

Common Law and Equity Division

IN THE MATTER of ALL THAT two parcels of land containing 54.23 acres situated approximately 400 feet southwest of the Settlement of Gregory Town in the Island of Eleuthera one of the Islands of the Commonwealth of The Bahamas and bounded on the North by a track of Crown Land running thereon some 795.51 feet and on the West by land originally granted as 156 Acres to I R Sears and running thereon some 3,192.42 feet and on the East by land claimed by Thompson Brothers parallel to land known as Pine Apple Hill Estates running thereon some 3,085.66 feet and to the South running thereon the Main Public Road some 482.45 feet and on the South by the other portion of land bounded Southwardly by the Sea and running thereon 277 feet Westwardly by Wood Terrace and Eastward by land owned by various owners running thereon 973.75 feet which said two parcels of land has such position shape boundaries marks and dimensions as are shown on a plan filed herein and thereon coloured **YELLOW**.

AND IN THE MATTER of the Quieting Titles Act, 1959

AND IN THE MATTER of the Petition of Arlington Wood and Nelson Wood

Before: The Honourable Madam Justice Mrs. Cheryl Grant-Thompson

Appearances: Mr. Philip Hilton on behalf of the Applicant, Mr. Antonio Thompson;
Ms. Richette Percentie & Ms. Lashanda Bain on behalf of the Applicants, Mr. Philip Thompson & Ms. Claudia Scavella (substituted for Ms. Cecelia Thompson)
Ms. Glenda Roker on behalf of the Applicant, Mr. Mario Pinder
Mr. Alton McKenzie on behalf of the Respondents Mr. Arlington Wood and Mr. Nelson Wood

Hearing Dates: 29th of September, 2023.

FINAL JUDGMENT ON COSTS; *Scherer v. Counting Instruments Ltd. [1986] 2 All E.R. 529; Ritter v. Godfrey [1918-1919] All ER Rep 714; Straker v Tudor Rose [2007] EWCA Civ 368; Swart et al v Appollon Metaxides et al SCCivApp. No.78 of 2012; Order 59, Rule 3(1) and (2) of the Rules of the Supreme Court 1978 (repealed); Rule 44.3 (4) & (5) of the Civil Procedure Rules 2023; Order 71.6 Rule (5) of the Civil Procedure Rules 2023*

Headnote: This is a Costs Judgment. The Respondents originally sought to quiet a total of 54.23 acres of land located Gregory Town, on the Island of Eleuthera, The Bahamas. On the 30th of August, 2023 the Court found relative to the subject properties in favour of the Adverse Claimants. The land did not belong to the Petitioners. The issue of cost was adjourned to be heard at a later date.

Held: The Courts found under all of the circumstances that, it would be just to adhere to the legal principal that Cost follows the event. The Court having reviewed the submissions, the body of work, time and nature of the matter determined that Costs would be fixed at Forty-Five Thousand Dollars (\$45,000), as neither of the Adverse Claimants provided to this Court the amount in which they believed to be fair. The Forty-Five Thousand Dollars (\$45,000) are to be split as follows:

- a. Ten Thousand Dollars (\$10,000) is to be provided to Counsel for the Mr. Mario Pinder, Ms. Glenda Roker;
- b. Fifteen Thousand Dollars (\$15,000) to Ms. Richette Percentie & Ms. Lashanda Bain on behalf of the Applicants, Mr. Philip Thompson & Ms. Claudia Scavella (fit for two Counsel); and
- c. Twenty Thousand Dollars (\$20,000) to Mr. Philip Hilton on behalf of Mr. Edward Turner (Deceased) for the Applicant, Mr. Antonio Thompson.

In making this decision the court relied on the following cases: *Scherer v. Counting Instruments Ltd.* [1986] 2 All E.R. 529; *Ritter v. Godfrey* [1918-1919] All ER Rep 714; *Straker v Tudor Rose* [2007] EWCA Civ 368; *Swart et al v Appollon Metaxides et al* SCCivApp. No.78 of 2012

GRANT-THOMPSON J.

BACKGROUND

2. Originally this case involved a family dispute over land. The properties consisted of beautiful, lush red soil pineapple fields found on Hamilton Land, Rangers Land, Sweeting Land, The South Side Land and Sweeting Land (Parkes), all located in Gregory Town, Eleuthera, The Bahamas.

