

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
Case No. 2009/CLE/gen/01367
Case No. 2011/CLE/gen/FP/00276**

B E T W E E N

**INCORPORATED TRUSTEES OF ST JOHN'S PARTICULAR CHURCH OF NATIVE
BAPTISTS IN THE BAHAMAS**

Plaintiff

AND

FREEPORT COMMERCIAL AND INDUSTRIAL LIMITED

1st Defendant

AND

GRAND BAHAMA DEVELOPMENT COMPANY LIMITED

2nd Defendant

AND

GODFREY R. WILLIAMS MINISTRIES

3rd Defendant

AND

GODFREY R. WILLIAMS

4th Defendant

AND

BANK OF BAHAMAS LIMITED

5th Defendant

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Mr. Edward Marshall II for the 1st Defendant /Appellant

Mr. Colin Jupp for the Plaintiff/Respondent

HEARING DATE: August 21, 2023

DECISION

Hanna-Adderley, J

Appeal of the Deputy Registrar's Decision not to permit taxation of former Counsel's Costs

Introduction

1. It should be noted that the Supreme Court Civil Procedure (Amendment) Rules 2023, Section 3 entitled "Insertion of new rule 4 into the principal Rules states: "the principal Rules are amended by the insertion, immediately after rule 3, of the following new rule-
"4. **Savings and transitional.** Notwithstanding rule 3, proceedings commenced in the Court prior to the commencement of these Rules, to which these Rules in accordance with rule 2(1)(b) do not apply, shall continue under the Rules of the Supreme Court (S.I. 48 of 1978)". The Notice of Appeal was filed herein prior to the coming into effect of the Civil Procedure Rules, 2022 and consequently, those rules do not apply to these proceedings.
2. The parties are before the Court on an appeal from a decision made by the Deputy Registrar Olivia Blatch on October 6, 2022 whereby she determined that Delaney Partners, Counsel and Attorneys for the Appellant herein, was not permitted to conduct taxation proceedings on behalf of the Appellant in relation to the costs incurred by the Appellant in this Action prior to lodging the Notice of Change of Attorney herein on March 4, 2020.
3. The Appellants filed their Notice of Appeal on October 7, 2022 for an Order that the said Decision made by the Learned Registrar be set aside; that pursuant to Order 59 of the Rules of the Supreme Court ("RSC"), Delaney partners may conduct the taxation of the Bill of Costs filed herein on February 1, 2022, in its entirety on behalf of the Appellant as its attorneys of record as ordered by Madam Justice Estelle Gray Evans as she then was on November 16, 2021, both prior to and after the filing of the Notice of Change of Attorney; that the Respondent pay the Appellant the cost of this appeal such costs to be taxed if not agreed; Such other direction as this Honourable Court may deem just.
4. In support of its appeal the Appellant relies Appellant's Skeleton Argument (In response to Respondent's Preliminary Objection made on 5 July 2023). The Defendant Respondent relies on its Skeleton Arguments in support of Plaintiff's Preliminary Point for use at hearing on July 11, 2023.

Chronology of Events

5. A brief chronology of events in this matter are:
 - a. On March 4, 2020 the Appellant filed a Notice of Change of Attorney herein.

- b. On February 1, 2022 the Appellant filed the 1st Defendant's Bill of Costs.
- c. On October 6, 2022, the Taxation commenced before the Learned Deputy Registrar. At the commencement of the taxation the Respondent objected to a taxation of costs in the Bill of Costs of items 1-110, as the items reflected services rendered from 2009 to 2019. That Delaney Partners could only claim for costs from March 4, 2020 when they came on record for the 1st Defendant. The Deputy Registrar made her decision, and Mr. Marshall Counsel for the Appellant indicated his intention of Appealing the Decision and the taxation proceedings were adjourned.
- d. On February 16, 2022, 2 weeks after DP Bill was filed and prior to the October 6, 2022 hearing before the Registrar, GrahamThompson filed a Bill of Taxation together with the supporting documents on behalf of the 1st Defendant for the period April 8, 2016 to January 4, 2021. On January 23, 2023 that Bill was taxed and the 1st Defendant was awarded \$290,824.27 as its costs. The Bill covered services rendered by Mr. Robert Adams, Mr. Dwayne Fernander, Mr. Edward Marshall II, Mr. Samuel Brown and others on the GrahamThompson legal team. The Certificate was filed February 25, 2023.
- e. The Appeal hearing commenced on August 21, 2023 and the Respondent raised a Preliminary point objecting to the hearing of the Appeal by this Court. I adjourned the hearing make a determination on the Preliminary Point.

