IN THE SUPREME COURT OF BELIZE, A.D. 2015

CENTRAL DISTRICT COURT

CLAIM NO. 739 of 2014

BETWEEN:

LUCILO TECK	**Claimant**
AND	
SUGAR INDUSTRY CONTROL BOARD	**1st Respondent**
BELIZE SUGAR INDUSTRY LTD.	**2nd Respondent**
BELIZE SUGAR CANE FARMERS ASSOCIATION	**1st Interested Party**
HON. GASPAR VEGA, MINISTER RESPONSIBLE FOR THE SUGAR INDUSTRY	**2nd Interested Party**

Before: **Hon. Madam Justice Shona Griffith**
Dates of Hearing: **9th January, 2015; 23rd February, 2015**
Appearances: **Ms. Audrey Matura-Shepard with Mr. Anthony Sylvestre, Attorneys-at-Law for the Claimant**
Mr. Rodwell Williams S.C. with Ms. Stevanni Duncan, Attorneys-at-Law for the 1st Respondent
Mr. Michael Young S.C. with Mr. Yohhahnseh Cave, Attorneys-at-Law for the 2nd Respondent
Mr. Eamon Courtenay S.C. with Ms. Pricilla Banner, Attorneys-at-Law for the 1st Interested Party
Mr. Nigel Hawke, Deputy Solicitor General with Ms. Marcia Mohabir, Attorneys-at-Law for the 2nd Interested Party.

On Written Submissions

DECISION

Introduction

1. On 30th December, 2014, the Claimant, a sugar cane farmer, sought permission to file judicial review proceedings seeking an order of mandamus and declarations against the 1st Respondent, the Sugar Industry Control Board and declarations against the 2nd

Respondent, Belize Sugar Industry Ltd, a private company. The Belize Sugar Cane Farmers Association and the Deputy Prime Minister (in his capacity as the Minister responsible for the Sugar Industry) were named respectively as the 1st and 2nd Interested Parties.

2. The application for permission was heard on 9th January, 2015 and following submissions on the applicant's mode of moving the Court in its application for permission, such permission was granted and subject to the filing of the substantive claim, a date for the hearing thereof was fixed for 23rd February, 2015. At the date of hearing, the Court dismissed the substantive claim for judicial review on the basis of the Claimant's failure to comply with the procedural requirements of CPR Rule 56.7. Consequent upon this dismissal, the parties were invited to make written submissions in relation to the issue of costs. The Court delivered its oral decision on the issue on 26th March, 2015, and awarded costs only to the 1st Respondent to be assessed by the Registrar if not agreed. The Court now delivers its written decision on the issue.
3. It is first useful to highlight with some particularity, the parties, the proceedings as they unfolded and the respective cases of the parties.

The parties and their capacities:

(i) **The Claimant** – Lucilo Teck, describes himself as a long standing cane farmer in Northern Belize and a member (in good standing) of the Belize Sugar Cane Farmers' Association ('the Association') for over 35 years.

(ii) **The First Respondent** – the Sugar Industry Control Board ('the Board/1st Respondent'), is a statutory corporation established pursuant to section 3 of the Sugar Industry Act, Cap. 325 of the Laws of Belize ('the Act'). The Board is charged with certain statutory functions and responsibilities in respect of the operation of the sugar industry in accordance with the Act.

(iii) **The Second Respondent** - Belize Sugar Industries Ltd ('the Manufacturer/2nd Respondent'), is a private company engaged in the manufacture of sugar cane products and by-products, operating pursuant to authority conferred under the Act.

(iv) **The First Interested Party** – Belize Sugar Cane Farmers Association, was at the time of the filing of the claim, a statutory corporation established under the Act, for the purpose of organization, regulation and management of cane farmers.

(v) **The Second Interested Party** – The Honourable Gaspar Vega (Deputy Prime Minister of Belize), Minister with responsibility for the Sugar Industry.

The Proceedings

4. By application dated 30th December, 2014 the Applicant sought permission to institute proceedings for judicial review against the 1st Respondent arising from what was described as the 1st Respondent's failure to carry out its statutory duty of fixing the dates for the commencement of the sugar cane grinding season. The fixing of the dates for the grinding season is prescribed as one of the functions of the 1st Respondent under section 6(1) of the Act. The application for permission was filed by way of fixed date claim form, with supporting affidavit sworn to by the Applicant Lucilo Teck. The Court ordered a hearing in open court with notice to the parties.
5. At the hearing for permission, learned senior counsels for the 1st and 2nd Respondent, respectively objected to the application for permission on the grounds that having been sought by way of fixed date claim form (as opposed to a Part 11 application), the proceedings were incurably bad. The institution of the proceedings by way of fixed date claim it was submitted, presupposed the existence of a substantive proceeding in respect of which the Court was sought to be moved, and the application for permission, not being a cause yet in existence, meant that the Court lacked jurisdiction to entertain same. It was urged upon the Court that the objection was not a merely a technical objection in relation to form, but was one of substance which spoke to the jurisdiction of the Court to entertain the proceedings. This argument was supported in principle by learned senior counsel for the 1st Interested Party. No submissions were made on behalf of the 2nd Interested Party.
6. The Court nonetheless granted permission for the application for judicial review to be filed, on the basis that notwithstanding form, the requirements prescribed by Rule 56.3 in respect of what an Applicant is required to demonstrate on the filing of an application for permission, were complied with to the satisfaction of the Court. Further, despite the

