[2015] JMSC Civ 192

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2005HCV02260

BETWEEN	**RICARDO WILKINS**	**CLAIMANT**
A N D	**POWTRONICS ELECTRICAL INTEGRATED TECHNOLOGY LIMITED**	**1ST DEFENDANT**
AND	**DONALD FARQUHARSON**	**2ND DEFENDANT**
AND	**JAMAICA PUBLIC SERVICE CO. LIMITED**	**3RD DEFENDANT**

Mr. Ainsworth Campbell and Mr. Andrew Campbell for the Claimant

Mr. Patrick W. Foster Q.C. and Ms. Ayana L. Thomas instructed by Nunes Scholefield DeLeon & Co. for the 1st Defendant

September 19, October 3, 2014 and October 1, 2015

Assessment of Damages – Award of Costs – Application of Part 64 CPR rule 64.6 – Principles on which costs may be apportioned – Factors which influence discretion to depart from the general rule that the unsuccessful party should pay the costs of the successful party

D. FRASER J

THE BACKGROUND

[1] On August 5, 2014, I handed down judgment on the assessment of damages in this claim (***Ricardo Wilkins v. Powtronics Electrical Integrated Technology Ltd et al*** [2014] JMSC Civ 124). The order read as follows:

a) **Special Damages** awarded in the sum of $166,000.00 with interest thereon ***a)*** on the sum of $36,500 at the rate of 6% per annum from September 15, 2004 to June 21, 2006 and at the rate of 3% per

annum from June 22, 2006 to August 5, 2014; and ***b)*** on the sum of $129,500 at the rate of 3% per annum from February 9, 2009 to August 5, 2014; *(I have chosen the date of February 9, 2009, (the date of the first medical report) as the start date for interest in respect of the medical reports, the encephalogram and the MRI as these costs were incurred significantly later than the date of the 2004 accident.)*

b) **General Damages** for pain and suffering awarded in the sum of $2,500,000.00 with interest thereon at the rate of 6% per annum from the August 26, 2005 to June 21, 2006 and at the rate of 3% per annum from June 22, 2006 to August 5, 2014.

c) The court will hear further submissions in relation to the issue of costs.

[2] After judgment was delivered it was revealed by the parties that payments had been made to the claimant's counsel and medical experts as follows:

a) Payment to Ainsworth Campbell of $2,500,000.00 on June 10, 2011

b) Payment to Ainsworth Campbell of $500,000.00 on December 15, 2010

c) Payment to Ivor Crandon of $27,500.00 on December 3, 2010

d) Payment to Ivor Crandon of $11,000.00 on October 26, 2010

e) Payment to Wendel Abel of $60,000 on November 29, 2010

[3] The Claimant was paid a total of $3,098,500 by June 10, 2011, when only three (3) of the twenty–three (23) dates for the assessment of damages had passed. (See previous judgment dealing with the assessment of damages).

SUBMISSIONS

[4] On September 19 and October 3, 2014 I heard submissions on costs and interest from counsel for the 1st defendant and for the claimant respectively. In summary, counsel for the 1st defendant contended that though the claimant was awarded damages, costs should not be awarded on the usual principle that "costs follow the event." This position was advanced based on the submissions that the conduct of the claim and behaviour of the claimant were improper and also because the amount of damages awarded relative to what was claimed made the 1st defendant "the real winner." Counsel for the claimant on the other hand maintained that the claimant did only what was reasonable in the presentation of his case and therefore the proper order should be the usual "Costs to be taxed if not agreed" and the issue left to the Taxing Master.

THE APPLICABLE RULE

[5] The principles that govern the award of costs are outlined in Part 64 of the **Civil Procedure Rules 2002** as amended up to 2011 (CPR). CPR r. 64.6 (1) – (6) the rule and paragraphs relevant to the present case are set out below:

> **Successful party generally entitled to costs**
>
> 64.6 (1) If the court decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.
> (Rule 65.8(3)(a) contains special rules where a separate application is made which could have been made at a case management conference or pre-trial review.)
>
> (2) The court may however order a successful party to pay all or part of the costs of an unsuccessful party or may make no order as to costs.
>
> (3) In deciding who should be liable to pay costs the court must have regard to all the circumstances.

