

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Numbers: **AXAHCV2020/0012**

Between

WYCLIFFE FAHIE

Claimant/Ancillary Defendant/Applicant

and

CLEONE ROGERS

Defendant/Ancillary Claimant/Respondent

Appearances: Mr. Kerith T. Kentish of Counsel for the claimant
Mr. Tim Prudhoe appearing with Carlyle Rogers of Counsel for the defendant

2020: July, 3rd

2020: October, 9th

JUDGMENT

Introduction

- [1] **SANDCROFT, M. [Ag.]**: This is an application by the claimant for costs on the defendant's statement of case on the basis that the claimant/ancillary defendant had made an application for strike out of the defendant's/ancillary claimant's counter claim and ancillary statement of claim. The application is strenuously resisted by the defendant on the basis that the claimant should not be entitled to costs on the application nor the claim.

Background/Chronology

- [2] The claimant brought this action against the defendant by way of pre-Action Letter dated 7th January 2020. He made a demand for payment of damages which flowed as a result of the defendant's/respondent's alleged negligent driving. The parties however, were not able to settle the matter and on 26th February 2020, the claimant/applicant filed a claim form and statement of claim in the captioned matter.

- [3] By letter dated January 24th, 2020, Solicitor for the defendant, Mr. Carlyle Rogers, responded to the pre-action letter denying liability and the fact pattern which the claimant set out therein and indicated that the defendant would counterclaim for loss of her vehicle, personal injury and hospitalization.
- [4] On 26th March 2020, the defendant/respondent filed a defence and counterclaim. On 23rd April, 2020, the claimant/applicant filed an application to strike out portions of the counterclaim filed on 26th March 2020.
- [5] On May 11th, 2020, Mr. Rogers wrote to Mr. Kerith Kentish pointing out the effect of Part 20 of the CPR (the right of amendment) and requested that the Strike-Out Application be withdrawn, and for consent to have Mr. Allan Coppin and the two doctors who treated the defendant for her injuries following the accident designated as experts. Counsel for the claimant was asked if he intended to rely on expert evidence so that the issue of consent could be settled and was given a deadline of May 18th, 2020 to respond.
- [6] On 12th May 2020, the defendant/respondent filed an amended defence and counterclaim which in effect was tantamount to a concession on the application to strike out. The amended defence and counterclaim struck out all the portions of the counterclaim which were the subject of the application to strike out.
- [7] The Case Management Conference was set for 8th June 2020 on which date the Application to Strike Out also came up for hearing before Master Ricardo Sandcroft [Ag.].

Claimant's/Applicant's Submissions

- [8] Counsel for the claimant/applicant, Mr. Kerith Kentish posited that applications to the Court are governed by Part 11 of the CPR 2000. Nowhere in the CPR 2000 is the Applicant or his Legal Practitioner required to discuss an intended application with the Respondent prior to making the application. The CPR does not require that the Respondent be given notice of an intended application prior to its filing. All that is required in relation to the application before the court is (1) that the Respondent be given Notice of the Application pursuant to CPR 11.8(1) and (2) that Notice of the Application must be served on the Respondent as soon as practicable after the day on which it is issued pursuant to CPR 11.11(1). CPR 11.8(1) and CPR 11.11(1) provide:

Notice of application and evidence in support

11.8 (1) The general rule is that the applicant must give notice of the application to

each respondent.

Service of notice of application

11.11 (1) The general rule is that a notice of an application must be served –

(a) as soon as practicable after the day on which it is issued; and

(b) at least 7 days before the court is to deal with the application

[9] Counsel also posited that the issue of service as it relates to CPR 11.11(1), the claimant/applicant is no longer required to serve documents once they are uploaded to the E-Litigation portal except for the claim form and statement of claim. Rule 12(8) of the **Eastern Caribbean Supreme Court (Electronic Litigation Filing and Service) Rules, 2019** provides:

“A document to which the Court’s stamp and date of filing information has been applied by the E-Litigation Portal is deemed to be served on the date and time that the document was submitted to the E-Litigation Portal, if the date and time is within business hours”

[10] Counsel further posited that the defendant/respondent took issue with service and notice of the application given the clear terms of Rule 12(8) of the **Electronic Litigation Filing and Service Rules 2019**, and the fact that shortly after the application was filed on the E-Litigation portal, the defendant/respondent filed an amended counter-notice which deleted the offending words that the applicant complained of in the application to strike out. The defendant’s/respondent’s position also ignored the fact that the E-Litigation portal generated an automatic email notification to the opposing party whenever a document is filed.