strenuous objections to the Court's capacity to treat with the application incorrectly moved by fixed date claim, there had been no submissions made that the requirements of Rule 56.3 were not met in what was presented to the Court, thus in all material respects, the Court treated the application as sufficiently before the Court for determination.

7. Pursuant to Rule 56.4(10) the Court set the application down for full hearing with requisite directions, the full hearing obviously conditional upon the filing of the claim for judicial review within the time stipulated by the Court's order. The Court's directions for hearing were complied with. At the intended hearing of the claim on 23rd February, 2015, the matter was dismissed consequent upon the Court's concurrence with a preliminary point taken by learned senior counsel for the 1st Interested Party regarding the failure of the Applicant to have properly filed the proceedings in compliance with Rules 56.7(3&4). In light of the dismissal the Respondents and 1st Interested Party requested costs whereupon the Court directed the issue to be decided upon written submissions in relation to all parties. The 2nd Interested Party played no part in the issue as to costs.

The Factual Background

8. By virtue of section 6 of the Act, the Board is inter alia, charged with certain functions in respect of manufacturers and farmers of sugar cane in furtherance of their respective operations under the framework established by the Act. In particular, the Board is tasked with the following, as stipulated under section 6(1)(e):-

> *"fixing in respect of each crop year, after consultation with the manufacturers and the Committee, the period or periods to be known as the grinding season during which manufacturers shall accept deliveries of sugar cane from growers and cane farmers; and specifying by Order published in the **Gazette** the commencement and termination of each grinding season;*

The period known as the 'crop year' is statutorily prescribed by section 2 of the Act and means the period between December 1st and November 30th in any given year. The 'grinding season', by definition under section 2 of the Act, in relation to the period fixed as stipulated in section 6(1)(e) above, is that period during which manufacturers accept sugar cane for purpose of conversion into sugar or other derivative thereof. It can readily

be concluded therefore, that for a cane farmer, his livelihood is earned during that period fixed as the 'grinding season', wherein the fruits of his labour – sugar cane – are converted into income by way of delivery and sale to the manufacturers.

9. The crop season having been opened by operation of statute on 1st December, 2014 the acceptance of sugar cane by the manufacturers was the next step within the statutorily regulated operations of the sugar industry. The facts as sworn to (with degrees of variance) amongst the respective parties, established areas of common ground, most importantly that the grinding season had not yet been fixed by the Board, despite several weeks having elapsed into the start of the crop year. Further, that what appeared to be delaying the fixing of the grinding season by the Board was the conclusion of an agreement between the 1st Interested Party (The Belize Sugar Cane Farmers Association) and the Manufacturer BSI Ltd, the 2nd Respondent. Negotiations for the conclusion of the agreement between those two parties were ongoing and it is fair to say, very much within the public domain.
10. Against the backdrop of closely watched circumstances, the Applicant commenced the judicial review proceedings, with a view to having the Court issue an order of mandamus against the Board compelling it to fix the dates for the grinding season as alleged to be mandated by the Act. In particular, it was contended that the final authority for fixing the grinding season lay in the hands of the Board, to the exclusion of whatever other issues might have been at large between the manufacturers and cane farmers, particularly, the signing of a commercial agreement between cane farmers and manufacturer BSI Ltd.

<u>The parties' cases and submissions</u>

Case for the Claimant

11. The relief sought by way of judicial review against the Respondents was as follows:
    (i) A writ of mandamus directed to the 1st Respondent requiring the 1st Respondent to fix the period known as the grinding season so that the 2nd Respondent shall accept delivery of sugar cane from the growers and cane farmers.

(ii) A writ of mandamus directed to the 1st Respondent requiring the 1st Respondent to thereafter specify by Order published in the Gazette the commencement and termination dates of the grinding season.

(iii) A Declaration that the 1st Respondent is the ultimate decision–maker of the dates to be set for the commencement and termination of the grinding season, despite any outcome of representation received during the consultation process with the 1st Interested Party and 2nd Respondent.

(iv) A Declaration that the 1st Respondent [sic] failure/refusal to act and carry out its statutory duty to fix a date for the commencement of the grinding season is irrational, unreasonable and unlawful.

