IN THE EASTERN CARIBBEAN SUPREME COURT TERRITORY OFTHE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE (CIVIL)

CLAIM NO. BVIHC 201510339

IN THE MATTER OF THE MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ACT, 2003 AND IN THE MATTER OF AN APPLICATION BY FRIAR TUCK LIMITED

BETWEEN:

FRIAR TUCK LIMITED

Respondent

-and-

THE INTERNATIONAL TAX AUTHORITY

Applicant

CLAIM NO. BVIHC2015/0340

IN THE MATTER OF THE MUTUAL LEGAL ASSISTANCE (TAX MATTERS) ACT, 2003 AND IN

THE MATTER OFAN APPLICATION BY QUIVER INC

BETWEEN:

QUIVER INC

Respondent

-and-

THE INTERNATIONAL TAX AUTHORITY

Applicant

Appearances

Ms. Jo.Ann Williams Ro be rt s , Solicitor General and Ms. Edwards-lAisterfor the Applicants Mr. Jonathan AddoandMs. TamaraSolange Kerrry-Ann Maduro for the Respondents

2017: February 23, March3

Civil Practice - Procedural application to extend time -CPR 65.11(3) - Costs ordinarily consequential on application to extend time unless there are special circumstances exist - Email from respondents consenting to the application - Email seeking a response and suggesting that the matter be dealt with on paper and by consent -no response fort hcom ing - Respondents attending hearing and seeking costs · Whether special circumstances exists -Overriding objective

DECISION

[1] RAMDHANI J. (Ag.) This was a consolidated appilcationin two related matters for an extension of time to vary an order of court dated 26"1 October 2016, which required the parties in both matters to file an agreed statement of issues, fact and law by the 7ti of December 2016. The substantive applicationttseff was not conteset d, but therespondents sought their costs on the applicationand this was with met resistancefrom the applicants. Having considered the application and heard the arguments, an order for costs to be paid to therespondents isappropriate. Thecourt considered it was appropriate toprovide these brief reasons for it decision.

[2] On the substantive application, tt was contended that the parties had attempted to agree on the agreed statements of issues, facts and law prior to the deadline and there was exhibited the affidavit supporting the application copies of email correspondence between both sides. It showed that there was disagreementon several matters. On the 7n December 2016, there were several emailsback and forth where the parties tried to wrest theother to agree to a version whicheach felt was appropriate. Thiswas not tobe, and the respondentsfiled their own statement wtthout agreement. Even after 5 p.m. that day, the applicants were still sending email.s

[3] On the 9lh December 2016, the applicantfiled an 'agreedstatement off issues, facts and law with areas of disagreement included' for each of thematter.s

[4] On the 26th January 2017 this application was filed effectively to deem those statements properly filed. It was supported by an affidavit sworn to by Ms. Sarah Potter-Washington of even date. It was contended that the applicant were not aware of any prejudice which could have been caused by the two days delay.

[5] The respondent to the application filed an affidavtt in answer sworn to by Ms. Tamara Solange Kerrry-Ann Maduro. Ms. Maduro deposed that the respondents had seen this application and that the respondents had written to the Solicitor General on the 31st January 2017 and again on the 611 February 2017 noting that there no objections to the application and suggesting that the matter be dealt on paper and by consent in an effort to save costs. The relevant portion of the email was as follows:

"Dear Ms. Williams

We *refer to thenotice of application filed on the 26'h January 2017 withrespect to theabove.*

Please note that we have no objections to the applicati , o a n nd suggest that this m atter bedealt with on paper andby consent. As *you know the22 February 2017* is*notaconvenient date for* usas*wewill beinvolved inatrial before the Commercial Court.*

Weinvite youtotakeareasonable & sensible courseonthis matter in keeping with the caution issuedby Ellis Jatthesubstantive hearing.

Regards"

[6] There was no response to this email and the second email to the Learned Solicitor General was essentially a reminder, asking for a response. There was again noresponse from the learned Solicitor General.

[7] Al the hearing, the applicants were represented by Ms. Edwards-Alister who moved the application. Mr. Addo and Ms. Maduro Appeared for the respondents and didnot object to the substantive order being sought but then insistedon getting their costs. It was contended that whilst they had written not obej cting to the applicatio.nThey had asked for a response to their suggestion that thematter bedealt with on pape,r and since there was noresponse, they were forced to attend the hearing. They incurred costs inthis process.

[8] This appeared to have taken Ms. Edward-Aslisterby surprise and the matter was stood down briefly for the parties to have a discussion. When the matter was recalled the Solicitor General was present. There was still no agreement on the issue of costs. The SolicitorGeneral accepted that they had not responded to the emails but pointed out that the respondents could have easily filed an affidavit to indicate their consent. There was some suggestion that the emails were being written by junior counsel and

that had spoken about a 'caution' from EllisJ. and she wanted to verify what that was as she had no idea what it referred to.

[9] Mr. Addo relied on CPR 65.11(3) stating that the respondents were entitled to their costs. The material parts of CPR 65.11(3) states that where the application is 'an application to extend time specified for doing any act under these Rules or an order or direction of the court, the court must order the applicant to pay the costs of the respondent unless there are special circumstances.

[10] Mr. Addo appears tobe right that costs will nonnally follow an application of this nature to extend time unless thereare special circumstances exists.

[11] In *my* view, this unnecessary contest arose because of a considerable degree of tension between counsel on both sides. For my own part, the Learned Solicitor General may have be entitled to be concerned when reading of a 'caution from Ellis J' if none existed. That being so, I seen oreason why the Learned Solicitor General could not have responded the first or the second email. It goes to common courtesy among counsel to respond to communications ina timely manner, especially where they relate tomatter pending before the court and they are designed to save the court time and resources. Be that as it *may*, if costs is to be awarded it cannot be for the purpose of punishment for failure to reply. It must be on principle.

[12] So the question for me is whether thereare special circumstacnesin this case which justify making no order as to costs. There are no such special circumstances in this matter. Both parties in this were obligated by the order of the 26111 October 2016 to file an agreed statement by the 7111 December 2016. Neither side filed such anagreed statement. I would have thought that impliedin that order was that if agreement were not possible each side would file his own statement by the required date. The respondents filed their own statement. Two days later the applicant filed its own statement largely agreeing with the respondents' statement and adding areas of disagreement. As far as the application to extend lime was concerned it was reasonable for the respondents to have consented to the extension which they did by their email.

[13] This was an application which not only sought an extension but it also contained prayer that there be no order as to costs. Had the email from the respondents stated that they were unqualifiedly consenting to the application (which included that prayrethat there be no order as to costs) such a consent might have amounted to special reasons to avoid a costs order. The email however, expressly suggested that both sides could agree that the matter proceed by way of a paper application without the need to attend court. Why was there a no response? I am not satisfied that there was any good reason for this failure to reply. The result was that there was a hearing of the application and all parties dutifully attended court. The Learned Solicitor General was herself forced to attend. The respondents were acting reasonably by suggesting the consensual paper application course. If this had been adopted then this matter would not have taken up the court's time as well as the

parties. This could have been avoided. The Learned Solicitor suggestion that the respondents could have filed an affidavit signifying their consent falls by the way. Such an affidavit would not have necessary obviated the need for them to attend. All of this was placed in the hands of the applicant. The overriding objective was not served on this occasion.

[14] The order of the court is as follows. The document tried on the 9:h December 2016 titled

• Agreed Statement of Issues Facts and Law' is deemed properly filed and fulfills the requirements of the Order of the 26th October 2017. There shall be costs to the respondents in the sum of $1200.00

Darshan Ramdhani

High Court Judge (Ag.)