

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

2021/COM/lab/00038

BETWEEN

ROBERT FORBES

Claimant

AND

MINISTRY OF TOURISM

First Defendant

AND

ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

Second Defendant

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Obie Ferguson KC with Sidney Campbell for the Claimant

Kenria Smith for the Defendants

DECISION

WINDER, CJ

[1.] This is my decision on costs arising out of my judgment dated 24 October 2023 awarding Forbes the sum of \$1,963.19 with interest. It is to be noted that the trial date in these proceedings was adjourned in *circa* April 2023 after the coming into force of the ***Supreme Court Civil Procedure Rules, 2022*** (the “CPR”), and, therefore, the ***CPR*** governs the issue of costs.

[2.] In my judgment dated 24 October 2023, I indicated that I would hear the parties on the appropriate order for costs, if required, by written submissions within 14 days. Forbes lodged written submissions dated 6 November 2023 seeking an order for costs on the basis of the usual rule that costs follow the event. In support of this contention, Forbes relied on ***Keith v Ruffin’s Crystal Palace Hotel [2008] 2 BHS J No. 44***, a case in which *Adderley J* (as he then was) awarded the plaintiff in that case his costs despite the claimant recovering only \$2,346. No written submissions were received by or on behalf of the Defendants within the prescribed period of 14 days nor was any request for an extension of time made.

[3.] **Rule 71.6** of the ***CPR*** provides:

(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.

[4.] **Rule 71.9** of the ***CPR*** provides guidance concerning the factors the Court should take into consideration when deciding who, if any person, should be liable to pay costs:

...

(3) In deciding who, or if any person should be liable to pay costs, the Court must have regard to all the circumstances.

(4) Without limiting the factors which may be considered, the Court must have regard to –

- (a) the conduct of the parties both before and during 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
 - (iii) whether the successful party increased the costs of the proceedings by the unreasonable pursuit of the issues; and
- (f) whether the claimant gave reasonable notice of an intention to pursue the issue raised by the application.

[5.] **Rule 71.10** of the **CPR** provides additional guidance as follows:

- (1) In deciding what order, if any to make about costs, the Court must 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;
 - (c) any payment into court or admissible offer to settle made by a party which is drawn to the Court's attention and which is not an offer to which costs consequences under Part 35 and 36 apply.

- (2) For the purposes of paragraph 1(a), the conduct of the parties includes –
 - (a) conduct before, as well as during, the proceedings;
 - (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; and
 - (e) unreasonable conduct of any kind by any party in relation to the inclusion or exclusion of documents or authorities in any bundle and whether a joint bundle or otherwise.

[6.] **Rule 71.10** of the **CPR** further provides:

- (3) The Court may make an order that a party must pay –
 - (a) a proportion of another party's costs;
 - (b) a stated amount in respect of another party's costs;
 - (c) costs from or until a certain date only;
 - (d) costs incurred before proceedings have begun;
 - (e) costs relating to particular steps taken in the proceedings;
 - (f) costs relating only to a distinct issue in or part of the proceedings; and
 - (g) interest on costs from or until a certain date, including a date before judgment.

- (4) Where the Court would otherwise consider making an order under paragraph 3(f), it must instead, if practicable, make an order under paragraph 3(a) or (c).

...

[7.] In my view, Forbes is to be regarded as the “successful party” for the purposes of **rule 71.6** in the circumstances of this particular case. Forbes succeeded in his claim that the MOT breached his contract by failing to pay him adequate compensation on the termination of his employment in accordance with the provisions of his contract of employment and the provisions of **section 29** of the **EA**. While Forbes claimed the sum of \$58,381.66 and only recovered the sum of \$1,963.19, he nevertheless established that he was entitled to be paid \$8,630.69 before accounting for the sum of \$6,667.50 paid to him by the MOT after these proceedings were commenced.

[8.] In the absence of any suggestion from the Defendants’ quarters for some other costs order to be made, and as the circumstances of the case do not clearly compel some other conclusion, I shall award Forbes, as the successful party, his reasonable and proportionate costs, to be paid by the Defendants.

[9.] **Rule 71.12** of the **CPR** provides in pertinent part:

(2) As a general rule, a judge conducting the trial will summarily assess the costs of the entire claim immediately after he has delivered judgment in respect of the same or as soon as practicable thereafter.

(3) A judge may, instead of summarily assessing the costs under paragraphs (1) and (2), direct that the whole or any part of the costs payable shall be subject to a detailed assessment and he may, when making such direction, indicate which particular matters the Registrar may or shall take into account or exclude in relation to such detailed assessment.

[10.] The relatively straightforward nature of Forbes’ claim makes it apt for summary assessment. However, I do not have the material necessary to carry out a summary assessment of the costs of the claim and the parties have not had the opportunity to address me on the quantum of costs to be paid by the Defendants. I therefore direct that Forbes lodge and serve his bill of costs and representations and additional evidence that he wishes for the Court to consider by 20 December 2023. The Defendants shall lodge and serve any evidence or representations in response they may wish for the Court to consider by 5 January 2024. Forbes shall lodge and serve any response to the Defendants’ evidence and representations by 12 January 2024.

Dated the 7th day of December, 2023



Sir Ian R. Winder
Chief Justice