(v) A Declaration that once the 1st Respondent fixes the date for the grinding season the 2nd Respondent must accept deliveries of sugar cane from cane farmers including the Claimant, who has been registered as a producer of cane and that payment for any sugar cane delivery will be pursuant to section 19(5) of the Act read along with Section 2 in the interpretation section defining 'current price'.

(vi) A Declaration that the Applicant/Claimant had a legitimate expectation that the 1st Respondent would carry out its statutory duty to ensure the protection of his right to gain a living by work, which he freely chooses by engaging in the business of cane farming and delivery of sugar cane to the 2nd Respondent and thus not act against his interest.

(vii) A Declaration that the Applicant/Claimant had a legitimate expectation that once the 1st Respondent carried out its mandated statutory duty and fix the date for the grinding season that the 2nd Respondent would comply with the Order published in the Gazette by the 1st Respondent and thus shall accept deliveries of sugar cane from growers and cane farmers, the Applicant included.

(viii) Any other order which the Court thinks just in the circumstances of this case, including an order that the Respondent pays the cost of this claim.

12. The Claimant bases his application for judicial review on a failure by the 1st Respondent to carry out its statutory function of fixing the dates for the commencement of the sugar cane grinding season thereby resulting in a loss of livelihood on the part of sugar cane farmers. It was submitted that the existence of statutory functions and the importance of the sugar cane industry to a large cross section of the Belize public rendered the matter of public interest and properly reviewable by the Court. It was also submitted on behalf of the Claimant, that despite being aware of the urgency of declaring the start of the grinding season, the 1st Respondent in breach of its statutory duty, failed to consult as statutorily required and erroneously took into consideration the ongoing negotiations between the cane farmers and manufacturer BSI, as a factor precluding its declaration of the start of the season.

13. As a matter of law, it was contended that the functions of the Board under section 6(1) of the Act were mandatory and that whilst consultations were necessary, (as between the Association and the Manufacturer), there was no requirement for an agreement between the two to be reached. As a result, the 1st Respondent's failure to set a commencement date to the grinding season was unreasonable and improper. Regarding the events which overtook the claim by the date of hearing of the claim – namely – the conclusion of the agreement between the 2nd Respondent (the Manufacturers) and the Association (1st Interested Party), the Claimant nonetheless asserted that the balance of the claim subsisted thus the declarations sought were to form the basis of the claim as it remained.

Costs

14. The claim having been struck out for non-compliance with the Rule 56.7 it was submitted in relation to the question of costs, that the issue should be determined in accordance with Rule 56.13(6). Pursuant to this rule, the general rule is that an applicant for an administrative order should not be subject to an award of costs unless the applicant acted unreasonably in bringing the claim. It was submitted that the question for the Court's determination on the issue of costs was whether the Claimant acted unreasonably in pursuing the claim even after the issue of mandamus became academic as a result of the commencement of the grinding season before the matter came for trial. In this respect,

it was submitted that the Claimant did not act unreasonably as the law relating to the Board's exercise of its function in fixing the dates for the grinding season required some certainty by judicial pronouncement, as the circumstances between the manufacturers and cane farmers were likely to recur every year. Particularly, it was submitted that the Claimant needed to know '*if each year similar considerations will determine the commencement of the grinding season and if the previous matters considered are no longer the relevant matters*'.[1]

15. With respect to the continuation of the matter, it was submitted on behalf of the Claimant that on the authority of **R v Secretary of State for the Home Department, ex parte Salem**[2] the Court retains a discretion (to be sparingly exercised), to hear a matter even if the result would be academic if there were good reason in the public interest to do so. In the instant case the Claimant contended that the need for pronouncement on the issue of the statutory construction of section 6(1)(e) of the Act which provided for the exercise of the Board's function to fix the dates for the grinding season was such a good reason in the public interest. Additionally, it was submitted that as the case was dismissed on a technical point at its infancy stage, there could be no reasonable conclusion which could justify a departure from the general rule provided in Rule 56.13(6).
16. In the event that the Court is minded to award costs, the Claimant submits that there should only be costs awarded to a single respondent and no costs awarded to the interested parties, unless the interested party could show that there was a separate issue on which he was entitled to be heard. In support of this contention, Counsel for the Claimant relied upon **Bolton Metropolitan District Council v Secretary of State for the Environment (Practice Note)**[3]. In this regard, it was submitted that the only issue in the instant case would have been that of the construction of section 6(1)(e) of the Act which would have determined the claim in respect of each party. On the issue of costs and multiple representation further reference was made to **Birmingham City Council v H (a**

[1] Claimant's submissions on costs, para 4.
[2] [1999] 2 All ER 42
[3] [1995] 1 WLR 1176

minor)[4] as authority for the proposition that joint representation should be considered where multiple defendants were concerned with the same interests**.**