3. The Petition was filed (14 December, 2010) by Mr. Arlington and Mr. Nelson Wood. They sought to have the properties investigated and a certificate granted under the Quieting Titles Act, 1959. Mr. Arlington and Nelson Wood asserted that they were the true beneficial owners of the property as they inherited it from their parents, who received it from Mr. Henry Wood.
4. In Contrast to the Application, the Adverse Claimant Mr. Antonio Thompson, averred that Mr. George Wood left several properties to his wife, Ms. Matilda Woods, for her life. The remainder interest was then given to their children and grandson, Malachi Wood, James H. Wood, Carolina Thompson, Martha Sweeting, Georgie Johnson, Mario Johnson, and William McKay by will dated the 9th December, A.D., 1921.
5. Further, Counsel Mr. Edward Turner (now deceased)– representing Mr. Antonio Thompson- submitted that after Mr. Antonio Thompsons’ death, Arthur Thompson’s Eldest Son, Mr. Anthony Thompson, became the owner and controller of the George Wood Properties. Mr. Anthony Thompson and his son Antonio Thompson issued Conveyances to the descendants of Mr. George Wood to property known as “The Thompson Generation Property”, which encompassed all of the property listed in the Last Will and Testament of Mr. George Wood.
6. The Respondents (Arlington and Nelson Wood) herein, both claimed to be owners in fee simple of the documentary and possessory title to both tracts described below (both properties referred to as the “subject properties”) being: -

ALL THAT piece parcel or tract of land totaling 45.43 acres bounded on the North by a tract, of Crown Land running thereon

some 795.51 feet and on the West by land originally granted to I R Sears and running thereon some 3,192.42 feet and on the East by land claimed by Thompson Brothers running thereon some 3,085.66 feet and South some 482.45 feet by a Public Road separating it from a tract of land hereinafter described running thereon some 482.45 feet (**hereinafter called Tract A**); and

ALL THAT piece parcel or tract of land totaling 8.80 acres bound Southwardly by the Sea and running thereon 277 feet Westwardly by Wood Terrace and Eastwardly by land owned by various Owners running thereon 973.75 feet and Northwardly by a thirty (30) foot main Public Road running thereon 485.12 feet (**hereinafter called Tract B**).

7. Mr. Philip Thompson claimed entitlement to possessory title of Tract A only, on the basis that he has been in possession of the property since the 1970's, when his father- Mr. Anthony Thompson- farmed the land.
8. Ms. Claudia Scavella (substituted for Ms. Cecilia Thompson) claimed that she was entitled to possessory title of a portion of Tract B being 4.80 acres, on the basis that her family has been in possession of the land for the statutory period.
9. Mr. Mario Pinder claimed to be entitled to possessory title of the remaining portion of Tract B, being 4.0 acres. His claim, based on the premise that the portion of land in question was purchased by Henry Wood on the 26th day of April, 1866 and was inherited by his father, Don Johnson (nee Wood) through his Great Great-grandfather. Additionally, Mr. Mario Pinder asserted that he has built a house on the subject property and

therefore, has possessory title. The Court has seen this physical structure and the development of the surrounding lands.

10. On the 30th of August, 2023 this Honourable Court ruled that:

- a. **Mr. Antonio Thompson was initially the true owner and controller of the subject properties. However, for the reasons stated above Mr. Antonio Thompson is now entitled to seventy (70) percent of Tract A, which amounts to 30.80 acres;**
- b. **The Adverse Claimant, Mr. Philip Thompson, was never the owner or controller of the property and thus was a licensee, in regard to Tract A. However, due to the equitable doctrine of proprietary estoppel Mr. Philip Thompson now possesses an irrevocable license and is entitled to thirty (30) percent of Tract A, which amounts to 14.63 acres;**
- c. **The Adverse Claimant, Mr. Mario Pinder possesses an irrevocable license in regard to Tract B. He is therefore entitled for the reasons stated above to the 4.0 acres of Tract B;**
- d. **The Adverse Claimant, Ms. Claudia Scavella possesses an irrevocable license in regard to Tract B. She is therefore entitled for the reasons stated above to the 4.80 acres of Tract B; and**
- e. **The Petitioners, Mr. Arlington Wood and Mr. Nelson Wood, would not be entitled to any land comprised in Tract A or Tract B.**

11. The matter was then adjourned to the 29th of September, 2023 for the hearing on Cost Submissions, and November, 2023 for a Ruling on Cost.

Applicants- Mr. Philip Thompson & Ms. Claudia Scavella Submissions on Cost

12. Counsel Ms. Richette Percentie and Ms. Lashanda Bain on behalf of the Applicants, Mr. Philip Thompson and Ms. Claudia Scavella, submitted that the costs of these proceedings should be borne by the Respondents, Mr. Arlington Wood, and Mr. Nelson Wood, as they were the unsuccessful parties herein.