(4) 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 that party has not been successful in the whole of the proceedings;

(c) any payment into court or offer to settle made by a party which is drawn to the court's attention (whether or not made in accordance with Parts 35 and 36);

(d) whether it was reasonable for a party -

(i) to pursue a particular allegation; and/or

(ii) to raise a particular issue;

(e) the manner in which a party has pursued -

(i) that party's case;

(ii) a particular allegation; or

(iii) a particular issue;

(f) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his or her claim; and

(g) whether the claimant gave reasonable notice of intention to issue a claim.

(Rule 65.8 sets out the way in which the court may deal with the costs of procedural hearings other than a case management conference or pre- trial review.)

(5) The orders which the court may make under this rule include orders that a party must pay -

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's costs;

(c) costs from or until a certain date only;

(d) costs incurred before proceedings have begun;

(e) costs relating to particular steps taken in the proceedings;

(f) costs relating only to a distinct part of the proceedings;

(g) costs limited to basic costs in accordance with rule 65.10; and

(h) interest on costs from or until a certain date, including a date before judgment.

(6) Where the court would otherwise consider making an order under paragraphs (5)(c) to (f), it must instead, if practicable, make an order under paragraph (5)(a) or (b).

THE ISSUES

[6] The issues appear to fall into two broad categories:

a) Is there a basis for variation of the usual rule that the successful party is generally entitled to costs on the ground(s) that:

(1) The claimant exaggerated his claim;

(2) The 1st defendant is the real winner on the assessment of damages;

(3) The conduct of the claimant before and during the proceedings warranted a variation;

(4) The claimant received a significant sum early in the proceedings which exceeds the sum awarded by the court

b) Should a special costs certificate be awarded in this case and if so to whom?

ANALYSIS

A1. Did the claimant exaggerate his claim? (See CPR r 64.6 (4) (f))

[7] The cases of ***Anthony Molloy v Shell UK Limited*** [2001] EWCA Civ 1272, ***Yvonne Hazel Painting v University of Oxford*** [2005] EWCA Civ 161, and ***Emmanuel Sunju Allison v Brighton and Hove City Council*** (CA) [2005] EWHC Civ 548 relied on by counsel for the 1st defendant, are instructive concerning how courts should exercise discretion in awarding costs where a claimant is found to have exaggerated his claim.

[8] In ***Anthony Molloy v Shell UK Limited*** the claimant, a former employee on the defendant's oil platform, brought proceedings for damages for personal injury following an accident. Liability was conceded by the defendant and quantum remained to be determined. The claimant contended that the accident rendered him unable to work for two years and his back injury had then prevented him from returning to work on oil rigs, forcing him to retrain for a job with a lower salary. The claimant sought £330,000 for general damages and past and future loss of earnings. The defendant made a payment into court under CPR 36 (UK) of a gross figure of £20,000 which the claimant did not accept. A few days before the trial, the defendant discovered that the claimant had returned to work continuously as a scaffolder on oil platforms. The judge found that the claimant's claim had been grossly and deliberately exaggerated and that the claimant had deceived doctors examining him so that his particulars of claim had been spectacularly dishonest. He was awarded damages of around £18,897.00. In consideration of the fraudulent nature of the claim and the claimant's conduct after the payment into court the judge awarded the claimant 100% of his costs up to the payment in and the defendant 75% of its costs following the payment in. The defendant appealed contending that it was entitled to 100% of its costs after payment in had been made.

[9] In allowing the appeal the Court of Appeal held that under CPR 36.20, where a claimant failed to beat a Part 36 payment, costs incurred by the defendant after the payment in would usually be borne by the claimant. CPR 44 provided that in deciding what order to make in respect of costs, the court had to have regard to all the circumstances of the case, including the conduct of the parties, whether there had been success in all the issues tried, and whether there had been a payment in. Under CPR 44.3(5), conduct included conduct before proceedings had commenced; whether it had been reasonable for a claimant to pursue a

particular allegation or issue; and whether a claimant who had succeeded had made an exaggerated claim.

[10] The Court found that in the instant case, the judge had erred in only considering the claimant's conduct after the payment in as, from the filing of the particulars of claim until he was found out, the claimant had made a cynical and dishonest use of the court process. In those circumstances, there was only one way the judge's discretion as to costs could properly be exercised and that was to award the defendant all of its costs incurred after the payment in.

