

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 726 of 2018

BETWEEN:

CARENZO TRADING LIMITED

Claimant/Respondent

and

CINSTEN INVESTMENTS LIMITED

Defendant/Applicant

Appearances:

Payal Ghanwani for the Claimant/Respondent

Angeline Welsh, KC and Jose M. Alpuche, for the Defendant/Applicant

2023: November 22
2024: January 2

DECISION

[1] **FARNESE, J.:** Cinsten Investments Limited (Cinsten) asks that I make an extraordinary ruling to order Carens Trading Limited (Carens) to pay Cinsten's costs up to the date of the discontinuance of the claim. Carens argues that there are no reasons to depart from the usual order for prescribed costs as outlined in the Supreme Court (Civil Procedure) Rules (CPR). For the reasons outlined below, I disagree. Cinsten is entitled to their costs up to the date of the

discontinuance of the claim. I find Carenso's conduct in this matter unreasonable and devised to delay and frustrate the just resolution of their claim.

[2] CPR 37.7(7) specifies that prescribed costs are the default when a claim is discontinued unless the parties agree or the court orders otherwise.¹ Part 63 of the CPR applies where the court departs from the general rule.² CPR 63.6(1) outlines that the successful party is generally entitled to costs from the unsuccessful party. The central issue in this application is whether I can make an order akin to an order for costs on an indemnity basis without explicit language in the CPR permitting such an order.

[3] I find the broad language used in CPR 64.2(1) reflects that the court has the discretion to grant costs on an indemnity basis:

Where the court has any discretion as to the amount of costs to be allowed to a party, the sum to be allowed is –

- (a) the amount that the court deems to be reasonable were the work to be carried out by a legal practitioner of reasonable competence; and
- (b) which appears to the court to be fair both to the person paying and the person receiving such costs.

(underline added)

CPR 64.2(1) is not limited to the types of costs expressly included in the CPR and in need of quantification such as wasted costs³ or where the court orders only a proportion of costs be paid.⁴ The court has discretion to order what it finds to be a reasonable amount of costs.

[4] The CPR outlines what factors I must consider when deciding whether to issue a cost order:

63.6 (5) In deciding who should be liable to pay costs, the court must have regard to all the circumstances.

(6) In particular it 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 he has not been successful in the whole of the proceedings;
- (c) whether it was reasonable for a party –

¹ CPR 37.6(1).

² See generally *Belize Telemedia Ltd v British Caribbean Bank Ltd* Supreme Court Claim No. 942 of 2009 (10 March 2010).

³ CPR 63.8.

⁴ CPR 63.6(3).

- (i) to pursue a particular allegation; and/or
- (ii) to raise a particular issue;
- (d) the manner in which a party has pursued –
 - (i) his case; or
 - (ii) a particular allegation; or
 - (iii) a particular issue; and
- (e) whether the claimant gave reasonable notice of intention to issue a claim.

- [5] Cinsten asks that I infer from Carensó's conduct in these proceedings that Carensó brought a hopeless case that ought not to have been brought or continued. Cinsten argues that Carensó was never willing to produce the Loan Agreement to prove their claim because the Loan Agreement they relied upon was not genuine. Moreover, parallel proceedings were brought in other jurisdictions and dismissed on every occasion. Of note, is also a 2021 award in LCIA Arbitration proceedings where the arbitrator found that the principal of Carensó falsified documents to avoid an asset splitting agreement with the principal of Cinsten.
- [6] Carensó disputes that the decision to discontinue the claim is in anyway related to an unwillingness to produce the Loan Agreement. Rather, the decision came after a court in Switzerland ordered the release of Carensó's funds. As such, they were unaware of Cinsten having assets anywhere else that could be used to enforce a judgment. They also assert that Carensó needed to present a bill of costs to ask for costs in this manner and therefore the application should be dismissed.
- [7] I find the circumstances in this case justify departing from the normal order for prescribed costs when a claim is discontinued. The timing of the discontinuation of this claim cannot be ignored. The Swiss decision to release Carensó's funds was made on the 13th June 2023, the day after I granted Cinsten permission to amend their defence to plead that the Loan Agreement was a forgery. Carensó filed an application to stay my decision pending appeal on 7th July 2023. I find it unfathomable that the merits of pursuing this claim after the release of Carensó's funds was not considered before 30th August 2023 when the notice of discontinuance was filed given that Carensó filed an appeal and actively pursued this claim.
- [8] The more reasonable explanation for the timing of the filing of the notice of discontinuance is that Carensó ran out of options to avoid disclosing the Loan Agreement. I ordered that the Loan

Agreement be transported to New York to be examined by a handwriting expert despite Carenso's objections. The Loan Agreement was scheduled to be carried to New York on 18th July 2023. When Carenso applied for the order to be stayed, I scheduled the hearing for the stay application for 8am on 17th July 2023. I also directed that the Loan Agreement be delivered to the court before the hearing.

[9] Carenso did not comply with my direction to deliver the Loan Agreement and terminated its Counsel's services. I adjourned the stay application and ordered Carenso to deliver the Loan Agreement to the court by 12pm on the 17th July 2023. Carenso's former counsel undertook to inform Carenso of that order. Again, Carenso failed to comply with my order to deliver the Loan Agreement. Carenso subsequently discontinued the claim.

[10] I find Carenso's conduct unreasonable and devised to delay and frustrate the just resolution of their claim. In these circumstances, I find that an order to depart from the default award of prescribed costs is justified. Cinsten is entitled to their costs of the claim as agreed or assessed by the Registrar pursuant to CPR 64.12(1). Cinsten was not required to present a bill of costs prior to applying to the Registrar for the assessment to be carried out.

Disposition

[11] IT IS HEREBY ORDERED THAT

- a) Carenso is to pay Cinsten's costs up to the date of discontinuance of the claim, and such costs are to be assessed by the Registrar, and interest at the rate of 6% to accrue from the date of the Registrar's assessment until payment.

**Patricia Farnese
High Court Judge**