THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION

SAINT LUCIA

CLAIM NO. SLUHCV2026/0125 formerly SLUHCV2015/0791

BETWEEN:

DR. CHARLES ISIDORE

Claimant

-and-

GERARD WILLIAMS

Defendant

Before the Honourable Mr. Justice Alvin Shiva Pariagsingh

Appearances:

Mr. Horace Fraser for the Claimant
Mr. V. Dexter Theodore, KC for the Defendant

2026: March 25 – Defendant's Written Submissions
May 4 – Claimant's Written Submissions
May 18 – Defendant's Written Submissions in Reply
May 27 – Hearing
July 9 – Decision

DECISION ON COSTS

INTRODUCTION:

[1] **PARIAGSINGH, J :-** This is the Defendant's application[1] to quantify the costs ordered in his favour by Smith J (as he then was) on 5 February 2020, following the retrial of this claim. In his oral judgment, the learned judge dismissed the Claimant's claim and awarded prescribed costs to the Defendant. The order was stated in these terms: "I am

[1] Filed on 5 December 2025.

obliged to dismiss the Claimant's claim in its entirety and to award costs, prescribed costs to the Defendant in this matter".[2]

[2] The Defendant asks the Court to quantify those costs in the sum of $32,082.87. His calculation proceeds on a claim value of $236,662.95, made up of pleaded special damages of $211,306.21 and a further $25,356.74 said to represent interest.

ISSUES:

[3] The parties accept that prescribed costs is the applicable costs regime. Their dispute concerns three matters:

1) whether the value of the claim is the full pleaded special damages figure of $211,306.21, or whether some of the pleaded heads of special damage should be left out.

2) whether the Defendant may add the further sum claimed as interest, calculated by reference to Article 1008 of the Civil Code; and

3) whether the Court should rely on emails exchanged between the Attorneys before this application was heard.

THE CLAIM:

[4] The underlying claim was determined on 5 February 2020. It had been remitted for retrial by the Court of Appeal. When the matter returned before Smith J, the issue had narrowed. The trial judge recorded, after confirming the position with both sides, that counsel agreed the sole issue was whether there had been a breach of contract.

[5] Breach of contract was not the Claimant's primary case as originally pleaded. His primary claim was in professional negligence, with breach of contract pleaded in the alternative. The trial judge noted that distinction in his oral judgment, observing that

[2] Page 18 lines 24 to 25 of Transcript of 5 February 2020.

professional negligence did not arise at the retrial because of the Court of Appeal's decision.

[6] The trial judge also rejected the Claimant's evidence that he had told the Defendant the building was being constructed as rental units so that rent could service the mortgage. That finding was plainly material to the dismissal of the claim. The claim was dismissed in its entirety, and prescribed costs was awarded to the Defendant.

SUBMISSIONS:

[7] Both parties filed written submissions and relied on them at the hearing. The Claimant also referred the Court to **De Maroussem (Legal Representative of Succession) v Director General, Mauritius Revenue Authority**[3] and **Gangar v Her Worship Ejenny Espinet**.[4] I address those authorities below.

[8] The Claimant's main submission is that, in determining the value of the claim, the Court should exclude the sums particularised as items 1 to 3 under the head of special damages. Relying on **Francis & Anor v Omega Caribe Limited**,[5] the Claimant says those items were not truly special damages. The challenged items are:

1) interest at 6% from 1 November 2015, in the sum of $25,356.74, claimed pursuant to Article 1008 of the Civil Code; and

2) loss of income from November 2013 to March 2015, namely four fully furnished two-bedroom apartments at $2,000.00 per month for one year and six months, totaling $144,000.00, and two fully furnished one-bedroom apartments at $1,000.00 per month for one year and six months, totaling $36,000.00.

[9] The Claimant submits that, because those sums were not properly recoverable as special damages, they should not be treated as part of the claim value for prescribed costs. He relies on **Techni Paint Incorporated (Bankruptcy) v Bombardier**

[3] [2011] UKPC 30.
[4] [2008] UKPC 48.
[5] SLUHCVAP2022/0010 (delivered on 6 July 2023), [2023] ECSCJ No. 211.

