

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2009/0029

BETWEEN:

**BNP TRADERS & COMPANY LIMITED
BRIAN PITT**

Claimants

and

**HUGH DOLLAND
VALERIE PARRIS
(Executors of the Estate of Linda Grant)**

Defendants

Appearances:

Brian Pitt for himself and the 1st Claimant

Mr. J. Bristol and Ms. D. Forrester for the Defendants

2010: May 10, June 2

JUDGMENT

- [1] **PRICE FINDLAY, J.:** This matter arises out of a judgment given by Justice Kenneth Benjamin in GDAHCV1996/0547 which the 1st Claimant was awarded damages in the sum of \$297,551.55 and costs of \$51,255.16.
- [2] Firstly, the Court finds on the application of Counsel for the Defendants, that the 2nd Claimant has no *locus standi* in these proceedings. The claim GDAHCV1996/0547 was between BNP Traders & Company Limited and the Attorney General & the Comptroller of Customs. It is trite law that the individual and a corporate body are treated as separate entities and, therefore, whatever Orders were made in the previous action were Orders which related to BNP Traders and not Mr. Brian Pitt in his personal capacity. This is so even though the evidence revealed that the 2nd Claimant is the Managing Director of the 1st Claimant.

- [3] In the circumstances, the 2nd Claimant is deemed not to be a proper party to these proceedings.
- [4] The 1st Claimant claims that the words of Justice Benjamin in GDAHCV1996/0547, where he stated "costs to the Claimant in the sum of \$51,255.16" means that the stated sum of \$51,255.16 belongs to the Claimant, and the monies which were retained by his then Attorney, Mrs. Linda Grant, ought to be returned to the Company as the Claimant.
- [5] Mrs. Linda Grant is now deceased hence the action has been brought against the Executors of her estate.
- [6] Even though the sum awarded as costs is stated to be \$51,255.16, the evidence which was put before this Court indicate that the firm of Grant & Joseph only retained the sum of \$46,255.66.
- [7] Further, the new partners of the Firm of Grant & Joseph have repaid to the Claimant the sum of \$18,252.60, leaving the sum of \$28,003.06 as the amount in question in these proceedings.
- [8] The Claimant's representative in his evidence describes himself as a businessman who has operated for over 30 years, involved in various business ventures. He indicated that he has sat on several Boards of Directors, as well as being in charge of the National Stadium at one time. He is not only the Managing Director of the Claimant by also a shareholder of the Company, the other shareholder being his mother.
- [9] The late Linda Grant was the Claimants' Attorney for about 25 years. The relationship started in or about 1980-1981 and continued until her death. The Claimant representative said he considered Mrs. Grant to be a person of great professional integrity. He said he felt that she was honest and that he trusted her word.

- [10] In the matter of **BNP Traders Co. Ltd. v. Attorney-General and Comptroller of Customs**, Mrs. Grant did not issue an invoice to the Company that he could recall. He said he had searched his home but that his home was 80% destroyed by Hurricane Ivan, and he could find no evidence of an invoice.
- [11] He did however produce some invoices for matters other than the BNP v. Attorney-General and Comptroller of Customs matter.
- [12] He did say, when confronted with a letter he wrote to the Grenada Bar Association, that he had been billed for the work done in the matter. He said that he stated that in the letter because that was the practice, that a bill would be presented to him/the company at the end of matters conducted by Grant & Joseph on behalf of the Company.
- [13] A claim of improper behaviour was made by the Claimant against Ms. Grant. The Claimant wrote to the Bar Association claiming that the firm of Grant & Joseph had kept money which rightfully belonged to the Company. The Claimant representative in making the complaint said that he thought that he had received a bill given the long standing relationship and practice with the Firm. In the end, however, the Claimant representative conceded that he never received a bill from the Firm.
- [14] He contended that he had done research and that the costs described in the judgment of Justice Benjamin belonged to the Company and not to Counsel.
- [15] He said he as the Company representative, he went to the Treasury and collected the first installment of the judgment, a cheque for \$75,000.00. He said that even after the judgment he had made no arrangement with the Firm for payment of fees.
- [16] What is clear is that when that first cheque was received by Firm they deducted a portion of the money towards the payment of their costs. The sum from the first cheque was \$18,000.00.

- [17] The Claimant representative testified that he was not satisfied with the deduction made and queried it with the late Linda Grant. He objected to Valerie Parris, the legal secretary in the Firm. She referred him to Ms. Grant. He says this is a true statement even though it does not appear in the witness statement or in the letter written to the Bar Association. The witness for the Claimant said that he made objections to both Valerie Parris and Linda Grant about these deductions.
- [18] He said he got an explanation about the deductions from Linda Grant and that after he got the explanation he signed for the receipt of the cheque. This procedure was done fifteen (15) times over the course of approximately eighteen (18) months. The Claimant representative also testified as to what the monies were spent for.
- [19] He reiterated that despite the fact that he accepted the cheques and spent the funds, knowing of the deductions and what they were for, that he was still of the view that the costs awarded belong to the Company and not to the Firm.
- [20] He testified that he fully expected that he would have to pay for the services rendered to the Company by the Law Firm.
- [21] He said that it was his understanding that an award of costs in a matter was not for work done by the Attorney, but he admitted that he did not know what it was for. He also accepted that the sum awarded for costs, \$51,255.16, did not form part of the loss which the Company had suffered. He said he believed that the awarded costs were for the Firm because Mrs. Grant told him so. She told him that this was the legal practice. He was unaware of how the Judge arrived at the figure. He was not saying that the judge was unreasonable in awarding that figure.
- [22] He indicated that there was no agreement between the Company and Mrs. Grant that the Firm would keep the awarded costs as fees.
- [23] One of the new partners of the Firm, Mr. Dickon Mitchell, also gave evidence. He recalled meeting with the Company Representative in the presence of Mr. Ruggles Ferguson, the Vice President of the Grenada Bar Association.

