

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2021/CLE/gen/01115

IN THE MATTER of an engagement as counsel and attorneys of record for and in relation to various and sundry civil court proceedings designated 2018/Cle.gen/No. 0252 and 2018/SCCiv. App. No. 0182, respectively;

AND IN THE MATTER of two Certificates of Taxation made in 2018/SCCiv.App.No. 0182, dated the 22nd October 2019 and 14th November 2019, respectively;

AND IN THE MATTER of a demand letter dated 14th January 2020.

BETWEEN

**MAURICE O. GLINTON & CO. (a Firm)
(by the principal and sole proprietor of the Firm)**

Claimant

AND

**ROBERT K. ADAMS
(as counsel and attorney and a member and partner of Graham Thompson & Co.)**

First Defendant

AND

**GRAHAM, THOMPSON & CO. (a Firm)
(as attorneys of record for parties to proceedings in each of the intituled actions)**

Second Defendants

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Maurice Ginton KC with Meryl Ginton for the Claimant
Dawson Malone with Raven Rolle, Ebonesse Bain and Miquel Cleare for the First Defendant
Leif Farquharson KC with Gabriel Brown for the Second Defendants

RULING ON COSTS

WINDER, CJ

[1.] This is my brief decision on costs arising from my ruling dated 16 February 2024 on the application for summary judgment brought by summons filed by the Claimant (“MOG & Co”) on 23 November 2021 and the application to strike out the claim and to dismiss or stay the action brought by summons filed by the First Defendant on 6 December 2021.

[2.] The action had been brought by MOG & Co seeking, inter alia, declarations as to a right of lien and damages against the Defendants jointly and severally for tortious interference with MOG & Co’s contract with the late Julius Trevor Bethel to provide legal services (of which the lien is allegedly a part). MOG & Co also sought remedies for claims of abuse of civil process and deceit by misrepresentation.

[3.] The general principles are that costs are in the discretion of the court and generally follow the event, with the unsuccessful party paying the costs. These principles are helpfully set out by Lord Justice Nourse in the English Court of Appeal case of *Re Elgindata Ltd (No 2)* [1992] 1 WLR 1207. Nourse LJ stated at page 1214:-

(i) Costs are in the discretion of the court. (ii) They should follow the event, except when it appears to the court that in the circumstances of the case some other order should be made. (iii) The general rule does not cease to apply simply because the successful party raises issues or makes allegations on which he fails, but where that has caused a significant increase in the length or cost of the proceedings he may be deprived of the whole or a part of his costs. (iv) Where the successful party raises issues or makes allegations improperly or unreasonably, the court may not only deprive him of his costs but may order him to pay the whole or a part of the unsuccessful party's costs.

[4.] In my ruling I dismissed both applications and reserved the question of costs for further consideration.

[5.] Submissions were received by all of the parties.

[6.] MOG & Co and the First Defendant, although having failed to succeed in their respective applications, argued that their successful defence of the applications brought against them made them the more successful party and ultimately entitled to an award of costs.

[7.] Notwithstanding the impactful arguments, I am not satisfied that there was an overall winner as between MOG & Co and the First Defendant in the context of the two separate applications being moved by each of the parties. In all the circumstances therefore, I am satisfied that the appropriate order ought to be that each of MOG & Co and the First Defendant ought to bear their own costs of the applications.

[8.] The Second Defendant was undoubtedly the successful party in the summary judgment application brought by MOG & Co. I accept the Second Defendant's submission that the outcome of the First Defendant's striking out application had absolutely nothing to do with the Second Defendant. Following the usual rule, that costs follows the event, the Second Defendant ought to be entitled to its costs.

[9.] I was not satisfied that the Second Defendant ought to be deprived of its costs on MOG & Co.'s submission that:

- (1) it merely adopted the arguments of the First Defendant;
- (2) it showed bad conduct; or
- (3) costs should be in the cause as this was a case management type hearing.

[10.] I accepted the submission of the Second Defendant that the summary judgment application was by any standard a time-consuming affair and that it would be "profoundly unjust for them not to recover their costs after being dragged through such an ordeal". This was a fully contested hearing to which the Second Defendant was an active participant and therefore should be entitled to its costs.

[11.] I order that the Second Defendant's costs be summarily assessed and that a pro forma bill of costs be laid over to the Court by the Second Defendant (and served on MOG & Co) within 21 days.

Dated the 16th day of January 2025

A handwritten signature in blue ink, appearing to read 'I. Winder', with a large, stylized flourish at the end.

Sir Ian R. Winder
Chief Justice