

COMMONWEALTH OF THE BAHAMAS

2021/CLE/gen/00477

IN THE SUPREME COURT

Common Law and Equity Division

BETWEEN

BAHAMAS NATIONAL COUNCIL FOR DISABILITY

Plaintiff

AND

MONIQUE ROKER CAREY

Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Miss Christina Galanos for the Plaintiff

Mr. Peter D. Maynard along with Mr. Colin Jupp for the Defendant

*Costs to be fixed by the Court if not agreed between the parties – Civil Procedure Rules,
2022 Part 72 - quantification of costs – factors to be considered Part
71.6(4) and 71.6(5)*

RULING – COSTS

Darville Gomez, J:

[1.] By a written decision given on May 23, 2024 the Court found in favour of the Defendant and made the following orders:

- (i) The injunction is discharged and the Claimant's Summons dismissed;
- (ii) Elections are to be held within the next 90 days in accordance with the Claimant's constitution and overseen by the Ministry of Labour;
- (iii) The purported vote of no confidence that took place on the 14th May, 2019 was ultra vires the Constitution of the Claimant and therefore null and void;
- (iv) restitution in the amount of the Defendant's own monies that she used, as evidenced at Exhibit MC8 in the Second Affidavit of Monique Roker Carey filed on 15th July, 2021 to keep the Claimant's Counsel

operational during her Presidency and withholding access to the Claimant's Counsel funds from her in the amount of \$8,900.09.

(v) An Accounting on behalf of the Claimant's Executive committee in respect of sums of money that it spent on behalf of the Claimant while purportedly acting as Executive members of the Claimant from May 2019 to present;

(vi) Restitution and return to the Claimant of any funds the Executive committee members may have misappropriated or misdirected from the Claimant.

(vii) Each party to lay over written submissions on costs including the quantum within the next fourteen days not to exceed 10 pages.

[2.] The Claimant has proposed for the reasons set out in its submissions that the Court ought to order that each party bears its own costs. The Defendant on the other hand, suggested that the usual costs order be given; viz, that she be awarded her costs because she was successful in the relief sought.

[3.] The general rule is that costs follow the event, viz., the successful party is generally entitled to costs. **Civil Procedure Rules ("CPR, 2022") Part 71.6** 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. **CPR, 2022 Part 71.6(2)**

[4.] The court should when making a determination on who is entitled to costs must consider all the circumstances and all the factors inclusive of the conduct of the parties during all stages of the proceedings. **CPR, 2022 Part 71.6(4)(5)**

[5.] Ultimately, I decided in favour of the Defendant (now deceased).

[6.] Both Counsel cited a miscellany of cases that were insightful on how the Court ought to treat with costs including: **Scherer v Counting Instruments Ltd. [1986] 2 All ER 5292** referred to by then Justice Indra Charles in **Monika Stubbs and another v Zamar Group Companies Ltd. [2022] 1 BS J. NO. 11** where Buckley LJ stated:

"The judge was required to exercise his discretion judicially, i.e., in accordance with established principles and in relation to the facts of the case and on relevant grounds connected with the case, which included any matter relating to the litigation, the parties' conduct in it and the circumstances leading to the litigation, but nothing else."

[7.] The Claimant has referred to the factors in Part 71.6(4) and 71.6(5) as follows and have made the following submissions in relation thereto:

Conduct of the parties both before and during the proceedings

[8.] The Claimant has asserted that the evidence before the Court showed that the divide between the parties commenced when the Defendant took it upon herself to schedule a family fun day without input from the executive team. Similarly, reference was made to the holding of executive meetings where the Defendant scheduled them without

reference to the committee and finally as it related to the conduct of the Defendant that an olive branch had been extended to the Defendant to meet however, that she did not show up at the meeting.

Whether the manner in which the party has pursued a particular allegation, issue or the case, has increased the costs of the proceedings

- [9.] The Claimant complained that the two large bundles of authorities relied upon by the Defendant were either irrelevant or were repetitious (making the same point) and therefore, they were unnecessary and unreasonable for the Defendant to include that many authorities in her skeleton arguments.