[11] Counsel submitted that the CPR encourages early filing of applications. CPR 11.3 to be dealt with at case management:

Applications to be dealt with at case management conference

11.3 (1) So far as is practicable all applications relating to pending proceedings

must be listed for hearing at a case management conference or pre-trial review.

(2) If an application is made which could have been dealt with at a case management conference or pre-trial review the court must order the applicant to pay the costs of the application unless there are special circumstances.

[12] Counsel also submitted that what is clear from CPR 11.3 is that had the claimant/applicant filed its application to strike out after the Case Management Conference, the Court would have ordered the claimant/applicant to pay the costs of the application unless there were special circumstances. The Applicant did not want to run afoul of CPR 11.3(2) and run the risk of a costs order against him. Therefore, the Applicant filed its application on time and in advance of the Case Management Conference. Instead of responding to the application, the defendant/respondent amended its counterclaim and deleted all of the words the claimant/applicant had complained about.

[13] Counsel further submitted that in respect to the terms of CPR 11.3, that the application to strike out portions of the counterclaim was not premature at all. Also had the application not been filed, the pleadings would have closed and the claimant/applicant would have had to respond to a defective counterclaim.

[14] Counsel posited that the respondent had not been able to produce any authority to the Court to substantiate the argument that the application was pre-mature. The fact that a party may amend its statement of case does not make the application to strike out pre-mature and that what was pre-mature was the inclusion of expert evidence in the counterclaim without first making the necessary application pursuant to CPR 32.

[15] Counsel further posited that the application to strike out was not frivolous or vexatious. That the defendant/respondent attempted to introduce 'expert' evidence through the backdoor when the same would not have been permitted via CPR 32. That Inspector Coppin was not a crash collision expert; he had no certifications that would assist the court on any issue on the claim or the counterclaim. Therefore, the defendant's/respondent's inclusion of the expert report was pre-mature and a breach of nearly the entirety of Part 32 of the CPR.

[16] Counsel also posited that the amended defence and counterclaim deleted the offending words which were the subject of the application, what the claimant/applicant sought to be struck from the counterclaim. That this was a clear concession on the issues raised in the said application.

[17] Counsel submitted that by a letter dated 11th May 2020, the defendant's/respondent's Solicitor revealed that the defendant/respondent still intended to make a later application at the appropriate time to have Retired Inspector Allan Coppin deemed an expert despite being put on Notice by the Applicant that Retired Inspector Allan Coppin was not a crash collisions expert and that the said 'Report' issued was not an impartial one.

[18] Counsel further submitted that the inclusion of Retired Inspector Coppin's report was a deliberate attempt to circumvent the Court's power to restrict evidence pursuant to CPR 32.6(1).

[19] Counsel also submitted that the filing of an amended counterclaim pursuant to Part 20 does not vanquish the application to strike out. That the application was duly filed, it was first in time and while the issue is now moot, the claimant/applicant was still entitled to costs of the application having been an application with merit, and that the amended counterclaim was a confirmation that the application had merit.

[20] Counsel posited that the general rule that costs follow the event is not displaced. That the claimant/applicant acted reasonably in response to the issues raised in the counterclaim.

[21] The claimant now pursues prescribed costs in accordance with the provisions of the CPR (as amended 2000). He contends that the prescribed costs should be on the value of the entire claim because of the aforementioned filed application to strike out which resulted in the defendant amending his defence and counterclaim; and he rested his submissions on the prescribed costs regime as stated in the CPR (as amended 2000):

Prescribed Costs

The prescribed costs regime in CPR 2000 is found in CPR 65.5 which provides as follows:

Prescribed costs

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 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.

