

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2015/CLE/gen/00198

IN THE MATTER of The Road Traffic Act Chapter 220 Statute Laws of the Commonwealth of The Bahamas (hereinafter referred to as "The Act").

AND

IN THE MATTER of a Judgment in Supreme Court Action No. 2013/CLE/gen/2017 between Harry Pinder (Plaintiff) and Audrey Boname (personal representative of the Estate of Walter B. Boname) and Cadet's Car Rental (Defendants), dated the 9th day of January, A.D., 2015.

BETWEEN

HARRY PINDER

Plaintiff

AND

BAHAMAS FIRST GENERAL INSURANCE COMPANY LIMITED

Defendant

Appearances: Larell Hanchell for the Plaintiff

Nadia Wright for Defendant

RULING

WINDER J

This is my brief decision on the outstanding question of costs in the captioned action.

1. This is an enforcement action arising from a judgment of the Supreme Court in Action No. 2013/CLE/gen/2017 between Harry Pinder and Audrey Boname (personal representative of the Estate of Walter B. Boname) et al. The claim is for the insurers to settle outstanding sums due by their insured. The judgment in the 2013 action was appealed and finally determined by the Privy Council on 28 January 2019.

2. Subsequent to the commencement of this action, the Defendant paid to the plaintiff the sum of \$140,397.38 on 31 May 2021. In the presence of the Court, on 2 September 2021, the plaintiff advised that it would accept the sum paid by the defendant on 31 May 2021 in full and final settlement of the claim. The only issue remaining, according to the plaintiff, was the determination of the question of costs for the action.

3. In my considered view the Plaintiff is entitled to his costs of the action. The enforcement action was necessary, if not for the mere fact that moneys, by way of interest remained outstanding and unpaid. The defendant says that the sums were not paid as a result of the plaintiff's insistence that the total sums due included interest upon the interest due. Ultimately, the defendant paid the sums it felt were due, less any interest upon interest. Upon the payment the plaintiff accepted that the action was at an end save for the question of his costs for pursuing the judgment debt.

4. Whilst the action has been compromised by the defendant's payment on 31 May, 2021 his does not absolve the defendant from its failure to have paid the sums, which it accepted were due to the plaintiff, despite any insistence on a higher sum. The sums paid on 31 May, 2021 could have been paid by the defendant prior to the reviving of these proceedings following the decision of the Privy Council.

5. In the circumstances, I will award costs to the plaintiff. I will however, having regard to all that has transpired, fix those costs. The award of costs are in the discretion of the Court and in accordance with Order 59 rule 9 of the Rules of the Supreme Court, such a discretion extends to the fixing of costs. According to Order 59 rule 9:

9. (1) Subject to this Order, where by or under these Rules or any order or direction of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs.

...

(4) The Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled — (a) to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified; or (b) to a gross sum so specified in lieu of taxed costs.

6. In assessing the reasonableness of the costs, I have taken into account the time spent before me, the work reasonably to have been expended, the seniority of counsel and the importance of the matter to the client. I have also taken into account the fact that the matter was resolved without full trial, albeit several interlocutory hearings. Having looked at the work, in the round, I will fix the reasonable professional charges in this matter, at \$7,500.

Dated this 26th day of October 2021



Ian R. Winder

Justice