

**IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS**

Action No CL 120/08

BETWEEN:

KIMBERLY JUNE COX-BAKER

Plaintiff

and

JIMMY CHARLES BAKER

Defendant

Determined on written representations

For the Plaintiff: Mr A Misick, QC and Mr J Misick

For the Defendant: Mr J Katan

J U D G M E N T O N C O S T S

1. As I was to leave the jurisdiction shortly after trial, the parties agreed that I should deal with the issue of costs on written representations to be lodged by 19 August. Each party lodged them on time.

2. This action was brought to determine the ownership of parcel no 20306/65 Godet Street, South Caicos, which was held in the name of Mr Baker. Mrs Baker claimed that it was bought with joint money so that she had a half interest. By counterclaim Mr Baker claimed a half share in two businesses run by Mrs Baker on the basis that they too were funded by joint money; and a half interest in the proceeds of sale of parcel no 20306/64 which was bought and later sold by Mrs Baker. Each party relied on a constructive trust. Having dismissed both claim and counterclaim, I was minded to make no order as to costs.

3. Mr Misick for Mrs Baker says that is an appropriate and just order on the grounds that

(i) Mr Baker acted unreasonably in bringing a counterclaim. It was served very late; was not supported by any evidence and had no prospect of success.

(ii) The majority of the preparation and trial work concerned the accounts of Caicos Pride, which applied equally to claim and counterclaim.

4. Mr Katan for Mr Baker seeks his full, or at least partial costs on the basis that

(i) The claim was brought in response to Mr Baker's claim in separate proceedings for possession of the house the subject of this claim.

(ii) Leave to add a counterclaim was not given until 19 August 2009, so he should have his costs up to that date anyway.

(iii) After that date the majority of the work involved related to the claim; the counterclaim adding very little to the volume of work done.

(iv) In any case he should have his costs from 22 May 2011 when a letter was sent to Mrs Baker's attorneys offering to settle on the basis that each party withdrew its claim/counterclaim with no order for costs – in effect, what the court eventually ordered.

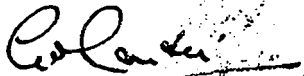
Conclusions

5. Although leave was not given until 19 August 2009, the counterclaim dated back to the original pleading. See note 20/8/2 in the *White Book*. This cannot entitle Mr Baker to his costs up to the date of amendment.

6. In my view neither case was "doomed from the start". The outcome of both claim and counterclaim depended on conclusions to be drawn from the accounts of Caicos Pride. That work related equally to both claim and counterclaim. Up to the date of the offer to settle there are no grounds for departing from the usual order.

8. If Mr Baker's offer to settle had been accepted the parties would have been spared the cost of final preparation and trial. Mr Baker should therefore have his costs from the date upon which the offer could and should have been accepted. As 22 May 2011 was a Sunday time runs from Monday 23 May. Adopting English practice I allow 21 days from the date of offer, i.e. 14 June. Mrs Baker is to pay Mr Baker's costs from 14 June 2011, to be taxed if not agreed.

Dated 24 November 2011

A handwritten signature in black ink, appearing to read 'G W Martin', with a horizontal line underneath it. The signature is somewhat stylized and is surrounded by some faint, scattered ink marks.

Justice G W Martin