpose of purchasing the said property could not be disbursed because of the caveat placed on the property by the defendants without reasonable cause;*
- e) *consequential economic loss suffered by the claimants as a result of the trespass and unlawful interference of the defendants;*
- f) *special damages;*
- g) *general damages;*
- h) *costs; and*
- i) *any other relief that the court deems just.*

[3] The trial of the matter took place in December 2019 and judgment was delivered on 9th April 2020. In addition to the order set out in paragraph 1 above, the court made the following declarations and orders:

- a) *All claims as against the 1st and 2nd defendants are dismissed. The remaining orders, save as to costs, relate to the claims against the 3rd defendant;*
- b) *The claim in trespass is dismissed;*
- c) *The claim of unlawful interference with the agreement for sale between the claimants is upheld;*
- d) *The claim for unlawful interference with the 1st claimant's agreement with the bank is dismissed;*
- e) *The caveat lodged on 3rd February, 2015 was not lodged with reasonable cause and the 3rd defendant is liable to pay such damages as are just;*
- f) *The 1st claimant is entitled to damages in the sum of \$13,887.59 together with interest at the rate of 6% per annum from the date of the filing of the claim;*
- g) *The 2nd claimant has not provided sufficient proof of the damages claimed and is therefore not awarded damages in this claim;*
- h) *Costs;*
 - i. *(as above at paragraph 1)*
 - ii. *Given that the 1st and 2nd defendants were successful in their defences the court considers the issue of an award of costs against the claimants. As it relates to the 1st defendant I would make no order as to costs, given the manner in which this case was defended. He was initially presented as representing the 3rd defendant and therefore did not seek separate legal representation.*

As it relates to the claim against the 2nd defendant, the claimant will pay costs to be assessed upon application by the 2nd defendant if not agreed within 21 days from the date of this judgment.

[4] The claimants appealed all the orders of the court (including the orders as to damages) except, obviously, the upholding of the claim of unlawful interference with the agreement for

sale between the claimants, and that costs be paid to the claimants by the 3rd defendant, the subject of this application.

Issue

- [5] The court must determine the quantum of costs to be awarded to the claimant.

The law

- [6] In conducting the assessment, the court is guided by Rule 65.2 of the Civil Procedure Rules 2000 as amended (CPR 2000). By virtue of CPR 65.2 (1), the sum to be allowed is –
- (a) the amount that the court deems to be reasonable were the work to be carried out by a legal practitioner of reasonable competence; and
 - (b) which appears to the court to be fair both to the person paying and the person receiving such costs.
- [7] Costs must be proportionate as well as reasonable.¹ By virtue of the overriding objective, the court is required to deal with cases justly and to award costs proportionate to the case.² A party is not to be indemnified for all his costs, but entitled to reasonable costs.³ Costs must not be embellished and unreasonable. It is not a punishment.⁴ Where costs are not disputed, the court retains the right to reduce or disallow costs which it finds are disproportionate.⁵
- [8] CPR 65.2(3) sets out the factors to be taken into account in determining what is reasonable, including:
- (a) any order that has already been made;
 - (b) the care, speed and economy with which the case was prepared;
 - (c) the conduct of the parties before as well as during the proceedings;
 - (d) the degree of responsibility accepted by the legal practitioner;

¹ HCVAP 2004/013 (Antigua and Barbuda), delivered July 18, 2008, per Chief Registrar Cenac-Phulgence (as she then was) at paragraph 10

² *Oliver MacDonna v Benjamin Wilson Richardson* AXAHCVP2005/0003, delivered November 25, 2013, per Gordon JA (Ag.) (as he then was) at paragraph 25

³ *Clive Hodge v Elfrida Alethea Hughes* AXAHCVP2013/0005, delivered November 10, 2016, per Chief Registrar Cenac-Phulgence at paragraph citing *Horsford v Bird and others* [2006] UKPC 55 at paragraph 7

⁴ *Michael Wilson & Partners Limited v Temujin International Limited et al* BVIHCV2006/0307, delivered June 20, 2008, at paragraph 74

⁵ Blackstone's Civil Practice 2005, paragraph 68.35

- (e) the importance of the matter to the parties;
- (f) the novelty, weight and complexity of the case;
- (g) the time reasonably spent on the case; and
- (h) ...

[9] The court has to consider whether the sum claimed by the claimants is reasonable in the circumstances of this case. The approach to be adopted was set out in **Lownds v Home Office**.⁶ Referring to a provision similar to CPR 65.2(3), Lord Woolf CJ pronounced:

“...what is required is a two-stage approach. There has to be a global approach and an item by item approach. The global approach will indicate whether the total sum claimed is or appears to be disproportionate having particular regard to the considerations which CPR 44.5(3) [*similar to our CPR 65.2(3)*] states are relevant. If the costs as a whole are not disproportionate according to that test then all that is normally required is that each item should have been reasonably incurred and the costs of that item should be reasonable. If on the other hand the costs as a whole appear disproportionate then the court will want to be satisfied that the work in relation to each item was necessary and, if necessary, that the cost of the item is reasonable.”⁷

Global approach

[10] Each claimant seeks separate costs. Two separate bills of costs are exhibited to the sole affidavit in support of the application for assessment of costs. The 1st claimant asks for a costs award of \$149,572.00 and the 2nd claimant, \$155,572.00, totalling \$305,144.00. The 3rd defendant finds this alarming in light of the fact that the learned trial judge awarded the 1st claimant damages in the sum of \$13,887.59, and did not award any damages to the 2nd claimant. The claimants point out that we are not in the area of prescribed costs as the court clearly ordered that costs be assessed.

