IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2018/CLE/gen/01480

IN THE MATTER OF sect. 13 and the other provisions of The Law of Property and Conveyancing (Condominium) Act, 1965 (as amended).

BETWEEN:

LUCAYAN TOWERS SOUTH CONDOMINIUM ASSOCIATION
(a statutory non-profit body Corporate)

Plaintiff

AND

GRAND BAHAMA UTILITY COMPANY LIMITED

First Defendant

AND

JULIE GLOVER

Second Defendant

Before:	The Honourable Mr. Justice Loren Klein
Appearances:	Ms. Meryl Glinton for the Plaintiff
	Mr. Edward Marshall II and Mr. Samuel Brown for the First Defendant
Hearing dates:	Cost determination and summary assessment, on written submissions only

RULING

KLEIN, J

Costs—Discretion of the Court—Issue-based costs order—Plaintiff successful on some issues—First Defendant successful in its counter-claim—Circumstances justifying departure from 'costs follow the event' principle—Public law features of litigation—Reasonable and proportionate costs—CPR 77.11—Practice and Procedure—Principles governing award of costs in public litigation—Cost capping Orders (CPO)—Corner House principles

INTRODUCTION AND BACKGROUND

1. This my determination of liability for costs and summary assessment of those costs consequential to my Judgment handed down on 31 March 2025.

2. That Judgment arose from a writ action in which the plaintiff claimed various declarations and injunctive relief—by way of what might be described as a pre-emptive strike—in relation to a demand for payment of arrears of over $400,000.00 for water and sewerage services supplied to

the plaintiff by the first defendant. The plaintiff alleged, among other things, that the rates which led to the accumulation of the arrears were "unreasonable" and in breach of the terms of the Hawksbill Creek Agreement ("HCA")—the Governmental agreement regulating the provision of public utilities and other municipal services within the Freeport area. The first defendant counterclaimed in *quantum meruit* for the debt owed by the plaintiff.

3. I granted several of the declarations sought and a *pro tem* injunction, and also granted the first defendant's claim in *quantum meruit*. At the end of that ruling, I indicated that it was "*not an outright win for either the plaintiff or the first defendant on its counterclaim*" and therefore invited the parties to lodge written submissions on liability and submit draft bills by any claiming party, which would be summarily assessed on an issues-basis.

4. I am grateful to counsel for their comprehensive written submissions on the incidence of costs and summary assessment and the draft statement of costs filed by the first defendant. I have read and considered them all and my decision follows.

DISCUSSION AND ANALYSIS

Liability

5. The wide discretion of the Court to determine who pays costs, when and what amounts is not in any doubt: see s. 30, of the Supreme Court Act; Ord 59, rr. 3-6, *Rules of the Supreme Court 1978* (R.S.C. 1978); *Civil Procedure Rules 2022* ("CPR") Part 71; and the dicta of Buckley LJ in **Scherer and another v Counting Instruments Ltd.** [1986] 2 All ER 529, applied by the Bahamas Court of Appeal ("CA") in **Sterling Asset Management Ltd. v Sunset Equities Ltd.** [SCCivApp No. 152 of 2021].

6. Secondly, when the Court makes an order about the costs of any proceedings, the general rule is that the successful party is entitled to costs (CPR 71.6(1)) (i.e., "costs follow the event"), although the Court may make a different order, including making no order as to costs, or in exceptional cases order the successful party to pay costs (CPR 71.6(2)).

7. While CPR 71 preserves the wide discretion of the Court with respect to costs, it also sets out a detailed list of factors that the Court is mandated to consider in exercising that discretion. Those factors are dispersed over many provisions of the Rules, some of which are overlapping. For example, under CPR 71.9 (4), dealing with the general discretion to award costs, the Court must have regard (among other things) to:

> "(a) the conduct of the parties both before and during the proceedings;
> (b) whether a party has succeeded on particular issues, even if not ultimately successful in the case, although success on an issue that is not conclusive of the case confers no entitlement to a costs order;
> (c) the manner in which a party has pursued—

(i) a particular allegation;
(ii) a particular issue;
(iii) the case;

(d) whether the manner in which the party has pursued a particular allegation, issue or the case, has increased the cost of the proceedings;

(e) whether it was reasonable for a party to—
(i) pursue a particular allegation; or
(ii) raise a particular issue; and
(iii) whether the successful party increased the costs of the proceedings by the unreasonable pursuit of the issues;

(f) whether the claimant gave reasonable notice of an intention to pursue the issue raised by the application."

