

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN

9/1/2008

CAUSE No. 78 of 2006

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7 BETWEEN

- 8
9 (1) SAGICOR GENERAL INSURANCE (CAYMAN)
10 LIMITED
11 (2) THE PROPRIETORS OF STRATA PLAN NO.
12 151 (KNOWN AS WINDSOR VILLAGE)
13
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15
16

Plaintiffs

17 AND

- 18 (1) CRAWFORD ADJUSTERS
19 (CAYMAN) LIMITED
20 (2) BOULD PATERSON LIMITED
21 (3) ALASTAIR PATERSON
22 (4) HURLSTONE LIMITED
23 (5) HURLSTONE GENERAL
24 CONTRACTORS LIMITED
25 (6) JOHN HURLSTONE
26 (7) ROBERT HURLSTONE

Defendants

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30 Appearances:

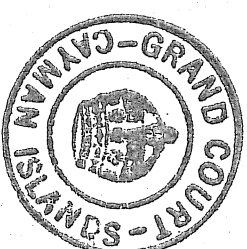
31 Mr. Hector Robinson and Mr. Simon Dickson of
32 Mourant du Feu & Jeune for the 1st and 2nd Plaintiffs
33 Mr. Michael Todd, Q.C. and Ms. Julia Beer instructed
34 by Mr. Graham Hampson for the 1st to 3rd Defendants
35 Mr. Thomas Lowe, Q.C. and Mr. Andrew Mold
36 instructed by Mr. Christopher J. McDuff of Myers &
Alberga for the 4th to 7th Defendants

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38 Before: Hon. Justice Henderson

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40 Heard: December 9, 2008

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JUDGMENT



1 The Defendants have applied for their costs of the unsuccessful main action
2 on an indemnity basis. The claim made allegations of fraud and conspiracy
3 against the Defendants which were maintained by the Plaintiffs for over two
4 years. On the eve of trial these allegations were abandoned.

5
6 It goes without saying that such allegations have a detrimental effect on the
7 reputations of those involved and that such allegations should never be made
8 lightly. Every attorney in the Cayman Islands has a positive obligation to
9 refrain from making allegations of fraud and dishonest conduct unless there is
10 a case of substance which gives rise to a reasonable expectation that the
11 allegations can be proved. From the failure of these Plaintiffs to prosecute
12 their case, I infer that they have never been in possession of a body of
13 evidence capable of establishing fraud or conspiracy.

14
15 These few comments, without more, provide ample justification for an award
16 of indemnity costs. I award such costs to each Defendant now.

17
18 Some particular and somewhat unusual points arise in respect of this award.

19
20 The Third Defendant Alastair Paterson made extensive efforts to find local
21 attorneys who would act for him in this matter. He approached ten local law
22 firms who each declined to act either due to a conflict of interest or because of
23 lack of funding. Eventually Mr. Graham Hampson agreed to assist but he
24 found himself not well positioned to shoulder the entire burden given the
25 complexity of the case and the number of documents involved. He in turn
26 retained Mr. Todd, QC and Ms. Beer from the United Kingdom who agreed to

1 act on a deferred fee basis. They are members of the Bar in the United
2 Kingdom but were not admitted to the Bar of the Cayman Islands until shortly
3 before the aborted trial. These facts are set out in some detail in Mr.
4 Paterson's affidavit of December 9th, 2008 filed in support of his application for
5 costs. Mr. Todd and Ms. Beer were admitted to the Cayman Bar shortly
6 before trial. That itself was caused by a desire to avoid expense. The cost of
7 coming here from England for that purpose alone would have been
8 considerable. As a consequence a good deal of preparatory work was done
9 before they were called.

10
11 The difficulty, if there is one, would appear to arise from the wording of Order
12 62 Rule 18. That Rule deals with work done by foreign lawyers in Cayman
13 Islands cases. There is a prohibition in Rule 18.1.7(b) against recovery of any
14 costs for work done prior to the admission to the Bar here of the foreign
15 attorney in question. The intent of the Rule is explained in Rule 18.7, which
16 reads, "*the overriding principle is that a paying party should not be required to*
17 *pay more because the successful party has engaged a foreign lawyer than he*
18 *would have been required to pay if the successful party had employed only*
19 *local attorneys*". By the opening words of Rule 18.1, the rule is made
20 applicable only to a taxation of costs on the standard basis. This language is
21 not accidental. Clearly, the intent was to exclude such considerations from
22 any award of indemnity costs. Accordingly, that Rule will have no application
23 to any taxation of my costs award on the indemnity basis. Although some of
24 the considerations mentioned in the Rule (such as duplication of work) are still
25 germane, Order 62 Rule 18.1.7(b) is not applicable to the present case.

26

1 Finally, I refer to the Practice Direction entitled Guidelines Relating to the
2 Taxation of Costs. It will be noted at the outset that the Practice Direction
3 represents itself as "Guidelines". It seems reasonable to expect that there will
4 be exceptional circumstances which justify a case being dealt with in a
5 manner which differs from the Guidelines set out in the Practice Direction.
6 Section 9.4 of those Guidelines says "*Travelling and hotel expenses paid for a*
7 *lawyer shall not be recoverable on taxation.*" Section 1.5 makes it clear that
8 the Guidelines are intended to apply to taxations both on the standard basis
9 and on the indemnity basis.

10
11 Despite the mandatory nature of some of the wording in the Guidelines, they
12 do not and cannot alter the very broad jurisdiction I have, both in equity and at
13 common law, to structure awards of costs: see the judgment of Taylor, JA, in
14 Bonotto and Others v Boccaletti and Others, 2001 CILR 292. My award of
15 indemnity costs to these Defendants is intended to avoid the obvious injustice
16 in their being out of pocket after being forced to defend ill-considered and
17 unmeritorious allegations of fraud and conspiracy. It would be unjust to allow
18 the Guidelines to frustrate that intent. Section 9.4 has the potential to do just
19 that. I will make an order now declaring that section 9.4 is not applicable to
20 this award of costs.

21
22 Dated this 9th day of December, 2008

23
24 *Henderson, J.*

25 Henderson, J.
26 Judge of the Grand Court