Defendant’s/Respondent’s Submissions

[22] Mr. Tim Prudhoe, Counsel for the defendant submitted that he had adhered to the spirit and text of the CPR 2000 by not making an unnecessary application but instead relied on the CMC, and the right to amend in advance of that, while the other party, the claimant, made a necessarily premature application with an unnecessarily lengthy and (in parts) inappropriate affidavit as the basis for seeking USD\$2000 in costs.

[23] Counsel also submitted that this Court was being reminded of the spirit and text of the overriding objective of the CPR which states specifically that

1(1) The overriding objective of these Rules is to enable the court to deal with cases justly.

(2) Dealing justly with the case includes –

(a) ensuring, so far as is practicable, that the parties are on an equal footing;

(b) saving expense;

(c) dealing with cases in ways which are proportionate to the –

(i) amount of money involved;

- (ii) importance of the case;
- (iii) complexity of the issues; and
- (iv) financial position of each party;

(d) ensuring that it is dealt with expeditiously; and (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

[24] Counsel also posited that the claimant had done nothing to save expense, in fact had done entirely the opposite, and that costs for the Application to strike-out ought to be considered within the context of the overall litigation.

[25] Counsel posited that on April 4, 2020, without raising the issue in advance and if he had, the defendant would have pointed out the right without permission to amend in advance of the Case Management Conference, the claimant filed a ten (10) page Notice of Application to strike-out portions of the counterclaim, a six (6) page Affidavit with a 22 page exhibit. The Application to Strike Out and related documents were never served on the defendant's Solicitor.

[26] Counsel further posited that Rules 64.6(5) and 64.6(6) of the CPR require this Court to have regard to all the circumstances of the matter and in particular the conduct of the parties both before and during the proceedings. That there was simply no need for Mr. Kentish to have brought a premature application. Part 20 allowed for an amendment of the defendant's pleaded case before the Case Management Conference.

[27] Counsel submitted further that if the court was minded to give the claimant costs, it was being reminded that costs allowed under Rule 65.11(7) CPR may not exceed one tenth of the amount of the prescribed costs appropriate to the claim unless the court considers that there are special circumstances of the case justifying a higher amount. There are no such circumstances. That, there were sufficient circumstances to the contrary.

[28] Counsel also submitted that the value of the claim was not accepted by the defendant because the claimant failed to mitigate his losses. And of the USD\$47, 693.14 amount claimed in the statement of claim, that USD\$39,525 represented the use of a rental vehicle for which, and irrespective of the

defendant's liability for causing the accident, which she denied, the defendant had no legal obligation to pay. The one-tenth rule mentioned above is therefore inappropriate for consideration in this matter.

[29] Counsel further posited that the overriding objective of the rules of the CPR (as amended 2000) is to ensure that cases are dealt with justly, ensuring that justice is done by all the parties involved.

[30] Counsel finally submitted for consideration, that in this jurisdiction, in Claim No. AXAHCV2017/0065 the Court awarded EC\$600 to the defendants who successfully brought a counterclaim. In that matter, two Queen's Counsel of several years standing were involved. This Court ought to be guided by that decision in the case at bar, that Counsel for the claimant sought costs for an application to strike-out a portion of a counterclaim.

Issue

[31] (a) Whether this Court should order costs on the striking out application or costs on the claim itself, and

(b) whether the questions for consideration should be: (i) what were the respective obligations on the respective parties? And, to what extent, if any, should these obligations impact on the costs payable?

Court Analysis

[32] The Civil Procedure Rules 2000 rule 64.6 (1) provides:

Rule 64.6(1) provides the general rule with regards to the award of costs. It states:

"64.6(1) If the court 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."

This rule embodies the well-known principle that "costs follow the event".

[33] The provisions in CPR 2000 that the judge is required to examine are rules 65.5 and 65.6. The relevant parts of the first rule read as follows:

Prescribed costs

“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) of this rule.

