

IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division
Claim No. 2017/CLE/gen/FP/00269

BETWEEN

JANSEL COURT CONDOMINIUM ASSOCIATION

Claimant

AND

JOAN BOWE

Defendant

Before: The Hon. Madam Justice Constance Delancy

Appearances: Mr. Jacy Whittaker for the Claimant
Mr. Kevin Russell for the Defendant

Hearing Dates: On the papers

RULING

DELANCY, J.

[1.] This is the Court's ruling on the Claimants' application for an order to strike out the Defendant's Bill of Costs filed herein.

Procedural Background

[2.] On 17 November, 2017, the Claimant commenced an action by way of Originating Summons. The trial of the matter was held 17 April, 2018 and *Hanna-Adderley, J.* delivered a judgment on 11 December, 2024 ("the Judgment") whereby the Claimant's action was dismissed.

[3.] At the conclusion of the matter costs were awarded to the Defendant and directions as to the assessment of the costs were given by as found at paragraph 40 of the Judgment:

Costs is usually in the discretion of the Court and the usual costs order that costs follow the event should apply. Therefore, costs are the Defendant's to be paid by the Plaintiff, to be taxed if not agreed. If not agreed the Court shall fix the costs. ***The Defendant shall file and serve on the Plaintiff a draft Bill of Costs, together with brief Submissions within 14 days of the date of this judgment. The Plaintiff shall within 7 days from the service of thereof file and serve Submissions in Reply on the Defendant for the assessment of the costs by the Court.*** [Emphasis added]

[4.] On 22 January, 2025 the Defendant filed a Bill of Cost dated 7 January, 2025 "*in respect of professional fees, cost and serve rendered and payable by the Plaintiff for professional services*"

rendered by Kevin M. Russell as counsel of the firm Kevin M. Russell & Co...". The Defendant also filed a Submissions on Costs per the directives of *Hanna-Adderley, J.* on the same date.

[5.] On 27 January, 2025 the Claimant filed a Notice of Application seeking an Order striking out the Defendant's Bill of Costs for non-compliance with Rule 26.3 Supreme Court Civil Procedure Rules ("CPR") and Practice Direction No. 12 of 2023 ("PD 12") or under the inherent jurisdiction of the Court.

Law & Discussion

[6.] At the conclusion of the hearing of an application or trial the Court has the discretion to summarily assess costs or as soon as practicable thereafter per Part 71.12 CPR. The Court may decide who pays the costs, when to assess costs, quantify costs and when they are paid (see Part 71.9(1) CPR).

[7.] As a general rule the judge hearing the matter has carriage of the summary assessment and may do so immediately upon the conclusion of the matter or as soon as practicable after the same is disposed of (part 72.12 CPR). The Judgment was transparent on issue of assessment of costs and gave directives to the parties to assist the Court in that regard. Parties were directed to lay over their respective brief submissions on costs and the Defendant to produce a draft Bill of Costs.

[8.] Counsel for the Claimant contends that the Bill of Costs filed by the Defendant failed to comply with the mandatory requirements of PD 12 as practice directions carry authority where explicitly referenced in the relevant rules (see **U v Liverpool City Council** [2005] EWCA Civ. 475). Further the Defendant's failure to adhere to the PD 12 has placed undue burden on the Claimant. That the bill of costs was materially defective as it does not contain a statement of truth which renders the verification of the contents defective and unreliable and it is not in the prescribed format (see **AKC v Barking, Havering & Redbridge University Hospitals NHS Trust** [2021] EWHC 2607 (QB).)

[9.] Counsel for the Claimant relies on part 26.3(1) CPR which empowers the Court to strike out or on the Court's inherent jurisdiction. Part 26.3 (2) CPR deals specifically with the Court having the discretion to strike out a "statement of case" or "part thereof". It does not include striking out documents such as a bill of costs.

[10.] Counsel for the Claimant also contends the Court has the power under its Inherent jurisdiction to strike out the Defendant's bill of costs. The Court should exercise its inherent jurisdiction in exceptional circumstances and it not to be used to circumvent a specific rule or practice direction. The Court does not accept the Claimant's assertion that it ought to do so in this instance.

[11.] The Defendant contends that the Court has the discretion to dispense with procedural irregularities under exceptional circumstances (Part 26.1(6) CPR) which may be validated to avoid

injustice. Further that striking out its draft bill of costs is a disproportionate remedy for defects that can be cured with an amendment. The Court finds some merit in this submission in the present case.

[12.] The rules provide that only the Chief Justice may issue practice directions (Part 4.1 CPR) and the Chief Justice “*may issue a practice direction where provision for such a direction is made by these rules*” (Part 4.2 CPR). The Chief Justice issued PD 12 which became effective on 2 January, 2024 pursuant to Part 72.10 CPR. The purpose of PD 12 was to specify the form of a bill of costs to be used in proceedings for assessment of costs.

[13.] The Defendant was directed to file a “draft” Bill of Costs under the directive at para.40 of the Judgment clearly intended to assist the Judge with determining the costs in accordance with the rules to give effect to the overriding objectives to ensure the just, expeditious and least expensive determination of issues.

[14.] It is apparent on the face of the draft bill of costs that it is not in conformance with provisions of PD 12. It does identify that the services rendered were performed by Kevin M. Russell and although the rate of the fee earner was not contained in the draft bill of costs it is found at para. III in the Defendant’s submissions on costs. What weight or whether the draft bill of costs would assist the learned Judge arriving at costs which are reasonable and proportionate is not a question to be determined by this Court.

[15.] The Court finds that communication between the parties could have saved time and judicial resources rather than the route employed by the Claimant in this instance. Counsel for the Defendant would have had the opportunity to amend his draft bill of costs to conform with the format mandated by PD 12. Such cooperation would have assisted the Court to further the overriding objectives.

[16.] The Court has considered the submissions of the parties and the directives in the Judgment. The Defendant having been successful in its application and awarded costs ought not to be deprived of the fruits of his labor. The Court hereby dismisses the Claimant’s application. The Court exercises its discretion under Part 26.9 CPR and orders that the Defendant to amend his draft bill of costs and serve it on the Claimant in accordance with the directives of para.40 of the Judgment.

[17.] The Court makes no order as to costs.

Dated 12th May, 2025

[Signed and Sealed]

Constance Delancy
Justice