8. CPR 71.10 ("*Circumstances to be taken into account when exercising its discretion as to cost"*) elaborates on several of the factors already signposted in 71.9, but provides additionally that the Court may make an order that a party pay "(3)(a) *a proportion of another party's costs*; …(e) *costs relating to particular steps taken in the proceedings*;…(f) *costs relating only to a distinct issue in or part of the proceedings*…".

9. Under the rubric "*Factors to be taken into account in deciding the amount of costs*", CPR 71.11 provides as follows:

"(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 of value of any money or property involved;
(c) the importance of the matter to all parties;
(d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
(e) the skill, effort, specialized 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) [deals with client/attorney costs]."

10. CPR 72.21 deals with the "*Basis of quantification*" and provides in material part as follows:

"(1) Where the Court has a discretion as to the amount of costs to be 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 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;…".

11. The portion of the Rules specifically engaged by these proceedings is CPR 71.12, which provides for summary assessment as follows:

"(1) As a general rule, a judge hearing an application will summarily assess the costs of that application immediately or as soon as possible after the same is disposed of.
(2) As a general rule, a judge conducting the trial will summarily assess the costs of the entire claim immediately after he has delivered judgment in respect of the same or as soon as practicable thereafter.
(3) A judge may, instead of summarily assessing the costs under paragraphs (1) or (2), direct that the whole or any part of the costs payable shall be subject to a detailed assessment and he may, when making such direction, indicate which particular matters the Registrar may or shall take into account or exclude in relation to such detailed assessment."

12. Further, the overriding objective at CPR 1.1 requires the Court "*to deal with cases justly and at proportionate cost*."

Issues-based approach

13. As mentioned, CPR 71.6 recites the general principle that the successful party is entitled to his costs—i.e., cost follows the event. It states, in relevant part that "…*where the Court decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party*."

14. But litigation is not a zero-sum game and—as illustrated by this case—both parties may have some degree of success in the issues being litigated. This is why I indicated to the parties at the outset that I was minded to decide the costs order on an issues basis, because this litigation was largely issue-driven, and several of the issues raised held legal significance in their own right.

15. There is no dispute in principle about an issues-based approach to costs, which has always been permissible at common law under the judge's wide discretion to deal with costs. However, the CPR now makes specific provisions for this—see 71.9(4)(b) and 71.10(3)(f), which empowers

the Court to, *inter alia*, make an order for the payment of "…*costs relating to a distinct issue or part of the proceedings*." See, also, this Court's Ruling in **Dr. Gauri Shirodkar v. The Bahamas Medical Council** (2021/PUB/jrv/0003 (Costs), 6 February 2025).

16. Counsel for the plaintiff also referred to **In Re Elginata** (No.2) [1992] 1 WLR 1207 (applied by the Court of Appeal ("CA") in **Roscoe Ferguson v Rascals Ltd. et. al.** (SSCivApp. No. 140 of 2016), where the Court stated several principles that were considered "axiomatic" to costs proceedings. These included the following (summarized) statements of principle:

(i) The general rule (costs follow the event) does not cease to apply because the successful party raised issues or made allegations or contentions on which he fails; but where that caused significant increase in the length or costs of the proceedings the successful party may be deprived of the whole or a part of his costs;

(ii) Where the successful party raises issues or makes allegations or contentions improperly or unreasonably, the Court may not only deprive him of his costs, but may order him to pay the whole or a part of the unsuccessful party's costs.

17. As is made clear by the case law and the CPR 2022, an issues-based cost order is not justified merely because the successful party has lost on some issues. In **Budgen v Andrew Gardner Partnership** [2002] EWCA Civ 1125 [at 35], Simon Brown LJ observed that "*the court can properly have regard to the fact that in almost every case even the winner is likely to fail on some issues*".

