

**COMMONWEALTH OF THE BAHAMS**  
**IN THE SUPREME COURT**  
**Commercial Division**  
**2020/COM/LAB 00058**

**B E T W E E N**

**VAUGHN MILLER**

**Claimant**

**AND**

**ISLAND HOTEL COMPANY LIMITED**

**Defendant**

Before: The Honourable Madam Justice Camille Darville Gomez  
Appearances: Mr Sidney Cambridge for the Claimant  
Mr Ferron Bethell, KC and Miss Camille Cleare for the Defendant  
Hearing Date: March 6, 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.] On the 9<sup>th</sup> day of May, 2024, the Court ordered that the Claimant must pay the taxed costs of the Defendant in the sum of \$19,981 per a Certificate of Taxation dated October 23, 2023 prior to the commencement of the trial scheduled for February 11, and February 12, 2025, and, if he failed to do so, the Writ of Summons shall be struck out and the action dismissed with costs to the Defendant. Further, the Court awarded costs of the application to the Defendant to be fixed, if not agreed. The parties were unable to agree costs.
- [2.] The previous order for costs had been made by the previous Judge hearing the action and was for the wasted costs of the trial not proceeding on the scheduled date due to the request for an adjournment by the Claimant on the date of the trial. The taxation was performed pursuant to the Rules of the Supreme Court, 1978.
- [3.] 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.*

[4.] 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.....*

[5.] 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.”*

- [6.] The Defendant claimed costs in the amount of \$17,974 comprised of professional fees, disbursements and VAT. It is broken down as follows: professional fees of \$16,125; disbursements of \$215; and VAT of \$1,634. These fees are apportioned between Mr Ferron Bethel, KC and Miss Camille Cleare (10.5 hours and 13.5 hours respectively) with billing hourly rates of \$750 and \$500 respectively.
- [7.] I have considered the fees claimed and find them excessive in the circumstances for the following reasons:
- (i) This application did not necessitate in my view the engagement of two senior attorneys, one of whom was a KC. Either one of the attorneys would have been more than competent to deal with this matter.
  - (ii) There was already an order for costs in October, 2023 because the trial date had been vacated on the application by the Claimant. These costs were taxed by the Deputy Registrar in the sum of \$19,981.
  - (iii) The claim was neither novel nor complex given that there was already a similar action brought in the Industrial Tribunal (and which had already been determined in favour of the Defendant). In fact, the decision in the Industrial Tribunal had been relied upon by the Defendant as a reason that the action out to be struck out.
- [8.] Therefore, I have not found the total sum claimed as reasonable or proportionate and have instead awarded costs to the Defendant of \$5,896.25 broken down as follows: \$5,625 professional fees; plus VAT of \$56.25; and disbursements of \$215.

**Dated this 9<sup>th</sup> day of August A. D., 2024**



**Camille Darville Gomez**  
**Justice**