Submissions of the 1st Respondent

17. The 1st Respondent firstly highlighted the state of affairs between the cane farmers and manufacturers regarding the failure to conclude a commercial agreement to govern the delivery of sugar cane during the season. In light of the failure to conclude a commercial agreement, the 1st Respondent asserted that there was similar failure on the part of the two relevant parties to agree (as had always been the case) on a date to the start of the grinding season. This lack of consensus between the two relevant parties was submitted to be the reason for the 1st Respondent's inability to fix the commencement date to the grinding season. In any event, at the time the application for judicial review was filed, as negotiations were still ongoing between the 2nd Respondent and 1st Interested Party, these negotiations were central to the outcome of consultations with these parties thus in contrast to the contention of the Claimant, the absence of consensus was a material consideration in the 1st Respondent's ability to fix a commencement date for the grinding season.
18. The 1st Respondent filed an application to strike out the claim on several bases. In particular, that the Board was not a body amenable to judicial review; that the Board was not a body against which declaratory relief could be granted; that the claim by virtue of the commencement of the grinding season having been fixed before the matter came on for hearing, was now academic; and that the Claimant had acted unreasonably in bringing the claim. With respect to the Claimant having acted unreasonably in bringing the claim, the submission based on evidence filed for the hearing was that the Claimant (by his own admission), having been a long standing member of the Cane Farmers Association was well aware of the process by which the dates for the grinding season are fixed by consensus between the manufacturers and cane farmers. Further, that it was in fact the actions of the Claimant, along with and through his attorney bringing an action to restrain

[4] [1994] 2 WLR 31

the signing of the agreement and thereafter improperly advising cane farmers not to sign the agreement with the manufacturers, which resulted in the delay of the Board's fixing of the dates for the grinding season.

Costs

19. The 1st Respondent submits that it is entitled to its costs upon the dismissal of the claim for judicial review on the basis that (as briefly highlighted above) the Claimant acted unreasonably in bringing the claim and in its conduct of the proceedings. Further in that regard, that the conduct of the Claimant's counsel violated a rule of ethics which prohibits an attorney from treating with another party except through its attorney, where that other party is represented by an attorney. Particularly, the actions of Counsel for the Claimant in addressing members of the Association in relation to the signing of the agreement violated that rule of ethics as at the material time, the Association was the defendant against whom the Claimant had sought injunctive relief. The actions of Counsel for the Claimant in the matter referred to are submitted as relevant to the Court's determination of the reasonableness of the Claimant's actions in the instant matter as the subject matter of both claims was the same.
20. The 1st Respondent submits further that the Court should order wasted costs against Counsel for the Claimant, pursuant to Rule 63.9. In accordance with Rule 63.8(2), learned Senior Counsel on behalf of the 1st Respondent urges the Court to find that the conduct of Counsel for the Claimant in advising members of the Association whilst acting as opposing Counsel; failing to properly file the substantive claim for judicial review; and failing to discontinue the claim as she should have after the grinding season commenced prior to the substantive hearing of the matter, was conduct which falls within that classified in Rule 63.8(2) as improper, unreasonable or negligent.

Submissions of the 2nd Respondent

21. The 2nd Respondent's overall approach to the claim was that the Claimant by his own actions, was responsible for the delay in the commencement of the grinding season. This by reason of the Claimant having filed an application for an injunction to prevent the

signing of the commercial agreement which had been agreed in principle, and with that accomplished, the role of his Attorney, in advising members of the Association that the signing of the agreement was unnecessary to the fixing of the dates for the grinding season by the 1st Respondent. Additionally, the unreasonableness continued insofar as the Claimant insisted in pursuing the claim after the issue of the mandamus was no longer relevant, resulting in further costs to the Respondents and Interested Parties.

Costs

22. The 2nd Respondent submits that its entitlement to costs is firstly based on the fact that the relief sought against the 2nd Respondent were not administrative orders within the meaning of Rule 56.1 thus the general provisions applicable to costs (Rule 63.6) fell to be applied. In particular, the relief against the 2nd Respondent as contained in paragraphs 5 and 7 of the Claim, were for declarations against the 2nd Respondent, and were not within the scope of the applications itemized in Rule 56.1 as the 2nd Respondent is a private company. Further, that the claim was not one of public interest and the Claimant was in fact seeking to protect his private interest as a cane farmer and asking the Court to intervene in a commercial agreement between cane farmers and the 2nd Respondent, the manufacturer.
23. Alternatively, the Claimant's conduct in bringing the claim or conduct of the application was unreasonable thus costs ought to be awarded against him. The actions of the Claimant are to be found unreasonable based on the circumstances within which the Claim was filed, namely, the agreement in principle and thereafter ongoing negotiations between the Association and the 2nd Respondent for conclusion of the commercial agreement governing the terms and conditions of the delivery of sugar cane. It was further submitted that the continuance of the claim after the agreement was signed and the grinding season opened aggravated the legal costs for the Respondents, thus the Claimant's conduct justified an award of costs against him.
24. With respect to the award of costs to more than one Respondent, it was submitted that the 2nd Respondent was due an award on the basis that there was a separate issue which the 2nd Respondent was required to legally defend.