Deputy Registrar's Decision

6. The Deputy Registrar's notes on file indicate her reason for disallowing the items. She states that she noted that 2 Bill of Costs were filed, however, a party cannot claim for the same costs twice. She accepted the submissions made by Council Jopp and disallowed the costs in relation to items 1 through 110 of the Bill of Costs. That Counsel Marshall indicated he wished to appeal the Decision. The taxation was adjourned pending outcome of the Appeal.

Appellant's Notice of Appeal

7. The Appellant in its Notice of Appeal sets out the Grounds of the Appeal as follows:

- (1) The learned registrar erred in construing the meaning and effect of order 59 rule 23 (2) of the RSC as requiring a party's former attorney(s) of record in an action to file and serve separate bills of costs and to conduct separate taxation proceedings.
- (2) The Learned Registrar erred when she determined that a party's former attorney(s) of record retained the authority to act on behalf of that party after a notice of change of attorney is filed and duly served if only in the limited capacity of cost recovery proceedings. She ought to have determined that upon the due service of a notice of change of attorney that party's new attorneys become counsel of record for that party and that party's former attorney authorization to act on its behalf and the action wholly ceases.
- (3) The learned registrar erred in law when she determined that that Delaney Partners was not permitted to conduct taxation proceedings on behalf of the Appellant in relation to the costs incurred by it in the Respondent's action prior to the filing of the Notice of Change of Attorney. She ought to have determined that the costs being recovered and the Bill of Costs are the Appellants and that as the Appellant's current attorney of record, Delaney Partners, are authorized and permitted by the Rules of Court to conduct taxation proceedings in respect to the same on its behalf notwithstanding the firm of attorneys with which such costs were incurred.

Preliminary Objection Submissions

8. Mr. Colin Jupp, Counsel for the Plaintiff submits, in part, as a preliminary point, that the Court has no jurisdiction to hear the Notice of Appeal and that the filing of the same amounts to an obvious abuse of process. That the Notice clearly states that it is made pursuant to Order 58 Rule 1 of the RSC. Order 58 rule 1, is based on and has virtually the same language as Order 58 rule 1 of the Old English Rules of Supreme Court (the "**English Rules**"). That the fatal flaw in Counsel for the 1st Defendant's application is that that he erroneously assumed that Order 58 rule 1 of the RSC applied to all judgments, orders or decisions of a Registrar, when it clearly does not.
9. The wording in the headnote to and the actual text of Order 58 rule 1 of the English Rules, makes it pellucidly clear that Order 58 Rule 1 of the English Rules only applies to "certain decisions", in particular to decisions of the "master of the Queens Bench Division, the

Admiralty Registrar or a registrar of the Family Division.” Notably, absolutely no reference whatsoever is made to the decision of a taxing master or taxing officer. If it was intended to apply to such decisions, the English Parliament would have stated so, as it did with the Queen’s bench, Admiralty and Family matters.

