



[2024] JMSC Civ.121

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2019CV00148

BETWEEN	DENSIL BERRY	CLAIMANT
A N D	HOWARD LETTMAN	1 ST DEFENDANT
A N D	LETTMAN GREENWOD & CO. (A FIRM)	2 ND DEFENDANT

CONSOLIDATED WITH:

SU2019CV02688

A N D	LEXINE CHANCE RICHARDS	1 ST CLAIMANT
A N D	LLOYD RICHARDS	2 ND CLAIMANT
A N D	DENSIL BERRY	DEFENDANT

IN CHAMBERS (VIA ZOOM PLATFORM)

Mr. Jeffrey Daley instructed by Betton-Small, Daley & Co. for Ms. Lexine Richards

Mr. Zurie Johnson instructed by Caroline P. Hay & Co. for the Executor for the Estate of Densil Berry

HEARD: October 3, 2024

Civil Practice and Procedure – Application for Costs – Whether the Claimant Lexine Richards Should Receive Costs in circumstances where the Claim is Being Settled – Quantum of Costs to be Awarded

STAPLE J

BACKGROUND

- [1] This case involved a convoluted series of court actions. It is now finally being settled in an amicable way except for the issue of costs which Mr. Daley, on behalf of his client, Ms. Chance is pursuing with vigour against the Estate of the now deceased Densil Berry.
- [2] The fundamental question to be resolved is whether or not Ms. Chance should have her costs in the context where the claim is being settled.
- [3] Mr. Daley insists on the costs while Mr. Johnson says that there should be no costs awarded.

THE HISTORY

- [4] The history of the claim is important. The now deceased Berry gave his former attorney-at-law Mr. Howard Lettman a title for property registered at Volume 1213 Folio 694 of the Register Book of Titles. The instructions were for counsel to undertake the process of subdividing the property and obtaining splinter titles for the divided lots and to have carriage of sale of the property identified as Lot 4. This was in 2004.
- [5] Some 2 years Berry entered into an agreement for sale with Ms. Chance and others to sell them the said Lot 4. A sum of money was deposited into Mr. Berry's account in this regard.
- [6] The process of getting the land subdivided and the splinter titles stalled and for over 11 years nothing happened. Eventually, in 2017, Mr. Berry took action against his Attorney-at-Law by filing a complaint with the General Legal Council.
- [7] Then in January 2019, Mr. Berry filed Claim No. SU2019CV00148 against Mr. Lettman and his former firm. Just prior to this Mrs. Chance-Richards got her own Attorneys-at-Law involved in the matter.

- [8] By April 29, 2019, Mr. Adedipe (formerly of counsel) sent over certain documents to the Attorneys-at-Law for Mr. Berry which included the duplicate certificate of title as mentioned above.
- [9] By July of 2019, Mrs. Chance Richards filed her own claim against Mr. Berry for specific performance. The matters have been travelling together since then. In September 2020, Mrs. Chance Richards filed an application for Summary Judgment against Mr. Berry's estate (Mr. Berry had died by this time).
- [10] In the interim, the original agreement for sale between Berry and Mrs. Chance Richards was lost and a new agreement for sale had to be drafted and this was dated October 3, 2022. The Claims have yet to be heard substantively nor have any applications been heard and determined.

THE LAW ON COSTS

- [11] The **Judicature (Supreme Court) Act** is the legal basis upon which a Judge of the Supreme Court may order costs in civil claims. But it remains in the discretion of the judicial officer presiding over the claim whether or not to award costs.
- [12] The awarding of costs is guided by the Civil Procedure Rules. In particular parts 64 and 65.
- [13] As Sykes J (as he then was) said in *Steven Sykes et al v KSAMC et al*¹, the general rule is that costs follow the event. It is an unsuccessful party that is to pay the costs of the successful party. The Court may also make no order as to costs.
- [14] Rule 64.6(4) sets out the factors that the Court must consider in whether to even make an award of costs in a particular case. It is also important for me to bear in

¹ [2023] JMSC Civ 176

mind that a party can be awarded costs based on conduct **before** proceedings have started.

SHOULD COSTS BE AWARDED?

[15] Generally, when matters are being settled, the parties tend to either agree a figure for costs, or they decide that there should not be any costs order or there is some other mechanism for the resolution of the issue of costs. Therefore, it is not unusual for costs to be contemplated even in the context of a settlement. But note that this is by agreement between the parties.

[16] This is important as at paragraph 24 of his submissions, Mr. Johnson posits that costs should not be awarded as “there is no event to trigger it”. He argues that there has been no determination of either the substantive claim or Mrs. Chance’s application for Summary Judgment. He is correct.

[17] The wording of Rules 64.6(1) and (2) does suggest that it is only after an outcome has been had that costs should be considered as a **general rule**. The rules speak to “successful” or “unsuccessful”. This suggests that there has been a hearing and there was a winner and a loser.

[18] But I also consider that “success” in the broadest sense means that the party suing has obtained the object of their claim, even if the object was obtained through a settlement. I agree with the submissions of Mr. Daley at paragraph 6 of his written submissions filed on the 10th September 2024 and the authority of *R (M) v Croydon LBC*² cited in the said paragraph. Though that had to do with a “consent judgment” entered in Court, I see no difference in principle.

[19] One of the main factors for the Court to consider, however, is the conduct of the parties before the claim and during the claim. Conduct includes the bringing of the

² [2012] EWCA Civ 595

claim in the first place. So the question that I have asked is whether it was reasonable for Mrs. Chance Richards to have even brought this claim against Mr. Berry in the first place.

- [20]** In my view, the claim by her was unnecessary. There was never any dispute between herself and Mr. Berry concerning the sale. In all the circumstances her attorneys-at-law knew the cause of the delay in her getting her actual title. It was due to the conduct of Mr. Lettman. I do agree that Mr. Berry was tardy in taking his former attorney to task over his conduct of the subdivision, but Mrs. Chance Richards was always kept in the loop and she was actually put in possession of the property from the outset and she has had no charges attached to that early possession. I therefore see no reason for Mrs. Chance Richards suing for specific performance when it was never in dispute that Mr. Berry wanted her to get the title, but was being stymied by the conduct of his counsel.
- [21]** I agree with the submission of Mr. Johnson that there is no evidence of prejudice suffered by Mrs. Chance Richards as a consequence of the delay in her getting her title. Indeed, Mr. Berry sued Mr. Lettman before this suit was filed by Mrs. Chance Richards.
- [22]** Yes, it is true that there was some carelessness on the part of the Attorneys-at-Law for Mr. Johnson in effecting an erroneous transfer. Mr. Daley is correct in that regard. But that delay was remedied in a reasonable amount of time and it was not hidden from Mrs. Chance Richards. Again, no evidence of specific prejudice is before the Court.
- [23]** The Court was also advised today that Mrs. Chance Richards has received her title at last.

CONCLUSION

[24] I am not of the view that costs are warranted in this case even though I find that Mrs. Chance Richards has finally obtained her registered title.

DISPOSITION

1 No Order as to Costs.

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Dale Staple
Puisne Judge