It was contended that the relief sought in paragraphs 5 and 7 were separate and distinct issues from that of the grant of mandamus to compel the commencement of the grinding season.

The 1st Interested Party

Costs

25. The 1st Interested Party did not file an acknowledgment of or submissions in relation to the hearing of, the Claim, but did participate with the leave of the Court, at the oral hearings and was invited to submit in relation to costs, having requested its costs. In relation to the issue of costs, the 1st Interested Party's position was that the Claimant had acted unreasonably in bring the claim which justified an award of costs against him. Reliance was placed upon Belize Civil Appeal **Placencia Citizens for Sustainable Development v Department of the Environment and Placencia Marina Ltd**.[5] as illustration for an award of costs against the Appellant/Claimant, where it was found to have acted unreasonably in bringing the claim therein. In the instant case, the unreasonableness of the Claimant was advocated in respect of the procedural failures in filing the claim which ultimately resulted in its dismissal and the failure of the Claimant to discontinue the claim after the application for the order of mandamus was no longer a live issue. With respect to the issue of an award of costs to more than one respondent, the 1st Interested Party submitted that based on the Placencia Citizens authority the unreasonable conduct of the Claimant which resulted in the incurrence of costs, justified a separate award of costs in its favour.

The Court's Consideration

The principles to be applied.

26. In the first instance, it is made clear, that the Court's consideration of the issue of costs is limited by the fact that the claim was struck out prior to its substantive hearing, for non-compliance with CPR 56.7 as it pertained to the procedural requirements for making an

[5] Civil Appeal No 37 of 2011. C.A.

application for judicial review. Consequently, there have been no finding of facts or any determination of questions of law relative to and arising in respect of any party's case. There is therefore a question, as to what principles, should inform the Court in its consideration of whether or not to award costs having not had the benefit of a concluded hearing. Whilst not a binding authority, the Court finds at the very least, guidance on this question, from the decision of **Boxall and another v London Borough of Waltham Forest**[6], a decision of the Administrative Court of England. In considering what he referred to as the 'not uncommon problem' of where judicial review proceedings are concluded before a substantive hearing, Mr. Justice Scott Baker, categorised the issue for consideration in two classes – (i) settlement of the proceedings before permission is granted and (ii) discontinuance of the proceedings after permission is granted but before the substantive hearing. The Court takes conservative guidance from the principles stated with respect to the second category, of 'discontinuance' after permission but before the hearing of the substantive proceedings.

27. The question most relevant to the Court's determination in the instant case, was the approach of the Court in ***Boxall*** relating to whether, and if so, the degree to which an assessment of the outcome of the proceedings was permissible, so as to form the basis of an award of costs. Baker J, examined a number of cases, which the Court finds useful to briefly highlight. Firstly, he referred to **R v Liverpool City Council ex p Newman**[7] per Simon Brown J, who expressed the view that as a general rule, where a judicial review claim was discontinued, a respondent was entitled to its costs, provided it could be ascertained that the discontinuance arose as a result of the applicant's recognition of his likely failure on the challenge. On the other hand, a different position was thought applicable where the discontinuance arose as a result of the Respondent taking some action which rendered the claim academic. In such a case, the applicant might be able to recover costs were it to be shown that the Respondent acted in order to avoid a likely successful challenge. Further, it was opined that where a claim was rendered academic

[6] [2000] All ER (D) 2445
[7] (1992) 5 Admin. L.R. 669

by some action independent of either party, costs would be best ordered to lie where they fell. Regardless of the situation however, the overall approach can be summed up as Simon Brown J further went on to state (as referred to in the Judgment of Baker J[8]) –

> *"It would seldom be the case that on discontinuance this court would think it necessary or appropriate to investigate in depth the substantive merits of what had by then become an academic challenge. That ordinarily would be a gross misuse of this court's time and further burden its already over-full list*."

28. Baker J further examined the case of **R v Holderness Borough Council ex p James Roberts Development Ltd[9]** where the Court of Appeal by majority decided the issue of costs in relation to an application rendered academic and discontinued, but after a substantial amount of costs had been incurred. The Court found, that as it was not in a position to assess a costs order based on the relative strength of the parties' cases as shown after the substantive hearing, it was appropriate for the trial judge to make a decision on the substantive claim for the sole purpose of determining the issue of costs. Simon Brown LJ, in a dissenting judgment, held true to his position expressed earlier in ***Liverpool City Council, Ex parte Newman.***[10] Baker J, concluded with the following principles in ***Waltham***[11] (emphasis mine):-

> *(i) the court has power to make a costs order when the substantive proceedings have been resolved without a trial but the parties have not agreed about costs.*
> *(ii) it will ordinarily be irrelevant that the Claimant is legally aided;*
> *(iii) the overriding objective is to do justice between the parties without incurring unnecessary court time and consequently additional cost;*
> *(iv) at each end of the spectrum there will be cases where it is obvious which side would have won had the substantive issues been fought to a conclusion. In between, the position will, in differing degrees, be less clear. How far the court will be prepared to look into the previously unresolved substantive issues will depend on the circumstances of the particular case, not least the amount of costs at stake and the conduct of the parties.*
> *(v) in the absence of a good reason to make any other order the fall back is to make no order as to costs.*

[8] Ibid
[9] (1992) 66 P + C.R
[10] Supra
[11] Supra

(vi) the court should take care to ensure that it does not discourage parties from settling judicial review proceedings for example by a local authority making a concession at an early stage.

