

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2016 – 00027

Between

Scotiabank Trinidad and Tobago Limited

Claimant

And

Carlos Law

Diane Law

Defendants

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Romney Thomas for the Claimant

Mr Ravi Mungalsingh for the Defendants

Date: 3 October 2016

Ruling

1. The issue to be decided is whether the fixed costs or prescribed costs regime is applicable to this claim. This is a mortgage claim. It is important because under the fixed costs regime the claimants would be entitled to \$2,000.00 and under the prescribed costs regime their

starting point will be \$87,852.09 as being 45% of prescribed costs. It is also important because I have seen some mortgage claims where the attorneys have claimed fixed costs and some for which prescribed costs have been claimed. Further neither counsel was able to refer me to any local decision which has dealt with the specific point.

2. By Fixed Date Claim Form filed 7 January 2016 the claimant filed a claim and statement of case supported by the affidavit of Raquel Sampson against the defendants. It is a mortgage claim. They claimed possession of the land mortgaged to the defendants. They claimed the specified sum of \$3,078,713.21, interest in a specified sum, and costs.
3. As with all fixed date claims, a date is set for the first hearing of the matter: Part 27.2. The court has all the powers of a case management conference. The court may treat the first hearing as the trial of the matter if it is not defended or if it considers that the claim can be dealt with summarily: Part 27.2 (3).
4. Part 69 deals with mortgage claims. It must be issued by a fixed date claim form: Part 69.2. If the claimant seeks judgment at the first hearing he must file evidence in support and serve the relevant documents on the defendants: Part 69.3. Part 69.4 sets out what evidence must be given in support of the claim. Part 69 does not deal with costs regarding a mortgage claim. Costs in general are dealt with it Parts 66 and 67.
5. Default judgment may not be obtained in respect of a fixed date claim: Part 12.2 (1) (a).
6. There are 4 types of costs under the CPR. These are fixed costs, prescribed costs, budgeted costs and assessed costs. The issue to be decided is whether the fixed costs or prescribed costs regime is applicable to this claim.
7. Part 66 deals with general principles of costs. Part 67 deals with the quantification of costs.
8. Part 67.3 states:
67.3
Costs of proceedings under these Rules are to be quantified as follows:
 - (a) where rule 67.4 applies, in accordance with the provisions of that rule;
and

(b) in all other cases if, having regard to rule 66.6, the court orders a party to pay all or any part of the costs of another party, in one of the following ways:

- (i) costs determined in accordance with rule 67.5 (“prescribed costs”);
- (ii) costs in accordance with a budget approved by the court under rule 67.8 (“budgeted costs”); or
- (iii) where neither prescribed nor budgeted costs are applicable, by assessment in accordance with rules 67.11 and 67.12.

9. Part 67.4 provides in relation to fixed costs:

67.4

- (1) A party is entitled to the costs set out in Part I of Appendix A.
- (2) The court may, however, direct that some other amount of costs be allowed for the work covered by any item in Part 2 of Appendix A.
- (3) If so, the court must assess such costs.

(Rules 67.11 and 67.12 deal with the assessment of costs).

10. Part 67.5 provides in relation to prescribed costs:

67.5

- (1) The general rule is that where rule 67.4 does not apply and a party is entitled to the costs of any proceedings those costs must be determined in accordance with Appendices B and C to this Part and paragraphs (2)–(4) of this rule.
- (2) In determining such costs the “value” of the claim is to be decided—
 - (a) in the case of a claimant, by the amount agreed or ordered to be paid; or
 - (b) in the case of a defendant—
 - (i) by the amount claimed by the claimant in his claim form; or
 - (ii) if the claim is for damages and the claim form does not specify an amount that is claimed, such sum as may be agreed between the party entitled to, and the client

liable to, such costs or if not agreed a sum stipulated by the court as the value of the claim; or

(iii) if the claim is not for a monetary sum it is to be treated subject to rule 67.6 as a claim for \$50,000.

(3) The general rule is that the amount of costs to be paid is to be calculated in accordance with the percentage specified in column 2 of Appendix B against the appropriate value.

(4) The court may, however—

(a) award a percentage only of such sum having taken into account the matters set out in rule 66.6(4), (5) and (6); or

(b) order a party to pay costs—

(i) from or to a certain date; or

(ii) relating only to a certain distinct part of the proceedings, in which case it must specify the percentage of the fixed costs which is to be paid by the party liable to pay such costs and in so doing may take into account the table set out in Appendix C.

11. Neither budgeted costs nor assessed costs apply here. Unless the matter comes under the fixed costs regime, then prescribed costs will apply.