- [24] He stated that the Claimant representative accepted the monies, minus the deductions, as payment of the monies awarded to the Company. He agreed with the sequence of events when the monies were received by the Firm and the disbursement to the Claimant Representative.
- [25] He indicated that he did not hold the view that costs awarded in a matter are for the Firm. He said that he believed that different people had different views on the matter.
- [26] He admitted that after consultation with the other new partners of the Firm that the Claimant Representative was repaid the sum of \$18,252.60, and that a release was signed by the new partners and the Claimant Representative.
- [27] Valerie Parris also gave evidence in the matter. She was a legal secretary at the Firm of Grant & Joseph at the relevant time and is one of the executors of the estate of the now deceased Linda Grant.
- [28] She indicated that she recalled when the Claimant Representative came to the Firm to collect the monies which were paid to the Company. She indicated that it was only on the last occasion that the Claimant Representative came to collect a cheque that she was aware of any dissatisfaction about the amount of costs which he had paid to the Firm.
- [29] She recalled that when the first cheque was collected that the Claimant Representative went into Linda Grant's office but is unaware of the nature of the conversation, if any, which took place in that office.
- [30] She could not recall any discussion with the Claimant Representative about his alleged dissatisfaction with the \$18,000.00 deduction. She said that she handed the Claimant Representative an envelope with a letter, the cheque was enclosed in that letter.
- [31] Under the Civil Procedure Rules 2000 – Part 65 deals with the issue of costs.

[32] Part 65.2(1) states clearly what the basis of the quantification for costs is. It is set out as follows:

- "(1) If the court has a discretion as to the amount of costs to be allowed to a party, 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.
- (2) If the court has a discretion as to the amount of costs to be paid to a legal practitioner by her or her client, the sum allowed is –
 - (a) the amount that the court deems to be reasonable; and
 - (b) which appears to be fair both to the legal practitioner and the client.

[33] The Rule in part refers that costs are "the amount that the Court deems reasonable were the work to be carried out by a legal practitioner of reasonable competence..."

[34] In the matter of **BNP Traders v Attorney-General & Comptroller of Customs**, Justice Benjamin awarded prescribed costs in the matter in the sum of \$51,255.16.

[35] The award of prescribed costs in the matter exercised his discretion and taking into account all the relevant factors as set out in the Rules arrived at what he must have considered to be a reasonable figure in terms of costs.

[36] Part 65.2(2) as set out above speaks to the amount of costs "to be paid to a legal practitioner by his or her client, the sum allowed ..."

[37] It would appear as if the Rules envisage that the costs which are awarded in a matter are to be reasonable and fair to both legal practitioner and client, but, further, that these costs awarded are for the legal practitioner.

[38] In deciding what is a reasonable figure for costs the Court is given guidelines as set out in Part 65.2(3).

[39] Again, Justice Benjamin must have had all these guidelines in mind when he made his Order for costs in GDAHCV1996/0547.

[40] The award of Benjamin J. was prescribed costs. This is governed by Rule 65.5:-

“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) 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; or

(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) The court may –

(a) award a proportion only of such sum having taken into account the matters set out in rule 64.6(4) and (5); and

(b) order a party to pay costs –

- (i) from or to a certain date; or
- (ii) relating only to a certain distinct part of the proceedings, in which case it must specify the proportion of the fixed costs which is to be paid by the party liable to pay such costs and in so doing may take into account the table set out in Appendix C."

[41] Again, there is nothing before this Court which would allow this Court to say that the Learned Judge did not consider the elements set out in this part of the Rule.

[42] Further, Rule 65.7 sets out clearly what is included in an award of prescribed costs:-

"65.7(1) Prescribed costs include all work that is required to prepare the proceedings for trial including, in particular, the costs involved in –

- (a) instructing any expert;
- (b) considering and disclosing any report made by the expert;
- (c) arranging the expert witness' attendance at trial; and
- (d) attendance and advocacy at the trial including attendance at any case management conference or pre-trial review.

(2) Prescribed costs exclude –

- (a) expert's fees for preparing report and attending any conference, hearing or trial;
- (b) costs incurred in enforcing any order (which are generally fixed in accordance with rule 65.4 but may, in certain cases, be assessed in accordance with rule 65.12);
- (c) the cost of obtaining a daily transcript of the evidence if the trial judge certifies this as a reasonable disbursement in all the circumstances of the case; and
- (d) the making or opposing of any application except at a case management conference or pre-trial review.

- [43] It speaks to "all the work that is required to prepare the proceedings for trial" – unless the Claimant or Defendant is representing himself or herself, that person is the legal practitioner.
- [44] In the matter of **BNP Traders v. Attorney-General & Comptroller of Customs**, that person was Linda Grant, deceased, for and on behalf of the Law Firm of Grant & Joseph.
- [45] I am not persuaded that the costs awarded were for the Claimant. I find that the costs awarded by Justice Benjamin were for the legal practitioner, Mrs. Linda Grant, deceased, and not for the Claimant BNP Traders.
- [46] Accordingly, I would dismiss the claim and award costs to the Defendants in the sum of \$3,000.00.
- [47] This case showcases the difficulty of lay persons who choose to represent themselves in matters before this Court.
- [48] The Claimant in this matter was unable to offer any assistance to this Court when matter of law arose in this case. This may have hampered his ability to present his case to the Court.
- [49] It is not easy to appear before the Court, as some people anticipate, and it would be of great assistance to the Court that persons in the future obtain legal advice and assistance before coming before the Court.
- [50] I thank Counsel for their assistance in this matter.


Margaret Price Findlay
High Court Judge