29. With respect to the guidelines referenced above, the Court finds paragraph (iv) most useful and applicable to the instant case (paragraph (iii) is already accounted for in the overriding objective of our CPR). In applying a broad approach, with this guideline in mind, the determination of the issue of costs will be considered with reference to the circumstances which engaged the application for permission to file the claim for judicial review, the filing of the claim and the Court's regard for the relative strength of each parties' case as made out by the evidence filed for use at the intended hearing.
30. The starting point for the consideration of costs is as has been identified by all parties concerned, Rule 56.13(6) which states as follows:

    "The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application."

    This has been interpreted all around, that in order for the Court to make an order as to costs, it must be found, that the applicant acted unreasonably in making the application or in the conduct thereof. This finding as to unreasonableness on the part of the applicant as the basis for an order of costs has been treated as the manifestation of the exception to the general rule, which is that there is to be no order as to costs against an applicant for administrative orders under Part 56. At the risk of engaging in semantics, the Court processes the reading of this Rule (56.13(6)), a little differently.

31. The general rule as far as the Court is concerned, is the totality of Rule 56.13(6), that is, that an order for costs is not to be made against an applicant for administrative relief under Part 56 unless that applicant acted unreasonably in bringing the claim or in the conduct thereof. In making a case in furtherance of the general rule then, a respondent would have to establish unreasonableness on the part of an applicant, or an exception to

the general rule. The exception to this general rule would therefore either be (i) that an applicant may have acted quite reasonably but it is nonetheless appropriate that an order for costs be made against him; or even (ii) an applicant may have acted unreasonably, but the Court may nonetheless decline to make an award of costs against him. The Court's interpretation of the totality of the general rule laid down in Rule 56.13(6) is strengthened by Rule 56.13(4) which provides

> *"The judge may, however, make such orders as to costs as appear to him to be just including a wasted costs order."*

Here in this Rule, is provided that very wide discretion to make such orders as to costs as appear just, which reflects the oft cited words of Lord Lloyd in **Bolton Metropolitan District Council et al v Secretary of State for the Environment**[12] as being the proper approach to an order for costs – "*As in all questions to do with costs, the fundamental rule is that there are no rules. Costs are always in the discretion of the court, and a practice, however widespread and longstanding, must never be allowed to harden into a rule*."[13] This wide discretion is however, in Belize, circumscribed by the operation of Rule 56.13(6) which prescribes a general rule. However the exceptions to the operation of this general rule as stated in paragraph 31 above, would in an appropriate case, still be able to give effect to what remains the court's discretion, albeit exercised to great exception. This being said however, it is not the Court's view that the instant case requires the Court to consider the question of the award of costs in terms of any exception as stated above, but rather, in terms of application of the general rule – whether from the standpoint of unreasonableness advocated by the Respondents or from a failure to show unreasonableness, advocated by the Claimant.

32. The Court's approach to the issue of costs in this case is thus as follows:-

(i) The Claimant having been unsuccessful, instead of the first general rule of costs following the event as obtains in a usual civil case, one looks to the general rule applicable to administrative law cases prescribed in Rule 56.13(6), which requires

[12] [1996] 1 All ER 184
[13] Supra @ 186.

the Court to consider whether there is any basis upon which find unreasonableness on the part of the Claimant in bringing the claim or in the conduct of the claim.

(ii) If there is found to have been unreasonableness on the part of the Claimant in the bringing of or conduct of the claim, is there any factor to be considered that mitigates against an award of costs against the Claimant.

(iii) If an award of costs is to be made against the Claimant, are both Respondents and interested party entitled to their costs.

(iv) In respect of whomsoever is awarded costs, what is the appropriate quantum of such costs.

Unreasonableness and the Claim

33. The Court commenced its consideration by adverting to the fact that the early dismissal of the claim restricts the extent of its consideration of the issue of costs[14]. There were facts asserted by the Respondents and Interested Party with respect to the existence and Claimant's knowledge of the prior procedure for fixing of a commencement date of the grinding season; the degree of involvement of the Association and Manufacturer in the fixing of a date; the previous existence of and circumstances surrounding the commercial agreement between the cane farmers and Manufacturer; the involvement of the Claimant and his Attorney-at-Law in disrupting the signing of the new agreement which if signed, would have given way to the start of the grinding season – however, in the absence of the substantive hearing no findings were made in respect of the respective cases put forward. In granting permission however, the Court made an assessment that the Claimant possessed at least an arguable case and with the facts yet to be finally assessed by full hearing of the claim, that determination as to arguability must remain. Accordingly, the Court does not consider that it is open to make a determination as to the Claimant having been unreasonable in bringing the claim, having regard to the stage at which the claim was dismissed.

