

**COMMONWEALTH OF THE BAHAMS
IN THE SUPREME COURT**

Commercial Division

2020/COM/LAB 00058

BETWEEN

VAUGHN MILLER

Claimant

AND

ISLAND HOTEL COMPANY LIMITED

Defendant

Before: The Honourable Madam Justice Camille Darville Gomez
Appearances: Mr Sidney Cambridge for the Claimant
Mr Ferron Bethell KC and Miss Camille Cleare for the Defendant
Hearing Date: March 6, 2024

REASONS FOR DECISION TO STAY THE ACTION

Darville Gomez, J

1. The Defendant applied by Notice of Application for an order that the Claimant's action be stayed pending settlement of the taxed costs of the Defendant in the sum of \$19,981.
2. This action was commenced prior to the Civil Procedure Rules, 2022 ("CPR") and was previously before another Judge until it was transferred to this Court sometime in August, 2023.
3. The action was commenced by the Claimant by a generally endorsed Writ of Summons filed on December 1, 2020. The Claimant was a Bellman employed at one of the Defendant's hotels. He admitted in his Statement of Claim that he was terminated for gross insubordination for his failure to accept a "master key" which allowed him to enter guest rooms at any time unattended. This fact was not disputed by the Defendant however, in response it was pleaded that he was terminated for his repeated failure to accept a "master key" which was necessary for the proper discharge of his functions and duties as a Bellman.
4. The Court held a Case Management Conference on May 17, 2022 where certain directions were given including the fixing of a trial date for January 30 and 31, 2024. The parties were

to settle the remainder of the case management directions and they were to return for a Pre-Trial Review on November 24, 2022.

5. The Claimant failed to comply with some of the directions and was forced to apply by a Summons filed on November 23, 2022 for relief from sanctions. At the Pre-Trial hearing on November 24, 2022 he was granted relief from sanctions. On January 30, 2023, the first day of the trial, the Claimant requested an adjournment for the matter to be sent to private binding arbitration. The Judge acceded to the request and awarded costs of the adjournment to the Defendant to be taxed, if not agreed.
6. The costs were taxed pursuant to the Rules of the Supreme Court, 1978 (“RSC”) by the Deputy Registrar on October 10, 2023 at \$19,281.00 and a Certificate of Costs was filed and served on the Claimant’s attorney on October 24, 2023.
7. The Claimant filed a Notice of Motion on November 8, 2023 seeking an appeal of the taxation.
8. Under the RSC the proper procedure would have been to apply for a review of the taxation and then apply to a Judge if dissatisfied with the decision of the Registrar on the review. However, the CPR has repealed the RSC and even if the RSC had still been in force, the Claimant was out of time for the review because the Certificate of Taxation had already been issued.
9. Under the CPR there is no review or appeal to a Judge from an assessment of costs. However, the appeal was lodged pursuant to CPR rule 58.1 as an appeal from the Registrar, however, it was out of time per CPR rule 58.1(3)(a). It was not pursued and in any event, the filing of the appeal by the Claimant did not operate as an automatic stay and the Claimant was still obligated to satisfy the Defendant’s costs.
10. I refer to the dicta of Woolf CJ in Lownds v Home Office [2002] EWCA Civ 365 because in that case the majority of costs were incurred before the introduction of the new rules. The instant case is somewhat similar in that the costs were taxed under the RSC however, the CPR has come into force and the Defendant is relying on the overriding objectives to enforce the costs order obtained under the RSC.

“[2] Proportionality played no part in the taxation of costs under the Rules of the Supreme Court. The only test was that of reasonableness. The problem with that test, standing on its own, was that it institutionalized, as reasonable, the level of costs which were generally charged by the profession at the time when the professional services were rendered. If a rate of charges was commonly adopted it was taken to be reasonable and so allowed on taxation even though the result was far from reasonable.

[3] The requirement of proportionality now applies to decisions as to whether an order for costs should be made and to the assessment of the costs which should be paid when an order has been made.”

11. The Court under the CPR must have regard to the overriding objective when exercising a discretion or interpreting the Rules. The overriding objective is to enable the Court to deal with cases justly and at proportionate cost.

12. I have considered the list of non-exhaustive factors set out in CPR rule 1.1(2)(a) through (f) as follows:

- (i) The trial has been rescheduled to February 11 and 12, 2025.
- (ii) The Claimant has submitted that the order being sought is inconsistent with the overriding objective because it seeks to deny the Claimant his “day in Court”.
- (iii) The Certificate of Taxation is an order of the Court.
- (iv) The Claimant did not attend and participate in the taxation despite having notice of the hearing.
- (v) Despite filing an appeal (albeit out of time) the Claimant did not apply for a stay pending the hearing of the appeal;
- (vi) The Defendant has submitted that the Claimant is one of several Bellman terminated for gross insubordination and others have initiated proceedings which have not reached beyond the filing of generally endorsed writs. The Claimant has expressed his intention to make an application to consolidate these actions. This will have the effect of actually increasing costs.
- (vii) The Defendant has submitted that one of the Bellman with an identical claim filed a trade dispute which has been dismissed by the Industrial Tribunal. The Tribunal ruled that the termination was not wrongful or unfair. This decision may be regarded as persuasive.

13. I have considered the factors and have determined that the Claimant must comply with the costs order prior to the commencement of the trial of this action. If the Claimant fails to do so, the action will stand as dismissed.

14. I have awarded costs to the Defendant to be fixed, if not agreed. The Defendant is to lay over to the Court and Counsel for the Claimant within fourteen (14) days their submissions on costs, not to exceed 5 pages.

Dated this 9th day of May, A. D., 2024



Camille Darville Gomez
Justice