

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2011/1258

BETWEEN:

Philomen Antilla Barley

Claimant

and

Georgianna Barley

Defendant

APPEARANCES:

Andra Gokool Foster of Counsel for the Claimant

Diana Thomas of Counsel for the Defendant

2013: January 13th

MASTER V. GEORGIS TAYLOR-ALEXANDER

REASONS FOR DECISION

- [1] The claim filed in Claim No. SLUHCV2011/1258 was by unilateral act of the claimant discontinued on the 28th September 2012. The matter came on for hearing pursuant to CPR 37.6 where the liability for costs stood to be determined.
- [2] The parties were unable to agree the costs on discontinuance, and have placed the matter in the hands of the court.
- [3] The claimant submits that the court should apply its discretion in favour of an order other than the general rule provided for in CPR 37.7 for the following filtered reason:

- (a) The defendant's impecuniosity.
- (b) This claim ought properly to have been determined pursuant to Article 176 of the Code of Civil Procedure which provides the rules in relation to costs on approbation proceedings. The code not having been complied with, no costs are payable;
- (c) The exercise of the court's discretion must account for the administrative' failures of the court office in erroneously filing the claim for approbation that did not comply with Article 176 of the Code of Civil Procedure.
- (d) The claimant ought not to be made to bear the costs caused by the negligence or inadvertence on the part of her legal representative.

- [4] The defendant , opposing the exercise of any discretion in favour of the application of the general rule relies on CPR 37.6 (1), 37.7 (1) and submits that costs ought properly to be determined in accordance with the scale of prescribed costs, and should be calculated based on the sum of \$198,40000 being the stated value in the claim of the dwelling house that is at the heart of the proceedings.
- [5] The general rule on the applicable costs for discontinuing a claim is contained at 37.7 of the CPR 2000 which provides that unless an order has been made for budgeted costs under rule 65.8 the costs are to be determined in accordance with the scale of prescribed costs contained in Part 65 Appendices B and C as amended by The Civil Procedure Amendment Rules No 92 of 2011.
- [6] The general rule is of course subject to the court's obligation to give effect to the overriding objective of dealing with cases justly, which allows the court to exercise its discretion in favour of the general rule. The court must nevertheless be guided by relevant grounds in the exercise of its discretion. See **Scherer and Another v Counting Instruments Limited and another [1986] 2 All ER 529.**
- [8] Of the claimant's submissions I accept that she withdrew the proceedings in the belief that it was procedurally defective, and I accept her submission that she was of the view that these

proceedings being for improbation ought to have commenced by petition pursuant to Article 178 of the Code of Civil Procedure .

- [9] I also accept that in such circumstances the claimant herself would have relied on the competence of her legal practitioner to guide her through the legal requirements to properly place her grievance before the court. Were this relevant, I would be required to juxtapose this consideration with the inconvenience and expense to which the defendant has been placed. The defendant would have had to hire counsel and instruct the filing of an acknowledgment of service and the filing of a defence to the proceedings.
- [10] All of this is of no consequence, as I am satisfied that the claim as originally filed was not procedurally deficient. I have found no requirement in Article 178 of the Code of Civil Procedure for commencement of this action by petition. The language of Article 173 of the Code refers to action in improbation commencing by principle and direct action, which was under the repealed provisions of the Code of Civil Procedure, referred to a writ of summons. The reference to the writ of summons was replaced eventually by CPR 2000 Part 8 which directs that such action commence by claim form.
- [11] In consequence I am unable to find the justification for the application of a discretion or the application of the overriding objective.
- [10] Calculated pursuant to prescribed costs, the costs payable under rule 65.5(2)(iii) are \$4125.00, which I order are the applicable costs.

Master Taylor-Alexander

High Court Master

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