[14] Paragraphs 26 – 29 supra.

34. This view notwithstanding, the Court must also consider whether the Claimant can be said to have been unreasonable in the conduct of the claim. In this regard the Court is in agreement with the submissions of all responding parties with respect to the Claimant's conduct of the claim. Particularly – insofar as the failure to comply with elementary rules at both the permission stage and the filing of the substantive claim resulted in the first instance, in a lengthy permission hearing at which sustained attacks were made on an application that was bad in form and thereafter, the ultimate dismissal of the claim, also bad in form, on the date of the substantive hearing. It is not the Court's position however, that this factor by itself, would have been sufficient to ground a finding of unreasonableness in the conduct of the claim.
35. In addition to the above however, the more serious consideration is the continuance of the proceedings in the face of the intervening events which put an end to a substantial portion of the case for the Claimant. As was public knowledge and acknowledged by all parties, the grinding season commenced on the 26th January, 2015, after relevant parties reached consensus on their commercial agreement governing the terms of delivery of sugar cane to the manufacturer. The substantive hearing was scheduled just shy of one month thereafter on the 23rd February, 2015 which provided more than sufficient time for Counsel for the Claimant to reassess or reconsider the continuance of the claim. In compliance with the Court's directions for hearing, all parties filed affidavits and with the exception of the 1st Interested Party, submitted arguments for the substantive proceedings. The 1st Respondent also filed an Application to Strike out the Claim.
36. At the hearing Counsel for the Claimant informed as to her intention to continue with the claim but that the Claimant would be pursuing only the declaratory relief as the orders for mandamus were no longer relevant. There had been no amendments made or sought in relation to the claim to take account of or give effect to what would have been a materially altered claim going forward. The intended mode of procedure by Counsel for the Claimant was to forge ahead with the claim and simply disregard the relief sought by way of mandamus. The Court declined to allow the claim to proceed on such an imprecise basis particularly as it was highly questionable whether any remaining issues in the claim

could have been sustained separately from the original case as put forward. The Court therefore directed Counsel for the Claimant to possible action under Part 20 (changes to statement of case) or Part 37 (discontinuance of a claim).

37. Again, a sustained attack was mounted against the case for the Claimant as it remained and the hearing of the Application to Strike out the Claim was urged upon the Court by learned Senior Counsel for the 1st Respondent. It was thereafter that learned Senior Counsel for the 1st Interested Party made the objection in relation to the Claimant's failure to comply with the procedural filing of the substantive claim under Rule 56.7(4). The non-compliance having been found as a fact and given the embarrassing state of the Claimant's case in light of the intervening circumstances which saw the commencement of the grinding season and given the failure to seek any amendment to the Claimant to take into account the changed circumstances, the Court upheld the technical but sound objection and dismissed the claim. In this regard, the Court was doubtful that the claim could have been successfully amended pursuant to Part 20 and fairly certain having regard to the relative strength of the respective positions, that the application to strike out would most likely have prevailed. With respect to the approach highlighted by Baker J in ***Boxall,***[15] it is found that the instant case is one at the end of the spectrum in which it is easily determinable as the case stood on paper, that the prospect of success lay with the Respondents, at the time of dismissal of the claim.

38. In the circumstances, the Court finds that the prudent course for the Claimant to have adopted having regard to the intervening commencement of the grinding season, was to have discontinued the claim. Based on the combined effect of the poor form of the claim from the permission stage to hearing which resulted in two lengthy oral hearings and the continuation of the claim which ought to have been discontinued after a material change in circumstances, it is found that the Claimant was unreasonable in relation to the conduct of the claim, to a degree which warrants an award of costs against the Claimant. The question now remains as to whom should costs be awarded.

[15] Supra

The award of costs and multiple respondents.

39. The respective submissions on the issue of costs point firstly to Rule 63.7 which reads

> *"Where two or more parties having the same interests in relation to proceedings are separately represented the court may disallow more than one set of costs.*

The application of this Rule is consistently illustrated in relation to proceedings for judicial review by a basic position that it would be unusual for a court to award more than one set of respondent's costs - ***Bolton Metropolitan DC v Secretary of State for the Environment***.[16] The justification for the award of a second set of costs would have to be based on there being a separate issue on which the additional respondents or interested parties were entitled to be heard. The main respondent in this case against whom the relief was primarily sought was the 1st Respondent, the Sugar Industry Control Board, from whom submissions were principally led at both hearings. It goes without saying therefore that the 1st Respondent is entitled to its costs.

