COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2018/CLE/gen/00451

B E T W E E N

NEW PROVIDENCE DEVELOPMENT COMPANY LIMITED

Plaintiff

AND

(1) WINDSOR FIELD DEVELOPMENT LTD

(2) WINDSOR PLACE LTD

Defendants

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: (at trial)	Gail Lockhart Charles KC with Tracey Wells and Candice Knowles for the Plaintiff
	Leif Farquharson KC with John Minns and Christina Davis-Justin for the First Defendant
	Damian Gomez KC with Marilyn Meeres and Paula Adderley for the Second Defendant
Hearing date(s):	On written submissions

DECISION ON COSTS

WINDER, CJ

[1.] This is my decision on costs arising out of my judgment dated 16 July 2024 dismissing NPDC's claim against both Defendants in its entirety and dismissing WPL's counterclaim against NPDC in its entirety. In my judgment, I indicated that I was minded to make an order that the Defendants should have the costs of NPDC's claim and NPDC should have the costs of WPL's counterclaim, to be taxed if not agreed, but I invited written submissions from the parties if they wished to contend for some other costs order. I have received written submissions from each of the parties.

NPDC's submissions

[2.] NPDC submits that the **Supreme Court Civil Procedure Rules, 2022** ("CPR") apply to the proceedings. NPDC contends for an order that it must pay 33% of WFD's and WPL's reasonable costs of defending the claim, to be assessed if not agreed, and for an order that WPL must pay 100% of NPDC's reasonable costs of defending the counterclaim, to be assessed if not agreed. NPDC submits that deductions should be made to the costs NPDC must pay for its claim to ensure that NPDC is not required to pay more than one set of costs and to reflect the extent of NPDC's success on freestanding issues that were important and also time-consuming. NPDC submits that the usual rule as to costs should be applied in relation to WPL's counterclaim.

[3.] NPDC submits regarding the costs of its claim that the Defendants pursued the "same case" and had "fully aligned interests" and, therefore, there was no reason in principle why they could not have been jointly represented. NPDC submits that, by being separately represented, the Defendants enjoyed advantages in the litigation and added to the costs and time spent in the course of the proceedings, including trial, and NPDC ought only to be responsible for the Defendants' costs as if they were jointly represented. NPDC suggests that, as it could work unfairness to disallow one set of costs, the Court should disallow or deduct 50% of each Defendant's costs.

[4.] NPDC grounds its submission on the issue of separate representation on **CPR 71.7**, which provides that the court may disallow more than one set of costs where two or more parties having the same interest are separately represented. NPDC submits that the rationale of **CPR 71.7** is to discourage the unnecessary duplication of costs by parties whose interests are aligned and submits that the rule reflects the principle established by the House of Lords in **Bolton Metropolitan District Council v Secretary of State for the Environment** [1995] 1 WLR 1176, where the House of Lords stated that a developer should not ordinarily be entitled to its costs of defending a judicial review challenge to a planning decision contested by the Secretary of State "…unless he can show that there was likely to be a separate issue on which he was entitled to be heard" or "he has an interest which requires separate representation."

[5.] NPDC submits that a deduction in the Defendants' costs is warranted because the Defendants' arguments and interests overlapped, resulting in unnecessary duplication. NPDC submits that the duplication of arguments and interests in this matter was reflected in the Court's judgment at para [36], where the Court summarised the Defendants' arguments on the main issues in identical terms and referred to them collectively as "the Defendants". NPDC also draws attention to the fact that the Defendants sometimes endorsed each other's submissions, as where WFD endorsed WPL's argument that Clause 19(2) was a purely personal covenant and did not run with the land and WPL contended that WFD could not, as a matter of law, have suffered or permitted WPL to do anything on the Site after it sold the Site to WPL.

[6.] NPDC further submits that a proportionate reduction in the Defendants' costs of defending the claim is justified to reflect the fact that the Defendants were unsuccessful in relation to the issue of whether the Site had been developed in breach of Clause 19(2). NPDC submits that this issue was important, as it underpinned every other issue in NPDC's claim, and NPDC was only deprived of success on its claim and substantial relief because of the Court's interpretation of Clause 19(2). NPDC submits that the importance of the issue of whether the Site had been developed in breach of Clause 19(2) was reflected in the attention that was devoted to it in the Court's judgment and the fact that it occupied a significant part of trial, as a substantial proportion of the evidence adduced concerned the issue.

