REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civ. Appeal No. CA T 63 of 2014

HCA No.: T-106 of 2003

BETWEEN

L'ANSE FOURMI TRUST HOLDING COMPANY LIMITED

Appellant/Claimant

AND

ANSE FOURMI BEACH AND RAINFOREST RESORT LIMITED

MR. RANJIT WIJETUNGE

DR. ALDRIC HILTON-CLARKE

Respondents/Defendants

PANEL:

I. ARCHIE, C.J.

P. RAJKUMAR, J.A.

A. DES VIGNES, J.A.

APPEARANCES:

Mr. Stanley I. Marcus, SC and Mr. Ian L. Benjamin instructed by Ms. Dawn Palackdharry Singh for the Appellant

Mr. Mark J. Morgan instructed by Ms. Kaveeta Persad for the First and Second Respondent

Mr. Duncan Byam for the Office of the Administrator General on behalf of the Third Respondent

DATE OF DELIVERY: November 14th 2018

I have read the judgment of Rajkumar and des Vignes JJA, and I agree with it.

……..

Ivor Archie

Chief Justice

Costs – Summary

1. This ruling is supplemental to our decision on the substantive appeal herein. After we delivered our decision in this matter, we heard the parties on costs and permitted submissions to be filed on the issue.

2. Having considered the submissions we are of the view that for the reasons set out hereunder, although the relief granted to the successful appellant on this appeal was in the form of orders for i. a declaration and ii. an injunction, and did not include orders for payment of a monetary sum, this is a claim concerning an estate, in respect of which there is no dispute that the value thereof is US $1.3 million.

3. Based on the pleadings and the evidence before the court set out hereunder, that value can be taken to have been effectively agreed. Accordingly, costs are to be paid by the respondents on the prescribed basis, based on a claim of that value in the sum of US $1.3 million.

Reasoning

Subject matter - Estate

4. There is no dispute on the pleadings that the **subject matter** of both the claim and the counterclaim is the **Estate**. The deeds which each party sought to uphold were both in relation to the Estate.

Value of the Estate

5. There is no dispute that the **value of the Estate** according to the first and second named respondents /defendants, and even the third named respondent, is US $1.3 million. It was also the price of the Estate under the agreement for sale sought to be enforced by the respondents in HCA T99 of 2000 – (R.O.A, Volume 2 page 130), and which was the subject of the alleged compromise and consent order among the respondents – (ibid, page 141).

Value according to the appellant

6. The Amended Writ of Summons and Statement of Claim (R.O.A, Vol. 2 Tab 5) reveal that the Appellant sought, (under paragraphs 17 and 18), declaratory and injunctive relief but also "aggravated and/or exemplary damages for conspiracy to cheat and defraud the Plaintiff in respect of the L'Anse Fourmi Estate." At paragraph 18, the Appellant alleged that, by reason of the conspiracy to cheat and defraud, the Defendants have caused loss and damage to the Plaintiff including loss in the sum of USD $1,300,000.00 together with loss of profits of the development of the L'Anse Fourmi Estate as a Dive Resort and Eco Lodge. That figure mirrored the price of the Estate in the agreement for sale between the second and third named respondents. The value of the claim to the appellant was therefore at least that sum. Although this amount was not "ordered to be paid", given that the court upheld the appellant's deed and rejected the respondents' deed, the effect was to uphold the appellant's claim of that value.

Value according to the respondents

7. There is ample undisputed evidence as to what the value of the Estate was to the respondents. For example, at paragraph 50 of the witness statement of Mr. Wijetunge – the second named respondent - (Vol. 4, page 22-23) he gives evidence of signing the Agreement for Sale prepared by Mr. Kelshall. The agreement for sale of the L'Anse Fourmi Estate stipulated a purchase price of USD$1,300,000.00. (See also (ii) above)

8. This is therefore not a situation where any party can claim to be taken by surprise at the value ascribed to the claim. Where,

i. the subject matter of the claim was the Estate,

ii. the value of that Estate was US $1.3 million on the respondents' own case , and

iii. there was no dispute that this was the price in the Agreement for sale between the third named respondent and the second named respondent ,and the claimant had pleaded this value as the quantum of damages that it would be seeking in the alternative,

there is sufficient material before the court to allow recognition of the fact that the parties were ad idem on the value of the claim, and therefore to consider that consensual value of the estate to be the amount agreed as the value of the claim.

9. There is no reason therefore why the Court should not consider this sum, rather than TT$800,000.00 (as submitted in the alternative submission of the First and Second Respondents), as the agreed value of the claim. In fact, it would be inconsistent with the respondents' own case, which sought to uphold a claim to the Estate of the specific value of US $1.3 million, to now ignore that value.

Previous Orders

10. Further, there is no dispute that under the Rules of the Supreme Court 1975, before this matter was converted to be heard under the current CPR, the parties, on an application for security for costs, each pre-estimated or submitted to **pre-estimated costs** of prosecuting and defending their respective claims in the sum of $600,000.00. This is by itself, even apart from the matters set out above, entirely incompatible with a contention now made by the First and Second Respondents that the claim, being a claim not for a monetary sum, was therefore a claim for $50,000.00, within the meaning of Part 67.

11. In all the circumstances, there can be no claim to unfairness or surprise at this being recognised by the court as the value of the claim. To treat this claim as one not for a monetary sum, and therefore as if it were a claim for $50,000.00, would require ignoring.

i. the **undisputed value** of the Estate, (and therefore the claim);

ii. the agreement between the parties on this issue;

iii. the parties' own pre-estimate of costs (itself indirect evidence that the claim cannot be treated as if it were a claim for only $50,000.00).

Order

12. It is ordered that:-

i. The appellant be paid the sum of TT $451,833.00 (being costs calculated on the prescribed basis on a claim of a value of US $1.3 million) out of the security for costs provided by the First and Second Respondents by sums paid into Court on 26 July 2006.

ii. Thereafter, the balance out of the security for costs provided by the First and Second Respondents (by sums paid into Court on 26 July 2006), with all interest accrued thereon be paid to the First and Second Respondents' attorneys at law.

ii. It is further ordered that there be paid to the Appellant's Attorney at Law out of sums deposited into court on behalf of the appellant on July 20th 2006 the sum of $TT600, 000.00 together with all interest accrued thereon until the date of the payment.

Peter A. Rajkumar
Justice of Appeal

Andre des Vignes
Justice of Appeal