13. To support their submission Counsel relied on Order 59, Rule 3(1) and (2) of the Rules of the Supreme Court 1978 (repealed) which provided that:

“3 (1) Subject to the following provisions of this Order, no party shall be entitled to recover any costs of/or incidental to any proceedings from any other party to the proceeding except under an order of the Court.

(2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.”

THE LAW

14. Counsel for the Applicants also drew this Courts attention to the leading authority of **Scherer v. Counting Instruments Ltd. [1986] 2 All E.R. 529**, where Buckley L.J. stated:

“The normal rule is that costs follow the event. That party who turns out to have unjustifiably either brought another party before the court or given another party cause to have recourse to the court to obtain his rights is required to recompense that other party in costs. But, (2) the judge has under s 50 of the 1925 Act an unlimited discretion to make what order as to costs he considers that the justice of the case requires. (3) Consequently, a successful party has a reasonable expectation of obtaining an order for his costs to be paid by the opposing party but has no right to such an order, for it depends on the exercise of the court's discretion...”

15. Further, Counsel for both Mr. Philip Thompson and Ms. Claudia Scavella also submitted that pursuant to Rule 44.3 (4) of the New Civil Procedure Rules 2023, guides the Honourable Court when deciding what Order (if any) to make relative to costs, have regard to all the circumstances including-

*“(a) the conduct of all the parties;
(b) whether a party has succeeded on part of his case, even if he has not been wholly successful; and
(c) any payment into court or admissible offer to settle made by a party which is drawn to the court’s attention.”*

16. Rule 44.3 (5) of the Rules provide an in-depth understanding of how the Court should define conduct. This provision provides: *“The conduct of the parties includes-”*:

“(a) conduct before, as well as during, the proceedings, and in particular the extent to which the parties followed any relevant pre-action protocol;

(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(c) the manner in which a party has pursued or defended his case or a particular allegation or issue;

(d) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim.”

17. In **Ritter v. Godfrey [1918-1919] All ER Rep 714** where Atkin L.J. stated that:

“In the case of a wholly successful defendant, in my opinion the judge must give the defendant his costs unless there is evidence that the defendant (1) brought about the litigation, or (2) has done something connected with the institution or the conduct of the suit calculated to occasion unnecessary litigation and expense, or (3) has done some wrongful act in the course of the transaction of which the plaintiff complains.”

Neither of these provisions are the circumstances in the instant case.

Applicant- Mr. Mario Pinder Submissions on Cost

18. Counsel Ms. Glenda Roker expressed similar sentiments as Counsel Ms. Richette Percentie and Ms. Lashanda Bain, in regard to the matter of Costs. Ms. Roker on behalf of the Applicant, Mr. Mario Philip, submitted that the costs of these proceedings should be borne by the Respondents, Mr. Arlington Wood and Mr. Nelson Wood, as they were the unsuccessful parties.

19. To support this argument, Counsel for this Applicant submitted that it is trite law that the Supreme Court has a wide discretion in relation to costs.

The relevant statute, The Supreme Court Act, Section 30 (1) (repealed) provides that:

“Subject to this or any other Act and to rules of the court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid.”

20. In addition to this, Counsel also relied on Order 59 Rules 2 and 3 of the Rules of The Supreme Court (repealed) which provided that:

“2.(2) The costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that Court shall have full power to determine by whom and to what extent the costs are to be paid, and such powers and discretion shall be exercised subject to and in accordance with this order.

Entitlement to Costs

3.(1) Subject to the following provisions of this Order, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceeding except under an order of the Court.”

21. Further, it was also submitted that the Supreme Court Civil Procedure (Amendment) Rules, 2023 provides as follows:

“71.3 Orders about costs

The Court may make an order requiring a party to pay the costs of another pay arising out of, or related to all or any part of any proceedings.

71.5 Entitlement to recover costs

A person may not recover costs of proceedings from any other party or person except by virtue of-

- (a) An agreement between the parties;*
- (b) An order of the Court; or*
- (c) A provision of these rules*

71.6 Successful Party generally entitled to costs

(1) Where 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.

(2) the Court may, however, make no order as to costs or, in an exceptional case, order a successful party to pay all or part of the costs of an unsuccessful party. ”

22. Counsel for the Applicant also directed the Court to the case of **Straker v Tudor Rose [2007] EWCA Civ 368** where Lord Justice Waller gave this helpful guidance on the approach to between-the-parties costs:

“First, is it appropriate to make an order for costs? Second, if so the general rule is that the unsuccessful party will pay the costs of the successful party. Next, identify the successful party. Then, consider whether there are reasons for departing from the general rule in whole or in part. If so, the judge should make clear findings of the factors justifying costs not following the event.”

