

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 2024/CLE/gen/00588

BETWEEN

EXECUTIVE MARINE MANAGEMENT LTD

Claimant

AND

FOWLCO MARITIME & PROJECT SERVICES LIMITED

First Defendant

and

CAMPBELL MARINE LTD

Second Defendant

Before: The Honourable Madam Justice Simone Fitzcharles

Appearances: Mr Dawson Malone with Ms Syneisha Y. Bootle of Counsel for the Claimant

Mr Keith O Major of Counsel for the 1st Defendant

Mr Joseph J Moxey of Counsel for the 2nd Defendant and Campbell Shipping Company Ltd

Hearing: On the papers

DECISION ON COSTS

FITZCHARLES, J.

1. Before the Court is an application by Campbell Shipping Company Limited, formerly the 2nd Defendant in this action (“CSCL”), for a costs Order in its favour following the success of CSCL in its application to be removed as a party to this action brought by Executive Marine Management Ltd (the “Claimant”).

2. The Court has considered the pleadings on file of the Claimant, the 1st Defendant, CSCL and Campbell Marine Ltd (formerly the 3rd Defendant) (“Marine”), Affidavits of Miquel Cleare filed on 12 March 2025, 13 March 2025 and 2 July 2025 respectively, the Affidavit of Rajesh J Dhadwal filed on 23 June 2025, Submissions of the Claimant and CSCL along with the pro forma bills concerning their costs.

Background

3. The Claimant commenced this matter by Standard Claim form filed on 5 July 2024. CSCL was served with the Standard Claim Form on 11 July 2024 at 4:37 pm according to the Affidavit of Service filed on 2 July 2025.

4. Subsequently the Claimant filed an Amended Claim Form on 4 August 2023 and served this document on the registered office of CSCL on 9 August 2024 at 4:19 pm. By this Amended Claim Form Marine was added to the action. The claim against CSCL reads:

“The Claimant claims general damages as a result of the negligence and breach of contract of the 1st Defendant and the negligence of the captain and the crew of the tugboat, agents of [CSCL] and/or the 3rd Defendant [Marine]...Special Damages...Aggravated Damages...Loss of Future Income (to date).”

5. CSCL filed its application on 16 August 2024 to have the said claim against it struck out on the basis that there was no reasonable ground for bringing an action against CSCL as pleaded in the Claim Form by the Claimant. This application was contested by the Claimant.

6. On 4 July 2025, the Court heard the arguments of Counsel for the Claimant and CSCL. The Court then ordered in part:

“Removal of [CSCL]

1. [CSCL], Campbell Shipping Company Ltd., be removed as a party to this action;
2. The Claimant and Counsel for [CSCL] shall prepare and serve Submissions and Authorities on Costs, in relation to [CSCL] being removed as a party to this action, by Friday, 25 July 2025;
3. In addition to the submissions as aforesaid, Counsel for the Claimant and Counsel for [CSCL] are to lodge with the said submissions a proforma bill concerning their costs of this action in relation to [CSCL];
4. Costs shall be determined on the papers...”.

Parties' Positions

Claimant

7. The Claimant, in summary, contends that costs ought to be awarded to the Claimant for the entire action to date against CSCL either on an indemnity or standard basis. The Claimant asserts that CSCL induced the Claimant in respect of its position in the proceedings by its presence in meetings prior to the litigation. Further, the Claimant submits CSCL “acknowledged in writing receipt pre and post action, filed an irregular application that it never moved despite prompting, on being served with a default judgment never took steps to set the same aside (to date or ever in accordance with the rules), never provided necessary discovery to aid this purpose (i.e. the contract), never filed a defence which was procedurally the correct step then apply to be removed, if desired, enforcement proceedings were launched and at all

times [CSCL] was on notice; [CSCL] refused to take steps or engage in the removal application or provide discovery; and remained in contempt of court.”

8. The Claimant states at paragraph 5 of its Submissions dated 28 July 2025 that CSCL failed “to participate in pre-action negotiations to settle the Claimant’s claim.” Yet the Claimant avers also that Mr Amit Gosh attended “a pre-action meeting as Campbells Shipping’s representative” but did not make it known that it was not the proper party to engage in discussions regarding the incident, nor was it denied Mr Gosh was acting on behalf of CSCL.

9. It was roughly one month after CSCL received the Standard Claim Form that Counsel filed an Acknowledgement of Service on behalf of CSCL as well as a Notice of Application to strike out the claim as against CSCL. The Claimant states that this Notice of Application was not served nor was it supported by evidence at the time of the filing.

10. The Claimant entered a Judgment in Default of Defence on 18 November 2024. It is contended that the Claimant should not bear fault for bringing CSCL into the matter when many opportunities were afforded to CSCL to respond pre-action and post-action and it was not until after enforcement being granted (on notice) that some evidence is now presented.

11. The Claimant argues that in deciding on costs in this application, the Court should have regard to a party’s failure to keep its duty according to the **Supreme Court Civil Procedure Rules 2022** (the “CPR”), **CPR 1.3(2)**. Generally, reliance is also placed on **Ritter v Godfrey** [1920] 2 KB 47, **Balmoral Group Ltd v Borealis (UK) Ltd** [2006] EWHC 2531 (Comm), amongst other authorities.

