COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Commercial Division
Claim No. 2013/CLE/gen/01179

BETWEEN:

GATEWAY ASCENDANCY LTD.

Plaintiff

AND
BERTRAM ALEXANDER WALLACE

First Defendant

AND
KEVA MONIQUE WALLACE

Second Defendant

Before:	The Hon. Mr. Justice Loren Klein
Appearances:	LaShanda Bain for the Plaintiff Myra Russell of Alpin O. Russell Jr. for the First Defendant
Hearing Dates:	Heard on the papers; written submissions 18 March, 15 April, 2025

RULING

KLEIN, J.

Costs—Summary Assessment—Reasonable and proportionate costs—Proportionality Assessment—Approach—Hourly Rates—Guideline Hourly Rates—Disbursements—Necessary for the attainment of justice—Process-server fees.

INTRODUCTION AND BACKGROUND

1. This is the summary assessment of costs ordered in favour of the first defendant pursuant to a Ruling delivered 25 February 2025, in which the Court set aside the plaintiff's writ of possession on the ground that it was filed outside of the applicable limitation period. The Court ordered the costs to be summarily assessed on paper, and gave directions for the parties to lodge short written submissions and the receiving party a draft Bill of Costs ("BOC"). These have been received, and the court is grateful to the parties for their written submissions.

2. The first defendant ("receiving party') initially submitted a BOC for $33,875.00, but later submitted a supplemental BOC totalling $41,500.00, of which $1,223.00 were disbursements and the remainder professional fees.

3. The plaintiff contends that the sum of $41,500.00 in professional fees and $1,223.00 in disbursements are manifestly disproportionate to the non-complexity of the case and the work

reasonably necessary to deal with "*one point*" in a notice application. It is further submitted that the costs should be drastically reduced and a ceiling of $3,500.00 should be imposed.

ANALYSIS AND DISCUSSION

Legal Principles

4. The principles relating to the summary assessment of costs under the CPR 2022 were considered by this Court in **Dr. Gauri Shirodkar v The Bahamas Medical Council** (2021/PUB/jrv/00003), 6 February 2025. In accordance with the overriding objective, the Court is required "*to deal with cases justly and at proportionate costs*" (CPR 1.1). The combination of the various rules dealing with the assessment of costs requires the court to ensure that costs are both reasonable and proportionate in relation to the matters in issue.

5. In assessing the reasonableness and proportionality of the amount of costs incurred, the court will have regard to all the circumstances, including the conduct of the parties, the value of the claim, the importance of the matter to the parties, the complexity of the case, and the time reasonably spent on the case (CPR 71.9 (4), 71.11, 72.21).

6. In the **Dr. Shirodkar** case this Court stated that [at 42]:

> "… a judge conducting a summary assessment or a registrar conducting a detailed assessment would have properly discharged their function if he or she applied the twin tests of reasonableness and proportionality, paying due regard to the factors at 71.11(3) or any wider factors considered appropriate under 71.11(1). He or she need not follow any particular formula or methodology in doing so, although as stated, it seems only logical and sensible that the starting point should be an assessment of the bill on the traditional basis of reasonableness, before any global adjustment is made for proportionality."

7. As to reasonableness, in **Francis v Francis and Dickerson** [1955] 3 All ER 836, Sachs J. said:

> "When considering whether or not an item in a bill is "proper" the correct viewpoint to be adopted by a taxing officer is that of a sensible solicitor sitting in his chair and considering what in the light of his then knowledge is reasonable in the interest of his lay client…".

8. On the matter of proportionality, this court in **Shirodkar** endorsed the UK Court of Appeal's decision in **West & Demouloid v Stockport HNS Foundation Trust** [2019] EWCA Civ 1220, which articulated the modern approach to proportionality in the UK. I summarized the approach there as follows:

(i) Costs must first be considered on a line-by-line basis to ensure that they are reasonable, then assessed by reference to CPR 44.3 (5) and, if relevant, the wider circumstances under CPR 44.4 [*cf.* CPR 2022, 71.11]. The court may also consider the

proportionality of a particular item during its assessment for reasonableness. At the end, if the court considers the total proportionate, then no further assessment is necessary.

(ii) If the figure is disproportionate to the matters, the judge then undertakes a further assessment, looking at each category of costs claimed (such as disclosure or expert reports) and should make such further reductions as appropriate. In doing so, the judge should ignore unavoidable items such as court fees and VAT. Once this is done, "…*the resulting figure will be the final amount of the cost assessment. There would be no further standing back and if necessary, undertaking a yet further review by reference to proportionality*." [para. 93 of **West**].

9. As a matter of general principle, in conducting a summary assessment of costs, the court must apply the same principles as would be applied on a detailed assessment. However, the summary assessment is not intended to be a mini detailed assessment, or a "*line-by-line billing exercise*" (see, e.g., **Axnoller Events Ltd. v Brake and Anor (Summary Costs Assessment)** [2021] EWHC 2362 (Ch). (23 August 2021). This is also made clear by CPR 71.12 (3), which provides that a judge may, instead of summarily assessing costs, "*direct that the whole or any part of the costs payable shall be subject to detailed assessment and he may, when making such direction, indicate which particular matters the Registrar may or shall take into account or exclude in relation to such detailed assessment*."