Incorporated,[6] a Canadian authority on a similar provision in the Quebec Civil Code and submits that Article 1008 of the Civil Code governs pre-judgment interest recoverable as damages for delay in the performance of a pecuniary obligation. Such interest, he says, is awarded at the Court's discretion. On that footing, the Defendant cannot treat the additional $25,356.74 pleaded as interest in the Claim Form as part of the claim value.

[10] The Claimant further submits that the Court should not rely on the emails exchanged between the Attorneys. He says those emails formed part of without prejudice discussions and, in any event, did not produce a concluded agreement.

[11] According to the Claimant, the true special damages are limited to the additional registration fees of $250.00 and legal fees for the demand letter and service thereof of $500.00, for a total of $750.00. The Claimant accepts that prescribed costs assessed on a claim value of $750.00 would produce an unjust result for the Defendant and therefore says the Court should exercise its discretion under Part 65.5(2).

[12] Conversely, the Defendant's position is that the proper value of the claim is $236,662.95, being the quantified monetary claim placed before the Court. He contends that characterising interest as damages for delay in the payment of money[7] does not prevent a quantified interest claim from forming part of the claim value. Alternatively, if the Court declines to include the additional $25,356.74 in interest, the Defendant submits that the value should still be fixed at $211,306.21, being the pleaded special damages.

[13] The Defendant also submits that special damages are not confined to out-of-pocket expenses already paid. The term includes pecuniary losses which are specifically pleaded, particularised, and capable of reasonably exact calculation. On that basis, he says the pleaded loss of rental income was capable of being special damages because it identified the relevant period, the monthly rate, and the calculation used.

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[6] 2005 CanLII 21623 (QS CS).
[7] Article 1008 of the Civil Code.

[14] The Defendant further submits that the rental loss does not become general damages merely because it is consequential. What matters, he says, is that the loss was specifically pleaded and quantified. He also submits that **Francis & Anor** does not assist the Claimant in the manner suggested, and that **Orin Roberts v Financial and Regulatory Commission**[8] is closer to this case because it recognises that, where the claim form states an amount and the defendant succeeds, the claim form is the first place to look when determining the value of the claim.[9]

ANALYSIS - VALUE OF THE CLAIM:

[15] Smith J made an order for prescribed costs. The present task is to identify the value of the claim for the purpose of applying the prescribed costs regime.

[16] Where, as here, a defendant has successfully resisted a monetary claim, the starting point is the value which the claimant placed on the claim. That value will ordinarily be found in the claim form and in the pleaded monetary relief, as stated in **Orin Roberts**. This is not a rigid rule that removes the Court's discretion. It is, however, a sensible starting point because it reflects the claim the Defendant was required to meet.

[17] I do not accept the Claimant's submission that the pleaded special damages should now be stripped down on the basis that the challenged heads were not "true" special damages. The sums were not pleaded in vague terms. Each was expressed as a monetary amount. The rental income claim was calculated by reference to the number of apartments, the alleged monthly rent, and the relevant period. The registration fee and legal fee were fixed sums. The loan interest item was also pleaded as a specific sum.

[18] Special damages are, in general terms, losses which are specifically pleaded and capable of calculation. They are not confined to money already paid out of pocket. Accrued loss of income may be claimed as special damage where it is pleaded by reference to a period and a rate. Whether the claim is ultimately proved is a separate

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[8] SKBHCV2016/0019 (delivered on 14 October 2019), [2019] ECSCJ No. 338.
[9] See paragraph 19.

question. Proof, causation, remoteness, and notice are trial issues. They do not necessarily determine the value of the claim for the separate purpose of prescribed costs after the claim has failed.

[19] That distinction matters in this case. The trial judge's rejection of the Claimant's evidence about the intended rental use of the building was plainly fatal to the claim. But that finding does not mean that the rental loss never formed part of the claim. It was a pleaded and quantified head of loss which the Defendant had to answer.

[20] I have considered **Francis & Anor**. I do not understand that decision as establishing a broad rule that a pleaded and quantified pecuniary claim must be excluded from the value of the claim simply because it is consequential. The question remains whether the sum formed part of the monetary claim the Defendant had to meet. In this case, it did.