18. The decision of Stephen Jourdan QC, sitting as a deputy High Court Judge, in **Pigot v The Environment Agency** [2020] EWCH 1444 [at 6], contains an admirable summary of the principles relating to issue-based costs orders as follows, which I would endorse:

> "(1) The mere fact that the successful party was not successful on every issue does not, of itself, justify an issues-based cost order…
> (2) Such an order may be appropriate if there is a discrete or distinct issue, the raising of which caused additional costs to be incurred. Such an order may also be appropriate if the overall costs were materially increased by the unreasonable raising of one or more issues on which the successful party failed.
> (3) Where there is a discrete issue which caused additional costs to be incurred, if the issue was raised reasonably, the successful party is likely to be deprived of its costs of the issue. If the issue was raised unreasonably, the successful party is likely also to be ordered to pay the costs of the issue incurred by the unsuccessful party…
> (4) Where an issue-based costs order is appropriate, the court should attempt to reflect it by ordering payment of a proportion of the receiving party's costs if that is practicable.
> (5) An issue-based costs order should reflect the extent to which the costs were increased by the raising of the issue; costs which would have been incurred even if the issue had not been raised should be paid by the unsuccessful party.
> (6) Before making an issue-based costs order, it is important to stand back and ask whether, applying the principles set out in CPR 44.2, it is in all the circumstances

of the case the right result. The aim must always be to make an order that reflects the overall justice of the case".

Summary of parties' arguments

19. The Court distilled nine issues for determination in the underlying claim as follows:

"Preliminary issues

(i) Whether the series of Agreements scheduled to the HCA Acts are enactments that form part of the statute law of The Bahamas.
(ii) Whether the plaintiff has standing to obtain declaratory relief against the first defendant in a private law action, based on a contract to which neither the plaintiff nor the first defendant is a party.
(iii) Whether GBUC is the *alter ego* of the GBPA with respect to the undertaking for the utility supply.

Main issues

(iv) Whether the plaintiff is entitled to all "rights, facilities and privileges" of the HCA by virtue of being a licensee of the Port Authority under the principal Agreement (as amended).
(v) Whether the first defendant provides the utility supply to the plaintiff by virtue of the licence issued to it by the GBPA under the provisions of the HCA (as amended), and/or as the *alter ego* of the GBPA.
(vi) Whether the first defendant is unilaterally entitled to set rates or impose rates, fees and charges for the utility supply and whether such rates, fees and charges must be reasonable and proportionate.
(vii) Whether the first defendant is entitled to disconnect water and sewerage supply to the plaintiff as a self-help remedy for non-payment of arrears, or alternatively whether the plaintiff is entitled to a permanent injunction restraining GBUC from discontinuing the supply of utility services to the LTS even in the event it fails to pay for such services.
(viii) Whether LTS is entitled to an award of damages payable by GBUC and, if so, in what amount.
(ix) Whether GBUC is entitled to charge LTS for services supplied to them by virtue of a contractual arrangement and therefore GBUC is entitled to compensation in damages, or whether GBUC is entitled to compensation on a *quantum meruit* basis for services consumed."

Plaintiff

20. The plaintiff contends that it was the successful party in the action, and that even if it were not, there are grounds on which the Court may award the plaintiff its costs, or at the very least order that each party should be made to pay its own costs. In this regard, the plaintiff contends that when one considers the "*weight of the issues, their relative importance, and the circumstances which brought these litigants before the Court, the Plaintiff should be regarded as the more successful party*".

21. The plaintiff contends that it was generally successful on the first issue, as the Court granted the declaration that the Agreements scheduled to the Act are not thereby made statutory law in the sense contemplated by s. 11(3) of the *Interpretation and General Clauses Act*. Secondly, the Court granted the declaration that the plaintiff (and other licensees) have "*every right to seek a declaration as to the existence of [their] rights*" under the HCA. This finding was said to be critical to the Court's finding and declaration at Issue "iv", that the plaintiff was entitled to the "*rights, facilities and privileges*" of the HCA. As to the third issue, the Court did not make the declaration in the form sought by the Plaintiff, but was satisfied that the GBUC was operating as an agent of the GBPA with respect to the provision of utilities. In other words, the Court accepted the gist of the plaintiff's submission that the commercial relationship between the GBUC and the GBPA was not one of independence (although the plaintiff remonstrated that its argument was that "*the two ought not to be treated as separate for the purposes of the Agreement*").

22. The plaintiff contends further that Issues (iv) and (vii) were the main issues between the parties, and that while neither party was wholly successful on them and the Court did not grant the declaration sought at (vii), the Court's finding on the point that the 1966 amendment to the HCA superseded the 1955 prescription and interposed a requirement of reasonableness in the setting of rates was important. As stated in its skeleton argument on costs:

> "The Court's finding in this respect is of public significance, and its effect will invariably extend beyond this action for the benefit of all Licensees, and may be considered in future analyses and interpretations of the duty owed by the GBPA, GBPC (and/or any future entity licensed by it to carry out its primary obligations to provide utility services)."

