

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law And Equity Division
2018/CLE/gen/FP/00289**

B E T W E E N

**TROY JOHNSON
AND
ALARICE JOHNSON**

Claimants

AND

INSURANCE MANAGEMENT (BAHAMAS) LIMITED

1st Defendant

AND

SUMMIT INSURANCE COMPANY LIMITED

2nd Defendant

AND

ISLAND HERITAGE INSURANCE CO. LTD.

3rd Defendant

**RULING
[On the Papers]**

Before: The Honourable Justice Constance A. Delancy

Appearances: Samuel Rahming for the Claimants
Viola C. Major for the Defendants

DELANCY, J.

[1.] This my decision on costs following the hearing of an Application by the Claimant seeking leave to remove the First Defendant as party to the action and amendment of Statement of Claim.

[2.] The Claimant commenced this action against the Defendants by way of Writ of Summons filed on 1 November 2018.

[3.] The Claimants filed an Ex-Parte Summons on 22 July 2019 seeking leave to discontinue the action as against the First Defendant, and amend the Writ of Summons and Statement of Claim.

[4.] On 23 January, 2025 at the Case Management Hearing me the Defendants' Counsel consented to the removal of the First Defendant from the claim and the amendment which flow as a necessary consequence thereof. Costs on the application was awarded to the Defendants.

[5.] The general rule with reference to summary assessment of costs is found in Part 71.12 Supreme Court Civil Procedure Rules, 2022 ("CPR") which provides:

....a judge hearing an application will summarily assess the costs of that application immediately or as soon as practicable after the same is disposed of.

[6.] The Court is also guided by the dicta of *Barnett, P.* in **William Downie v Blue Planet Limited** Civil Appeal 188 of 2019 at paras. 37 and 39 thereof:

37. In my view, what the intended appellant was asking the judge to do was to conduct a mini taxation. But the law is clear. **The exercise of the judge's discretion in fixing a lump sum should be a broad one and is not a process similar to that involving taxation.** This point was made in *Leary v Leary* and repeated by HH Judge Fox Andrews QC in *Chefflick Ltd V JDM Associates et al* [1989] 22 Con LR 51 when in considering the equivalent English Rule he said:

It seems to me that on a proper discharge of my task I have to approach the matter on a very broad basis and to the extent if at all I consider charges are extravagant or hours are excessive then that should be reflected in the gross sum I order but without any necessity on my part to explain the process I have followed.

38. The judge having conducted the hearing was in a better position than any taxing master to assess what are the reasonable costs that the intended respondent as the unsuccessful party should be required to pay to the intended appellant. **The judge was clearly of the view that this was a rather simple application that did not require the intended appellant to incur such enormous costs and certainly that the amount sought was unreasonable to require the intended respondent to pay.**

[7.] Part 72.26 of the Supreme Court Civil Procedure Rules, 2022 ("CPR") sets of the factors which the Courts ought to consider when assessing costs on procedural applications:

(1) On determining any interlocutory application except at a case management conference, pre-trial review or the trial, the Court must —

- (a) decide which party, if any, should pay the costs of that application;
- (b) assess the amount of such costs; and
- (c) direct when such costs are to be paid.

(2) In deciding which party, if any, should pay the costs of the application **the general rule is that the unsuccessful party must pay the costs of the successful party.**

(3) The Court must however take into account **all the circumstances including the factors set out in rule 71.11 but where the application is** —

- (a) **an application to amend a statement of case;**
- (b) an application to extend the time specified for doing any act under these Rules or an order or direction of the Court;

(4) In assessing the amount of costs to be paid by any party, **the Court must take into account any representations as to the time that was reasonably spent in making the application and preparing for and attending the hearing and must allow such sum as it considers fair and reasonable.**

(5) A party seeking assessed costs must on making any such interlocutory application supply to the Court and to all other parties a brief statement showing —

- (a) the attorney's fees incurred or estimated;
- (b) how that party's attorney's costs are calculated; and
- (c) the disbursements incurred or estimated.

(6) The statement under paragraph (5) must comply with any relevant practice direction.

[8.] In deciding the amount of costs the Court must consider all the circumstances and as provided in Part 72.26(3) CPR must include the factors set forth in Part 71.11 CPR:

(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.

[9.] Counsel for the Defendants did not contest the Claimants' application but sought costs occasioned by thereby. Counsel laid over a draft Bill of Costs to assist the Court in the summary assessment of such costs. Counsel submits that the First Defendant having been brought into the

matter by the Claimants is entitled to the entire costs of this action. Further that as Counsel represents all the Defendants the draft Bill of Costs has been discounted by two-thirds in light thereof.

[10.] Counsel for the Claimants invites the Court to consider that the parties communicated with reference to the proposed amendment and any further procedural steps by the Claimants against the First Defendant. Further, that no new cause of action was introduced against the Second and Third Defendants as a consequence of the amendment.

[11.] The Court having reviewed the submissions of Counsel, the draft Bill of Costs and considered the factors as outlined in the CPR the finds that the First Defendant is entitled to costs assessed at \$5,000 with disbursements in the sum of \$918.80. No costs shall be allowed for the Second and Third Defendants on the application.

[12.] The Court hereby orders that the costs of the First Defendant is assessed at \$5,000 with disbursements in the sum of \$918.80. Such costs to be paid by the Claimants to the First Defendant within 90 days of this order.

Dated: 27 May, 2025

[Original Signed and Sealed]

Constance A. Delancy
Justice