23. In the Court of Appeal decision of **Swart et al v Appollon Mexaides et al SccivApp No. 78 of 2012** the Learned Justices of Appeal considered the case of **Regina (Viridor Waste Management Ltd and others) v Revenue**

and Customs Commissioners [2016] 4 WLR 165 and quoted Nugee, J in reaffirming the position relative to costs follow the event rule:

“The general rule that costs follow the event is I think based on causation principles: a claimant who has no good claim which the defendant denies is obliged to sue, and hence incur costs, in order to make good his claim and the defendant therefore ought to pay for the costs which he has caused the claimant to incur; similarly a defendant who is sued by a claimant who in fact has no claim is obliged to defend himself, and hence incur costs, in order to see off the invalid claim, and the claimant therefore ought to pay for the costs which he has caused the defendant to incur.”

24. Counsel for the Applicant, Mr. Pinder, asked the Court to consider the manner in which the Respondents approached the Court, namely, with no reasonable cause of action. As a result of these proceedings, the Applicants were put to the unnecessary expense of defending the claim as against the Respondents. The Court must also be cognizant about the length of time spent in preparation of the trial of the action along with the lengthy trial and disbursements such as travel expenses which are justifiably incurred by the Applicants.

25. Therefore, Counsel for the Applicant, Pinder, submitted that in this case, there is no reason to depart from the ordinary rule that costs follow the event and that the successful party is normally awarded their costs. It was further submitted that the Respondents herein having failed on all of their claims cannot be said to be a successful party in the proceedings. Therefore, they should be made to bear the Cost of these proceedings. The Court agrees.

Discussion

26. When dealing with the doctrine of Cost as shown in the case of **Scherer v Counting Instruments Ltd. (supra)** the general rule is that cost follows the event. This means that the costs of the successful party in any proceedings should be borne by the unsuccessful party. Having reviewed the oral and written submissions provided by Applicants in this matter, this Court finds that Cost should follow the event and be awarded to the Applicants herein. They were the successful parties to the original proceedings.

27. This Court took into consideration the relevant guiding principles on the proper exercise of the Courts discretion, taking Order 71.6 Rule (5) of the New Civil Procedure Rules 2023 into account:

“Without limiting the factors which may be considered, the court must have regard to —

(a) the conduct of the parties both before and during the proceedings;

(b) whether a party has succeeded on particular issues, even if not ultimately successful in the case, although success on an issue that is not conclusive of the case confers no entitlement to a costs order;

(c) the manner in which a party has pursued —

(i) a particular allegation;

(ii) a particular issue; or

(iii) the case;

(d) whether the manner in which the party has pursued a particular allegation, issue or the case, has increased the costs of the proceedings;

(e) whether it was reasonable for a party to —

(i) pursue a particular allegation; or

(ii) raise a particular issue;

and whether the successful party increased the costs of the proceedings by the unreasonable pursuit of issues; and

(f) whether the claimant gave reasonable notice of an intention to pursue the issue raised by the application.”

28. Taking these provisions into consideration, this Court found that the conduct of the Respondents in this matter initially had been reasonable. As prescribed by law the Respondents began this matter by first filing their Petition dated the 14th of December, 2010. The Respondents, in adherence to the requisite rules and regulations, published the required advertisements stating their intention to acquire the subject property. In response to the advertisement the Applicants joined the action to contest the claims of the Respondents. The actions of both the Applicants and Respondents in this matter were reasonable in the sense of no unnecessary delay caused by either the Respondents or the Applicants. However, it cannot be denied that the Respondents case disclosed no reasonable cause of action.

29. Moreover, when considering the conduct of the parties throughout this matter Rule 44.3 (5) of the Civil Procedure Rules states that, “*The conduct of the parties includes-*”:

“(a) conduct before, as well as during, the proceedings, and in particular the extent to which the parties followed any relevant pre-action protocol;

(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(c) the manner in which a party has pursued or defended his case or a particular allegation or issue;

(d) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim.

30. Taking these provisions into consideration this Court is of the view that though the Respondents were unsuccessful notwithstanding that, their initial conduct was in adherence to the pre-action protocol in resolving title disputes. The Respondents case was wholly bad. The Applicants were put to the unnecessary expense of responding to a challenge that had no reasonable prospect of success. As a result of these proceedings the Applicants incurred the unnecessary expense of defending their claims. They had to prepare for trial, sit over the period of twenty-nine (29) days, which included travel to the Locus in quo. The travel to the Locus included the purchase of plane tickets to Eleuthera, a family Island where the majority of the witness testimony was taken to avoid the witnesses having to travel to New Providence. The Court and Counsel went to them sitting in the local Magistrates Court. Counsel would have had to rent vehicles pay for hotel accommodations, food and employ the services of a professional surveyor and map production of the relevant area. These costs should be borne by the Respondent.