Whether a party has succeeded on part of his case, even if he has not been wholly successful

- [10.] The Claimant submitted that this was relevant because the Plaintiff was successful in obtaining injunctive relief by Senior Justice Indra Charles (as she then was) who found that there was a serious issue to be tried. The application was vigorously opposed by the Defendant and the Court found in favour of the Plaintiff, therefore, the Court should not make a cost order in the Defendant's favour as it related to the injunction.
- [11.] The Defendant on the other hand cited inter alia, the case of **Gladstone Adderley Susan Palmer Hugh Morally v Dion Bethell and another [2022] 1 BHS J. No. 171** where Justice Klein followed Scherer (supra) and stated at paragraph 66 as follows:

"It is unnecessary to embark on anything but a rudimentary statement of costs principles for the purposes of this matter. I only highlight three leading principles. The first is that costs are awarded in the discretion of the court. This appears from s. 30 of the Supreme Court Act, Ord. 59., r.3 and has been reiterated many times by the court. The second is that although the discretion is broad, it is not unfettered and must be exercised in accordance with prescribed rules and case law principles. The imperative principle in adversarial civil proceedings is that the party who is successful in any proceedings or application should usually be paid its costs from the unsuccessful party – i.e., 'costs follow the event' principle. {see Ord. 59, r3(2); and Scherer v Counting Instruments Ltd. [1986] 2 All ER 529, at 536, per Buckley, LJ}

[Emphasis added by the Defendant]

- [12.] In that action, Justice Klein awarded costs to the plaintiffs because they were the successful party overall however, they did not succeed on all the relief sought. The Defendant submitted that this is the distinguishing feature from the instant action where the Defendant, Mrs Roker-Carey was successful on all of the relief sought on her behalf. Therefore, it was submitted that she should be awarded costs.
- [13.] The Defendant also cited the case of **Ritter v Godfrey [1920] 2 K.B. 47** relied upon in the case of **Rawson McDonald and another v Paul R. Major [2023] 1 BHS J. No. 12.** This case in summary supported the settled practice that in the absence of special circumstances *a successful litigant should receive his costs* and further, that there must be some ground for a refusal to exercise them in favour of the successful party. I refer as follows to the paragraph which addressed a wholly successful defendant:

In the case of a wholly successful defendant, in my opinion the judge must give the defendant his costs unless there is evidence that the defendant (1.) brought about the

litigation, or (2.)has done something connected with the institution or the conduct of the suit calculated to occasion unnecessary litigation and expense, or (3.) has done some wrongful act in the course of the transaction of which the plaintiff complains.

- [14.] The Defendant submitted that several efforts had been made to settle the matter through mediation however, leading members of the Claimant frustrated those efforts. Further, that she did not bring about the litigation and has not done anything to occasion unnecessary litigation, expense or some wrongful act. In fact, it was submitted that she did all she could to mitigate litigation expenses however, that she had no choice but to defend herself in such proceedings.
- [15.] The Claimant has asserted that the Defendant had extended the olive branch by scheduling a meeting. However, the Defendant failed to show.

Conclusion

- [16.] The instant action was an unfortunate one given that the Claimant is a charitable organization and the Defendant had been duly elected its President. It was clear from the evidence that the contention and dissension erupted shortly after the Defendant had been elected and it escalated rapidly.
- [17.] It is undisputed that the Defendant is entitled to her costs. However, the Claimant has proffered several reasons why I ought to depart from this settled principle. However, I have considered them and found that there were no exceptional circumstances that would cause me to depart from the usual rule. The Defendant was wholly successful in the action.
- [18.] Therefore, I award costs to the Defendant to be paid by the Claimant.
- [19.] Copies of the invoices billed to the Defendant totaling \$64,542.34 were claimed as the amount of costs which should be awarded and that the Defendant was billed at a discounted rate.
- [20.] I have considered the invoices and while I appreciate that the rates were discounted, I am still of the view that they are excessive. I recognize that the issue regarding the vote of no confidence required some research by both parties which greatly assisted the Court in reaching its decision. I do not accept that it was excessive as posited by Counsel for the Claimant.
- [21.] I have considered the costs claimed by the Defendant and awarded costs in the sum of \$35,000 plus VAT.

Dated the 18th day of November, 2024



Camille Darville Gomez
Justice