

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2018/0115

IN THE MATTER OF CLAIM FOR ARREARS OF RENT AND RECOVERY OF POSSESSION OF
RENTAL PREMISES SITUATE AT VILLA, ST. VINCENT

BETWEEN:

SANDRA BRAMBLE
(through her lawful Attorney on Record
Charles Samuel)

CLAIMANT

AND

MICHELLE FIFE

DEFENDANT

Appearances:

Ms. Vynnette Frederick for the Claimant

Mrs. Kay Bacchus-Baptiste for the Defendant

Ms. Michelle Fife appears in person

2021: 19th March

REASONS FOR DECISIONS

Byer, J.:

- [1] On 19th March 2021, I delivered an oral decision on the sole issue in this matter as to the quantum of costs that should be awarded to the claimant on the mediation order that being the only issue that was not agreed to at mediation. At the delivery of the order of the court, the defendant who appeared in person on that day, (she being an attorney herself) her counsel having been absent requested that the court provide the reasons for the order delivered. These are the reasons for the decision as delivered.

- [2] In order for the court to determine this issue, this court needs to look at the procedural history of the matter.

Procedural History/Chronological History

- [3]
- i) Fixed date claim form filed for the payment of the sum of \$37,000.00 and recovery of possession of the premises -13/8/2018
 - ii) Acknowledgement of service indicating that the defendant was defending the claim - 26/9/2018
 - iii) Application for judgment in default of defence - 3/10/2018
 - iv) Defence and counterclaim filed without an order of the court - 18/10/2018
 - v) Notice of acting - 23/1/2019
 - vi) Amended defence and counterclaim filed without leave - 27/3/2019
 - vii) Reply to defence and counterclaim - 10/4/2019
 - viii) Amended reply and defence to counterclaim-2/5/2019
 - ix) Application filed for an extension of time to file the amended defence and counterclaim and for an order that it be deemed properly filed- 18/4/2019
 - x) Amended fixed date claim form filed for \$41,000 and recovery of possession - 15/4/2019
 - xi) Matter referred to mediation - 2/5/2019
 - xii) Mediation undertaken - 5/6/2019: 1st session
 - xii) Mediation order extended - 27/9/2019
 - xiii) Mediation report outstanding - 17/1/2020
 - xiv) Mediation was to continue - 6/3/2020
 - xv) Agreement reached in mediation but no mediation report - 8/5/2020
 - xvi) Mediation report still outstanding - 29/5/2020
 - xvii) Mediation report outstanding for the remainder of 2020
 - xviii) Mediation report outstanding - 1/2/2021
 - xix) Court orders submissions on the costs payable - 12/2/2021
 - xx) Mediator passed away 8/3/2021 without producing report

Court's Findings

- [4] From the history it is clear, that the defendant up until the point when the parties agreed to attend mediation was contesting this claim by the claimant.
- [5] The defendant maintained, in their submissions on the issue of costs that the matter having commenced as a fixed date claim form and relying on authorities from this jurisdiction that fixed costs were applicable in such an instance, and therefore submitted that fixed costs were due to the claimant.

- [6] When this court considered the case law relied on, (even though not produced to the court for the court's consideration) it is clear that where fixed costs were ordered, the matters proceeded as summary trials¹. Essentially it meant that these matters were undefended, and this court accepts that in those instances fixed costs would be applicable². This suit was not such an instance and there can be no hard and fast rule in this court's mind that once a matter is commenced by fixed date claim form then fixed costs must follow. In fact this very court³ has made it clear that even where there has been a summary trial, if the conduct of the defendant during the proceedings cannot amount to an acceptance of the claim that the fixed costs regime does not apply.
- [7] This court therefore accepts the considerations contained in the judgment of my brother Cottle J in the case of **Vinciclean Floor Maintenance Services v St Vincent and the Grenadines Football Federation**⁴ where the learned judge was making a similar determination on the issue of costs on a mediation that prescribed costs should apply. That case did not divulge the position that had been taken by the defendant on the claim against them but in the case at bar, the defendant herein had vigorously defended the claim and in mediation (although the court has not seen the order or the agreement) has not succeeded on any part of her counterclaim.
- [8] The court accepts that the mediation agreement is reflective of a compromise position but the claimant even having not obtained the entirety of her relief sought has been the party who was in fact successful.
- [9] In the case of **Orin Roberts v Financial and Regulatory Commission**⁵ my former brother Ventose J considered the applicability of Part 65.5 CPR 2000 where there is a monetary claim and how the claim is valued in those circumstances. He made it clear that Part 65.5 CPR applies where there is a claim for either an unspecified claim or a specified claim once it is also coupled with other remedies and the value of the claim for the purposes of calculation of prescribed costs, is the sum for which the judgment was entered⁶.
- [10] This court agrees with this assessment. I find that fixed costs do not apply in the instant case this not being an undefended action or an action that amounts to a default judgment⁷. In fact, this was a monetary claim coupled with a claim for recovery of possession. I therefore find that in the instant case prescribed costs would apply and as such, the calculation would be 15% of the sum awarded

¹ **RBT Bank Caribbean Limited v La Fleur Grant** SVGHCV2015/018; **St Vincent Co-operative Bank v Aldrick Haddaway** SVGHCV2017/0149

² **Rochamel Construction Limited v National Insurance Corporation** Civ App 10/2003 St Lucia

³ **St Vincent Building and Loan Association v Kenneth Browne** SVGHCV2019/0077

⁴ SVGHCV2013/0106

⁵ SKBHCV2016/0019

⁶ Ibid at para 19

⁷ **The Attorney General of the Commonwealth of Dominica and anr v STEWCO Construction Company Ltd and anr** HCVAP2008/0007

on the mediation. However, this court also considers that it is imperative for this court to encourage mediation and in the discretion of the court I therefore do not award the one hundred percent of the prescribed costs but rather the sum of \$2000.00 to be paid as costs on the mediation.

Order of the court:

1. Costs to the claimant on the mediation order in the sum of \$2,000.00.

**Nicola Byer
HIGH COURT JUDGE**

By the Court

Registrar