

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2020/CLE/gen/00671
BETWEEN

RICHARD ROBERT ROLLE

Plaintiff

AND

NEW PROVIDENCE DEVELOPMENT COMPANY LIMITED

Defendant

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Donovan Gibson for the Plaintiff

Gail Lockhart Charles KC for the Defendant

DECISION ON COSTS

WINDER, CJ

[1.] This is my decision on costs arising out of my judgment dated 23 June 2023 dismissing the Plaintiff's claim.

[2.] In my judgment, I indicated that I was inclined to make the usual order for costs, however, I said that if the parties wished to be heard on costs, I would deal with the issue on written submissions to be lodged within 7 days. No written submissions were received by or on behalf of the Plaintiff within the prescribed period of 7 days nor was any request for an extension of time made. The usual order for costs therefore follows. As the successful party, the Defendant is entitled to its reasonable costs of the action.

[3.] I also indicated that I proposed to summarily assess the Defendant's costs in the event that costs should follow the usual course. I directed that the Defendant provide any representations it wished as to the time that was reasonably spent in defending the claim and in preparing for and attending trial within 14 days of my judgment. The Defendant lodged submissions on quantum dated 7 July 2023 exhibiting a draft bill of costs claiming costs in the amount of \$81,125.50 (including VAT and disbursements).

[4.] Generally, costs must be reasonably incurred and reasonable in amount. What is reasonable will be influenced by factors such as the nature of the case, the importance of the case to the parties and the manner in which the case was conducted by the parties, but what is reasonable will ultimately be dictated by the particular circumstances of the case. Further, a successful party will normally only be entitled to such costs as were necessary or proper for the attainment of justice or for enforcing or defending their rights.

[5.] In *William Downie v Blue Planet Limited SCCivApp & CAIS No. 188 of 2019* (5 March 2020), a decision refusing an extension of time within which to appeal a decision that I made fixing the costs payable to the intended appellant on a successful application to set aside subpoenas under *Order 59, rule 9* of the *Rules of the Supreme Court*, *Sir Michael Barnett P* had occasion to consider the jurisdiction of the Court to fix costs when considering the merits of the intended appeal. He said at paragraphs 23 to 30:

23. It is settled law that the court has a wide discretion as to costs. Section 30 of the Supreme Court Act provides:

30. (1) Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid.

24. Order 59 Rule 2 of The Rules of The Supreme Court provides:

(2) The costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that Court shall have full power to determine by whom and to what extent the costs are to be paid, and such powers and discretion shall be exercised subject to and in accordance with this order

25. These provisions give the court a wide discretion as to whether the costs are payable by one party to another; the amount of those costs; and when they are to be paid. This is specifically set out in the English Civil Procedure Rules Rule 44, but in my judgment represent the law as expressed in the Supreme Court Act and the Rules of The Supreme Court.

26. As far back as **Wilmott v Barber** (1881) 17 Ch.D. 772 Jessell MR said: **'The judge has a large discretion as to costs. He may make the defendant pay the costs of some of the issues in which he failed, although he may have succeeded on the whole action. Or he may say that both parties are wrong, but that he could not apportion the blame in a definite proportion, and therefore would dismiss the claim without costs.**

Or he might say that the plaintiff should have half the costs of the action, or some other aliquot part. Or he may follow the course which I sometimes adopt, and I generally find that the parties are grateful to me for doing so, namely, fix a definite sum for one party to pay to the other, so as to avoid the expense of taxation, taking care in doing so to fix a smaller sum than the party would have to pay if the costs were taxed. [Emphasis Added]

27. The judge has a wide power to fix a definite sum that one party pays the other party instead of ordering costs to be taxed.

...

29. The issue is how does the court go about fixing that sum?

30. In **McAteer v Devine** [2016] NICA 46, the Court of Appeal of Northern Ireland had to consider an appeal from the exercise by a trial judge of his power to fix costs under the Irish Rule similar to our Order 59 Rule 9. After considering various authorities, including the decision in **Leary v Leary** (1987) 1 WLR 72 and the other authorities referred to in the intended appellant's skeleton submissions and relied upon by the intended appellant in this application, the court said:

[27] The principles which we have distilled are as follows:

(i) The purpose of the rule is to avoid expense, delay and aggravation involving a protracted litigation arising out of taxation. Such an aim would be achieved especially, though not exclusively, in complex cases.

(ii) The discretion vested in the judge is not subject to any formal restriction.

(iii) The order does not envisage any process similar to that involving taxation. The approach should be a broad one. A judge is not obliged to

receive evidence on oath or anything more than some evidence as to the estimated costs before making such an order.

(iv) Although the discretion is unlimited, it must be exercised in a judicial manner. An example of acting in an unjudicial manner would include eg “clutching a figure out of the air without any indication as to the estimated costs”.

(v) The court will only interfere with the exercise of the discretion by the trial judge if he/she has erred or was plainly wrong.

[Emphasis added]

[6.] Having reviewed the Defendant’s draft bill of costs and considered the items of costs enumerated therein, taking into account the circumstances of the case, including the time spent before me, the work reasonably expended, the seniority of counsel and the importance of the matter to the client, I fix the Defendant’s reasonable professional charges in this matter at \$28,000 plus disbursements of \$200. The Plaintiff shall also pay any Value Added Tax which arises on these sums.

Dated this 12th day of October, 2023

A handwritten signature in black ink, appearing to read 'I. R. Winder', written in a cursive style.

Sir Ian R. Winder
Chief Justice