

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division**

Claim No. 2024/CLE/Gen/FP/00198

B E T W E E N

BMLS LIMITED

Claimant

AND

PHILIP PINDER

Defendant

Before: Honourable Madam Justice Constance Delancy

Appearances: Gail Lockhart-Charles, KC with Edwin Knowles, Esq. for the Claimant
Osman Johnson, Esq. with Mark Alex Flowers, Esq. for the Defendant

Hearing Date: On the papers

RULING

DELANCY, J

[1.] This is the Court's summary assessment of costs awarded to the Defendant on its ruling of 15 July, 2025 as a result of the Defendant's application filed on 26 June 2025. The Defendant sought various orders:

- (a) An Order granting a stay of the substantive proceedings and the hearing of the Claimant's extant notice of application for committal filed herein on February 7th 2025, pending the Supreme Court's determination of the Defendant's Notice of application to vary and/or discharge and/or set aside the terms of Supreme Court Orders filed herein on November 19th 2024 and May 30th 2025, respectively and pursuant to Part 9.8 (1) Civil Procedure Rules 2022 and in accordance of the overriding objectives of the CPR and/or in the exercise of the inherent jurisdiction of the Court;
- (b) An Order to stay the execution of the Supreme Court's Orders filed herein on November 19th 2024 and May 30th 2025 respectively on the ground of matters

which have occurred since the date of the orders and pursuant to Part 43.12 of the Civil Procedure Rules and in accordance of the overriding objectives of the CPR and/or in the exercise of the inherent jurisdiction of the Court;

- (c) An Order to vary the terms of the interim injunction Order filed herein on November 19th 2024, such as to remove paragraphs 4 through 15 from the Order, on the grounds that the transcript and record in the matter discloses that the Supreme Court did not grant the relief entailed in the aforementioned paragraphs to the Claimant, and in accordance with Rule 1, with specific reference to 1.1(1) and 1.1(2) of the CPR 2022 and the overriding objectives of the CPR and/or in the exercise of the inherent jurisdiction of the Court;
- (d) An Order to discharge the interim injunction Order filed herein on November 19th 2024, on the grounds that the transcript and record in the matter discloses that the Supreme Court did not grant the relief entailed in paragraphs 4 through 15 to the Claimant, and in accordance with Rule 1, with specific reference to 1.1(1) and 1.1(2) of the CPR 2022 and the overriding objectives of the CPR and/or in the exercise of the inherent jurisdiction of the Court;
- (e) An Order to vary the terms of and/or discharge the Court Orders dated November 26th 2024 and December 12th 2024 and filed herein on May 30th 2025, such as to allow the Defendant to continue his business affairs and trade unrestrained pending the Court's final determination of the proceedings, and in accordance with Rule 1, with specific reference to 1.1(1) and 1.1(2) of the CPR 2022 and the overriding objectives of the CPR and/or in the exercise of the inherent jurisdiction of the Court;
- (f) An Order directing that the Claimant fortify its undertaking in damages set out in Schedule B (7) of the interim injunction Order filed herein on November 19th 2024 by way of payment into Court a sum in the equivalent value of the Defendant's contracts with Carnival Cruise Line for services to Freeport Harbour and Celebration Key and in accordance with Rule 1, with specific reference to 1.1(1) and 1.1(2) of the CPR 2022 and the overriding objectives of the CPR and/or in the exercise of the inherent jurisdiction of the Court;

[2.] In its ruling, the Court granted the varied terms of the Order made of 14 November, 2024 (extended by the Order made 26 November, 2024). The Court awarded costs to the Defendant and directed Counsel for the Defendant to provide a *pro forma* bill of costs and directed parties to also forward submissions thereon to assist the Court in its summary assessment exercise.

[3.] The parties are at polar opposites on the issue of the quantum of costs that the Court ought to allow the Defendant to recover on the ruling. Counsel for the Defendant (the receiving party) prepared a *pro forma* bill of costs outlining Counsel's rates, fees and disbursements claiming the \$36,102.75 inclusive of VAT. Counsel for the Claimant submits that the Defendant should be allowed to recover costs of no more than \$4,867.50 inclusive of VAT and disbursements.

