

IN THE SUPREME COURT OF BELIZE, A.D. 2020

CLAIM NO. 540 OF 2020

BETWEEN: (SCOTT ROBINSON	FIRST CLAIMANT
(
(VANESSA ROBINSON	SECOND CLAIMANT
(
(AND	
(
(THE ESTATE OF NOE SANDOVAL	FIRST DEFENDANT
(
(NOE SANDOVAL DESIGN AND	SECOND DEFENDANT
(CONSTRUCTION LTD.	
(
(ROSALBA SANDOVAL	SECOND DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE LISA SHOMAN
RULING PURSUANT TO ORDER MADE ON MAY 19, 2020.

Written Submissions 2022

May 21, 2021 – Second Defendant – Mr. Estevan Perera

May 28, 2021 – Claimants – Ms. Stacy Castillo

RULING ON COSTS OF STRIKE APPLICATION

1. On March 31, 2021, the Second Defendant in this Claim, Noe Sandoval Design and Construction Ltd. filed a Notice of Application to strike out the Claimant's Claim against the Second Defendant.

2. On May 19th, 2020, on hearing Ms. Stacy Castillo for the Claimants. Ms. Natasha Espat for the First Defendant. Mr. Estevan Perera for the Second Defendant and Ms. Deshawn Arzu-Torres for the Third Defendant, an Order was granted for the Strike Out Application and the claim against the Second Defendant was ordered to be struck out.

3. This Court ordered that costs of the Application and in the matter were to be decided on written submissions. The Second Defendant filed its written submissions on May 21st, 2021 and the Claimants on May 28th, 2021.

4. The Second Defendant is a limited liability company which was formed on July 6th, 2020 pursuant to the Companies Act, Chapter 250 of the Laws of Belize and has no bank account in Belize.

5. The Claimant filed a claim against the Second Defendant seeking payment of the sum of \$143,000.00 Belize Dollars. The Second Defendant filed a Defence dated October 2nd, 2020 in which Cassia Castillo, a Director of the Company stated that it could not be involved in any agreement or receipt of funds pursuant to any agreement between Noe Sandoval and the Claimants in either 2018 or 2019 because the Defendant Company was not incorporated until July 6th, 2020.

6. The Claimants thereafter filed an amended Claim dated March 5th, 2021 in which they sought the payment of \$143,000.00 Belize Dollars, an account of what was due from the Claimant to the Second Defendant trading as “Noe Dezign and Construction” and/or the Third Defendant in respect of money received for the construction agreements entered by the Claimants and Mr. Noe Sandoval on October 29th, 2018 and an Order for payment by the Second Defendant trading as Noe Dezign and Construction and/or the Third Defendant to the Claimants of any sums found due on taking such an account and the interest on those sums.

7. The Second Defendant filed an application to strike out the Claim against it on March 31st, 2021 and the Court granted the application on the basis that the Claimants did not have reasonable grounds for bringing the claim against the 2nd Defendant. Costs were ordered against the Claimants.

8. The applicable section of the Supreme Court (Civil Procedure) Rules on Costs is Part 63. Rule 63.6 states that *“If 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.”*

9. According to Rule 63.5 and 63.6, *“(5) In deciding who should be liable to pay costs, the court must have regard to all the circumstances.*

(6) In particular it must have regard to - (a) the conduct of the parties both before and during the proceedings; (b) whether a party has succeeded on particular issues, even if he has not been successful in the whole of the proceedings; (c) whether it was reasonable for a party - (i) to pursue a particular allegation; and/or (ii) to raise a particular issue; (d) the manner in which a party has pursued - (i) his case; or (ii) a particular allegation; or (iii) a particular issue; and (e) whether the claimant gave reasonable notice of intention to issue a claim.”

10. The Court also takes note of Rule 64. 2 (1) which states that: *“Where the court has any discretion as to the amount of costs to be allowed to a party, the sum to be allowed is - (a) the amount that the court deems to be reasonable were the work to be carried out by a legal practitioner of reasonable competence; and (b) which appears to the court to be fair both to the person paying and the person receiving such costs”.*

11. The Claimants commenced a claim against a Party which did not exist as a legal entity at the time when the matters complained of occurred. The Claimants' Counsel did not send any pre-action demand letter to the registered address of the Second Defendant, nor to the Company prior to filing the Claim. This is not in dispute.

12. There is, however an Affidavit filed on behalf of the Claimants – the First Affidavit of Minette Gillett dated May 19th, 2021 to which is attached a letter from Ms. Stacy Castillo, dated 18 March 2021 and exhibited as “**M G-1**”.

