

COMMONWEALTH OF THE BAHAMS
IN THE SUPREME COURT
Commercial Division
2023/COM/LAB 00027

B E T W E E N

TANYA THOMPSON-NEWBOLD

Claimant

AND

IPG FAMILY OFFICE LTD.

Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mr Obie Ferguson, KC with Mrs Annette Cash for the Claimant
Mrs Gail Lockhart–Charles, KC and Mrs Syann Thompson-Wells

Hearing Date: April 11, 2024

*Costs to be fixed by the Court if not agreed between the parties – Civil Procedure Rules Part 72
- quantification of costs – factors to be considered*

RULING – COSTS

Darville Gomez, J

[1.] By a written ruling dated April 11, 2024, I ordered as follows:

- (i) I find that parts 1, 20 and 35 of the Statement of Case be struck out pursuant to section 26. 3(1)(b) of the Civil Procedure Rules, 2023 because they do not disclose any reasonable ground for bringing a claim for sexual harassment against the Defendant.
- (ii) I order costs to the Defendant to be fixed if not otherwise agreed between the parties within the next fourteen (14) days. If not agreed, the Defendant is to provide written submissions on costs in less than 5 pages.

- [2.] The parties were unable to agree costs, therefore the Court will fix them.
- [3.] The Defendant prepared a draft Bill of Costs in which the sum of \$64,055 was claimed for the successful application.
- [4.] I have reviewed the draft Bill of Costs and the Defendant submissions on them.
- [5.] I have considered the authorities on the summary assessment of costs per Part 72.2 of the Civil Procedure Rules, 2002 (the “CPR”) and in particular cite with approval the decision of the Honourable Chief Justice Ian R. Winder in the case of **Forbes v Ministry of Tourism and Attorney General of the Commonwealth of The Bahamas** 2021/COM/lab/00038 that the purpose of a summary assessment is to save time and expenses, fostering a more efficient and cost-effective resolution of disputes over costs. The Chief Justice noted at paragraph 11 of the **Forbes** decision as follows:

“[11.] While the CPR is silent on the details of the summary assessment procedure, and this is not an appropriate occasion on which to attempt to elaborate such details, there must be at least two minimum requirements (I have summarized them):

- (i) Firstly, the Court ought to obtain a bill or statement of costs from the receiving party before it can proceed to summarily assess costs because the Rules Committee did not intend for them to be done on an arbitrary or random basis – it was not intended to be a vehicle for judges to pluck costs awards “out of thin air”.*
- (ii) Secondly, the Court must permit the parties a reasonable opportunity to be heard on the assessment. That opportunity to be heard may, in appropriate cases, take the form of a paper hearing.*

- [6.] The Chief Justice also referred to Part 72.21 of the CPR the relevant principles to be considered.

“[16.] CPR 72.21 provides (so far as is relevant):

- (1) Where the Court has a discretion as to the amount of costs allowed to a party, the sum to be allowed-*
 - (a) Is the amount that the Court deems to be reasonable were the work to be carried out by an attorney of reasonable competence; and*
 - (b) Which appears to the Court to be fair to both to the person paying and the person receiving such costs.*
- (3) In deciding what would be reasonable the Court must take into account all the circumstances, including –*
 - (a) any order that has already been made;*

- (b) *the care, speed, and economy with which the case was prepared;*
- (c) *the conduct of the parties before as well as during the proceedings;*
- (d) *the degree of responsibility accepted by the attorney;*
- (e) *the importance of the matter to the parties;*
- (f) *the novelty, weight and complexity of the case;*
- (g) *the time reasonably spent on the case.....*

- [7.] Finally, the Chief Justice cited with approval his review of English Court of Appeal authorities at paragraph 17 of his decision in **Forbes** as follows: “*The court should focus on the detailed breakdown of costs actually incurred and should carry out an assessment by reference to the items in the draft bill. Having done that, the court should also look at the total sum at which it has arrived to see whether that sum is reasonable and proportionate.*”
- [8.] The Defendant claimed costs in the amount of \$64,055.00 comprised of professional fees, disbursements and VAT. It is broken down as follows: professional fees of \$57,650.00; disbursements of \$640.00; and VAT of \$5,765.00. I have allowed an hourly rate of \$800 for Mrs Lockhart Charles, KC and Mrs Syann Thompson-Wells rate of \$400 has been accepted as reasonable.
- [9.] The Defendant has proffered four reasons for the bill of \$64,055 which I set out below and address each separately:
- (i) The lack of precedent on reported cases on sexual harassment.
Court: I agree with this. However, the primary issue relative to this application was whether the Defendant, a company duly incorporated under the laws of the Commonwealth of The Bahamas and carrying on business as a corporate service provider could be sued for sexual harassment.
 - (ii) The seriousness of the matter given that the claim carried criminal penalties.
Court: I do not believe that a civil claim can carry any criminal penalties however, I am willing to accept that the matter was of a serious nature. I reiterate that the issue was whether the Defendant was a proper party.
 - (iii) The complexity of the allegations requiring careful research and analysis of facts and discussion with the Defendant, its directors and former Compliance Officer.
Court: Any matter requires careful research and client discussions.
 - (iv) The potential reputational harm to the Defendant.
Court: I accept this unequivocally.
- [10.] Notwithstanding the responses to the reasons advanced by the Defendant in the previous paragraph, even if I accepted the Defendant submissions in their entirety, without

qualification, I would still find the costs claimed of \$64,055 neither reasonable nor proportionate.

[11.] Therefore, I have not found the total sum claimed as reasonable or proportionate and have instead awarded costs to the Defendant of \$12,507.50 broken down as follows: \$11,750 professional fees; plus VAT of \$117.50; and, disbursements of \$640.

Dated the 19th day of August, 2024

A handwritten signature in black ink, appearing to read "Camille Darville Gomez". The signature is written in a cursive, flowing style.

Camille Darville Gomez

Justice