

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NOS 57/2008 AND 111/2011

**BEFORE: THE HON MR JUSTICE MORRISON P (AG)
THE HON MR JUSTICE BROOKS JA
THE HON MR JUSTICE F WILLIAMS JA (AG)**

BETWEEN	WAYNE REID	1ST APPELLANT
AND	JENTECH CONSULTANTS LIMITED	2ND APPELLANT
AND	CURTIS REID	RESPONDENT

CONSOLIDATED WITH

BETWEEN	CURTIS REID	APPELLANT
AND	CABLE AND WIRELESS JAMAICA	1ST RESPONDENT
AND	JENTECH LIMITED	2ND RESPONDENT
AND	WAYNE REID	3RD RESPONDENT

Written submissions by Vacciana & Whittingham for Wayne Reid and Jentech Limited

Written submissions by Livingston Alexander and Levy for Cable and Wireless Jamaica

Written submissions by Ballantyne Beswick and Co for Curtis Reid

25 September 2020

MORRISON P (AG)

[1] I have read, in draft, the judgment of Brooks JA. I agree with his reasoning and conclusion and have nothing to add.

BROOKS JA

[2] On 16 June 2020, this court handed down its decision in these consolidated appeals. At that time the parties were asked to make submissions in writing on the issue of the appropriate costs order. An extension of time was granted for the submissions to be filed and they were filed by 16 July 2020.

[3] As part of their submissions, learned counsel for Jentech Consultants Limited (Jentech) and Dr Wayne Reid also asked for an order for the payment out of sums that had been paid as a condition for a stay of execution, pending the outcome of the appeal. The matter of the payment out will be addressed before the issue of costs.

The payment out of the monies paid into court

[4] Learned counsel submitted that the sum of \$5,000,000.00 was paid into an interest-bearing account in the joint names of the attorneys-at-law for the parties. The appeal having been resolved in favour of those appellants, the order should be made for the payment out of the sum.

Costs

Submissions

[5] Learned counsel for Mr Curtis Reid have submitted, that despite the fact that Mr Reid was the unsuccessful party in both of the consolidated appeals, the court should nonetheless award Mr Reid the costs of the litigation. Learned counsel justified those submissions on the basis that Jentech and Dr Wayne Reid were unreasonably dilatory in prosecuting their appeal. This contributed to a long delay in the completion of the appeal.

[6] Learned counsel for Jentech and Dr Reid have argued that the costs should be awarded to their clients. They contend that there is no basis to depart from the general principle regarding costs. They argue that despite the fact that Jentech and Dr Reid failed in some aspects of their appeal, they did succeed in the major aspects, and the result demonstrates that success.

[7] Learned counsel for Cable and Wireless Jamaica Limited (CWJ) similarly argued that there is no reason to depart from the general principle in the case. Since, they submit, Mr Reid failed in every aspect of his appeal, CWJ should be awarded the costs of the appeal.

Analysis

[8] The rules guiding this court as to the award of costs in civil litigation, are the Civil Procedure Rules (CPR). The CPR stipulate that the general principle with respect to awarding costs is that the unsuccessful party should pay the costs of the successful party (see rule 64.6(1) of the CPR). The court may depart from applying the general principle if the circumstances demand departure (see rule 64.6(3)). Rule 64.6(4) sets out the principles that guide the court in deciding whether there should be a departure from the general principle. The paragraph states:

- “(4) In particular [the court] must have regard to -
 - (a) the conduct of the parties both before and during the proceedings;
 - (b) whether a party has succeeded on particular issues, even if that party has not been successful in the whole of the proceedings;
 - (c) any payment into court or offer to settle made by a party which is drawn to the court’s attention

(whether or not made in accordance with Parts 35 and 36);

- (d) whether it was reasonable for a party -
 - (i) to pursue a particular allegation; and/or
 - (ii) to raise a particular issue;
- (e) the manner in which a party has pursued -
 - (i) that party's case;
 - (ii) a particular allegation; or
 - (iii) a particular issue;
- (f) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his or her claim; and
- (g) whether the claimant gave reasonable notice of intention to issue a claim.

(Rule 65.8 sets out the way in which the court may deal with the costs of procedural hearings other than a case management conference or pre-trial review.)"

[9] Despite the criticisms laid by learned counsel for Mr Reid, there is nothing that has been raised to show that Mr Reid's costs were increased by the conduct of the other litigants, so as to warrant a departure from the general principle. Similarly, the general success by Dr Reid and Jentech in their appeal, and the total success by CWJ in Mr Reid's appeal, require that the general principle should be applied.

[10] The application of the general principle would result in Mr Reid being ordered to pay the costs of both appeals as well as the costs in the court below.

F WILLIAMS JA (AG)

[11] I have read, in draft, the judgment of Brooks JA and agree entirely with his reasoning and conclusion.

MORRISON P (AG)

ORDER

- (a) The sum paid by Dr Wayne Reid and Jentech Consultants Limited into a joint account in the names of the attorneys-at-law for the parties shall be paid out to them forthwith together with all interest accruing thereon.
- (b) Costs of the appeal and in the court below in respect of Supreme Court Civil Appeal No 57/2008 are awarded to Dr Wayne Reid and Jentech Consultants Limited to be agreed or taxed.
- (b) Costs are awarded to Cable and Wireless Jamaica in respect of Supreme Court Civil Appeal No 111/2011 to be agreed or taxed.