Law and Analysis

[4.] The Supreme Court Civil Procedure Rules (“CPR”) provides that it is the general rule is that the unsuccessful party pays the costs of the successful party (*Part 71.6 CPR*). The Court determined that the costs on the applications would be summarily assessed (*Part 71.12 CPR*).

[5.] The Court, having regard to all the circumstances, has a wide discretion when deciding whether costs were proportionately and reasonably incurred or were proportionate and reasonable amount (*Part 71.11 (1) (a) and (b) CPR*).

[6.] Under Part 71.11(3) CPR the Court must consider the following factors:

- (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

[Emphasis added]

[7.] The Court, when considering issues related to costs must do so through the lens of the CPR’s overriding objectives in particular to “deal with cases justly and at proportionate costs” (Part 1.1 CPR).

[8.] This Court adopts the dicta of *Klein, J* in **Maurice Johnson v Bahamas Waste Ltd.** 2022/COM/lab/00054 in particular at paras. 5 to 7 thereof:

5. 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.”

6. **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...”.

7. On the **matter of proportionality**, this court in **Shirodkar** endorsed the UK Court of Appeal’s decision in **West & Demoulid 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 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].

[Emphasis added.]

[9.] The basis for quantification of costs, Part 72.21(1) CPR, emphasizes the need for the Court in exercising its discretion to be guided by the hallmark of “*reasonableness*” and the criteria to be applied when determining the same:

- (1) Where the Court has a discretion as to the amount of costs allowed to a party, the sum to be allowed —
 - (a) is **the amount that the Court deems to be reasonable were the work to be carried out by an attorney of reasonable competence**; and
 - (b) **which appears to the Court to be fair both to the person paying and the person receiving such costs.**
- (3) In deciding what would be reasonable the Court must take into account all the circumstances, including —
 - (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 attorney;
 - (e) the importance of the matter to the parties;
 - (f) the novelty, weight and complexity of the case;
 - (g) the time reasonably spent on the case; and...

[Emphasis added.]

[10.] Counsel for the Defendant’s submissions focused on the issue of hourly rate to attributed to Counsel. Counsel relies on dictum *Klein, J* in **Lucayan Towers South Condominium**

Association v Grand Bahama Utility Co. Ltd. 2018/CLE/gen/1480 and *Charles, J* in **Opac Bahamas Ltd. v Duane Bennet Parnham et al** 2019/CLE/gen/00127. Counsel for the Defendant submits that the hourly rates attributed to Counsel are reasonable given the standing of Counsel and adjusted for inflation as supported by **Lucayan** (*supra*) and **Opac** (*supra*). The Court finds that the hourly rates claimed by Defendant are not disproportionate given Counsel's standing at the Bar.

[11.] Counsel for the Claimant (the paying party) submits that the costs claimed by the Defendant are “*excessive*” and “*unreasonable*” when having regard for the provisions of Part 71.11 CPR. In particular Counsel contends that the costs are excessive on the basis that (i) the matter was not certified for two Counsel; (ii) significant duplication of work; (iii) inclusion of costs for reviewing procedural emails and internal correspondence; and (iv) the limited success of the application. The Claimant's reasons for opposing the costs claimed by the Defendant are outlined in its submissions and notations for each item on the Defendant's proforma bill of costs.

(i) *Matter not certified for two Counsel*

[12.] Counsel for the Claimant submits that in the absence of Court certifying that the application was fit for two Counsel it would be unreasonable to allow fees claimed for MAF and ORCJ. Further, that in the absence of such certification only the costs associated with MAF, “*who conducted the advocacy, should be allowed and that all costs claimed for ORCJ should be excluded as unnecessary and disproportionate*”.