10. That Order 58 rule 1 was never intended to apply to all decisions of a Registrar and it is submitted that this Order particularly does not apply to parties who are dissatisfied with decisions of a taxing Registrar, which is expressly governed by Order 59 Rule 31 of the RSC.
11. The above conclusion regarding the limited scope of Order 58 Rule 1 of the RSC, must necessarily follow as a matter of both law and logic. Otherwise, if it were possible for a disgruntled party to challenge the decision of a Registrar arising out of a taxation of costs, via Order 58 Rule 1, that would render obsolete the entire regime specifically set out for such purpose by Parliament and the Rules Committee in Orders 59 Rules 31 through 33 of the RSC.
12. Orders 59 Rules 31-33 make specific and detailed provision for the Registrar firstly being afforded the opportunity to review its decision and if that review is still unsatisfactory, having the decision reviewed by a Judge. As a result, using Order 58 rule 1 to usurp the purpose of Orders 59 rules 31-33, is odious and could not have been intended by Parliament which would not have had Orders 59 rules 31-33 promulgated, if one can simply rely on Order 58 rule 1.
13. Furthermore, the fact that Order 58 rule 1 is not the proper basis for challenging the decision of a Registrar arising out of a taxation, is confirmed by the language in Order 62 rule 33 (1) of the English Rules. Order 62 Rule 33 (1) has virtually the same language as Order 59 Rule 31 (1) of the RSC. It is also the Order and Rule upon which Order 59 rule 31 (1) is based. In this regard it is notable that Order 62 Rule 33, specifically refers to decisions by the “taxing master”.
14. Further and/or alternatively, the filing of the Notice amounts to an obvious abuse of process because the proper application would have been for the 1st Defendant to seek a review of the decision of Deputy Registrar Blatch pursuant to Order 59 rule 31 (1). As a result, no such application for a Review may now be made as the 14 day time period under Order 59 rule 31 (2) has expired.

15. That based on the foregoing, it is clear that the 1st Defendant's Notice should be dismissed with the costs to the Plaintiff because the Court does not have jurisdiction to hear the Notice and/or proceeding with the Notice amounts to an abuse of process.
16. Further and/or alternatively, Order 59 Rule 23 (2) of the Rules of the Supreme Court state,

“(2) Before a bill of costs is left for taxation it must be indorsed with the name or firm and business address of the attorney whose bill it is.”
17. In this matter, the Notice of Taxation filed on 1st February 2022 for the 1st Defendant's Bill of Costs in respect of its professional fees incurred, along with the Statement of Parties also filed on 1st February 2022 and indeed the Bill of Costs itself have all been endorsed by Delaney Partners thereby confirming that the Bill of Costs is in fact Delaney Partners' Bill as Counsel for the 1st Defendant. The Bill of Costs purports to commence from 23rd October 2009. However, Delaney Partners only acted in this matter from the 27th of February 2022. Moreover, no Notice of Taxation, Statement of Parties, or Bill of Costs have been endorsed whatsoever, in respect of Mr. Robert Adams KC, Mr. Leif Farquharson KC, or Mr. Edward Marshall II. That prior to 27th February 2022, Mr. Robert Adams KC and Mr. Edward Marshall II were employed with Graham Thompson. Mr. Leif Farquharson KC is also still employed with Graham Thompson.
18. In this regard, although Order 62 rule 25 of English Rules, which our Order 59 rule 23 is based on, provides for one solicitor applying to have the costs of another solicitor taxed where an **agency relationship** exists between the two separate solicitors, our Order 59 rule 23 (2), makes no allowance for the same. If Parliament intended for it to be permissible for one attorney to leave for taxation the costs of another attorney under any circumstances, it would have stated so in Order 59 rule 23 (2) as was done by the English Parliament in Order 62 rule 25.
19. Furthermore, as regards the Statement of Parties filed on behalf of the 1st Defendant, the RSC in Order 59 rule 19 (5) (ii), requires where an attorney is acting as the agent for another, the name of the firm and business address of the principal must be included in the Statement of Parties. As is clear from the Notice of Taxation, the Statement of Parties and the Bill of Costs filed on behalf of the 1st Defendant, nowhere in any of the documents is it stated that Delaney Partners is acting as the agent of Graham Thompson and vice versa.