40. Further, the award is not merely to be a nominal award on the basis as submitted by Counsel for the Claimant, of the limited financial resources of the Claimant and the fact that the proceedings were dismissed on a technicality. The rationale of Rule 56.13(6) in preventing persons from being dissuaded from seeking administrative orders on the basis of having to pay costs for unsuccessful applications has to be balanced against the wider underlying basis for awarding costs which is that a party is not to be put out of pocket in having no alternative but to defend legal proceedings. Having regard to the Court's findings as to the unreasonableness of Claimant's option in failing to discontinue the proceedings and the unnecessary and embarrassing breaks in filing the claim, it is follows that the Claimant must bear the consequences those actions and pay the costs of the 1st Respondent, to be assessed by the Registrar, if not agreed.

[16] Supra

41. The question of costs in relation to the 2nd Respondent and 1st Interested Party (the 2nd Interested Party made no submissions on costs) will turn on a finding that there existed a separate interest particular to each of them respectively which they were required to defend. An example of an award of a second set of respondent costs is taken from **R (on the application of Smeaton) v Secretary of State for Health (No. 2).**[17] In addition to the respondent, the interested party in this case was awarded costs upon the dismissal of judicial review proceedings. The basis of the court's award was a finding that the position of the interested party in fact represented the real defendant who was in reality forced to intervene by virtue of the particular circumstances of the case in order to protect its interests, those interests including avoiding criminality in the event of the success of the claim. Further, the learned judge therein found that the circumstances required the interested party to have an active part in the proceedings in order to protect its own interests and in the conduct of the proceedings, the evidence put forward by the interested party was of greatest relevance in its determination.
42. With respect to the 2nd Respondent in the instant case, it was contended that the declarations sought engaged the 2nd Respondent in private law concerns in an interest separate to the 1st Respondent and as such the ordinary consideration of 'costs following the event' should apply upon the striking out of the claim. The Court does not agree. The Claim as it existed, engaged the 2nd Respondent in a secondary sense only, in that the relief sought could not stand independently of any determination made in relation to the case against the 1st Respondent. The question of the categorization of the claim against the 2nd Respondent as private law or capable of subsisting in public law was one left undecided by the dismissal of the claim before hearing. A dismissal against the 1st Respondent would have necessarily (and did in fact do so) put an end to any involvement in the claim by the 2nd Respondent. With this base position, it is not considered that any case is made out for separate set of costs to be awarded in favour of the 2nd Respondent.

[17] [2002] EWHC 886

43. In relation to the 1st Interested Party, the position is much the same with the added element that according to ***Bolton*** the award of a third set of costs in judicial review proceedings is to be even more rare than a second set of costs. The 1st Interested Party can therefore be said to be have an uphill task in securing an award of costs. The 1st Interested Party filed no acknowledgement to the claim or written submissions save in respect of costs. The 1st Respondent however had sought leave, was granted and did make submissions at the oral hearings which were of great assistance to the Court. Such assistance notwithstanding, there was no position advanced by the 1st Interested Party, nor did the Claimant advance any case against the 1st Interested Party which necessitated that the 1st Interested Party take any active part in the proceedings. This position can be contrasted with the circumstances of the interested party in ***Smeaton***[18] as outlined above. In the circumstances, the even higher threshold for a third set of costs to be awarded against an unsuccessful application for judicial review has not been established and as such the Court makes no order as to costs in favour of the 1st Interested Party.

Wasted Costs

44. The 1st Respondent submitted that the Court should order wasted costs against the Claimant's Counsel. This the Court is empowered to do pursuant to rule 56.13(4). This Rule acknowledges the power of the Court to award wasted costs in administrative law proceedings, but the procedure for so doing is still to be applied as is provided under Rule 63.9. This Rule in effect exempts wasted costs ordered under Rule 27.9(6)(b) from the procedure therein provided, but not any other rule. Given that a wasted costs order as defined under Rule 63.8 impugns the professional integrity or competence of a legal practitioner, the stipulated mode of procedure whether on application by a party or by the Court's own motion, is to be strictly followed. As the procedure laid down in Rule 63.9 was neither invoked nor followed, there is no consideration in the instant case given to a wasted costs order against Counsel for the Claimant.

[18] Supra

Final Disposition

45. The Court makes the following orders with respect to the disposal of the claim and the award of costs.

    (i) Following upon the dismissal of the claim on 23rd February, 2015 the 1st Respondent is awarded costs to be assessed by the Registrar if not agreed;

    (ii) The applications for costs by the 2nd Respondent, 1st Interested Party are denied.

    (iii) No application for costs was made by the 2nd Interested Party. In any event, no order for costs is made in favour of the 2nd Interested Party.

Dated this 15th day of April, 2015

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Shona O. Griffith
Supreme Court Judge.