(2) In determining such costs the value of the claim is –

(a) in the case of a claimant – the amount agreed or ordered to be paid;

(b) in the case of a defendant –

(i) the amount claimed by the claimant in the claim form;

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

(iii) if the claim is not for a monetary sum – the amount of EC\$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) ...”

[34] Rule 65.6 is in the following terms:

Application to determine value of claim for purpose of prescribed costs

65.6 (1) A party may apply to the court at a case management conference

(a) to determine the value to be placed on a case which has no monetary value; or (b) if the likely value is known, to direct that the prescribed costs be calculated on the basis of some higher or lower value.

(2) The court may make an order under paragraph (1) (b) only if it is satisfied that the costs as calculated in accordance with rule 65.5 are likely to be either –

(a) excessive; or

(b) substantially inadequate; taking into account the nature and the circumstances of the particular case.

(3) If an application is made for costs to be prescribed at a higher level, rules 65.8 (4) (c) and 65.9 apply.

[35] This court, in **Roberts v Financial and Regulatory Commission** (Claim No. SKBHCV2016/0019 dated 14 October 2019), had the opportunity to examine the provisions of CPR 65.5 in some detail. The court stated as follows:

[12] The starting point is to consider the words of CPR 65.5 to determine whether they expressly cover the situation with which we are here presented, and, if they do not, whether there is any implication that can properly be made or even necessary. CPR 65.5(1) states expressly that the general rule is that where 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 CPR 65.5(2) to (4). It seems to me that this must be the starting point to any determination of prescribed costs in accordance with CPR 65.5. CPR 65.5(2) provides for the situations in which it is necessary to determine the value of a claim. CPR 65.5(3) states that 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. Appendix B, entitled “Scale of prescribed costs” provides for the percentages of costs (Column 3) based on the “Value of the Claim” (Column 2). Appendix C states that it is a table “showing the percentage of the prescribed costs to be allowed under Appendix B where a claim concludes prior to trial”. Therefore, the percentage of prescribed costs is calculated based on the value of the claim in accordance with Appendix B and the amount payable to a party is further calculated in accordance with Appendix C based on the stage of the claim.

[15] ... it is necessary to focus on the chapeau of CPR 65.5(2) which states that “[t]he “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 – ”. The important point is that CPR 65.5(2) does not apply in all cases where the value of the claim is to be determined but applies only where the claim is: (1) for a specified sum; or (2) for an unspecified sum; and in both cases where it is (3) coupled with a claim for other remedies. The words “coupled with a claim for other remedies” is the deciding limitation on the scope of CPR 65.5(2). If the claim, whether for a specified or unspecified sum, is not coupled with a claim for other remedies, CPR 65.5(2) does not apply.

[18] It is important not to forget that CPR 65.5(1) states that the general rule is that where 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 CPR 65.5(2) to (4). As stated above, Appendix B provides the scale of prescribed costs based on a percentage of the “Value of the Claim”. CPR 65.5(2) provides for the determination of the value of the claim in the circumstances outlined therein.

[19] It seems to me to be obvious that the first place to look to determine the value of the claim is the claim form. Where the claim is for a specified amount that amount is the value of the claim. Prescribed costs are to be determined in accordance with CPR 65.5(1). Where claim, whether for a specified or unspecified sum, is coupled with other remedies, CPR 65.5(2) (a) applies.

[36] In summary, the decision in **Roberts** made it pellucid that: (A) an important and first consideration is that CPR 65.5(1) states that the general rule is that where 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 CPR 65.5(2) to (4); (B) CPR 65.5(2) does not apply in all cases where the value of the claim is to be determined but applies only where the claim is: (1) for a specified sum; or (2) for an unspecified sum; and in both cases where it is (3) coupled with a claim for other remedies; and (C) the words “coupled with a claim for other remedies” is the deciding limitation on the scope of CPR 65.5(2). If the claim, whether for a specified or unspecified sum, is not coupled with a claim for other remedies, CPR 65.5(2) does not apply.