Also, no agency relationship is referred to in the Statement of Parties as is required specifically by Order 59 rule 19 5 (ii) of the RSC. That based on the foregoing, it is clear that none of Delaney Partners' costs prior to 27th February 2020 should be allowed. and this matter proceed only with the taxation of Delaney Partners' costs after the 27th February 2020.

20. Mr. Edward Marshal II, Counsel for the 1st Defendant states, in part, that the Respondent's Preliminary Objection is not a new one. In fact, it is a preliminary objection that has been considered and determined by the English High Court in the cases of **Re Marco (Ipswich) Ltd; Re Earliba Finance Co. Ltd.** [1996] 1 All ER 8141 and **Skuse v Granada Television Ltd.** [1994] 1 WLR 1156.
21. In the **Re Marco** case, two petitions, a claim and a counterclaim were heard together. The judge found for the petitioners on the petitions, but dismissed their action and found for the respondent on his counterclaim. In relation to costs, the judge made orders requiring each party to pay the other party's costs in those actions in which they did not succeed.
22. The petitioners lodged appeals on the substantive issues, and both parties lodged bills for taxation in respect of the costs which were ordered to be paid by the opposite party. On the respondent's application, the taxing master adjourned the taxation proceedings until after the substantive appeals had been heard. The petitioners appealed, relying on Order 58, Rule 1 of the English RSC (which is analogous to Order 58 Rule 1 of the Bahamas RSC), which gave an express right of appeal from a master's decision, or alternatively on the court's inherent jurisdiction.
23. The respondent contended, however, that (i) the English court lacked jurisdiction under that rule to entertain an appeal from the decision of a taxing master, since the definition of 'master' in Order 1, Rule 4 (b) of the English RSC excluded a taxing master, and (ii) Order 62 (c) of the English RSC provided a complete procedure for reviewing taxation decisions, and since the steps required to be taken under that procedure had not been taken, the appeals had to fail.
24. The English High Court in **Re Marco** rejected the respondent's objection that the appeals had to fail on the basis that Order 62 of the RSC provided a complete procedure for reviewing taxation decisions. Instead, the English High Court determined that while the review machinery provided by Order 62 Rules 33 to 35 of the English RSC was appropriate

to challenges in respect of technical matters concerning taxation, it was inappropriate to challenges to the exercise by the taxing master of procedural powers of a general nature.

25. The Appellant asserts that the first preliminary objection advanced by the Respondent before the Learned Registrar was clearly an objection of a procedural or general nature within the meaning of the **Re Marco** case. The Respondent advanced the position that the Appellant ought to have filed a Bill of Costs, Statement of Parties and Notice of Taxation on terms indicating that Delaney Partners was recovering the costs incurred by the Appellant with GrahamThompson as GrahamThompson's agent and that, in the absence of the same, Delaney Partners could not proceed with the taxation of those costs. Mr. Marshall submits that it was an objection to the process being used by the Appellant to recover the costs incurred by the Appellant with GrahamThompson and not an objection on technical matters concerning taxation.
26. By the Notice of Appeal, the Appellant is challenging the decision of the Learned Registrar in relation to that specific procedural issue of law. The Appellant submits that the Notice of Appeal is a rehearing of the application made before the Learned Registrar, and to which she acceded to, and does not seek to challenge any technical matter concerning the taxation of the Bill of Costs such as any miscalculation or the improper allowance or disallowance of costs based applicable factors.
27. In addition, the English Court in **Re Marco** also addressed what the Appellant anticipates will be a further preliminary objection, namely, that the appeal being advanced is made pursuant to Order 58 of the RSC in circumstances where the Notice of Appeal does not purport to advance an appeal pursuant to this Court's inherent jurisdiction (See **Allen v Grand Bahama Port Authority Limited** [2011] 3 BHS J. No. 18). Respectfully, that objection would be futile in light of the court's holding in the **Re Marco** case that such an omission does not cause any prejudice to other party and therefore not is fatal to the appeal:-