[7.] NPDC submits that, in addition to its success on the issue of whether the Site had been developed in breach of Clause 19(2), other adverse findings were made on important issues that were disputed by the Defendants which should also be reflected in the overall order for costs. NPDC points, in particular, to the Court's findings that NPDC would have been acting reasonably in declining to consent to the 2017 Conveyance had it been notified of the intended sale to WPL, that there was an inducement on the part of WPL for WFD to breach Clause 19(2) and that WPL had deemed or actual notice of Clause 19(2) prior to the sale of the Site. NPDC also justifies disallowing some of the Defendants' costs of the claim on the basis that it acted reasonably in bringing the claim and some of its concerns were found to be fundamentally well-founded and reasonable.

[8.] On the matter of proportionate or percentage costs orders, NPDC relies on:

(i) **Aspin v Metric Group Ltd** [2007] EWCA Civ 922, which affirms, at para [22], that, in deciding what order to make on an issue-based approach, the court may decide that, in relation to an issue which the successful party overall has lost, that party should be deprived of his costs or should pay the costs of the otherwise unsuccessful party on that issue, and where a claimant recovered 50% of their costs up to the conclusion of trial of liability because of their mixed success on the issues;

(ii) **R (Viridor Waste Management Ltd) v Commissioners for HM Revenue and Customs** [2016] 4 WLR 165, where the overall successful defendant's costs after a certain date were reduced by 15% because they raised a discrete issue which they lost on which raised distinct costs and which involved a wider inquiry into the facts than would otherwise have been necessary; and

(iii) **Grupo Hotelero Urvasco SA v Carey Value Added SL** [2013] 5 Costs LR 669, where the defendant's costs were reduced by 25% because the overall unsuccessful claimant succeeded on several issues after a trial where the court found the claimant was in default under a loan agreement and the defendant's cancellation of the agreement was lawful.

[9.] NPDC also relies on **Sycamore Bidco Ltd v Breslin** [2013] EWHC 583 (Ch), where *Mann J* said, at para [28], that making a proportionate or percentage order is a "difficult exercise" and that "the exercise has to be a broad brush one", and **SmithKline Beecham Plc v Apotex Europe Ltd (No. 2)** [2004] EWCA Civ 1703, at paras [27] and [28], where Jacob LJ said that "[t]he estimation of costs, like that of valuation of property, is more of an art than a science" and that "there is no 'precise' figure of costs which, in theory with perfect measurement tools, one could reach. The best that can be achieved is an estimate which is necessarily going to be somewhat crude."

[10.] On the costs of the counterclaim, NPDC submits that there is no justification for the Court to make any order other than that the costs of the counterclaim should follow the event, pursuant to **CPR 71.6**. NPDC submits that the Court's findings bear out that there was never a legal or evidential basis for the counterclaim to have been launched and the counterclaim ought never to have been pursued beyond the interlocutory judgment which considered the counterclaim handed down in the course of the proceedings. NPDC submits that serious allegations were made which NPDC had to respond to fully and WPL lost on every issue of its "spurious and unmeritorious" claim.

WFD's submissions

[11.] WFD agrees with the Court's proposed order that the Defendants should have the costs of NPDC's claim and expresses no view on the treatment of the costs of WPL's counterclaim as the issue is between NPDC and WPL.

[12.] WFD submits that the incidence of costs falls to be governed by the **Rules of the Supreme Court, 1978** ("RSC") because the instant action was commenced on 25 April 2018, the trial was conducted throughout under the **RSC** regime and it was only when the parties appeared before the Court on 21 July 2023 to make closing submissions that the **CPR** regime was even in force.

[13.] WFD submits that it was the overall winner against NPDC whose claim was dismissed in its entirety, and, as such, the starting point is that it is entitled to its costs. WFD submits that there is no principled basis on which to depart from the general rule that costs follow the event. WFD relies on **Sterling Asset Management Ltd v Sunset Equities Ltd** SCCivApp No. 152 of 2021, **Re Elgindata (No. 2)** [1992] 1 WLR 1207 and **Sharp v Blank** [2020] EWHC 1870 (Ch). WFD stresses that success in litigation is normally to be determined by who is to be paid money and it does not require universal success.

