

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2021/CLE/gen/00969

BETWEEN

FIDGEN S.A.

(In the capacity of trustee of Piani 2020 3 Year Grat)

Claimant

AND

LYDDA CAPITAL LTD.

Defendant

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Tara Archer-Glasgow with Trevor Lightbourn and Audley Hanna Jr for the
Claimant
Raynard Rigby KC with Asha Lewis for the Defendant

Hearing Date(s): On the papers

DECISION ON QUANTUM OF COSTS

WINDER, CJ

[1.] Following upon the trial of this action, on 30 June 2025 I gave my decision as to the appropriate order for costs of the action. I awarded the Claimant 80% of its costs, certified fit for two counsels. I also indicated that I proposed to fix those costs and invited Counsel for the Claimant to provide a summary of its costs, to assist in the determination of the appropriate quantum of costs.

[2.] Rather than a summary, the Claimant filed a Bill of Costs detailing work done by 7 lawyers, in the extraordinary amount of \$355,372.95.

[3.] Written opposition to the Bill of Costs was received from the Defendant.

[4.] I begin by setting out the jurisdiction for the fixing of costs and the task to be undertaken by the judicial officer in that exercise. This is aptly set out in the dicta of *Sir Michael Barnett P* in the case of **William Downie v Blue Planet Limited** SCCivApp & CAIS No. 188 of 2019, and in my view are equally applicable to the task of summary assessment under the Supreme Court (Civil Procedure) Rules 2022. According to *Sir Michael Barnett P* at paras [23] to [30]:

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.

24 Order 59 Rule 2 of The Rules of The Supreme Court provides:

(2) The costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that Court shall have full power to determine by whom and to what extent the costs are to be paid, and such powers and discretion shall be exercised subject to and in accordance with this order.

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.

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]

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.

28 This is provided for in Order 59 Rule 9 which states:

9. (1) Subject to this Order, where by or under these Rules or any order or direction of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs...

(4) The Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled —

(b) to a gross sum so specified in lieu of taxed costs. [Emphasis Added]

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”.

[5.] Having looked at the Bill of Costs, I agree with the assessment of the Defendant, that the bill provided resembled indemnity costs rather than that of a reasonable Bill of Costs. I will not condescend to responding to individual items in the bill as that would end in a procedure akin to taxation, which is not the exercise being undertaken. Suffice it to say that I have considered the work which counsel for the Claimant says was done. While the sums pursued were fairly substantial, this was a one-day trial, with a single witness advanced by each side. I accept that these were not rudimentary issues of law being considered, which was why the certification of being fit for 2 counsel was made.

[6.] In the present case, having considered the Claimant's claimed costs, and taking into account the circumstances of the case, including the time spent before me, the work reasonably expended, the seniority of counsel, the importance of the matter and the nature of the issues which required determination, I am satisfied that the gross sum of \$80,000 is a reasonable sum for the Claimant in lieu of taxed costs.

[7.] In accordance with my 30 June, 2025 Order, apportioning 80% of these costs to Claimant, I order that the Defendant do pay the sum of \$64,000 to the Claimant in lieu of taxed costs.

Dated this 15th day August 2025



Sir Ian. Winder
Chief Justice