

COMMONWEALTH OF THE BAHAMAS

2023

IN THE SUPREME COURT

CLE/Gen/01010

Common Law & Equity Division

IN THE MATTER of The Planning and Subdivision Act, 2010

AND IN THE MATTER of the Subdivision and Development Appeal Board Rules, 2011

AND IN THE MATTER of an Appeal by The New Providence Development Company Limited and Old Fort Bay Company Limited pursuant to S 66 of the Planning and Subdivision Act, 2010

BETWEEN:

THE NEW PROVIDENCE DEVELOPMENT COMPANY LIMITED

OLD FORT BAY COMPANY

Claimants/Appellants

AND

THE DIRECTOR OF PHYSICAL PLANNING

HENRY F. STORR ELECTRIC COMPANY LIMITED

Respondents

Before: The Hon. Madam Justice Carla Card-Stubbs

Appearances: Bradley Cooper – Second Respondent/Applicant

Gail Lockhart-Charles – Claimants/Appellants (Respondents to the
(Application

Civil Procedure and Practice- Basis for costs – Discretion of Court – Factors to be taken into account – summary assessment - Rule 71.6, Part 71 of The Supreme Court Civil Procedure Rules, 2022

RULING ON COSTS

CARD-STUBBS J.

Introduction

1. This ruling on costs follows this Court's ruling of July 16, 2024 relating to the application of the Second Respondent, viz, Henry F. Storr Electric Company Ltd., to strike out the Claimants/Appellants Appeal brought by way of Originating Application. The Second Respondent's Application was dismissed.
2. The parties were directed to make written submissions on costs.
3. The Court is in receipt of the submissions of both parties.

Costs

Incidence of Costs

4. As a general rule, a successful party is entitled to its costs. Rule 71.6, Part 71 of The Supreme Court Civil Procedure Rules, 2022, as amended ("CPR 2022"), provides:

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.

5. In this case, I found no reason to depart from the general rule. Indeed, this Court had already made a costs order for the Claimants/Appellants as one of its orders at the rendering of the July 16, 2024 ruling.

Level of Costs - Submissions on Quantum

6. There are several factors that a court must taken into account in determining the level of costs to be awarded. Rule 71.11 CPR 2022 sets out the factors that a court ought to take into account in coming to a decision on quantum.

71.11 Factors to be taken into account in deciding the amount of costs.

(1) The Court is to have regard to all the circumstances in deciding whether costs were —

(a) proportionately and reasonably incurred; or

(b) were proportionate and reasonable in amount.

(2) In particular, the Court must give effect to any orders which have already been made.

(3) The Court must also have regard to —

(a) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;

(b) the amount or value of any money or property involved;

(c) the importance of the matter to all the parties;

(d) the particular complexity of the matter or the difficulty or novelty of the questions raised;

(e) the skill, effort, specialised knowledge and responsibility involved;

(f) the time spent on the case;

(g) the place where and the circumstances in which work or any part of it was done;

(h) the care, speed and economy with which the case was prepared; and

(i) in the case of costs charged by an attorney to his or her client —

(i) any agreement about what grade of attorney should carry out the work;

(ii) any agreement that may have been made as to the basis of charging; and

(iii) whether the attorney advised the client and took the client's instructions before taking any unusual step or one which was unusually expensive having regard to the nature of the case.

7. The Claimants/Appellants have made submissions on costs, citing work performed and billing periods, amounting to the sum of \$28,200. The work was performed largely by Counsel of the inner bar (King's Counsel) (1992 call date). This work included reviewing the Notice of Application and supporting affidavit and taking instructions, researching the law, drafting skeleton arguments, preparing for court and appearing in court, attending court to receive the ruling, reviewing the ruling and updating the client. Counsel for the Claimants/Appellants submits that the application was of importance to the Claimants/Appellants and that counsel had to spend time to consider and respond to the application.
8. Counsel for the Second Respondent submits that the recoverable fees should be \$2550. However, the Second Respondent advanced a table for the court's consideration which shows total costs recoverable in the sum of \$3450. The Second Respondent submits that the Notice of Application was "far from complicated" and that the law was trite.

Determination and Conclusion

9. I accept the submission of Counsel for the Claimants/Appellants that the matter was important to the Claimants/Appellants. The Claimants/Appellants faced the spectre of their matter being terminated. The matter also affects property rights. However, I do not consider this to be a complicated matter. No novel points of law were raised. The law is settled. While I do not question whether extensive research was done, I bear in mind the limited, and appropriate, skeleton arguments presented by both parties coupled with a hearing that lasted less than ½ day. I also consider that while a party is entitled to counsel of his choice, this was not a matter that required special expertise. The response to the Second Respondent's application could have been handled by competent counsel who had not attained the level of silk.
10. On review of the billing advanced by the Claimants/Appellants, I must determine whether the costs incurred were proportionately and reasonably incurred or were proportionate and reasonable in the amounts. For the foregoing reasons, and having regard to all the circumstances, I am not minded to award the level of fees sought by the Claimants/Appellants.

11. Based on the foregoing, this court makes an award of costs in the sum of \$12,500.

ORDER

12. The order of this Court in relation to costs is as follows.

IT IS HEREBY ORDERED THAT:

The Second Respondent do pay costs to the Claimants/Appellants, fixed in the sum of \$12,500.

Dated this 21st day of August 2024

A handwritten signature in black ink, appearing to read 'Carla D. Card-Stubbs', with a stylized flourish at the end.

Carla D. Card-Stubbs J