IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

Claim No. CLE/gen/00069 of 2025

IN THE MATTER OF A Master Agreement for Desalinated Water Supply Dated 12th August, 2021

AND IN THE MATTER of A Sub-Agreement for Desalinated Water for the supply of desalinated water within The Bahamas at Waterford, Eleuthera; Cockburn Town, San Salvador; Georgetown, Exuma; Matthew Town, Inagua; Bogue, Eleuthera; Tarpum Bay, Eleuthera and Naval Base, Eleuthera.

AND IN THE MATTER OF A Notice of Termination of Desalinated Water Delivery period dated 30th January, 2025

BETWEEEN

WATER AND SEWERAGE CORPORATION

Claimant

AND

AQUA DESIGN BAHAMAS LTD.

Defendant

Before:	Hon. Chief Justice Sir Ian R. Winder
Appearances:	Tara Cooper-Burnside, KC with Miguel Darling for the Claimant Luther McDonald, KC with Keri Sherman and Rashae Newbold for the Defendant
Hearing Date(s)	On the papers

RULING

SIR IAN WINDER, CJ

On 3 April, 2025, I gave my decision on the Defendant's (Agua's) application to discharge the interim injunction granted in favor of the Water & Sewerage Corporation (WSC) and the Attorney-General on 29 January, 2025. At that time, I indicated that I would hear the parties as to the appropriate order for costs, by written submissions. Each party lodged written submissions, which I have considered and which I summarize below. This is my decision on costs.

[1.] At paragraph 36 of the written decision, it was determined that the injunction granted to the WSC would continue for a further period of seven months as I was satisfied that there are serious issues to be tried between the parties, damages to WSC would not be an adequate remedy and the balance of convenience lies with the WSC.

[2.] It is accepted by both parties that the Court has a 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."**

[3.] WSC argues that as Aqua was plainly the unsuccessful party in the discharge application the general rule should apply. They say that even if the merits and continuation of the injunctions were to be treated as a distinct issue within the proceedings, it would nonetheless be appropriate for the Court to award costs to the WSC.

[4.] Aqua says that the appropriate order in the present circumstances should be cost reserved or costs in the cause. They say that the application arose in the context of an interim injunction, where no final determination has been made on the substantive issues and no party can be said to have succeeded or failed. In such circumstances, the just and proper course is to defer the question of costs until the resolution of the substantive matter.

[5.] In my view, the English Court of Appeal case of **Richardson v Desquenne et Giral UK Limited** [1999] Lexis Citation 21 is particularly instructive. There, Morritt LJ observed that the Court will ordinarily reserve the cost of the application until the determination of the substantive issue. According to Morritt LJ:

> **"I accept of course that the issue was one for the judge's discretion. In my view, this is one of those cases where this Court is entitled and indeed bound to interfere with that exercise."**

I say so for basically three reasons: the first is that the decision seems to me to be inherently unjust. It is quite plain from the passage in the judge's judgment from which I quoted that he granted or continued the injunction on the basis of the balance of convenience in order to hold the ring until the dispute between the parties could be properly decided at a trial. It is inconsistent with an order such as that, that there should be successful or unsuccessful parties for the purposes of the rules either new or old.

Second, it seems to me that the judge was wrong, therefore, in determining, for the purposes of rule 44.3.2, that either Mr. Richardson was the unsuccessful party, or, alternatively, that the employer was the successful party. He was right to consider within the terms of that rule whether to make an order about costs. That was what he did. But the order that he made was, going back to rule 44.3.1(a), whether the costs should be made payable by one party to another. That seems to me to have been wrong; there were no successful or unsuccessful parties at that stage and the proper orders to be considered were those under the terms of the practice direction to which I have referred.

The third reason for thinking that the judge made an error of law was in the passage in his judgment where he refers to the general rule that the Court will make a summary assessment of costs as reflected in the practice direction paragraph 4.4.1. It seems to me that the judge there confused the decision on whether or not to make an order within 44.3.1(a) with the question of whether, having made such an order, he should then make a summary assessment of the costs so as to ascertain the quantum that would fall within it.

For my part, I think, therefore, that each one of those three reasons is a sufficient and good reason for setting aside the judge's exercise of his discretion; in that event the discretion has to be exercised by this Court. It follows from what I have said already, that it seems to me that the only proper exercise must be that the costs of both parties are to be reserved to the trial judge because only then can it be determined which party is successful and which is unsuccessful.

[6.] The English High Court case of ***PDVSA Services SA v Clyde & Co LLP and another*** [2020] EWHC 3430 (Ch) 2, was also relied upon by Aqua, and the Court finds it instructive. According to Sir Alastair Norris J:

On interim applications where the outcome is driven by practical considerations (such as the desire to cause the minimum of injustice until the rights and wrongs can be sorted out) costs are generally reserved because it is not possible fairly to decide who is the successful party. There may, of course, be particular features of the application or the detail of its conduct which make it just to make a final order about the costs of the application: and there may be cases that are so straightforward that an order for "costs in the case" can be made. But where, as here, the judge hearing the interlocutory application reserves the costs

of the application to some later occasion and does not reserve those costs to himself or herself, it may, I think, be taken that that judge regards later events as being more likely to have a significant bearing on the just order for the costs of the application (though not determinative of it) than the detail of the conduct of the hearing before him or her. After all, the judge who eventually deals with costs will by then know "the big picture" but will not know the minutiae of earlier hearings, and it is not in the interests of justice and the efficient use of Court time to re-run those earlier disputes purely to sort out the costs. The orders I propose adopt this approach.

[7.] I bear in mind that:

a) The original interim injunction was partially discharged, by consent, in respect of all of the Plants, save and except for the San Salvador Plant. (the original injunction related to Waterford, Eleuthera; Cockburn Town, San Salvador; Georgetown, Exuma; Matthew Town, Inagua; Bogue, Eleuthera; Tarpum Bay, Eleuthera and Naval Base, Eleuthera);
b) The injunction was extended only for a period of seven months rather than until trial;
c) The fact that the Court was particularly moved as to the balance of convenience in favor of the WSC; and,
d) Despite the urging of WSC, I was not satisfied that the conduct of Aqua should warrant any costs implications

In the circumstances, I am not convinced that it can be said that Aqua was completely unsuccessful. It therefore seems to me that the proper exercise of my discretion ought to be that the costs of both parties are to be reserved to the trial judge because only then can it be determined which party is successful and which is unsuccessful.

Dated the 30th day of June, 2025

Sir Ian R. Winder
Chief Justice