[13.] It is generally accepted that a party is entitled to claim costs for a senior (King's) Counsel and a junior Counsel. The Court finds guidance in the dicta of *Moore, J* in **Nassau Cruises Ltd v Bahamas Hotel Catering and Allied Workers Union** [2000] BHS J. No. 248 at para.90, which was confirmed by Court of Appeal in **Sterling Asset Management Ltd. v Sunset Equities Ltd.** [2021] 1 BHS J. No. 223:

A balance has to be struck between the advantages of the more efficient presentation of the client's case and the extra expense involved in instructing leading counsel, or two counsel rather than one. With regard to the instruction of leading counsel, the question is not whether the case was well within the capabilities of junior counsel but rather whether or not it was reasonable to instruct leading counsel.

[Emphasis added.]

[14.] The Court notes that since the implementation of the Integrated Case Management System the need for voluminous copies and duplication thereof have been greatly reduced. The Court considered this when reviewing the Defendant's costs related to production of documents and copies thereof.

[15.] The Court notes that Counsel for the Defendant are not designated King's Counsel. Further, that there was not request by the Defendant to have the application certified fit for two Counsel.

The Courts finds it was not reasonable in the circumstances to instruct MAF on the hearing of the application as the same was within the capabilities of ORCJ. Therefore, the Court will not allow the claim for two fee earners and as MAF was the primary advocate on the application costs claimed for ORCJ are disallowed.

(ii) *Duplication of Work*

[16.] Counsel for the Claimant also submits that throughout the Defendant's *pro forma* bill of costs, there are several items which demonstrate duplication of the work performed between MAF and ORCJ, for example reviewing the same documents, preparing overlapping submissions, and attending to internal procedural emails. Counsel submits that based on the requirements of the requirement under CPR 72.2 CPR it is not reasonable for the Defendant to recover such costs. The Court upon conducting a perusal of the Defendant's *pro forma* bill of costs finds some merit in this argument and disallowed those instances where duplication.

(iii) *Costs for reviewing procedural emails and internal correspondence*

[17.] Counsel for the Claimant submits that the Defendant's claim for costs of emails involving internal exchanges between counsel and tasks performed by administrative staff are neither reasonable nor proportionate and should be excluded. Counsel also directed the Court's attention to the dicta of *Evans, J* in **Johnson v Reed Corrugated Cases Ltd.** [1992] 1 All ER 169 at paras.171j to 172a thereof:

These rules are supplemented by the Masters' Practice Notes 1986 printed in The Supreme Court Practice 1988 Vol 1, para 62/A2/31, p 1009. I quote the following extracts from them:

'3. The new Appendix 2 Part II is designed further to simplify the process of drawing, reading and taxing a bill of costs and thereby to reduce both time and expense. **The principal provision is that items which are properly part of a solicitor's normal overhead costs, and as such provided for in his expense rates, are wholly to be excluded. Each chargeable item will be the subject of a discretionary allowance which should be shown in two parts, the first representing the direct costs of the work properly itemised and the second the appropriate allowance for care and conduct.**

(iv) *Limited success of the Defendant's application.*

[18.] Counsel for the Claimant submits that the Court ought to consider that its ruling ultimately turned on limited issues and narrower reasoning than that advanced by the Defendant. The Defendant's application sought various orders which are reproduced at para. [1] hereof. The Court granted an order varying the terms of its 14 November 2024 order (which was extended on 26 November 2024). The Court notes that the Defendant did not succeed on the claim for fortification.

[19.] Under Part 71.14 CPR the rules provide the timelines for payment of costs awarded to a party:

A party must comply with an order for the payment of costs within twenty-one days of

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- (a) the date of the judgment or order if it states the amount of those costs;
- (b) if the amount of those costs, or part of them, is decided later in accordance with this Part, the date of the certificate which states the amount; or
- (c) in either case, such later date as the Court may specify.

[Emphasis Added]

[20.] The Court having considered all the circumstances summarily assess the total costs to be paid by the Claimant to the Defendant at \$8,182.50 and VAT at rate of 10% being \$818.25.

Disposition

[21.] The Court hereby orders that the Claimant pay to the Defendant costs in the amount of \$9,000.75 (representing professional fees, disbursements and VAT).

Dated: 2 December 2025

[Original, signed and sealed]

Constance Delancy
Justice