[37] 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 which provides –

- (3) In deciding what would be reasonable the court must take into account all the circumstances; 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;**
- (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) in the case of costs charged by a legal practitioner to his or her client –**
- (i) any agreement about what grade of legal practitioner should carry out the work;**
- (ii) any agreement that may have been made as to the basis of charging; and**
- (iii) whether the legal practitioner advised the client and took the client/s instructions before taking any unusual step or one which was unusually expensive having regard to the nature of the case.**

Discussion & Conclusion

[38] It is common judicial experience that there is nothing so wonderfully effective in bringing good sense to bear on whether to continue to prosecute or defend a claim as the certainty of the cost consequence for whoever will turn out to be the loser. A turning point is reached when a party sees that it is ineluctable that if he loses he will likely have to pay a definite sum as costs. The risk of losing that is inherent in litigation, then looms larger and appropriate decisions – settle; discontinue; admit - are then more likely to be made. This can only benefit the litigants themselves, the court and the society by saving expense and precious judicial time that other litigants are waiting to utilise.

[39] The claimant contended that the defendant's rectification of its defence and counterclaim, that there were no reasonable grounds for bringing the counterclaim against them. The court is therefore being asked to examine the conduct of the defendant in amending its defence and counterclaim in assessing and awarding prescribed costs on the value of the claim itself. The defendant on the other hand is asking the Court to consider that the issues raised in the claim and counterclaim have not been litigated and therefore prescribed costs should be awarded on the application and not the value of the claim itself.

[40] Starting with first principles, part of a claimant's obligation is to ensure that a bona fide claim is brought and that it is brought against the correct party. Where a corporate entity is concerned,

care has to be taken to do such relevant searches as are necessary to ensure the correct party is identified.

[41] The starting point, which is the overriding objective of CPR, found at part 1, provides:

“1.1 (1) The overriding objective of these Rules is to enable the court to deal with cases justly.

(2) Dealing justly with the case includes—

(a) ensuring, so far as is practicable, that the parties are on an equal footing;

(b) saving expense;

(c) dealing with cases in ways which are proportionate to—

(i) the amount of money involved;

(ii) the importance of the case;

(iii) the complexity of the issues; and

(iv) the financial position of each party;

(d) ensuring that it is dealt with expeditiously; and

(e) allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases.

Application by the court of the overriding objective

1.2 The court must seek to give effect to the overriding objective when it —

(1) exercises any discretion given to it by the Rules; or

(2) interprets the meaning of any rule.

Duty of the parties

1.3 The parties are required to help the court to further the overriding objective.”

[42] Under the CPR, both or all parties are under an obligation to do what they can to assist in the just disposition of a claim. Such obligations must extend to the efficient disposition of a claim. A claim should not go on for longer than is necessary. There are many rules which underscore this obligation. The court has the power to dispose of a claim at the case management stage; default judgment can be granted; summary judgment can be granted; a claim can be dismissed for various breaches of the CPR and the court can impose the sanctions set out in the CPR for these breaches. All of these options available to the court underscore the court’s management powers to ensure claims are dealt with, with the overriding objectives in mind.

[43] With respect to the determination of what is reasonable in terms of such costs, there are then the factors enumerated in Rule 64.3 which include time reasonably spent, complexity of the matter, importance of the matter to the parties and several other factors. In this regard, in **Norgulf Holdings Ltd et Anor v Michael Wilson and Partners Ltd.**¹ then Barrow JA of the Eastern Caribbean Supreme Court observed that the provisions of Rule 65.12 were merely procedural so that in any event, the actual quantification of costs was nonetheless to be determined according to the principles otherwise provided in the Rules. It is clear, that these principles are those provided in Rule 64.2. The Court's review of the assessment is therefore to be conducted with reference to the overall principles stated in Rule 64.2(1) within the context of the relevant factors enumerated in Rule 64.2(3).