31. The locus visit was to the settlement of Gregory Town, on the island of Eleuthera, one of the Islands of the Commonwealth of The Bahamas to view subject property in the original matter. This visit was necessary and crucial in order for a just ruling in this matter to be given. However, although reasonable, it caused the Applicants to encounter additional expenses detailed above.

32. As shown in the case of **Swart et al v Appollon Metaxides (supra) and Rule 71.6 of the CPR** the Court or judge possesses the full power/discretion to determine by whom and to what extent the costs are to be paid. This authority was further supported by Order 59 Rules 2 and 3 of the Rules of The Supreme Court (repealed). In this matter though Counsel for the Applicants have provided this Court with submissions justifying why cost should be granted in their favour, there has been no submissions stating the exact amount which they deem reasonable. Thus, in awarding costs to the Applicants in this matter, this Court is now tasked with determining a reasonable amount to give to the Applicants.

33. The Court finds costs should be fixed in this matter at Forty- Five Thousand Dollars (\$45,000). Ten Thousand Dollars (\$10,000) is to be awarded to Ms. Glenda Roker Counsel for Mr. Mario Pinder, Fifteen Thousand Dollars (\$15,000) to Ms. Richette Percentie & Ms. Lashanda Bain Counsel for Mr. Philip Thompson & Ms. Claudia Scavella and Twenty Thousand Dollars (\$20,000) to Mr. Philip Hilton Counsel for the Applicant, Mr. Antonio Thompson, which includes the work of Mr. Edward Turner. Counsel Turner had the steepest case to prove. He called a number of relevant witnesses in order to meet his case, supplying bundles and material which were of immeasurable assistance to the Court in making its determination in this case. Counsel Percentie and Roker are also to be commended.

34. These Costs reflect the twenty-nine (29) days the Court sat hearing evidence in the trial, the visit to the Locus, the preparation of Submissions and bundles. (18th May, 2016; 21st July, 2016; 3rd November, 2016; 21st December, 2019; 8th April, 2019; 2nd May, 2019; 5th September, 2019; 19th June, 2019; 24th October, 2019; 20th of February, 2020; 16th of July, 2020;

21st of September, 2020; 11th of March, 2021; 6th of July, 2021; 11th of March, 2021; 2nd July 2021; 13th of July, 2021; 15th of July, 2021; 22nd of July, 2021; 28th of July, 202; 29th of July, 2021; 30th of July, 2021; 7th of September, 2021; 6th of October 2021; 8th of October, 2021; 9th of November, 2021; 23rd of November, 2021; 30 of November 2021; 1st of February, 2022; 29th August, 2023; 29th September, 2023; 16th of November, 2023). The Court having reviewed the submissions, the body of work, time and nature of the matter determined that Costs would be fixed at Forty-Five Thousand Dollars (\$45,000).

Conclusion

35. It is clear to this Court that while a successful party has a reasonable expectation of receiving an order requiring the opposing party to pay its costs, they have no right to such an order since it is subject to the exercise of the court's discretion. That discretion is an unlimited discretion to make what order as to costs the court finds necessary for the justice of the case. This assertion is supported by the obiter dictum of **Scherer v Counting Instruments Ltd. (supra)** which stated that “*Consequently, a successful party has a reasonable expectation of obtaining an order for his costs to be paid by the opposing party but has no right to such an order, for it depends on the exercise of the court's discretion...*”.

36. In conclusion this Honourable Court finds that, in accordance with the legal principles, costs in this matter will follow the event. The Applicants should be awarded their costs which shall be fixed at total Forty-Five Thousand Dollars (\$45,000). This Forty-Five Thousand Dollars is to be distributed as follows:

- a. Ten Thousand Dollars (\$10,000) is to be provided to Counsel for the Mr. Mario Pinder, Ms. Glenda Roker;
- b. Fifteen Thousand Dollars (\$15,000) to Ms. Richette Percentie & Ms. Lashanda Bain on behalf of the Applicants, Mr. Philip Thompson & Ms. Claudia Scavella (fit for two Counsel); and
- c. Twenty Thousand Dollars (\$20,000) to Mr. Philip Hilton on behalf of Mr. Edward Turner (Deceased) for the Applicant, Mr. Antonio Thompson.

37. I promised to provide my reasons in writing this I now do.

DATED this 23rd day of November A.D., 2023

The Honourable Madam Justice Mrs. Cheryl Grant-Thompson