

COMMONWEALTH OF THE BAHAMAS

2023

IN THE SUPREME COURT

CLE/gen/452

Common Law Equity Division

B E T W E E N

CEM OKULLU'NUN YEMINLI BEYANI

Claimant/Applicant

AND

**(1) WEISER GLOBAL CAPITAL MARKETS LTD.
(2) BENTLEY ROTHSCHILD CAPITAL 3 LIMITED
(3) JAITEGH SINGH**

Defendants/Respondents

Before The Hon. Mr. Justice Neil Brathwaite

Appearances: Sean Moree KC, Erin Hill for the Claimant/Applicant

Date of Hearing: 19th June 2023, 30th June 2023

DECISION

1. In this matter the Claimant sought and was granted an ex parte injunction following the bringing of an action against the Defendants for deceit and unlawful means conspiracy. The Claimant alleges that there was an elaborate transaction in which the Claimant pledged shares worth \$120 million in exchange for an equivalent loan. The shares were transferred, to be held by the Second Defendant, and the loan was to be provided by the First Defendant. Rather than \$120 million, an amount less than \$1 million was actually advanced, and there were dealings with the shares which were supposed to have been held.
2. At the conclusion of the ex parte hearing, the Claimant was awarded costs, to be assessed by the court. A Statement of Costs was duly submitted, claiming the sum of \$82,650.00 in professional charges, \$1348.04 in disbursements, and a further \$18,250.00 in unbilled professional charges.

3. In *Hughdon Bowe et al v Shanique Rolle et al (2018) CLE/gen 01171* the learned Winder, CJ, in considering how the court ought to approach the task of fixing costs, stated the following:

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

(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.

4. While the authority set out above refers to the Rules of the Supreme Court, similar considerations are set out in the **Supreme Court (Civil Procedure) Rules 2022** as follows:

71.11 Factors to be taken into account in deciding the amount of costs.

(1) The Court is to have regard to all the circumstances in deciding whether costs were —

(a) proportionately and reasonably incurred; or

(b) were proportionate and reasonable in amount.

(2) In particular, the Court must give effect to any orders which have already been made.

(3) The Court must also have regard to —

(a) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;

(b) the amount or value of any money or property involved;

(c) the importance of the matter to all the parties;

(d) the particular complexity of the matter or the difficulty or novelty

- of the questions raised;
- (e) the skill, effort, specialised knowledge and responsibility involved;
- (f) the time spent on the case;
- (g) the place where and the circumstances in which work or any part of it was done;
- (h) the care, speed and economy with which the case was prepared; and
- (i) in the case of costs charged by an attorney to his or her client —
 - (i) any agreement about what grade of attorney should carry out the work;
 - (ii) any agreement that may have been made as to the basis of charging; and
 - (iii) whether the attorney advised the client and took the client's instructions before taking any unusual step or one which was unusually expensive having regard to the nature of the case.

5. In assessing the reasonable costs in this case, I note that this was a without notice application, and I bear in mind the time spent by counsel, the work reasonably to have been expended, the seniority of counsel, whether more than one counsel was actually required, and the importance of the matter to the client. I also note that there is an international element to this case. Having regard to all those factors, and to the submitted bill of costs with the time estimates and allocations to various counsel, I award the sum of \$36,000.00 in professional fees, and disbursements of \$1348.50, for a total of \$37,348.50.

Dated this 4th day of March, A.D. 2024


Neil Brathwaite
Justice