[11] This matter took four years for completion in the High Court. There were several delays, due in part to the ill health of one of the defendants, scheduling conflicts and the absence of a sitting judge in Nevis for some time. The matter was of great importance to the claimants. The 1st claimant's building project of considerable value was frustrated and the 2nd claimant

⁶ [2004] 4 All ER 775

⁷ Ibid at 782, paragraph 31

was deprived of the benefit of the sale of its very valuable land to the 1st claimant. The case concerned issues of interference with a contract and the lodging of a caveat without reasonable cause under the Title by Registration Act. Although somewhat novel in terms of the caveat, it does not appear that the issues were particularly weighty or complex.

- [12] I take into consideration the factors in CPR 65.2(3) and find that the amount claimed in the sum of \$305,144.00 for costs in this matter is disproportionate. That being the case, an item by item approach is required.

Item by item approach

- [13] Each bill of sale contains over 170 items. The items are categorised as follows:

- Letters
- Emails
- Stamps
- Service
- Research and Advice
- Pleadings
- Meetings
- High Court Appearances

- [14] The issue arises as to whether the claimants are entitled to two separate sets of costs. The claimants contend that they had two different and distinctly separate causes of action. The 3rd defendant submits that the claimants had the same interests and the court ought not to allow both sets of costs.

- [15] In **Golfview Development Limited v St. Kitts Development Corporation and Michael Simanic**,⁸ Rawlins JA, as he then was, provided some guidance on the issue as follows:

“Golfview and Simanic had the same interest in the present case. They were represented by the same counsel at the trial. The implication of rule 64.7 of CPR 2000 is that even where parties that have the same interests in a case are represented by different counsel the court may in its discretion award only one set of costs. It is also implicit from rule 64.7...that where, as in the present case, the parties have the same interests and are not separately represented by counsel, the

⁸ Civil Appeal No. 17 of 2004 at paragraph 57

court should award one set of costs. Since the judge awarded costs to Golfview, he erred in also awarding costs to Simanic. I would therefore allow the counter-appeal on this ground, set aside the costs order against the Corporation in favour of Michael Simanic, and order that the costs order in favour of Golfview should instead be for one set of costs to be paid by the Corporation to both Golfview and Michael Simanic.”

- [16] The claimants submit that the matter concerned two claimant companies, each with different interests and each on its own separate footing, against three defendants. They say that the cause of action against the 3rd defendant by the 1st claimant was unlawful interference with the contract between the 1st and 2nd claimants which was upheld by the learned trial judge, and the cause of action against the 3rd defendant by the 2nd claimant was damage caused by the 3rd defendant for lodging a caveat without reasonable cause on property belonging to the 2nd claimant and which was upheld by the court.
- [17] In my respectful view, this submission by the claimants is superficial, artificial and overly technical. First, in the claim, there is no separation in terms of the relief sought by the claimants. Apart from the claim for damages relating to trespass to the 2nd claimant’s land, which claim was dismissed, all other relief sought could be awarded to both claimants. Further, it is incorrect to say that the claim for damages for unlawful interference by the 1st and 3rd defendants with the contract for the sale of land between the 1st and 2nd claimants is the cause of action of the 1st claimant only. The claim alleges that the unlawful interference with the contract was brought about by the lodgment and maintenance of the caveat. This is a cause of action of both claimants. The learned trial judge upheld the claim of unlawful interference with the agreement for sale between “the claimants” and ruled that the caveat was not lodged with reasonable cause. The claims for damages were in respect of both claimants. Damages were awarded to the 1st claimant only, as the court was of the view that the 2nd claimant had not provided sufficient proof of the damages claimed. This application is supported by one affidavit of a single deponent and both claimants are represented by the same counsel. To my mind, for the purposes of the assessment of costs, it is clear that the claimants have the same interests in these proceedings and are entitled to one set of costs only.

- [18] Although not using headings or sub-heads, the 3rd defendant has dealt with the item by item approach by the categories stated earlier at paragraph 13. In order to avoid tedium, I will adopt that approach.

Letters

- [19] In this category, the 1st claimant claims a total of \$3,150.00 for the preparation and perusal of letters, the 2nd claimant, \$3,400.00. The 3rd defendant points out that the claim by the 2nd claimant is for the same letters claimed by the 1st claimant and one additional letter, and therefore this amounts to duplication of costs. Given my ruling that the claimants are entitled to one set of costs only, I will allow the claimants costs of letters in the sum of \$3,400.00.