“Ord 58 could not be construed widely to apply to taxing masters. It was possible, however, for the court to examine the activities of the taxing master even where they did not fall precisely within the rules, having regard in particular to the relationship of the functions of the taxing master to those of the court as a whole. The basis of that power lay not in Ord 58, but rather in the inherent power of the court to control its own proceedings conducted by officials of the court as delegates of the judge. On the facts, it followed that the inherent jurisdiction could be invoked to make good the want of an

express right of appeal and, since the respondent had not been prejudiced by the absence of a proper application under that jurisdiction, the court could proceed to entertain the appeals as if they were such applications (see p 819 h, p 821 a f, p 823 j to p 824 b d and p 827 c, post); R v Taxing Officer, ex p Bee-Line Roadways International Ltd (1982) Times, 11 February applied; Skuse v Granada Television Ltd [1994] 1 WLR 1156 considered.”

28. That for all these reasons, the appeal should be allowed and the Respondent's Preliminary Objection herein ought to be dismissed.
29. Costs ought to follow the event on an indemnity basis in light of the failure by the Respondent to support its objection with any authority in circumstances where the authority before this Honourable Court shows the futility of the same.

Analysis and Conclusions

30. Order 58 of the RSC

“ORDER 58

APPEALS FROM THE REGISTRAR (R.S.C. 1978)

“1. (1) An appeal shall lie to a judge in chambers from any judgment, order or decision of the Registrar.”

31. Order 59 of the RSC Order 59 Rule 31 (1) of the RSC states:

“Review 31. (1) Any party to any taxation proceeding who is dissatisfied with the allowance or disallowance in whole or in part of any item by the Registrar, or with the amount allowed by him in respect of any item, may apply to him to review his decision in respect of that item.”

32. Order 59 Rule 31 (2), a copy of which states:

“(2) An application under this rule for review of the Registrar's decision may be made at any time within 14 days after that decision or such shorter period as may be fixed by the Registrar: Provided that no application under this rule for review of a decision in respect of any item may be made after the signing of the Registrar's certificate dealing finally with that item.

33. I accept Mr. Marshall's submission that the objection advanced by the Respondent before the learned Registrar is clearly a substantive issue, an objection of a procedural or general


nature within the meaning of the **Re Marco** case and are not technical matters concerning the taxation which ought properly to be brought under Order 59 and the taxation proceedings set out therein. This Court is not being asked to look at each of the 110 items and determine what costs ought to have been fixed by the Registrar. Those costs have not even been taxed. The Court can exercise its powers under Order 58 r 1 of the RSC and pursuant to its inherent jurisdiction to hear this appeal.

34. While I accept Mr. Marshall's submissions that I have jurisdiction to hear this appeal, the intervening taxation by GrahamThompson makes any taxation of items 1-110 of the Delaney Partners Bill of Costs moot. Costs are awarded to a "Party" to an action not to its legal representative. Costs are awarded to the "Client". The Party/Client, The 1st Defendant, cannot now recover its costs twice as is reflected in Deputy Registrar Blatch's notes taken at the hearing and the reason for her decision.

Disposition

35. Therefore, after considering the sequence of events, namely, the intervening Taxation by GrahamThompson, having heard the Submissions from Counsel, and considering the relevant RSC and the case law referred to, I hereby uphold and affirm the Decision of the Deputy Registrar made on October 6, 2022, by reason that those costs had already been taxed on behalf of the 1st Defendant by GrahamThompson. As a result, the taxation shall continue before the Deputy Registrar on a date to be fixed by her.
36. In the circumstances, neither party has been totally successful on the grounds advanced by them in this application. Each party shall therefore bear their own costs in this Appeal.

This 23rd day of April, 2024


Petra M. Hanna-Adderley
Justice