[14.] WFD submits that the general rule should be applied because, (i) while NPDC's evidence on an isolated issue was accepted, NPDC failed to establish liability on any of the various causes of action it relied on; (ii) WFD maintained from inception that Clause 19(2) was a personal covenant which did not run with and bind the land, that it was not liable for "permitting or suffering" a breach of the covenant, and that subsequent to the sale to WPL it played no role in the development or marketing of the Subject Property (points on which it succeeded); and (iii) WFD did not behave improperly or unreasonably in its defence of the action.

[15.] WFD submits that it was appropriate for the Defendants to be separately represented in this case. WFD points to the fact that NPDC sued the Defendants for numerous and distinct breaches, for conspiracy to injure by unlawful means alleging different individual acts of participation and for a variety of injunctive relief both individually and collectively. WFD further submits that the Defendants had different commercial and legal interests, as WFD is the previous owner and vendor of the Site and WPL is the purchaser and current owner and developer of the Site. WFD also relies on the complexity of the matter and the fact that NPDC assembled a "formidable legal team".

WPL's submissions

[16.] WPL endorses the costs orders proposed by the Court. WPL submits that NPDC's submissions are predicated upon the **CPR**, which do not apply to the proceedings. WPL submits that NPDC knew, prior to trial, that WPL relied on the doctrines of privity of contract and privity of estate, upon which it succeeded, yet it continued its claim without regard to the elements required for it to prove its claims. WPL submits that NPDC ought therefore to pay the costs of its unsuccessful claim and this is all the more so because NPDC failed to disclose a document which was relevant to the threshold issue of the permitted uses of the Site. WPL submits that separate representation was justified in this case because of the breach of covenant claim against WFD and the conspiracy claim against both Defendants.

Discussion

[17.] As there is no consensus on the point, the first issue that must be determined is whether the **RSC** or the **CPR** apply to these proceedings. As *Klein J* noted in **Gabrielle Volpi v Delanson Services Ltd et al** 2020/APP/sts/00013, 2020/APP/sts/00018 (22 May 2024) at para [165], "...the CPR makes radical departures from the RSC cost regime". Among the departures made by the CPR is that there is greater flexibility to make issue-based costs orders and proportionate costs orders to reflect success across issues. However, even under the **RSC**, issue-based costs orders and proportionate costs orders were not unprecedented and recent examples of such costs orders being made in the Court of Appeal, which has regard to the practice in the Supreme Court, can be found in **Rubis Bahamas Limited v Lillian Antoinette Russell** SCCivApp No. 86 of 2022 and **Little Bay Partners LLC v Besing Shores Ltd** SCCivApp No. 54 of 2023.

[18.] **Preliminary rule 2** of the **CPR** provides that the **CPR** does not apply to civil proceedings commenced in the Court prior to the date of commencement of the **CPR** except where a trial date has not been fixed for those proceedings or a trial date has been fixed for those proceedings and it has been adjourned. WFD correctly submits that this action was commenced well before the date of commencement of the **CPR** and that the **CPR** did not come into force until the parties appeared before the Court to make closing submissions. With that procedural history, I do not consider that the **CPR** governs the costs of these proceedings. The Court may, however, take into account the principles set out in the **CPR** in exercising its discretion.

[19.] Turning to the principles that apply, **Order 59, rule 3** of the **RSC** provides:

> "(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.
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> (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."