[11] In ***Yvonne Hazel Painting v. University of Oxford*** [2005] EWCA Civ 161 the claimant sought damages for personal injuries caused by a fall from a ladder while in the employ of the defendant. Judgment was entered against the defendant with an agreed deduction of 20% contributory negligence. The claimant claimed £400,000.00 – that is £500,000.00 less 20 per cent for contributory negligence. The defendant made a payment into court of £184,442.91 which was later reduced to £10,000.00 when the defendant realized that it had significant surveillance evidence which seemed to undermine the claimant's case in relation to the severity and duration of her injuries. The claimant never accepted nor applied to take out the sums paid into court. She maintained at the assessment that she had sustained a long term debilitating back injury which would prevent her from working and which justified damages in the region of £400,000 after her 20% agreed contribution. The court however awarded the sum of £25,331.78 based on a full liability figure of £31,664.73. The trial judge ordered the defendant to pay all the claimant's costs of the action. The defendant appealed against the award of costs only.

[12] The Court of Appeal ordered that the defendant (appellant) pay the claimant's costs down to the date the sum paid into court was reduced and that the claimant pay the costs of the defendant thereafter**.** The

decision in ***Anthony Molloy v. Shell UK Ltd***. was cited with approval. Dealing with the question of exaggeration at paragraphs 25 and 26 Longmore LJ said:

> The Court therefore has to have regard to exaggeration. However, exaggeration can take many forms and the rule makes no distinction between intentional exaggeration or unintentional exaggeration. Here, Mr. Farmer was constrained to accept that Mrs. Painting had been deliberately misleading in the course of the claim, and the fact that the exaggeration is intended and fraudulent is, to my mind, a very important element which needs to be addressed in any assessment of costs.

[13] In ***Allison v. Brighton & Hove City Council*** (CA) [2005] EWHC Civ 548 the claimant sought approximately £90,000.00 for water damage to his property which abutted the defendant's premises. The defendant made a Part 36 payment into court of £7,500.00. The defendant admitted liability at trial and the claimant was awarded £4,340 in damages**.** The court ordered the defendant to pay 25% of the claimant's costs up to the date for accepting the Part 36 payment and thereafter that the claimant should pay the defendant's costs. On appeal the trial judge's award of costs was upheld. The Court of Appeal noted that since the coming into force of the CPR, orders of this nature were not unusual. Although the defendant had not conceded liability until the day of trial, the main issues in dispute were causation and quantum. The claimant had substantially failed on those issues. The trial judge had taken into account all of these factors. As the judge had not exceeded the "generous ambit within which reasonable disagreement" was possible (see paragraph 18) the Court of Appeal was unable to say the order was wrong.

[14] Counsel for the 1st defendant maintained that in the present case the principles outlined in ***Molloy v Shell UK Ltd***, ***Allison v Brighton & Hove City Council*** (CA) and ***Yvonne Hazel Painting v University of Oxford***

should be followed. Evidence of exaggeration in the present case pointed to by counsel for the first defendant included the fact that the claimant pleaded 49 particulars of injuries in his Second Amended Particulars of Claim filed April 15, 2011 of which only 8 were found proven based on the medical reports in evidence. Further that his claim for special damages was grossly exaggerated as he claimed in particular a) loss of earnings and b) extra help for 343 weeks in the sum of $2,744,000.00 and $1,029,000.00 respectively and well as c) loss of a 5% annual increase in salary for the period 2005 to 2010 in the sum of $3,476,954.20. The total claim for special damages was $7,629,954.20 of which only $166,000.00 was allowed and awarded, in the words of counsel "a mere 2.18% of the claim as pleaded."

[15] Counsel also highlighted that the court found at paragraph 170 of the judgment in this matter on the assessment of damages that " *There is therefore abundant evidence that the Claimant's pattern of exaggeration of his injuries has extended to him falsely maintaining that he was unable to work for several years when that was patently untrue.*" This was supported by the consistent non-disclosure of information to medical advisors and the evidence of Mrs. Farquharson, a witness for the 1st defendant, who witnessed the claimant feigning inability to work — all evidence, counsel submitted, that the claimant's case was exaggerated deliberately and dishonestly.

