IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2022/CLE/gen/00167

B E T W E E N

HUGH PATRICK ROLLINS

Plaintiff

AND

BAHAMAS POWER AND LIGHT COMPANY LIMITED

Defendant

Before: The Hon. Chief Justice Sir Ian R. Winder

Appearances: Ferron Bethell KC with Camille Cleare for the Plaintiff

Raymond Rigby KC with Asha Lewis for the Defendant

Hearing dates: Bill of Costs filed 15 October 2014; Objections to Bill of Costs filed 1 November 2024; Amended Bill of Costs filed 16 April 2025

DECISION ON COSTS

SIR IAN WINDER, CJ.

[1.] This is my brief decision fixing the costs awarded to Rollins (the Plaintiff) in my Judgment dated 30 September 2024, which I delivered following a two-day trial. In the Judgment, I awarded Rollins damages for breach of contract in the amount of $592,951.63, but dismissed his claims based on unfair dismissal, discrimination contrary to **section 6** of the **Employment Act** and breach of **Article 26(2)** of the **Constitution**.

[2.] At para [157] of the Judgment, I stated:

> "[157.] Rollins is entitled to the costs of the action. The costs of these proceedings are governed by the regime under the *Rules of the Supreme Court, 1978*. I propose to fix the costs on the papers unless objection is made to that proposed course within three (3) days of this decision. My directions, subject to no objection being made, are that Rollins is to lodge and serve a statement of costs within fourteen (14) days, BPL is to lodge and serve any representations in response within seven (7) days and Rollins shall have a right of reply within seven (7) days thereafter."

[3.] Rollins filed a Bill of Costs on 15 October 2024 seeking $109,030.90 in costs, inclusive of professional fees, disbursements and VAT. BPL filed objections in response to that Bill of Costs on 1 November 2024. Rollins amended his Bill of Costs on 16 April 2025 to include items pertaining to responding to an application by BPL for a stay pending appeal filed on 8 November 2024 and the costs of attempting to negotiate the settlement of the Judgment. The revised costs figure Rollins claims is $112,461.80.

[4.] Relying on **Property and Reversionary Investment Corporation Ltd v Secretary of State for the Environment** [1975] 2 All ER 436 and **Part 72.2(1)** of the **Civil Procedure Rules, 2022** (the "**CPR**") in its original form prior to its amendment by the **Supreme Court Civil Procedure (Amendment) Rules, 2023**, BPL submitted that the object of the exercise of quantifying costs is to arrive at a sum which is fair and reasonable having regard to all the circumstances.

[5.] BPL submitted that there are certain factors that the Court must take into account in determining what are reasonable costs. Counsel for BPL referred the Court to **Part 72.2(3)** of the of the **CPR** prior to its amendment by the **Supreme Court Civil Procedure (Amendment) Rules, 2023** and the decision of Charles J (as she then was) in **McPhee (as Administrator of the Estate of Thelma Mackey) v Stuart** [2018] 1 BHS J. No. 18, where Charles J identified the following factors that inform whether costs are reasonable:

> "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 legal practitioner;
> e) the importance of the matter to the parties;
> f) the novelty, weight and complexity of the case; and
> g) the time reasonably spent on the case."

[6.] No objection was taken by BPL to the hourly rates claimed for Mr. Bethell KC – $900 (39 years call) or Ms. Cleare – $600 (26 years call). I agree that those rates are reasonable. Instead, BPL objected to a number of items of cost claimed by Rollins on the basis that the time spent was unreasonable. I set out BPL's objections below, with my disposition in italics.

OBJECTIONS

(i) the minimum chargeable unit of time employed in Rollins' Bill is 0.25 hours. That broad approach is "beyond the scope of the reasonableness…".
No specific items warranting a smaller minimum chargeable unit of time were identified by BPL.

(ii) counsel should already be aware of the current law and should not be expected to charge for time spent carrying out extensive legal research unless it is a novel or complex point of law (**Perry v Lord Chancellor** [1994] Lexis Citation 3951).
I accept this principle. Applying this principle, I would have reduced item 63 and would disallow items 69 and 85 in their entirety.

(iii) items 1 to 5 all related to steps taken to obtain instructions and the time allowed should be no more than 3.5 hours in the aggregate, consisting of 2 hours for senior counsel and 1.5 hours for junior counsel.
I consider items 1 to 5 to be fair and reasonable charges.

(iv) items 6,7,8 and 11 are unreasonable. The drafting and finalizing of a Writ of Summons by experienced counsel should not take almost 6 hours for a claim which was in essence a wrongful termination claim. A reasonable period is 3 hours.
I agree that the overall time spent on the Writ of Summons is excessive. I would have allowed item 7 (which includes work related to drafting a demand letter) as claimed but disallow items 6 and 8 in their entirety and reduced item 11 by 2 hours.

(v) items 15, 22, 24, 33, 37, 45, 48, 68 and 77 are unreasonable because an Affidavit of Service is a simple document and it should take no longer than one-quarter of an hour and should be prepared by a junior lawyer at a lower hourly rate.
I would have allowed $150 per entry in the Bill concerning the preparation, notarization and filing of affidavits of service.

(vi) items 14, 16, 17 and 23 are unreasonable because the tasks to which they relate should not have taken longer than one-quarter of an hour.
I do not accept this objection in its entirety. I considered that items 14, 16, 17 are fair and reasonable charges. I would have reduced item 23 to 0.50 hours.