[20.] In **Sterling Asset Management Ltd v Sunset Equities Ltd** SCCivApp No. 152 of 2021, *Barnett P* stated at para [5]:

> "5. The general principle is that whilst costs are in the discretion of the court, that discretion must be judicially exercised. The jurisprudence in this matter can be found in the judgment of Buckley, LJ in Scherer and another v Counting Instruments Ltd and another [1986] 2 All ER 529:
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> '...we derive the following propositions. (1) 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. (4) This discretion is not one to be exercised arbitrarily: it must be exercised judicially, that is to say in accordance with established principles and in relation to the facts of the case. (5) The discretion cannot be well exercised unless there are relevant grounds for its exercise, for its exercise without grounds cannot be a proper exercise of the judge's function. (6) The grounds must be connected with the case. This may extend to any matter relating to the litigation and the parties' conduct in it, and also to the circumstances leading to the litigation, but no further. (7) If no such ground exists for departing from the normal rule, or if, although such grounds exist, the judge is known to have acted not on any such ground but on some extraneous ground, there has effectively been no exercise of the discretion. (8) If a party invokes the jurisdiction of the Court to grant him some discretionary relief and establishes the basic grounds therefor but the relief sought is denied in the exercise of discretion, as in Dutton v Spink & Beeching (Sales) Ltd and Ottway v Jones, the opposing party may properly be ordered to pay his costs. But where the party who invokes the Court's jurisdiction wholly fails to establish one or more of the ingredients necessary to entitle him to the relief claimed, whether discretionary or not, it is difficult to envisage a ground on which the opposing party could properly be ordered to pay his costs. Indeed, in Ottway v Jones [1955] 2 All ER 585 at 591, [1955] 1 WLR 706 at 715 Parker LJ said that such an order would be judicially impossible, and Evershed MR said that such an order would not be a proper judicial exercise of the discretion, although later he expressed himself in more qualified language (see [1955] 2 All ER 585 at 587, 588–589, [1955] 1 WLR 706 at 708, 711)…'

[21.] In **Re Elgindata (No. 2)** [1992] 1 WLR 1207, *Nourse* LJ said at pages 1213 to 1214:

In order to show that the judge erred I must state the principles which ought to have been applied. They are mainly recognised or provided for, it matters not which, by section 51 of the Supreme Court Act 1981 and the relevant provisions of R.S.C., Ord. 62, in this case rules 2(4), 3(3) and 10. They do not in their entirety depend on the express recognition or provision of the rules. In part they depend on established practice or implication from the rules. The principles are these. (i) Costs are in the discretion of the court. (ii) They should follow the event, except when it appears to the court that in the circumstances of the case some other order should be made. (iii) The general rule does not cease to apply simply because the successful party raises issues or makes allegations on which he fails, but where that has caused a significant increase in the length or cost of the proceedings he may be deprived of the whole or a part of his costs. (iv) Where the successful party raises issues or makes allegations improperly or unreasonably, the court may not only deprive him of his costs but may order him to pay the whole or a part of the unsuccessful party's costs. Of these principles the first, second and fourth are expressly recognised or provided for by rules 2(4), 3(3) and 10 respectively. The third depends on well established practice. Moreover, the fourth implies that a successful party who neither improperly nor unreasonably raises issues or makes allegations on which he fails ought not to be ordered to pay any part of the unsuccessful party's costs. It was because of his disregard of that principle that the judge erred in this case.

[22.] In **Sharp v Blank** [2020] EWHC 1870 (Ch), *Sir Alastair Norris* remarked at para [7]:

It is, of course, not the law that a successful party can only be deprived of the costs of an issue if he has unreasonably resisted that issue; any more than it is the law that he should be deprived of the costs of the issue simply because he lost it. In singling out an issue for separate treatment by way of costs I think the court must look for some objective ground (other than failure itself) which alongside failure distinguishes it from other issues and causes the general rule to be disapplied. In

> F & C Alternative Investments Holdings v Barthelemy Davis LJ described it as "a reason based on justice" ([2013] 1 WLR 548 at [47]). Without seeking in any way to be prescriptive, I think the distinctive ground may relate (amongst other things) to the comparative weakness of an argument (even if not unreasonably maintained) or to the necessity for particular evidence relevant only to that issue or to extensive and intensive legal argument directed to that issue which gives it an especial significance in the costs context. ...