[44] In *Norgulf*, Barrow JA expounded (at para 14):

“Rule 65.12 complements and overlaps rule 65.11 but it is much broader in scope. Rule 65.12 applies to all assessments of costs, not just costs of an application. The rule opens by stating in paragraph (1) that this rule applies where costs fall to be assessed in relation to any matter or proceedings, or part thereof, other than a procedural application. These two words “matter” and “proceedings,” both terms of art, together extend the rule to virtually every proceeding that could come before the court....The effect of paragraph (1) in stating that this rule applies to any matter or proceedings or part thereof, is to apply this rule to proceedings generally, not just applications. But the rule does cover applications generally, which are necessarily parts of proceedings, save for procedural applications, which are specifically excepted. Put another way, by excluding only procedural applications this rule includes all other applications.”

[45] His Lordship continued (at para 12):

“The object of rule 65.11 is to establish a norm that the court hearing an application “must” decide the issues of costs, including who is to pay, how much and when. Notably, it makes the amount of costs to be awarded a matter for the discretion of the court. Rule 65.11 states the principles by which the court must guide itself in exercising that discretion and assessing costs. The rule specifies the documentation that the party seeking costs must provide. And, finally, it caps the

¹ OECS Civil Appeal No. 8 of 2007 paras 13 et seq.

amount of costs that normally may be awarded on the determination of an application.”

[46] Barrow JA in **Norgulf** admonished us that we must not be misled by its heading in that the rule plainly applies to more than just procedural applications. At paragraph 11 of the judgment, his Lordship explicated:

“The rule applies to all applications except for two categories of applications. One category consists of those applications that are made at a case management conference, pre-trial review and trial. There are specific rules that apply to such applications and hence they are excluded. The other category of applications to which rule 65.11 does not apply consists of the specific applications listed – to amend, to extend time and to obtain relief from sanctions – and applications that could have been made at case management or pre-trial review (and which would therefore have fallen into the first category). Rule 65.11 does not apply to the second category of applications because of the need to exclude such applications from the general rule that costs are awarded to the party who succeeds on his application.”

[47] Additionally, I have considered, as Barrow JA did in **Bradford Noel v First Caribbean International Bank (Barbados Ltd.)** (Civil Appeal No. 29 of 2006 dated 19 March 2007), where he stated that in interpreting CPR 65.5 one must avoid a result that may amount to an absurdity (at [20]). To make sense of CPR 65.5(2) (b), it must be read so that the words “whether or not the claim is one for a specified or unspecified sum, coupled with a claim for other remedies”, found in the chapeau of CPR 65.5(2), and do not apply.

[48] In awarding prescribed costs therefore a judge has the discretion to award a percentage of those costs in accordance with part 65.5 (4). In doing so the judge is required to take into consideration all the circumstances including the matters identified at 65.5(5) and (6) where relevant.

[49] Further Part 65.2(1) of the CPR 2000 provides that:

“Where the court has any discretion as to the amount of costs to be allowed to a party the sum to be allowed is the amount that the court deems to be reasonable were the work to be carried out by an attorney at law of reasonable competence and which appears to the court to be fair to both the person paying and the person receiving such costs.”

[50] In deciding to depart from the general rule and award the claimant only a percentage of the prescribed costs a judge is now required to exercise a discretion as to the amount of costs to be allowed. In these circumstances part 67.2 also becomes pertinent. A judge who wishes to apply part 67.5 (4) and orders that only a percentage of the applicable prescribed costs be awarded therefore also has to factor in what would be a reasonable amount to be allowed were the work to be carried out by an attorney- at- law of reasonable competence and which is fair to both the person paying and the person receiving such costs.

[51] Parties should be vigilant in ensuring that issues of costs are dealt with early. Both parties may make an application: (a) at case management for budgeted costs pursuant to CPR 65.8; or (b) at any time prior to trial to determine the value of the claim for purpose of prescribed costs pursuant to CPR 65.6.

[52] Finally, I wish to thank learned Counsel for their written submissions in this matter.

[53]The claimant's/applicant's application to prescribed costs on the claim is granted and these are the orders that follow:

[54] **Orders**

For the reasons explained above, I make the following orders:

- (1) Costs to be costs in the matter.
- (2) Matter is set for Case Management Conference on November 3rd, 2020.
- (3) Claimant's attorney-at-law is to have carriage of this order.

Ricardo Sandcroft

Master [Ag]

By the Court

Registrar