

IN THE SUPREME COURT  
TURKS AND CAICOS ISLANDS

BETWEEN

SANDRA ELLIOTT

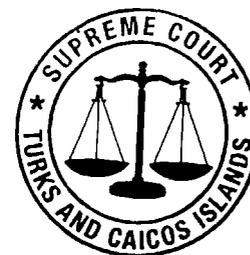
Plaintiff

-and -

ROYAL BAY RESORT & VILLAS

Defendant

Mr. Finbar Grant for the Plaintiff  
Mr. Samuel Nicholls for the Defendant  
Heard on 30 September 2015  
BEFORE RAMSAY-HALE CJ



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**RULING**

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1. A draft judgment was circulated to Counsel on 17 June 2015 with directions that the matter be listed for hearing on 22 June 2015 in relation to any consequential orders. Counsel were unavailable and the matter next came before the Court on 30 September 2015.
2. On that occasion, Mr. Samuel Nicholls of Misick and Stanbrook, attorneys for the successful Defendant, has indicated that it was the Defendant's intention to apply to the Court for a wasted costs order against Counsel for the Plaintiff. This is the ruling on the preliminary issue for resolution which is whether this Court has jurisdiction to make such an order.
3. Mr. Grant contends that it does not and relies on the fact that the Civil Rules 2000 of the TCI Supreme Court, which are based upon the Rules of the English Supreme Court as they stood at 1<sup>st</sup> January 1999, expressly omitted Order 62 r 11 which deals with wasted costs orders. He submits, on the strength of that omission, that this court does not have jurisdiction to make such an Order.
4. Mr. Nicholls, however, makes the point that the Rules do not confer jurisdiction on the Court and submits that the absence of a specific rule 11 in the Civil Rules 2000 is not a bar to awarding wasting costs against a party's legal representative.
5. He submits that the Court's jurisdiction is inherent in its power to regulate its own proceedings and that the principle underlying the jurisdiction is that the Court has a right and a duty to supervise the conduct of its officer and visit with penalties any conduct which is of such a nature as to tend to defeat justice in the very cause in which he is engaged professionally. He relies in support of his submission

on the authority of Myers v Elman [1939] 4 All ER 484 in which the Court identified the purpose of the jurisdiction as not intended to punish the solicitor but to protect the client who has suffered and to indemnify the party who has been injured. The Court held that the common law jurisdiction was to be exercised where the attorney's conduct in the proceedings could be described as "*a serious dereliction of duty as a solicitor*" (per Viscount Maugham at pg 490 D) or as "*gross negligence*" or "*gross neglect*" (per Lord Wright at pg 509 H).

6. When Myers v Elman was decided, the court's wasted costs jurisdiction was not regulated by the Rules of the Supreme Court but subsequently a new rule - which later became Order 62 rule 8(1) - was introduced which did regulate, although not enlarge, this inherent jurisdiction. The new rule provided,
- "Subject to the following provisions of this rule, where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or any other misconduct or default, the Court may make against any solicitor whom it considers to be responsible (whether personally or through a servant or agent) an order -*
- (a) disallowing the costs as between the solicitor and his client; and*
  - (b) directing the solicitor to repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or*
  - (c) directing the solicitor personally to indemnify such other parties against costs payable by them."*

recognising by paragraph (c) the effect of Myers v Elman.

7. In 1986, the new O 62 r 11, which is omitted from our Rules, was introduced. The new Rule enlarged the Court's jurisdiction to make wasted costs orders and is described by Mr. Nicholls as a self-contained code which had the effect of disapplying the inherent jurisdiction of the Court. He accepts that, notwithstanding the provisions of s 3 of the **Supreme Court Ordinance** which permits this Court in any matter of practice or procedure to apply the practice and procedure of the High Court in England, it would not be appropriate to ignore the decision to omit O 62 r 11. He asserts, however, that in the absence of O 62 r 11, the Court must fall back on its common law jurisdiction to award wasted costs and apply the relevant pre-1986 Rule.
8. Having reviewed the authorities, I say that I accept Mr. Nicholls submissions and am satisfied that the Court retains its common law jurisdiction to make a wasted costs order where the conduct complained of meets the standard of culpability set out in Myers v Helms.
9. The parties are to apply to the Registrar for a suitable date for the continuation of the costs hearing.

DATED 15 OCTOBER 2015



RAMSAY-HALE C