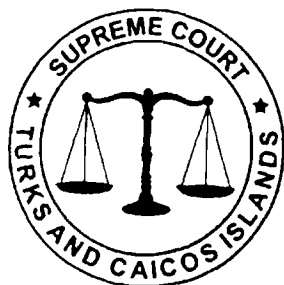


BETWEEN:

THE HONOURABLE ATTORNEY GENERAL
OF THE TURKS AND CAICOS ISLANDS



~ and ~

(1) CLYDE BRADLEY ROBINSON
(2) SUSANNAH BISHOP

Plaintiff

Defendants

CORAM: The Chief Justice, the Hon. M. Ramsay-Hale

Mr. David Phillips QC and with him, Mr. Patrick Patterson for the Crown
Mr. Ariel Misick QC and with him, Ms. Deborah John- Woodruffe for Mr. Robinson
*The Court considered written submissions on behalf of the Crown dated 27 March and 13 April
2018 and the written submissions on behalf of Mr. Robinson dated 6 April 2018*

JUDGMENT ON COSTS AND INTEREST

1. The case against Mr. Robinson was remitted to the Supreme Court by the Court of Appeal for the sums due to the Crown from Mr. Robinson for knowing receipt of Crown Land transferred to him in 2007 by HE the Governor at an undervalue ascribed to the land by the Minister of the day in breach of the Minister's fiduciary duties as the Minister responsible for Crown lands to be assessed. The assessment was concluded and in its judgment handed down in June¹ this Court held that the sum of \$657,500 was due and owing to the Crown as equitable compensation.
2. Counsel were invited to make submissions to the Court on the issue of the rate of interest to be applied to the sum now due to the Crown and on the question of costs and, by

¹ A draft of the judgment was circulated on 14 March 2018

agreement, provided written submissions addressing the outstanding issues for resolution.

On Costs

3. Mr. Misick QC submits that the Crown should not be allowed any costs based on advancing the claims, other than the claim for equitable compensation and that a proportional costs order should be made disallowing the costs of advancing claims for relief other than for equitable compensation. Given the amount of time and resources spent on those other claims, Mr. Misick suggests that the Crown should be awarded 50% of its costs. He relies on Mears Limited v Leeds City Council [2011] EWHC 2964 (TCC) in support of this submission.
4. Mr. Phillips QC submits in response that the relief sought on each head of damages traversed the same factual issues, and each head was inextricably intertwined, unlike the *Mears* case where the Court was required to consider several different issues each entailing different factual inquiries and where different relief was sought in respect of the different issues and that there are no grounds for the Court to depart from the conventional approach to costs which is that costs follow the event.
5. The Court's discretion to award costs is set out in RSC 0.62 r.3(3) which provides that,

"If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs."
6. The approach the Court should take when deciding to depart from the usual order was set out by Atkin LJ in Ritter v Godfrey [1920] 2 KB 47 where he stated at p 60 of the judgment,

“It is not easy to deduce from these authorities what the precise principles are that are to guide a judge in exercising his discretion over costs. And yet as the discretion is only to be exercised where there are materials upon which to exercise it, it seems important to ascertain the principles upon which a judge is to discern whether the necessary materials exist. In the case of a wholly successful defendant, in my opinion the judge must give the defendant his costs unless there is evidence that the defendant (1) brought about the litigation, or (2) has done something connected with the institution or the conduct of the suit calculated to occasion unnecessary litigation and expense, or (3) has done some wrongful act in the course of the transaction of which the plaintiff complains.”

7. The Privy Council in Capron v TCIG [2010] UKPC 2 reiterated that principle, citing the decision of Atkins LJ in Ritter with approval at paragraph 42 as laying down the general rule governing the award of costs.
8. In Capron's case, the Privy Council upheld the Court of Appeal's decision that costs should follow the event, despite the trial judge's finding that the successful party's conduct of the litigation had been *“disgraceful.”*
9. The In re Elqindata Ltd (No 2) [1992] 1 WLR 1207, the Court held that there should not be an automatic reduction of a successful party's costs merely because that party loses on one or more issues, as Robinson seeks to argue the Crown did here. Nourse J set out the applicable principles at paragraph 1213H:

“In order to show that the judge erred I must state the principles which ought to have been applied. They are mainly recognised or provided for, it matters not which, by section 51 of the Supreme Court Act 1981 and the relevant provisions of R.S.C., Ord. 62, in this case rules 2(4), 3(3) and 10. They do not in their entirety depend on the express recognition or provision of the rules. In part they depend on established practice or implication from the rules. The principles are these. (i) Costs are in the discretion of the court. (ii) They should follow the event, except when it appears to the court that in the

circumstances of the case some other order should be made. (iii) The general rule does not cease to apply simply because the successful party raises issues or makes allegations on which he fails, but where that has caused a significant increase in the length or cost of the proceedings he may be deprived of the whole or a part of his costs. (iv) There the successful party raises issues or makes allegations improperly or unreasonably, the court may not only deprive him of his costs but may order him to pay the whole or a part of the unsuccessful party's costs."