[16] Counsel submitted that the exaggeration of the injuries has resulted in prejudice to the 1st defendant in terms of time and costs in defending the proceedings. It also increased the length of the assessment as more time was spent making interlocutory applications for disclosure to get to the true state of affairs. More time than was necessary was spent cross-examining the claimant on the nature of his injuries as the claimant had to be recalled for cross-examination after the 1997 and 2009 injuries were revealed. Relying on the three cases cited, counsel submitted that the

claimant should be awarded 25% of his costs up to the date of payment into court and then costs to the defendant thereafter.

[17] Counsel for the claimant, despite the finding of the court in the substantive matter, rehearsed a number of the findings in the medical reports which were not relied on by the court based on the fact that at the time the doctors consulted were unaware that the claimant had suffered other injuries apart from in the 2004 accident. Counsel steadfastly maintained that there was adequate basis for the claim as advanced.

[18] I find the submission of counsel for the 1st defendant compelling. The circumstances of the present case are more egregious that the circumstances in the cited cases. The approach adopted in ***Allison v Brighton & Hove City Council*** could quite fairly be applied in this case.

A2. Who was the real winner on the assessment of damages? (See CPR 64.6 (4) (b)

[19] Counsel for the 1st defendant submitted that in ***Painting v. University of Oxford*** the issue was framed as *"Who was the real winner in this litigation."* At paragraph 21 of the judgment Maurice Kay LJ stated as follows:

> To the question: who was the real winner in this litigation? There is in my judgment, only one answer. The two day hearing was concerned overwhelmingly with the issue of exaggeration, and the University won on that issue. Mr. Farmer's submission that that was only one issue, the other issue being the quantification of the claim, is not persuasive. Quite simply, that second issue was hardly an issue at all once the Recorder found the exaggeration and the cut-off date. It is that the cut-off date was later than the one advanced on behalf of the University, but, viewed objectively, the totality of the judgment was overwhelmingly favourable to the University. It was in real terms the winner. Moreover the costs incurred after the reduction of the money in court were expended almost entirely on the preparation for and conduct of a trial in which the central issue was that of exaggeration.

[20] Support for this position is also found in ***Blackstone's Civil Practice 2012*** at Chapter 66.6 where it is stated, "*…where a Claimant wins on one issue, but the defendant is in reality the winner: … it may be right to order the claimant to pay the defendant's costs.* ***HLB Kidsons v. Lloyd's Underwriters Subscribing to Lloyd's Policy No 621/PKID00101*** *[2007] EWHC 2699 (Comm), LTL."*

[21] The main bases on which the 1st defendant challenged the claimant in its Amended Defence as to quantum filed December 17, 2012 were that:

a) The injuries as pleaded were not supported by the medical evidence and were not attributable to the accident in the 15th of September 2004.
b) The Claimant sustained major head injuries in two separate and unrelated accidents one being prior to the accident on the 15th of September 2004 and the other in August 2009; and
c) The Claimant's present injuries or disabilities were attributable wholly or in part to his accident prior to September 2004 and the accident in August of 2009.

[22] It is the case the the 1st defendant was largely successful on the issues raised in its Defence as to Quantum. I found as a fact in the judgment on the assessment of damages that only 8 of the 49 particulars of injuries pleaded in the Second Further Amended Particulars of Claim filed on April 15, 2011 were supported by medical evidence and attributable to the accident in 2004, the genesis of the claim. I concluded that the claimant had a pre-existing condition of epilepsy from the accident he suffered in 1997 and that he also sustained serious head injuries in 2009. Accordingly the majority of his permanent partial disability was attributable to his pre-existing condition and the accident in 2009.

[23] Accordingly the quantum awarded to the claimant was substantially less than what was claimed. Only 2.18% in the case of special damages and 7.35% in the case of general damages. Significantly the sum awarded was also less than what was paid over for the claimant's benefit. It is therefore manifest that the 1st defendant was the real winner of this litigation and I agree with the submission of the 1st defendant that the nature of the award for costs should reflect that fact.