(vii) items 20 and 21 are unreasonable and excessive and should be combined and allowed at one hour.
I would have allowed item 20 as claimed, but reduce item 21 by 1 hour.

(viii) items 25, 26 and 30 are unreasonable because the tasks to which they relate should not have taken longer than one-quarter of an hour.
Both items 25 and 30 reflect that only one-quarter of an hour was spent on the work to which those items relate. As regards item 26, I concur that it should be reduced to 0.25 hours.

(ix) items 34 and 35 are excessive for attendance to a case management conference and the drafting of an order. That should not have taken longer than three-quarters of an hour.
I would have allowed 1 hour for items 34 and 35 together.

(x) items 54 to 60 are unreasonable because 11 hours spent on witness statements is excessive. A reasonable period is 5 hours, 3 hours for senior counsel and 2 hours for junior counsel.
I accept that, in this matter, 11 hours spent on witness statements is excessive. I would have allowed 6 hours, comprising 2 hours for senior counsel and 4 hours for junior counsel.

(xi) item 63 is unreasonable for legal research. Only an hour should be allowed.
Having reviewed the narrative describing the work done, and taking into consideration (ii) above, I would have allowed 1 hour for item 63.

(xii) items 64 and 65 should be allowed at twenty-minutes as reasonable for the tasks.
Items 64 and 65 are reasonable and would be allowed as claimed, as the items include work beyond merely perusing the Second Witness Statement of Samantha Rolle.

(xiii) items 71, 72 and 73 claiming 4.5 hours for preparing opening submissions is excessive. A reasonable period is 3 hours shared between junior and senior counsel.
I would have allowed 3 hours in total for the preparation of opening submissions. I would have allow 2 hours for junior counsel and 1 hour for senior counsel.

(xiv) items 83, 84 and 87 for trial preparation at 22 hours are unreasonable and excessive. 8 hours for senior counsel is reasonable.
I agree that the amount of time claimed in the Bill for senior counsel's trial preparation is excessive. I would have allowed 8 hours.

(xv) items 93 to 98 for drafting closing submissions at 17.75 hours are excessive. 8 hours is a reasonable period, shared between senior and junior counsel.
Having reviewed the items, I would have reduced the time claimed by junior counsel by 6.25 hours.

[7.] Although BPL lodged no objections addressing the additional, post-judgment items included by Rollins in his amended Bill of Costs, I am not inclined to allow the additional items as claimed. With respect to items 104 to 108, no order was made on BPL's stay application, which was never heard. I therefore do not take these items into account. With respect to items 109 and 110, the amount of time claimed appears excessive, and I would have reduced both items to 0.25 hours each.

[8.] While I have carefully examined the Amended Bill submitted by Rollins, and commented on the objections made by BPL, such an examination is not the task of the judge whether fixing costs or summarily assessing costs. If such meticulous examination was to be undertaken there is no utility in ordering summary assessment or fixing costs. The task undertaken by the Court when it exercises its discretion to order a gross sum in lieu of taxed or assessed costs is not the same as in a taxation or a detailed assessment within the province of the Registrar.

[1.] In **William Downie v Blue Planet Limited** SCCivApp & CAIS No. 188 of 2019 (5 March 2020), *Sir Michael Barnett P* had occasion to consider in some detail the jurisdiction of the Court to fix costs under the **Rules of the Supreme Court**. In my view this remains relevant to the task of summary assessment. He stated:

> 23 It is settled law that the court has a wide discretion as to costs. Section 30 of the Supreme Court Act provides:
>
> > **30. (1) Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid.**
>
> ...
>
> 25 These provisions give the court a wide discretion as to whether the costs are payable by one party to another; the amount of those costs; and when they are to be paid. This is specifically set out in the English Civil Procedure Rules Rule 44, but in my judgment represent the law as expressed in the Supreme Court Act and the Rules of The Supreme Court.
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> 26 As far back as *Wilmott v Barber* (1881) 17 Ch.D. 772 Jessell MR said:
>
> > **'The judge has a large discretion as to costs.** He may make the defendant pay the costs of some of the issues in which he failed, although he may have succeeded on the whole action. Or he may say that both parties are wrong, but that he could not apportion the blame in a definite proportion, and therefore would dismiss the claim without costs. Or he might say that the plaintiff should have half the costs of the action, or some other aliquot part.
> >
> > **Or he may follow the course which I sometimes adopt, and I generally find that the parties are grateful to me for doing so, namely, fix a definite sum for one party to pay to the other, so as to avoid the expense of taxation, taking care in doing so to fix a smaller sum than the party would have to pay if the costs were taxed.**
>
> [Emphasis Added]

[Emphasis Added]

27 The judge has a wide power to fix a definite sum that one party pays the other party instead of ordering costs to be taxed.

...

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 cost 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 costs".
> **(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.**
> **[Emphasis Added]**

[9.] Taking into account Rollins' Bill of Costs, BPL's objections, and the circumstances of the case, including the time spent on the case, the seniority of counsel, the importance of the matter, the value of the claim, and the nature and complexity of the issues which required determination, I order that BPL do pay the sum of $60,000 to Rollins in lieu of taxed costs.

[10.] The process of fixing the costs is not to engage in a detailed assessment but the fixing of costs considering the matters identified above. The sum of $60,000, I find is a reasonable sum for the work done on behalf of Rollins, taking into account the work detailed and described in his Bill of Costs and the objections made. The sum is, furthermore, neither unfair to BPL as the paying party, nor unfair to Rollins as the receiving party.

Dated the 2nd June, 2025

Sir Ian R. Winder