

Battle now over costs

...as Central Bank drops decade-long CL lawsuit

PORT OF SPAIN

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THE Central Bank has formally discontinued its decade-and-a-half-long civil lawsuit arising out of the collapse of CL Financial, with the matter now shifting to a legal battle over costs.

When the case was called before Justice Robin Mohammed at the Waterfront Judicial Centre yesterday, lead attorney for the Central Bank, Senior Counsel Ian Benjamin, informed the court that a notice of discontinuance had been filed last Friday. However, he said it was only processed minutes before the hearing.

Benjamin said that while the State had taken the decision to discontinue the proceedings, significant sums had already been spent and there were 'cost consequences' flowing from that decision.

'I have spoken to my friends on the other side, and we want to see if we can curtail and circumvent whether there can be fruitful discussions between us,' Benjamin said, adding that the parties were seeking an opportunity to resolve the issue of costs by agreement. He also noted that Justice Mohammed had previously set aside time in March in the event that arguments on costs became necessary.

Attorney Justice Phelps, one of the defence attorneys, said the defendants had not yet seen the notice of discontinuance but agreed that the issue of cost must follow the event. He said that if agreement could not be reached, the matter could result in a lengthy and highly prejudicial assessment process.

'After 15 years, nothing has been achieved. All sorts of unlimited resources have been used,' Phelps told the court. He said subjecting the defendants to a prolonged costs assessment would prejudice both the defendants and the claimant.

Phelps urged that the issue be resolved quickly and in the public interest, suggesting that the court grant attorneys for the Central Bank only 48 hours to state its position on the issue.

He further submitted that part of the court's function would be to consider whether the proceedings should have been maintained at all.

'These proceedings were bound to fail,' Phelps said.

Benjamin responded that 48 hours, as suggested was unreasonable, given the number of defendants involved. He said he was hopeful the parties could return to court with an agreed position on costs.

The judge stated that the question of costs remained firmly in the hands of the court and explained that there were two aspects to be determined-entitlement and quantum.

He noted that when a party discontinues proceedings, that party is generally required to bear the costs of the other up to a certain point, unless the court is persuaded otherwise.

'Assuming that entitlement is determined in the defendant's favour, prescribed costs will apply,' Mohammed said.

The judge also said it was unrealistic to expect the State to give its position on the issue within 48 hours and gave the parties until the end of February to attempt to reach consensus, noting that February is traditionally affected by Carnival-related activity.

He directed that if there is no agreement on how costs should be allocated and quantified, statements of costs must be filed.

Justice Mohammed further ruled that in the event the parties cannot agree on the value of the claim-which is based on the amount claimed by the Central Bank-that issue will also be determined by the court.

The matter was adjourned to March 9 and 10, in default of agreement.

The parties were ordered to inform the court by February 27 whether the issues of entitlement and quantification of costs had been resolved. If not, the court will hear and determine the costs dispute on those March dates.

The decision to discontinue follows statements by Attorney General John Jeremie in Parliament earlier this month, in which he said the State could no longer justify continuing expensive and complex civil litigation that had not produced meaningful results.

Jeremie told Parliament that the collapse of CL Financial had already cost taxpayers an estimated \$28 billion in rescue and bailout measures, with a further \$3 billion to \$4 billion spent on legal, accounting and administrative expenses.

He also noted that despite years of investigation and litigation, no criminal charges had been laid and pointed to the severe strain such massive financial investigations placed on limited investigative and prosecutorial resources.

Jeremie said the State had to take a pragmatic and fiscally responsible approach, adding that continuing the civil proceedings would only add to the burden on taxpayers without a realistic prospect of recovery.

He therefore signalled the Government's intention to bring the long-running litigation to an end in a way that would minimise further costs to the public purse, while allowing the State to redirect resources to other pressing national priorities.

The lawsuit, filed in 2011, stemmed from the collapse of Colonial Life Insurance Company (Trinidad) Ltd (CLICO) and other companies within the CL Financial group. The failure of the conglomerate in 2009 led to one of the largest State interventions in the country's financial history.

Civil claims were brought against the late Lawrence Duprey, former CL Financial chairman, Andre Monteil, CL Financial, Dalco Capital Management, Stone Street Capital Ltd, and Gita Sakal, former corporate secretary of the group.