

12/7/05

CAYMAN ISLANDS
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1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN - *Coul.*

CAUSE NO. 524 OF 2002

6 BETWEEN: IRVIN **BANKS**
7 PLAINTIFF

10 AND: RICHARD ARCH
11 MARGARET ARCH
12 DEFENDANTS

14 Appearances: Mr. Anthony Akiwumi of Stuarts for the Plaintiff
15 Mr. Kyle Broadhurst of Broadhurst Barristers for
16 the Defendants

18 Before: Hon. Justice Sanderson

21 Heard: July 12, 2005

24 ORAL REASONS FOR
26 JUDGMENT

29 Costs

31 I delivered reasons for judgment in this case on July 7th, 2005 in which I awarded the
32 plaintiff damages against the defendants in the amount of \$1,131.90.

34 The parties appeared before me today both seeking costs of the trial.



1 The plaintiff seeks costs, primarily on the basis of the ordinary rule that costs should
2 follow the event. The plaintiff was successful overall in this case, in that he was awarded
3 damages in the amount of \$1,131.90.

4
5 The defendant on the other hand asserts that while the plaintiff was successful, it was
6 only for a marginal amount and out of proportion for a trial which took approximately
7 eleven days of evidence and argument. The defendant further asserts that if the court
8 examines the decision on an issue by issue basis, it was the defendants who were largely
9 successful. The defendants submit that the plaintiff advanced arguments which were
10 significantly time consuming, such as the issue of whether or there was a surrender or
11 forfeiture, that those issues took a good deal of time and in the main the defendant was
12 successful on what they refer to as the substantial issues.

13
14 There is merit in the plaintiff's general submission that costs should normally follow the
15 event, absent of good reason for that rule being departed from. It is no answer for the
16 defendants to say that the award was only marginal and therefore the plaintiff should not
17 have his costs. There are ways of dealing with that result, in particular the writing of a
18 Calderbank letter or other offer of settlement which can be brought to the court's
19 attention post judgment and which the court can take into account in exercising its
20 discretion on the question of costs. I was not told of any Calderbank letter or other offer
21 to settle and accordingly, at least at first instance, the general rule that costs should follow
22 the event, ought to apply.

23

1 There is, however, considerable merit in the defendants' assertion that this case should be
2 examined on an issue by issue basis. As previously stated, the trial and argument
3 occupied some eleven days of hearing over an extended period of time due to counsels
4 estimates of time difficulties of obtaining court time, counsel's time and the number of
5 issues raised by the plaintiff.

6

7 The issue for consideration by the court at this point, is who really was successful on the
8 main issues.

9

10 The issue on which the plaintiff was successful was the finding that there had been an
11 irregular distraint. There was is no dispute by the plaintiff that he owed certain monies to
12 the defendants. That was never an issue that the defendants had to deal with by way of
13 evidence or argument. Having found that the distraint was irregular I had, therefore, to
14 turn to the respective valuations to do the best I could to calculate the measure of
15 damages. Those damages were slightly more than the amounts which the plaintiff
16 admitted owing to the defendant. The valuations of the defendants were preferred over
17 the plaintiff's. The net result was an award in the plaintiff's favour in the amount stated
18 above.

19

20 The issues that were decided against the plaintiff were significant, in terms of the time
21 consumed, the legal complexity and consequences to the parties. The primary issue
22 determined was whether or not there has been a surrender or forfeiture of the lease. That
23 occupied a great deal of time, and in many ways was the focus of the judgment. There

1 were several other collateral issues which arose from that determination upon which I did
2 not rule. They did however occupy a fair amount of the time both in terms of evidence
3 and argument. There were several other ancillary issues (for example the quantum of
4 damages), which have been pointed out by Mr. Broadhurst as being issues that were
5 decided in favour of the defendants. On balance, the issue that was ultimately determined
6 in favour of the plaintiff was, in a relative comparison with the issues in totality, less
7 significant and time consuming than the issues and claims upon which the defendants
8 were successful. I conclude that this is an appropriate case for varying from the general
9 rule that costs should go to the successful party. The plaintiff was successful in the
10 monetary award but was unsuccessful on the majority of the significant issues that he
11 raised and which took a considerable amount of time.

12

13 Accordingly, balancing all of these factors, as best the court is able, I conclude, that the
14 appropriate award in this case, is that each party should bear their own costs on the basis
15 that there has been divided success. The plaintiff achieved a slight monetary success, the
16 defendant succeeded in respect of the more significant and time consuming claims of the
17 plaintiff.

18

19 Dated this 12th day of July, 2005

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DGSanderson

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Sanderson, J.

23

Judge of the Grand Court

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