Defendant

12. CSCL states that a Standard Ship Management Agreement (referred to as the “BIMCO” Agreement) dated 10 August 2023, was entered into by the First Defendant and Marine. Further, that on a review of the face of the Standard Claim Form and the contents of the same together with Exhibit 1 and Exhibit 2, it was discovered that by virtue of the parties involved in the BIMCO Agreement, the Claimant had no claim against CSCL. The BIMCO Agreement showed that it was Marine alone that agreed with the 1st Defendant to provide a crew for the 1st Defendant’s tugboat ‘Heroic 1’ (IMO 6604781).

13. According to the Affidavit of Rajesh J Dhadwal filed on 23 June 2025, after CSCL received the Standard Claim Form of the Claimants at its registered office situate at Campbell Maritime, West Bay Street on 12 July 2024, the pleading was sent to Mackay & Moxey, Attorneys for CSCL for advice. CSCL was advised to have a Notice of Application filed to have its name removed from this action in that it has no liability whatsoever with respect to the incident outlined in the Claimant’s Standard Claim Form.

14. CSCL contends that there was no basis for the Claimant to bring the action against it. As such, on its removal by Court Order from these proceedings, the general rule that the unsuccessful party (the Claimant) must pay the costs of the successful party should be applied.

15. Reliance is placed on **CPR Part 71** (Costs: General Provisions), the Overriding Objective (**CPR Part 1**), **A.R.C. v L.R.C.** [2013] 1 BHS J. No. 204 and **Rosamund Sandbrook v Susan Davis and another** [2021] 2 BHS J. No. 32.

Discussion and Disposition

16. According to **CPR Part 71.6** 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. However, the Court may 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.

17. The Court has a discretion to deviate from the general rule. In relation to the discretion of the Court to deviate from the usual rule, the Court of Appeal in **The Attorney General of the Commonwealth of the Bahamas v Westmor Ltd** BS 2023 CA 74, stated:

“It is clear then that whereas a successful party has a reasonable expectation of obtaining an order for his costs to be paid by the opposing party he has no right to such an order, for it depends on the exercise of the court’s discretion. That discretion is an unlimited discretion to make what order as to costs the court considers that the justice of the case requires. It is well accepted that this means that 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.”

18. The Court retains a discretion in relation to awarding costs, including to consider whether it is unjust to apply the usual costs consequences. The Court’s discretion as to costs is addressed in **section 30** of the **Supreme Court Act, Chapter 53 of the Statute Laws of The Bahamas** which provides:

“30. (1) Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court...shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid.”

19. While the Court has a wide discretion as to costs, to guide it in a judicious exercise of the discretion, the **CPR** prescribes that account be taken of certain factors. According to **CPR 71.10**:

“(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) ...

“(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.”

20. The Court has considered the circumstances of this case. The BIMCO Agreement appears to be a central document in the case brought by the Claimant against CSCL and Marine. However, there is no proof the Claimant was made aware of the BIMCO document pre-action, or post-action before the Claimant took several steps to prosecute its case against CSCL.

21. The Claimant maintains it was faultless in bringing the claim against CSCL because a representative of CSCL participated in a pre-action meeting. The Court cannot say based on the averment that Mr Gosh attended a meeting with the Claimant that CSCL thereby confirmed responsibility to the Claimant for the matters now the subject of this action, and therefore that the Claimants felt certain CSCL was properly joined at the time. Further, the Claimant’s averment that CSCL failed to participate in pre-action negotiations to settle is an indication the CSCL did not in fact admit it was a proper party or at least did not admit a connection with or responsibility for the matters which form the basis of the claim.

22. While there is no evidence CSCL definitively informed the Claimant before or immediately after the action was commenced that it was not responsible for, or involved in the events which led to the claim, in joining CSCL the Claimant took the usual risk, without solid verification on evidence, that CSCL may or may not be responsible or liable and a proper party. Having brought the action against the 1st Defendant, if uncertain, the Claimant could have awaited the discovery stage to verify whether CSCL ought to have been joined in the action.

23. CSCL wishes the Court to accept that the later inclusion of Marine as a party in the Amended Statement of Claim suggests that the Claimant knew CSCL was not liable. The Court cannot make that leap without evidence.

24. CSCL appears to have held its cards close until after the Claimant took several steps, assuming CSCL to be a proper party. The failure of CSCL to defend the case did not necessarily and transparently show the Claimant that CSCL was unconnected to the matter, for such restraint could have been interpreted as simple neglect.

25. Coupled with the above observations, I consider that CSCL won the application and was successfully removed from the action as it ought not to have been joined in this action. CSCL’s application was canvassed at the Case Management Conference.

26. The Claimant moved fairly aggressively in this matter, and there is some room for doubt whether, if it was aware of the BIMCO Agreement sooner (than 23 June 2025 when it was filed in the Affidavit of Rajesh Dhandwal), the Claimant would have withdrawn the matter against CSCL. Even when the Claimant became aware of the BIMCO Agreement, it did not concede it had wrongly joined CSCL. The Court granted CSCL an order removing it from this action on 4 July 2025. I consider also that had the notification by CSCL of its position that it was the wrong party to be sued taken place sooner, the issue as to removal of CSCL may have been pursued and disposed of sooner by the Court.

27. The Court is of the view that while CSCL is the successful party and should get costs to reflect that outcome, in the circumstances, it could have done more to, earlier, notify the Claimant of its position. In such case, it would not be just for CSCL to collect 100% of its costs or on the other hand for the Claimant to pay no costs. I therefore order that the Claimant pay CSCL 75% of its reasonable costs which I fix, taking the deduction into consideration, in the amount of Six thousand dollars (\$6,000.00).

Dated 10 June 2026



Simone I. Fitzcharles

Justice