[23.] The issue of whether more than one set of costs should be awarded to separately represented defendants was considered by *Allen J* (as she then was) in **R v Smith** No. 854 of 1993 (2 December 1998), where the question arose whether a trustee and beneficiaries who had separately appeared ought to be awarded separate costs. *Allen J* stated:

> It seems to me that the question is whether BITCO and the beneficiaries were justified in separately appearing. I am of the view that there was a sufficient divergence of interests between them to justify their appearance by separate counsel for the reason that BITCO appears as trustee and also as licensee under and *Trust Companies Regulation Act* and in the latter capacity had a duty generally to protect it's customer's confidentiality, while the beneficiaries are concerned with preventing the disclosure of information about their own private affairs. It is conceivable that a difficulty could have arisen in the course of the proceedings where the interest of the two parties conflicted. See *Bagshaw v. Pimm* [1900] P. 148. In the circumstances, I allow them the costs of their separate appearance.

[24.] The Court of Appeal considered the same issue in **Weisfisch et al v Weisfisch** [2011] 1 BHS J. No. 103. There, *Blackman JA*, delivering the judgment of the Court of Appeal, noted the principles stated in **Bolton** (supra) and said at paras [52] to [56]:

> 52 The principles adumbrated in Bolton were applied and considered in a number of commercial cases in the Commonwealth, both prior and post the Bolton ruling. It would suffice to consider just three (3) of them.
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> 53 In Nova Scotia Savings Loan Co. et al v. Cohen et al [1983] Carswell NS 108; 41 C.P.C 245, the financial institution was unsuccessful in obtaining an injunction and costs were awarded to the 5 successful defendants, with one bill of costs to be taxed. Burchell J of the Nova Scotia Supreme Court stated at paragraphs 6, 8 and 9 of the decision that:
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> > "6. Although it is my opinion that costs should be awarded against the plaintiffs in this instance, there remains the question of whether they should be awarded separately or in one bill. Costs in the proceeding before Mr. Justice Grant were awarded in one bill but it has been pointed out that all of the unsuccessful applications in that proceedings were represented by the same counsel. I assume the same was true in the case of the successful respondents in that case.
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> > 8. I recognize the right of separate parties to retain separate counsel, but the extent to which their participation should elaborate the costs to the other side must, I think, depend upon the extent of the contributions actually made and the extent to which multiple appearances and separate preparation can be seen to have been necessary. Counsel for the unsuccessful applicants point out that the main brief and argument was that of Mr. Wickwire who acted as leading counsel during the hearing. It was also Mr. Wickwire who insisted on cross-examining Mr. Black which he did at length. The participation of other counsel was more

limited and, in general, they associated themselves with the points raised by Mr. Wickwire....

11. I think it would be unfair in the circumstances under review to impose upon the plaintiffs the burden of 5 separate and full bills of costs where a common position was adopted by all of the defendants. (emphasis added) At the same time I think I should give some recognition to the right of separate parties to be separately represented. My conclusion is that there shall be one taxed bill of costs to be presented by Mr. Wickwire but that other defence counsel shall have the right to counsel fees for their appearances at the hearing."

54 In the British Columbia Supreme Court case of West Coast Title Search Ltd v. Datamex Ltd [1994] CarswellBC 705; 24 C.P.C.(3d) 245 part of the headnote records that the corporate defendant and its general manager had separate representation from the second corporate defendant and its president. In circumstances that the general manager's defence was the same as that of the second corporate defendant, the general manager was not awarded separate costs.

55 In another property case from British Columbia, the Court of Appeal of that province considered the principles applicable on the award of costs where they are multiple parties. Smith J.A in delivering the judgment of the Court in Aviawest Resort Club v. Chevalier Tower Property Inc [2006] CarswellBC 1874; [2006] 10.W.W.R 265, noted at paragraphs 10 - 14 and 20 of the decision that:

"10. The Chevalier appellants and the Rosedale appellants filed separate factums. Although they did not use identical language, each raised the central issue whether s. 174 of the Act empowered the court to authorize the administrator to act without a vote of the strata lot owners in situations where the strata corporation could not act without an authorizing vote...

11. In their factums, The Chevalier appellants and the Rosedale appellants made essentially the same arguments on the successful ground of appeal and relied on the same case authorities. At the hearing, counsel for the appellants divided the responsibility for the submissions between themselves.