[21] I also accept the usefulness, in general terms, of the approach taken in **Roberts**. Where the claim form states a monetary claim and the defendant succeeds, the Court will usually begin with the amount claimed. That approach is fair to both sides. A claimant who advances a substantial quantified claim cannot, after losing, reduce the costs consequences by saying that parts of the claim were never properly recoverable as special damages.

[22] **De Maroussem** does not assist the Claimant. It concerned a valuation dispute in a tax assessment context and is distinguishable on its facts. **Gangar** is also of no assistance. It dealt with questions of statutory interpretation concerning limitation periods. Neither authority guides the costs issue now before the Court.

[23] I therefore find that the pleaded special damages of $211,306.21 form the proper valuation base, subject only to the separate question whether the additional interest figure should also be included.

ANALYSIS – INTEREST:

[24] The Defendant seeks to include a further $25,356.74 for interest pleaded in the Claim Form. That figure is separate from the $30,556.21 already pleaded and included as part of the special damages claim, representing interest accrued on the outstanding loan balance from 13 February 2015 to 13 May 2015.

[25] I am not persuaded that the additional sum claimed as pre-judgment interest should be included when valuing the claim for prescribed costs. Article 1008 of the Civil Code, which addresses interest on obligations for the payment of money, does not, without more, entitle a successful party to introduce an additional notional sum for the purpose of increasing the prescribed costs base.

[26] In **Francis & Anor**, the Court of Appeal made clear that a sum claimed as general damages, being discretionary and within the Court's purview, may properly factor into prescribed costs only where the Court has assessed those damages.[10] In my view, the same principle applies to interest. An award of interest is not automatic; it remains a matter for judicial discretion. Where interest has not been assessed or awarded, there is no proper basis for treating a sum unilaterally calculated by the Claimant as interest on the special damages claim as part of the value of the claim for costs purposes.

[27] Here, the Claimant was not ordered to pay damages. There is therefore no judgment debt in favour of the Defendant representing the pleaded special damages. The question is not what interest might hypothetically have been payable had the Claimant succeeded. The question is what value should properly be attributed to the claim for the purpose of determining prescribed costs in favour of the Defendant.

[28] Even if interest was claimed in the ordinary way, the Defendant has not shown why the Court should now undertake a separate calculation and add Article 1008 interest to the pleaded special damages in order to increase the prescribed costs valuation. The fairer

[10] See paragraph 71.

course is to adopt the pleaded quantified special damages as representing the monetary value of the claim and to exclude the additional interest calculation.

THE EMAILS BETWEEN ATTORNEYS:

[29] The Defendant also relies on certain concessions and positions said to appear in email correspondence exchanged between Counsel and exhibited to the application. The Claimant says those emails should be disregarded because they formed part of without prejudice communications and, in any event, did not result in a concluded agreement.

[30] Having considered the emails, I agree with the Claimant. There was no concluded agreement between the parties. It would not be right to treat the exchanges as fixing the value of the claim or as an admission that should determine this application. I therefore place no reliance on the emails between the Attorneys. For present purposes, it is unnecessary to go further and make any wider ruling on the scope of without prejudice privilege in respect of each email.

CONCLUSION:

[31] The Claimant's objection to the inclusion of the pleaded heads of special damage is without merit. Those sums were pleaded and quantified. They formed part of the claim which the Defendant successfully resisted.

[32] The Defendant's request to add the further sum of $25,356.74 by way of interest is refused.

[33] The emails exchanged between the Attorneys do not record a concluded agreement, and I have not relied on them in deciding this application.

[34] The value of the claim for the purpose of calculating prescribed costs is fixed at $211,306.21.

ORDER:

[35] For these reasons, I make the following orders:

1) The Defendant's costs are quantified and allowed in the sum of $28,913.28.

2) The Defendant shall have his costs of this application summarily assessed in the sum of $1,500.00.

Alvin Shiva Pariagsingh
High Court Judge

By the Court,

Deputy Registrar of the High Court