Emails

- [20] Each claimant claims a total of \$200.00 for the preparation of two emails. One sum of \$200.00 is allowed.

Stamps

- [21] The 1st claimant claims \$447.00 under this head, the 2nd claimant, \$472.00 for the same stamps claimed by the 1st claimant and a few additional stamps. Included in the cost of stamps are those for the claimants' documents involving a successful application by the 3rd defendant to set aside certain witness summonses. Therefore, I deduct the cost of these stamps totaling \$90 from one set of the costs claimed for stamps, \$472.00. The award for stamps is \$382.00.

Service

- [22] Here the 1st claimant claims \$4,300.00. The 2nd claimant claims \$4,500.00 for service of the same documents including documents surrounding the said witness summonses plus the service of an additional document, a court order. I identify four items for \$100.00 each in this regard and deduct \$400.00 from one set, \$4,500. The award for service is \$4,100.00.

Research and Advice

- [23] Under this head, the 1st claimant claims \$34,500.00 and the 2nd claimant, also \$34,500.00. The sums include research and advice for the aforementioned witness summonses. The claimants have billed these items as hourly costs. Learned counsel for the claimants is a

senior practitioner of almost thirty years' experience and demands an hourly rate of \$500.00. In my view, counsel's hourly rate is not unreasonable.

[24] The 3rd defendant submits that the claim for research undertaken by counsel for the claimants on preparing witness statements and trial bundles is unnecessary and unusual. The 3rd defendant further submits that the claims for advice and research with regard to \$6,000.00 for three witness statements at \$2,000.00 per witness statement, \$2000.00 for preparing a core bundle and \$7,000.00 for preparing trial bundles are inconceivable and excessive.

[25] I agree with this submission in respect of the bundles. However, research and advice on the witness statements were necessary. I deduct from one set of items under this head, costs in relation to the witness summonses, \$1,500.00, and the bundles, \$9,000.00, giving an award of \$24,000.00 for research and advice.

Pleadings

[26] Hourly billing is utilised for pleadings. The 1st claimant claims \$72,000.00 and the 2nd claimant, \$78,500.00, including the preparation of the said witness summonses. The difference in the claim by the 2nd claimant is the addition for the preparation of documents concerning the removal of the caveat, which was dealt with in another matter. With no assistance from the 3rd defendant in doing so, I identify nine items in relation to the said witness summonses and deduct \$7,000.00 from the 1st claimant's set which does not include the costs for the removal of the caveat. This amounts to an award of \$65,000.00 for pleadings.

Meetings

[27] Each claimant claims \$2000.00 for meetings to settle documents for trial with all parties on 14th August 2018 for four hours. The 3rd defendant contends that there was only one meeting to settle the documents for trial, and counsel for the claimants was extremely late and the meeting lasted approximately thirty to forty-five minutes. The claimants respond that they refer, not only to one meeting, but also meetings with the solicitor and the claimants. With the use of the word "meetings", I accept that there was more than one meeting and the

claimants are referring to at least one other meeting on 14th August 2018 to settle documents. The sum of \$2,000.00 for meetings is allowed.

High Court Appearances

[28] Each claimant claims \$32,000.00 for court hearings. The 3rd defendant objects to amounts claimed for –

- i. a hearing before Williams J before the filing of the instant claim;
- ii. a hearing before Williams J regarding an application filed by the 2nd defendant; and
- iii. a hearing before Glasgow J regarding the said witness summonses set aside on the application of the 3rd defendant.

[29] The claimants argue for the inclusion of these items. They state that the causes of action arose from an order made by Williams J on an application filed before the claim.

[30] I agree with the submission by the 3rd defendant that these items should be excluded. I will deduct from one set of items the sum of \$2,000.00 for the hearing before Williams J in 2015, the sum of \$3000.00 claimed in relation to the application by the 2nd defendant, and the sum of \$3,500.00 regarding two appearances before Glasgow J in June 2019. The award for court appearances is \$23,500.00.

[31] The sums allowed are summarised as follows:

• Letters	\$3,400.00
• Emails	\$200.00
• Stamps	\$382.00
• Service	\$4,100.00
• Research and Advice	\$24,000.00
• Pleadings	\$65,000.00
• Meetings	\$2,000.00
• High Court Appearances	<u>\$23,500.00</u>
Total	\$122,582.00

[32] I consider the claim for \$305,144.00 to be grossly disproportionate in the circumstances of this case. Therefore, it was necessary to conduct the item by item (or category by category)

approach, the court being of the view that there is no justification for the claim for two sets of costs.

Order

[33] Based on the foregoing, it is hereby ordered as follows:

- 1) The claimants' costs against the 3rd defendant are assessed in the sum of \$122,582.00 to be paid on or before 30th July 2022.
- 2) The 3rd defendant shall pay the claimants costs of the application in the sum of \$1,500.00.

Tamara Gill
Master

By the Court

Registrar