A3. Was the conduct of the claimant before and during the proceedings such that a variation was warranted from the usual rule that costs should be awarded to the successful litigant? (See CPR r. 64.6(4)(a))

[24] A critical factor to which the court may have regard when exercising its discretion as to costs is the conduct of the parties. In ***Cable v. Dallaturca*** (1977) 121 SJ 795 the successful defendant was deprived of half the costs of the trial for failing to serve an expert's report in accordance with the rules of court. In ***Liverpool City Council v. Rosemary Chavasse Ltd*** (1999) LTL 19/8/99 the successful council had flouted the approach embodied in the CPR, leaving matters to the last minute. This resulted in a cost order being reduced from 75 per cent to 50 per cent.

[25] It is significant in the instant case that critical information relating to the 1997 and 2009 accident was not disclosed by the claimant to a number of medical personnel who were experts in the case by virtue of Part 32 of the CPR. These experts include Dr. Amza Ali, Dr. Franklin Ottey, Dr. Dwight Webster, Dr. Ivor Crandon, Dr. Wendel Abel, Dr. Trevor Golding and Dr. Tameka Haynes-Robinson. The medical reports prepared by these medical experts spanned a period of February 2009 to March 2011. The reasonable and inescapable inference I find is that the claimant's non-disclosure was deliberate and consistent and was not because he forgot or did not recognise their importance.

[26] Further this vital information that was determinative of the issue of causation in relation to the damage and sequelae suffered by the claimant which related to the injuries occasioned in 1997 and 2009 was only disclosed to the court after applications for specific disclosure made by counsel for the 1st defendant.

[27] The various interlocutory applications spawned by the claimant's persistent lack of candour include:

a) Notice of Application for Court Orders filed on July 5, 2011 by the 1st defendant supported by Affidavit of Conrad George requesting an order that the claimant produce any and all medical records pertaining to an incident on August 28, 2009. Prior to the application being made the claimant and his counsel declined to comply with a reasonable request for the documents. An order was made in favour of the 1st defendant on this application on July 15, 2011 which the claimant applied to rescind by Notice of Application for Court Orders filed on the 11th of November 2011 with supporting Affidavit;

b) Notice of Application filed on September 14, 2011 by the 1st Defendant requesting that the Respondent comply with paragraph 3 of the Order of Fraser J made on July 15, 2011 for the provision of medical reports including the KPH medical records;

c) Notice of Application for Court Orders and Affidavit in Support filed by the 1st Defendant on December 7, 2012 seeking an order for specific disclosure of all medical records of the claimant in relation to injury pertaining to Suit # CLW 429 of 1998 ***Ricardo Wilkins v. Cecil Jackson Electric Co. Limited etc***. An order was made by Fraser J in terms of the Application on December 10, 2012;

d) Notice of Application for Court Orders to Strike Out Claim filed by the 1st defendant on April 22, 2013 for failing to comply with the order of Fraser J made on the 10th of December 2012. An unless order;

e) Notice of Application for Court Orders filed by the claimant on the June 4, 2014 seeking a variation of the order of Fraser J made on December 10, 2012. By order dated June 17, 2013 this application was refused and an unless order made for the claimant to comply with the order for specific disclosure.

[28] The late disclosure of documents led to the 1st defendant having to apply to amend its Defence and file an Amended Defence. The non-disclosure to the medical experts listed in paragraph 24 rendered the contents of their reports essentially unhelpful in the determination of the central issue the court had to grapple with in the assessment — what were the injuries associated with the accident of 2004? As I said in the first judgment at paragraph 128 in relation to the reports of all the doctors with the exception of Professor Owen Morgan, *"Their reports are…useful to the extent that they reveal the claimants full disabilities, but unhelpful in so far as any disaggregation into which incident caused or aggravated certain conditions".* Counsel for the 1st defendant submitted that no costs should be awarded to the claimant for any time or costs incurred in connection with the preparation of these reports as they were prepared under false or materially inaccurate instructions from the claimant. Counsel argued that all time spent requesting and perusing these reports should be disallowed.

[29] Professor Owen Morgan was the only expert witness who eventually had the benefit of the full medical history of the claimant and the court accordingly relied heavily on his opinion in arriving at the final judgment in the assessment of damages. I accept the submission of counsel for the 1st defendant that the claimant's non-disclosure resulted in Professor Morgan

preparing several reports (four in total) over a period of three years which increased the costs of the 1st defendant.