10. Mr. Phillips submits, and I accept, that it is in the nature of litigation that a successful party will not win on every issue he or she raises. He also submits that the costs of dealing with the issues on which the Crown was not successful did not cause a significant increase in the length or costs of the proceedings such as to suggest that it would be fair to deprive the Crown of any of its costs. Further, the Crown has substantially beaten the offer Robinson made.
11. Having considered the submissions made by the parties, I am of the view that the Crown should have the costs of and occasioned by the proceedings to determine the relief to which it is entitled, there being no other circumstances within *Ritter's* case to justify departure from the rule that costs follow the event. The costs are to be taxed on a standard basis, if not agreed.

On Interest

12. Mr. Misick submits that the Court should follow its own decision in *Sandra Elliot v Royal Bay Resort* [2017] CL 178/2010² but that was a personal injury case and the Court was considering the special rules that govern the interest rate to be applied to awards of general and special damages. The proper rate to apply in this matter is a commercial rate.

² Paragraph 9

13. Mr. Phillips submits that the judgment rate of 6% is the appropriate rate to apply. In his written submissions on behalf of the Crown³, he sets out the changing rates across the relevant period⁴ and asserts that a rate of 6% would reflect an average of those rates.⁵ I accept his submissions and consider that the rate of 6% would, given the cost of borrowing by TCIG as set out by Mr. Phillips in his written submissions, be appropriate if the Court is, by its award of interest, to achieve full restitution. To that end, I order that the interest should be compounded annually.
14. The total sum awarded to the Crown is the sum of US\$657,500.00.
15. Mr. Misick submits that the interest should be applied to the losses at the date they occurred. He relies in support of that submission on the decision of Robert Goff J in B.P. Exploration Co (Libya) Ltd v Hunt (No 2) [1979] 1 WLR 783 who at page 846C stated that, *“interest will generally run from the date of accrual of the cause of action in respect of money then due or loss which then accrues; and in respect of loss which accrues at a date between accrual of the cause of action and judgment, from such date.”*
16. Mr. Misick submits that the interest should be applied in the first instance to the sum of US\$95,000.00 by which Mr. Robinson immediately benefitted when he acquired the Land at an undervalue for the period 1 March 2017 when the Land was transferred to him and on the whole only after 13 September 2016 when land was sold to a non-Belonger and the Crown deprived of the sum of US\$562,500.00 to which it would have been entitled if a charge in the proper amount had been registered against the Land.
17. It seems to me, however, that as the claim is in respect of an unauthorised disposal of trust assets to Mr. Robinson by the former Minister, that the interest should be applied to the full sum found by the Court at trial to be due to the Crown from the date at which Mr. Robinson knowingly received the trust asset. While it was necessary to refer to the

³ Dated 27 March 2018

⁴ Paragraphs 8 to 10

⁵ At para 11

CPL and the underlying Crown Land Policy in the context of the various land transactions in order to determine what losses were actually caused by the breach of fiduciary duty, the loss to the trust estate was immediate and the interest payable from the date of that loss. There is no merit in the suggestion that such an award would be penal and not compensatory where it was already a term of the CPL that Mr. Robinson pay interest from the date of the transfer of the Land to him in the event he sold the Land to a non-Belonger.

18. As some monies by way of interest were paid by Mr. Robinson under the CPL when the Land was transferred to WaWa, I order that the interest run from 7 September 2007. With respect to Mr. Misick's submissions that interest for some further period should be disallowed because of delays by the Crown in prosecuting the appeal, in my judgment the delay was not significant and the Crown's mistake in pursuing its application for an extension of time before the Court of Appeal in the face of the *Inversiones* decision was undoubtedly met by an order for costs in Mr. Robinson's favour.
19. I therefore order that Mr. Robinson pay interest at the rate of 6% on the sum of \$657,500 from 1 March 2007, such interest to be compounded annually.
20. It only remains for me to thank Counsel for their assistance and also for their patience.

DATED 6 NOVEMBER 2018


CHIEF JUSTICE