13. The deponent asserts that she is advised by Ms. Castillo that the letter requested “***certain information which would have prevented the need for the Second Defendant to file a strike out application***”. Ms. Gillett then goes on to depose that she is further advised and verily believes that “***none of the parties responded to the letter***”.

14. It must be noted that while this letter was sent to Counsel for the First Defendant and the Second Defendant, about a week before the Strike Application of the Second Defendant was filed, it is not in fact, a pre-action letter, and all that it was requesting was disclosure of the ownership of a business account at Atlantic Bank Limited, along with the names of the persons operating the account along with supporting documentation, There was no request in that letter about the Second Defendant company. As a precautionary move, it was too little and it came late.

15. The written submissions made on behalf of the Second Defendant proposes the sum of \$1,500.00 as the costs to be awarded by this Court on the Strike Out Application, as a fair and reasonable sum considering that a “***minimum of 5 hours was spent on research and preparing the application***”. The Claimants Written Submissions suggest that either there be no order as to costs, or alternatively, costs of \$500.00.

16. In terms of the Costs in the Cause, written submissions for the Second Defendant proposes that this Court be guided by the general Rule at 64.5 of the Civil Procedure Rules and order costs based on the value of the claim and the stage of proceedings at which the matter was at. Based on this calculation, the full prescribed cost would be BZD\$28,950.00, and it is proposed that the Court award 55% of the sum since we are at the stage of Case Management. When calculated, 55% of the sum of BZD\$28,950.00 is BZD\$14,475.00.

17. The Claimants' written submissions say that prescribed costs are not always appropriate and cite an excerpt from The Caribbean Civil Court Practice 2011 at page 352 as follows “ *The prescribed costs regime embraces a significantly large proportion of cases. There are cases, however, where costs assessed or fixed by reference to the low amount of the value do not justly reflect the considerable complications of the law of fact. It may be that the converse situation arises; that the value of the claim may be very high but the work involved in its conduct is not appreciable and the assessment of costs payable by reference to the value of the claim is disproportionate to the reality of the expenses involved. In such cases prescribed costs may not be appropriate.*” (Emphasis added)

18. I agree with that submission made on behalf of the Claimants. Prescribed costs are not appropriate in this case. The Second Defendant's Defence is not complex and it is simply alleged that the Second Defendant was not in existence when the agreements which are the subject of the claim were entered into, and that it had no knowledge of the material transactions. The Claimants propose that the sum of \$1,000.00 is sufficient for costs.

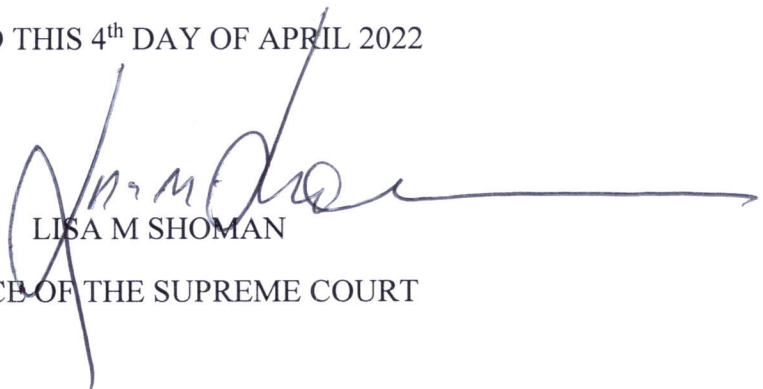
19. Both Counsel for the Claimants and for the Second Defendants say that if I do not accept the amount of costs proposed, that I should then send the matter to an assessment of costs in accordance with Rule 64.12 of the Supreme Court Civil Procedure Rules.

20. My duty under these rules under the overriding objective is to ensure that I deal with cases justly. Dealing justly with the case includes – (a) ensuring, so far as is practicable, that the parties are on an equal footing; (b) saving expense; (c) dealing with the case in ways which are proportionate to- (i) the amount of money involved; (ii) the importance of the case; (iii) the complexity of the issues; and (iv) the financial position of each party; (d) ensuring that the case is dealt with expeditiously; and (e) allotting to the case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

21. Sending these parties to an assessment of costs with a detailed breakdown of all costs incurred would only lead to the need for additional affidavits to be filed, an increase in costs to both parties and result in the matter having to be sent to the Registrar to be taxed. I will not, in all the circumstances of this claim, make an order for costs in the claim to be assessed.

22. Accordingly, I order that the Claimants pay the Second Defendant, the sum of BZD\$1,500.00 for the Strike Application, and the sum of BZD\$5,000.00 as costs for the Claim.

DATED THIS 4th DAY OF APRIL 2022



LISA M SHOMAN

JUSTICE OF THE SUPREME COURT