

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2005/0492

BETWEEN:

THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

Claimant

and

**[1] ANTIGUA AGGREGATES LIMITED
[2] LESTER BYRANT BIRD
[3] ROBIN YEARWOOD
[4] HUGH MARSHALL Snr.**

Defendants

Appearances:

Ms. Karen de Freitas-Rait for the Claimant
Ms. Kema Benjamin (holding papers for Mr. Hugh Marshall Jr.)
for the First Named Defendant
Ms. Rika Bird for the Second, Third and Fourth Named Defendants

2011: June 10;
June 17.

RULING

- [1] **MICHEL, J.:** This case has a long history that probably predates its filing in the court office on 6th October 2005, starting (one suspects) on the political platforms preceding the 2004 general election in Antigua and Barbuda. After contentiously making its way through the courts over a five-year period, it appeared to have finally come to an end on 17th June 2010 when the Claimant filed a Notice of Discontinuance of all claims against all of the Defendants pursuant to Rule 37.2 of the CPR.

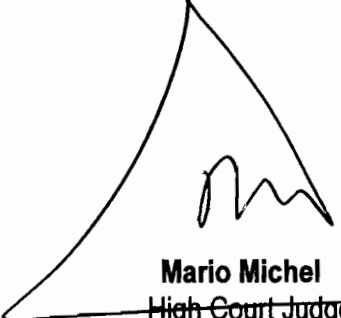
- [2] The filing and serving of the Notice of Discontinuance brought to an end the Claimant's claims against the Defendants, but left extant the issue of costs, with Rule 37.6 (1) of the CPR providing that, in the absence of an agreement by the parties or an order by the court to the contrary, the Claimant is liable for the costs incurred by the Defendants up to the service of the Notice of Discontinuance.
- [3] There appeared to have been some attempts by Counsel, on one side at least, to obtain an agreement on the quantum of costs, but when no agreement appeared to have been forthcoming within a period of just under three months, application was filed on 14th September 2010 on behalf of the First Named Defendant for an order determining its costs and on 17th September 2010 on behalf of the other three Defendants for the same purpose. Although the applications were scheduled for hearing before a Judge in Chambers on 5th November 2010, the first entry on the Court's file as to the proceedings in Chambers on these applications is a note on the file that on 18th February 2011 Floyd, J. ordered the parties to file submissions on or before 2nd March 2011 by 3 p.m. and adjourned the matter to a date to be fixed by the Court.
- [4] The Order of Floyd, J. was never filed, but on 2nd March 2011 submissions on costs were filed by Marshall & Co. on behalf of the First Named Defendant and by Rika Bird & Associates on behalf of the other three Defendants. Submissions on costs were filed on behalf of the Claimant on 19th April 2011, together with a Notice of Application for an extension of time within which to comply with the Order of 18th February 2011 such that the submissions filed on behalf of the Claimant on 19th April shall be deemed to have been filed in accordance with the Order.
- [5] The Claimant's application for an extension of time came before me on 10th June 2011 and was vigorously argued by Counsel on both sides and a ruling on the application was reserved for today.
- [6] The application by the Claimant for an extension of time within which to file his submissions on costs was grounded on the fact that the issues to be addressed in the submissions were more complex than had been anticipated by Counsel for the Claimant and that Counsel had been coping with certain medical challenges during the period when the submissions were to be researched and filed, and the

combination of these two circumstances prevented Counsel from researching and filing the submissions within the time stipulated by the Order of Floyd, J.

- [7] Counsel for the Claimant also argued in her oral submission to the Court that, in any event, what the Court is being asked to extend the time for is the filing of legal submissions which are intended to assist the Court on issues of law and it is a matter within the discretion of the Court as to what matters of law it takes into consideration in its deliberation on any issue, and the failure of a party to file submissions on a particular date does not prevent the Court from taking cognizance of matters of law which are available to the Court – the submissions having been filed on 19th April 2011, albeit outside of the time stipulated in the Order of Floyd, J.
- [8] The principal argument advanced by Counsel for the Defendants in opposition to the Claimant's application for extension of time is that no application was made by the Claimant for relief from sanctions pursuant to Part 26 of the CPR and that such an application is mandatory if the Court is to grant an extension of time.
- [9] Rule 26.7 (2) of the CPR states that: "If a party has failed to comply with any of these rules, a direction or any order, any sanction for non-compliance imposed by the rule, direction or the order has effect unless the party in default applies for and obtains relief from the sanction, and rule 26.9 does not apply."
- [10] On the facts of this case, there was no sanction imposed by the Court for non compliance with the Order of Floyd, J. and so there is no sanction that has taken effect which the Claimant must apply to the Court for relief from. The submissions of Counsel for the Claimant on the issue of costs have been filed, albeit outside of the time stipulated in the Order of Floyd, J., and the Court is free to look at these submissions or indeed any other sources of information on applicable law in its deliberation on the issue of the appropriate award of costs to make to the Defendants, even without making an order for extension of time to file the submissions.
- [11] In the circumstances, there being no sanctions imposed for non compliance with the Order of Floyd, J. for the Claimant to be relieved from; the grounds of the Claimant's application for extension of time

being in any event reasonable; and the effect of granting the Claimant's application being in no way prejudicial to the Defendants, considering that the Court could, even without granting the application, still consider the information contained in the Claimant's submissions when it deliberates on the issue of the appropriate award of costs to make to the Defendants; the Court hereby deems the Claimant's written submissions on the issue of costs filed herein on 19th April 2011 (with authorities) to have been properly filed.

[12] No order is made as to costs on this application.



Mario Michel
High Court Judge