12. Appendix A which is referred to in Part 67.4 provides:

APPENDIX A

PART 1

This part of the appendix sets out the fixed costs applicable to a claim for a specified sum of money:

(a) Table 1 — which a defendant who does not defend must pay to the claimant, in addition to the amount claimed and interest and the court fees paid by the claimant, in order to avoid judgment being entered against him under Part 12. These sums are to be entered on the claim form. The table also deals with claims for possession of land or delivery of goods and an application for an attachment of debts order.

(b) Table 2 — which a claimant is entitled to include as costs in any default judgment under Part 12 in addition to the costs set out in Table 1.

SCALE OF FIXED COSTS

TABLE 1

1. This Table shows the fixed costs to be entered on a claim form or provisional attachment of debts order in respect of attorney's-at-law charges—
 - ii. in an action for payment of a specified sum of money;
 - iii. in attachment of debt proceedings; or
 - iv. in an action for the recovery of land.

13. Part 12 deals with default judgment. As has been noted above, a party is not entitled to default judgment when a fixed date claim form is filed. Appendix A clearly deals with Part 12 claims. However, does it deal with anything else? Appendix A states: "The table also deals with claims for possession of land or delivery of goods and an application for an attachment of debts order." Also Table 1 provides the fixed costs being applicable "in an action for payment of a specified sum of money" and "in an action for the recovery of land". Thus, it appears that fixed costs are not limited to claims for which default judgment can be obtained under Part 12.

14. Parts 68 and 69 deal with two ways in which possession of land can be obtained. Part 69 in particular deal with payment of moneys secured by a mortgage: 69.1 (a); possession of a mortgaged property: 69.1 (d); and delivery of possession by the mortgagee: 69.1 (g).

15. In the fixed date claim form here two principal reliefs are claimed along with costs. These are for the payment of a specified sum and interest under the mortgage and for possession of the land secured by the mortgage.

16. Both these reliefs claimed therefore fall within the fixed costs regime established by Part 67.4.

17. What is also important is that the defendants have not advanced any defence. There is no challenge to the claim except on the issue of costs. This is so even though the appearance that they each filed indicated they intended to defend the claim and they did not admit it. They filed no evidence in opposition and they did not file a defence. They also had no opportunity to avoid a hearing since a date is given for the hearing when the claim is issued, which is the date entered on the claim form by the court office: Parts 8.1 (2) and 27.2 (1). Even if they had said in their appearance that they did not intend to defend and admitted the claim, the matter would still come up for a hearing.

18. If at the first hearing, the defendants had sought to challenge the evidence put in by the claimant by filing an affidavit in response or sought to raise a defence, and the court thus had to give further directions, the prescribed costs regime would then have applied to the claim. It is either the court would make the order once the evidence put in by the claimant is satisfactory or the court would consider there is a basis for challenge to the evidence or there is a defence being raised by the defendant.
19. Thus for claims arising from a mortgage where a stipulated sum is claimed and / or possession, the fixed costs regime applies unless the matter is challenged by the defendant. This is similar to what happens when default judgment is taken up over the counter in ordinary claims where a specified sum is claimed. If the defendant does not challenge the claim, fixed costs apply. Default judgment only gives the claimant a right to fixed costs unless the court assesses costs: Part 12.9. It is only where a defence is put in and the matter then has to come up for hearing at a case management conference that prescribed costs would apply. The only real distinction is that claims by fixed date claim forms cannot be taken up over the counter but must come up for hearing before a judge.
20. This position arrived at seems to be similar to the position in England and Wales although their relevant Part 45.1 is much more specific than our Part. In **Atkin's Court Forms/Costs Vol 13/Practice/G** discussing the English position regarding claims for recovery of land there is this passage:

“[102]

Possession claims¹ are commenced in accordance with CPR Part 55 and the CPR Pre-action Protocol for possession claims (by social landlords) based on rent arrears or the CPR Pre-action Protocol for possession claims based on mortgage or home purchase plan arrears in respect of residential property. Claims may be allocated to one of the three tracks with appropriate cost consequences but only to the small claims track if both parties agree². If a possession order is made and the defendant takes no part in the proceedings, the claimant will only be granted an order for fixed costs³. If the defendant (in a possession claim other than a possession claim against trespassers) does not file a defence within the time limits⁴ he may take part in any hearing but the court may take his failure to do so into account in relation to costs⁵.

Where permission is given to enforce a judgment or order for the recovery of possession of land by writ of possession⁶, if costs are allowed on the judgment or order, the costs allowed are fixed and are added to the judgment or order⁷.

'Possession claim' in England and Wales means a claim for the recovery of possession of land including buildings and parts of buildings: CPR 55.1(a).”

21. Given the value of the claim here the defendants must pay the claimant fixed costs in the sum of \$2,000.00.

Ronnie Boodoosingh

Judge