10. In other words, the procedure was intended to achieve savings of time and effort by having costs speedily assessed by the judge who heard the application or trial and was therefore very familiar with the nature of the matter and what was involved. As noted, it does not require a line-by-line assessment and allowance or disallowance of the amounts claimed, although a judge may look at each item in considering whether the charges are reasonable and proportionate.

Assessment having regard to principles

Reasonableness

11. The first defendant submits claims on behalf of a single fee earner with just over 10 years, charging at $500.00 per hour. The plaintiff did not directly challenge counsel's rate, but as explained in **Shirodkar**, there really must be some uniformity in the hourly rates that can be charged by counsel based on their years of call and post-qualification experience. I have previously assessed the rate of silk with just over 20 years' experience at $900.00 per hour (**Shirodkar**), counsel of 16 years' call at $550.00 (**Maurice Johnson**), and accepted $350.00 as a reasonable rate for counsel with just under 10 years call (**Shirodkar**). In my view, I therefore think the hourly rate of $400.00 is a reasonable rate for counsel with just over 10 years' call, and will therefore reduce it to that rate.

12. In this regard, it is argued that the BOC reveals many instances where excessive time was billed for tasks that should have required significantly less effort. The chief example is a claim for 24 hours spent drafting the BOC, which the plaintiff says is "unthinkable". The next criticism is directed at the disbursements, which it is claimed are also excessive and should be disallowed or reduced. The claimant refers to CPR 72.13(2), which provides that disbursements must be "*necessary or proper for the attainment of justice*". In this regard, the plaintiff makes three points: (i) that in the age of electronic communication, messenger fees should not be passed on to the claimant; (ii) that the process-server fee of $150.00 is too high; and (iii) that the fees for printing and photocopying are unreasonably high, and in any event should be absorbed in the firm's general overheads.

13. All in all, the plaintiff contends that the court should apply the following deductions to ensure a reasonable and proportionate costs award: (i) disallowance of excessive time entries and duplicative billing; (ii) imposition of reasonable limits on recoverable attorney's fees; and (iii) disallowance of disbursement for general overhead expenses.

14. The first defendant deploys several arguments in support of its BOC. Firstly, it contends that the application is a document-heavy one, as mortgage matters normally involve a plethora of legal documents. Secondly, because it was a setting-aside or strike-out action, which could potentially bring the matter to an end, the application could be deemed to be the final stage of proceedings of this kind. Thirdly, it was argued that the matter raised some novel issues, as the CPR contains new provisions relating to mortgages and there is little case-law on the provisions of the *Home Owner's Protection Act* ("HOPA"). Lastly, it was contended that the value of the property involved is significant, as the plaintiff was seeking arrears in excess of $500,000.00 or possession, and these are important matters to be taken into consideration in assessing the proportionality of the costs.

15. The matters adverted to by the first defendant are indeed all matters that the court will consider in making its assessment. But I do not think these detract from the validity of the criticisms of the plaintiff. I agree that 24 hours is a completely unreasonable time claim for preparing a BOC that comes to just about 14 pp and 121 items. I would reduce the time claimed on this item to six hours.

16. I also agree that the rate of $150.00 for service of a single document is high, and that $50.00 is the going rate. I will reduce the fees for serving documents (of which there are three) to $50.00, for a total of $150.00, instead of the $450.00 claimed. I also agree that several of the items charged for disbursement are either inflated (there is a charge of $87.00 for printing one email, and some photocopying is charged on a time basis) and should be accordingly reduced. I will assess disbursements at $600.00, roughly half of what was claimed.

17. This leaves professional fees. The first defendant claimed for some 81.25 hours of work at $500.00, which would amount to $40,512.50, and which accounts for the lion's share of the Bill. I have already deducted 18 hours from the claim for drafting the BOC, leaving 63.25 hours. From this I will also deduct another 15 hours, which relates mainly to claims for perusing various documents via the e-filing portal (all on 3 March 2025, after the delivery of the Ruling). These

were the claims added by way of the supplemental Bill, and I am unable to discern how they were incurred in connection with the application with which the Ruling was concerned. That leaves 48.25 hours at $400.00 p/h for a total of $19,300.00 + $600.00 in disbursements ($19,900.00)

Proportionality

18. I must now assess whether the figure of $19,900.00 is proportionate to the matter in issue. The claimant also referred the Court to the case of **Jefferson v National Freight Carriers Ltd.** [2001] 2 Costs LR 313, where the English Court of Appeal approved the following observation [para. 40] as follows:

> "In modern litigation, with the emphasis on proportionality, it is necessary for parties to make an assessment at the outset of the likely value of the claim and its importance and complexity, and then to plan in advance the necessary work, the appropriate level of person to carry out the work, the overall time which would be necessary and appropriate to spend on the various stages in bringing the action to trial, and the likely overall costs. While is not unusual for costs to exceed the amount in issue, it was, in the context of modest litigation such as the present case, one reason for seeking to curb the amount of work done, and the costs by reference to the need for proportionality."

19. I think there is some merit in the first defendant's contention that, notwithstanding that the application was in the nature of an interlocutory one, its effect could also result in a final disposition of the issue. Considering the amount in issue and the obvious significance of the matter to the parties, in my view the amount assessed is not disproportionate. I will therefore make no further deductions.

CONCLUSION AND DISPOSITION

20. For the above reasons, I summarily assess the costs payable by the plaintiff to the first defendant in the sum of $19,300.00, to which is to be added VAT at $1,930.00 and disbursements at $600.00, for a total of $21,830.00

Klein J.

2 May 2025