

IN THE HIGH COURT OF BELIZE, A.D. 2023

CLAIM NO. 285 of 2015

BETWEEN

PRORIETORS OF STRATA PLAN NO. 10

CLAIMANT/APPLICANT

AND

STUART ELLIOTT

NON-PARTY RESPONDENT

AND

JAMES JANMOHAMED

INTERESTED PERSON

BEFORE The Honourable Madam Justice Patricia Farnese

Hearing Date: June 1, 2023

Appearances

Mr. Fred Lumor SC and Estevan Perera, for the Claimant/Applicant
Mr. Andrew Bennett, for the Non-party Respondent

DECISION ON APPEAL FROM REGISTRAR ON COSTS

[1] In a written decision dated 1st July 2022, I lifted an interim injunction and dismissed Mr. Elliot’s application for a permanent injunction to prevent the sale of property where he claimed to hold an equitable interest. I also ordered that prescribed costs be paid. The sale of the disputed property was to enforce a default judgment arising out of unpaid home ownership association (HOA) fees owed to the Claimant/Applicant by the Interested Person.

[2] The Claimant/Applicant applied to the Registrar and proposed an award of prescribed costs that set the value of the claim as the entire judgment debt owed by Mr. James Janmohamed. When the matter was heard by the Registrar, she declined to make the assessment on the basis that she “has no jurisdiction to deal with the matter.” The Claimant/Applicant appeals that decision.

[3] The Registrar provided no further reasons for her decision. As a result, I am left to speculate why she declined jurisdiction. I have concluded that it likely arises from the Registrar's belief that this matter is not of the kind where prescribed costs can be awarded because it is either (1) a claim for a specified sum of money or (2) arises from enforcement proceedings.

[4] In granting the Claimant/Applicant's leave to appeal, I have reviewed the Registrar's jurisdiction as specified in the *Senior Courts Act, 2022* and the *Supreme Court (Civil) Procedure Rules (CPR)* and conclude that she does have the jurisdiction to carry-out my order to assess costs. I also reviewed the Claimant/Applicant's application for leave. No reply to the application for leave was filed by Mr. Elliot or Mr. James Janmohamed although I did permit oral submissions from Counsel for Mr. James Janmohamed.

[5] The *Senior Courts Act, 2022* undoubtedly maintains the Registrar's power to assess costs. Section 11 grants the Registrar the power to do anything that a judge sitting in Chambers is permitted to do. From a procedural perspective, the application to assess costs was properly before her.

[6] *CPR* Rule 64.4(a) provides that a party is entitled to fixed costs for a "claim for a specified sum of money" as outlined in Table 1 of Appendix A. Rule 64.4(b) allows for "additional costs" to be added for "miscellaneous enforcement proceedings" in the circumstances listed in Part 2 of Appendix A of the *CPR*. Rule 64.5 outlines as a "general rule" that parties are to be awarded prescribed costs in all circumstances except where Rule 64.4 applies.

[7] Rule 64.4 does not apply because this is not a claim for a specified sum of money. A claim for a specified sum of money is defined in Rule 2.4 as:

- (a) a claim for a sum of money that is ascertained or capable of being ascertained as a matter of arithmetic and is recoverable under a contract ; and
- (b) for the purposes of Parts 12 (default judgment) and 14 (judgment on admissions), a claim for –
 - (i) the cost of repairs executed to a vehicle;
 - (ii) the cost of repairs executed to any property in, on or abutting, a road; or
 - (iii) any other actual financial loss other than loss of wages or other income, claimed as a result of damage, which it is alleged to have been caused in an accident as a result of the defendant's negligence where

the amount of each item in the claim is specified and copies of
received bills for the amounts claimed are attached to the claim form
or statement of claim;

The Claimant/Applicant has valued the claim as the amount judged to be owing from Mr. James Janmohamed for unpaid HOA fees. If the Registrar accepts that as the value of the claim, this amount may be ascertainable as required by Rule 2.4(a). Nonetheless, the judgment debt is not an amount that is recoverable under a contract. The use of “and” in Rule 2.4(a) requires both conditions be present for fixed costs to be awarded.

[8] HOA fees arise as an incident of ownership of property that is a part of a strata plan. Subsection 6(2)(b) of the *Strata Titles Registration Act (Strata Act)* provides the legal authority for the HOA fees to be charged to the registered owner of strata title lands. The debt does not arise from a personal contractual obligation consenting to pay the fees, therefore, both requirements of Rule 2.4(a) are not satisfied. Any outstanding amount survives transfer of title. While people frequently agree to be bound by the bylaws of the strata plan when they purchase strata property, no such requirement is necessary because compliance is mandated by the *Strata Act*.

[9] Rule 64.7(d) makes it clear that prescribed costs can be ordered for some enforcement proceedings:

64.7 Prescribed costs include all work that is required to prepare the proceedings for trial including, in particular, the costs involved in instructing any expert, in considering and disclosing any report made by him or arranging his attendance at trial and for attendance and advocacy at the trial including attendance at any case management conference or pre-trial review but exclude –

...

(d) costs incurred in enforcing any order (which are generally fixed in accordance with Rule 64.4 but may, in certain cases, be assessed in accordance with Rule 64.12).

Rule 64.12 outlines the procedure to be followed in those cases. I decided that this is a case where costs ought to be assessed in accordance with Rule 64.12 as prescribed costs. The Claimant/Applicant is not asking for the costs of enforcing the judgment against a party to the original claim. The injunction application considered the potential property interests of an individual who was not a party to the original claim. Despite having knowledge of the original proceedings, Mr. Elliot sought to wait to the final stage of the conclusion of the matter to assert his claim. These circumstances warrant prescribed costs.

[10] Counsel for the Non-party Respondent expressed concern that allowing prescribed costs would result in a cost award wholly disproportionate to the nature of claim. Rule 64.2(2)(a), however, recognizes that the Registrar, acting on behalf of the Court, must assess a sum that is “reasonable”. Rule 64.2(3) outlines a non-exhaustive list of factors the Registrar must take into consideration. It was open to Mr. Elliot to challenge the Bill of Costs presented by the Claimant/Applicant on the grounds that fixing the value as the amount of the judgment debt is unreasonable.

Disposition

[10] The application for leave to appeal is granted. The Registrar is to fix a date to assess costs within 30 days of the release of this decision. No award as to costs is made with respect to this application.

Dated June 2, 2023

Patricia Farnese
Justice of the High Court