12. Given those circumstances, the respondents submit that the two groups of appellants had identical interests and should be entitled to only one set of costs. They rely on Forrest v. M.C.K Properties Ltd [1990] 42 C.P.C (2d) 158, [1990] B.C.J No. 1412 where Southin J.A who gave the judgment of the Court said, at page 160:

The general rule is that defendants at trial are entitled not only to be separately represented but also, if the action fails to separate bills of costs.

The question then becomes whether respondents in this Court who do not divergent interests have the same right to separate representation in every respect, including, if successful, a full set of costs each, as do defendants in the court below.

In my opinion, separate representation of respondents with identical interests is not to be encouraged although, of course, it cannot be forbidden. Therefore, the respondents will be entitled to one set of costs only.

13. Thus, the question in this Court, whether the successful parties in question are appellants or respondents, is whether their interest are identical. If so, the Court's discretion will generally be exercised against awarding multiple set of costs.

> 14. The appellants submit that they had divergent interests in the appeal. In their written submission, the Rosedale appellants contend that they were adverse in interest as property managers to the Chevalier appellants as property owners. They say they defended their conduct as property managers while the interests of the Chevalier appellants was in maintaining their control as owners and in distancing themselves from alleged misconduct by the Rosedale appellants. The Chevalier appellants adopt this submission....
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> 20. Accordingly, the Chevalier appellants and the Rosedale appellants should be restricted to one set of costs. "

> 56 The contrasting decisions of the Court of Appeal of the State of Victoria, Australia in the commercial matter of Spotless Group Ltd v. Premier Building and Consulting Pty Ltd et al [2008] VSCA 115 (an order for one set of costs) and an action for judicial review in the Outer House, Court of Session, in Dulce Packard and others, [2011] CSOH 148 (an order in favor of the two defendants) delivered on September 7, 2011 are instructive as to the approach taken by the Courts in making costs orders where there are multiple defendants. The common feature they have however is to ensure that substantial injustice is avoided and that there is just recompense for the work undertaken.

Costs of NPDC's claim

[25.] Where there are multiple defendants that are separately represented, the authorities cited suggest that the central question to be answered when deciding whether to award more than one set of costs is whether or not the defendants were justified in separately appearing. That is a question of what was necessary in the circumstances. While there is nothing which prohibits several defendants with the same interest from being separately represented against a common opponent, a court will naturally be reluctant to award more than one set of costs if it appears that the defendants separately appeared when they could just as well have been jointly represented and therefore needlessly added to the costs of the proceedings.

[26.] I consider that the Defendants were justified in being separately represented here. NPDC's claim was a substantial and complex one with significant consequences for both Defendants. While there was overlap in the claims advanced against the Defendants, NPDC pursued distinct claims and different reliefs against them. NPDC's claims against the Defendants reflected their distinct roles and involvement as previous owner of the Site and original covenantor on the one hand, and current owner of the Site and current developer of the Site on the other. By virtue of those distinct roles and the Defendants' distinct involvement in the matter, the Defendants were in different circumstances and had different interests and it was appropriate for them to be separately represented.

[27.] However, some allowance must be made for the fact that NPDC succeeded on the issue of whether the Site had been developed in breach of Clause 19(2). The issue was an important and time-consuming one in the context of the proceedings, as NPDC submitted. The Defendants' opposition to it was based to a significant extent on the restrictive covenants regulating development at the AIP and the diversification that had taken place at the AIP since 2004, both of

which the Court found not to be relevant. NPDC was responsible for most of the evidence relevant to the issue and the Defendants in the final analysis had very little to support any favourable factual comparison between the AIP in 2004 and the OWBP. Being mindful that making a proportionate or percentage costs order is a "broad brush" exercise which is entirely dependent on the facts, I will award the Defendants 70% of their respective costs of the claim.

Costs of WPL's counterclaim

[28.] No suggestion has been made that I should depart from my provisional costs order that WPL should pay NPDC's costs of the counterclaim and I see no reason to do so. Notably, WPL itself did not contend for any other costs order.

Conclusion

[29.] In the premises, I order that NPDC shall pay 70% of the Defendants' respective costs of the claim and that WPL shall pay NPDC's costs of the counterclaim, such costs to be taxed if not agreed.

Dated the 9th day of October, 2024

Sir Ian R. Winder Kt.
Chief Justice