[30] The failure of the Claimant to disclose in a timely manner his medical history to the several medical experts who were appointed under Part 32 of the CPR and to the court led to several interlocutory applications for specific disclosure and to the postponement of the assessment until the information was obtained. This unnecessarily increased the duration of the hearing and the costs associated with this matter.

[31] It is also of significance that the overall conduct of the claimant is more egregious than that exhibited in the ***Molloy v. Shell UK Ltd*** and ***Yvonne Hazel Painting v. University of Oxford*** cases. In **Molloy v. Shell UK Limited** after the dishonesty was discovered the claimant submitted a revised schedule of loss (See paragraph 7 of the judgment) and adjusted the claim to accord with the true facts. In ***Molloy*** the trial started with a genuine revised claim. In the present case even after the material non-disclosure was uncovered the claimant's position as pleaded was adhered to and instead efforts were made to downplay the significance of the claimant's lack of candour. This effort at justification continued even during the submissions on costs.

[32] The conduct of the claimant's case was such that there is a basis for the variation of the usual cost order in light of the cases cited and reviewed.

A4. What is the effect of the fact that a significant sum was paid to or on behalf of the claimant early in the proceedings which exceeds the amount awarded to the claimant? (See CPR r.64.6(4)(c))

[33] I accept the submission of counsel for the 1st defendant that CPR r. 64.6(4)(c) allows a payment to the claimant or on behalf of the claimant to be taken into account when deciding the issue of costs even if no formal Part 35 or Part 36 offer was made. It was open to the claimant at the time

the payment was made to accept same in full and final settlement of the claim. The fact also is that the amount paid to or on behalf of the claimant exceeded the amount awarded by the court.

[34] It should also be considered that unlike in the ***Molloy v. Shell UK Ltd*** and ***Yvonne Hazel Painting v. University of Oxford*** cases monies were paid directly to counsel for the claimant and to doctors on his behalf, not into court. The claimant also obtained in his pocket payment of approximately $340,000.00 in excess of his award for general damages and special damages.

[35] It is clear that also under this head there is a clear basis for the costs orders to reflect the fact that the claimant benefitted directly from early payment and in fact was paid in excess of the courts final award.

B. Should an award be made for a Special Costs Certificate?

[36] Counsel for the claimant made an application for a special costs certificate to be awarded to allow for costs for his junior in the matter. Counsel for the 1st defendant agreed that an award of a special costs certificate could be made in this matter but submitted it should be in favour of the 1st defendant and not the claimant.

[37] Having looked at CPR r. 64.12, however, it appears that such certificates are reserved for applications in chambers. In the cases of ***Micro Distant et al v Nicroja Ltd. 2010HCV1276*** (March 8, 2011) and ***Raziel Ofer v George Thomas et al*** 2011HCV08015 (December 19, 2012) in keeping with the rule, special costs certificates were awarded in chamber hearings. It does not therefore appear that it would be appropriate for the court to make such an award in this matter.

[38] This finding would not however affect the power of the Taxing Master to allow costs for specific items and for the number of counsel as deemed appropriate at taxation.

Interest

[39] My initial order in the judgment on the assessment of damages had included interest. However that order was made when the court was unaware of the payments that had been made to or on behalf of the claimant. As interest is only payable where the claimant had been kept out of the benefit of sums due to him, of necessity the order that I now make will revise the previous order made in relation to the award of interest.

ORDER

[40] The Court makes the following order:

a) The claimant is awarded 25% of his costs up to June 10, 2011 *(including the costs of medical reports).*

b) The claimant is to pay the 1st defendant's costs after June 10, 2011.

c) Interest on the sum awarded for special damages as follows:

(1) On the sum of $36,500.00 at the rate of 6% per annum from September 15, 2004 to June 21, 2006 and at the rate of 3% per annum from June 22, 2006 to December 15, 2010 *(the date the first payment of $500,000.00 was made.)*

(2) On the sum of $129,500.00 at the rate of 3% per annum from February 9, 2009 to December 15, 2010.

(3) Interest on general damages in the sum of $2,500,000.00 at the rate of 6% from August 26, 2005 to June 21, 2006 and at the rate of 3% per annum on the sum from June 22, 2006 to

the 15th December 15, 2010 and at the rate of 3% per annum from December 15, 2010 to June 10, 2011 on the sum of $2,166,000.00.