23. Main issue (viii) was said not to occupy much time (it was a consequential issue), and as to main issue (ix), which was the subject of the Defendant's counter-claim, it is contended that the first defendant cannot be seen as being wholly successful on its counterclaim. This is because the Court deducted significant penalties, which the plaintiff may otherwise have been required to pay had it not commenced the action, and therefore the defendant did not obtain the entirety of the relief claimed.

24. In addition to the submissions on the issues-based approach, the plaintiff also contended that there were several public law factors and other considerations that justified a departure from the ordinary rule that costs follow the event. In particular, these were:

(i) the public significance of the issues involved, particularly those arising out of the interpretation of the HCA;
(ii) the Plaintiff's not-for-profit status;
(iii) the respective financial resources of the Plaintiff and the First Defendant;
(iv) and the extent to which the matters which are before the Court can be attributed to the matters pleaded against the second defendant.

25. It therefore submits that, having regard to these factors, the Court can award costs as between the plaintiff and the first defendant, or the plaintiff and the second defendant, or order the second defendant to indemnify and/or contribute to the plaintiff's costs of the action.

26. The plaintiff also invoked the public significance of the Ruling as a ground for the Court to have regard to the "Corner House Principles" (**R (Corner House) v Trade and Industry Secretary** (CA) [2005] 1 WLR 2600), where the UK Court of Appeal propounded the approach to costs in public law matters, inclusive of its ability to grant "Protective Costs Orders" ("PCOs"). It was therefore submitted that awarding the plaintiff its costs, or otherwise protecting it from paying costs, would be in keeping with the trend toward protecting a litigant who has brought proceedings in the public interest. It was further submitted that, in this regard, an equitable costs order or parity could be achieved by requiring the plaintiff to pay the costs of those issues which were beneficial to the plaintiff, but not awarding any costs in respect of those matters which redounded to the public interest.

First Defendant

27. The first defendant contends that it was, for the most part, wholly successful in defending the claims brought against it and submits that it succeeded on 6 out of the nine 9 issues. In this regard, it relies on **Commonwealth Franchise Holdings Limited v Casual Dining Restaurant Ltd. and another** [2022] 1 BHS J. No. 80, where Barnett CJ awarded CFH 65% of its costs on the basis that it succeeded on four out of five issues—although the First Defendant adds the caveat that it was unclear on what basis the CJ attributed 35% of the costs incurred by CHF to the single issue on which it did not succeed.

28. The first defendant contends that there is, therefore, no basis for depriving it of costs incurred in the action as the predominantly "successful party", although it accepts that deductions may be made with respect to those issues on which the plaintiff succeeded.

29. As to apportionment, the first defendant contends that not more than 10% should be deducted from its costs on an issues-based approach. This is because, as to the first issue, while it "*did make submissions with respect to the HCA being a schedule to an Act of Parliament, it did not go so far as to submit that the HCA has statutory force and effect by virtue of s. 11 of the Interpretation and General Clauses Act*." In this regard, it submits that to the extent that the Court found that the Act does not form part of the statute law of The Bahamas but has quasi-statutory effect, this was a position not strictly advanced by either party. Therefore, it follows that the first defendant did not advance any submissions contrary to the Court's findings and on that basis did not incur any costs in relation to this issue.

30. With respect to Issue (ii), the First Defendant asserts that no more than 5% of its costs must be attributed to this issue in the overall assessment, given that:

(i) the submission on this issue are only 5 out of 79 paragraphs;

(ii) only one authority was relied on in support of the submissions;
(iii) no fact evidence was adduced or led by any of the parties as this issue was a pure issue of law.

31. As to the declaration sought under Issue (iv)—that the plaintiff was entitled to all rights, facilities and privileges under the HCA, and its relation to Issue (ii)—the first defendant submitted that it only challenged the plaintiff's ability to obtain declaratory relief on the general ground that it was not a party to the contract, and there was therefore no privity of contract. It says it never suggested that the plaintiff was not entitled to all rights, facilities and privileges under the HCA as a licensee of the GBPA. Accordingly, the only cost incurred in connection with this issue are in the same region of the costs with respect to preliminary issue (ii), which is 5%.

Court's discussion

32. In my view, according victor status or apportioning costs to a party on an issues-based approach cannot be done simply on the arithmetical basis of which party has succeeded on the majority of the issues. This would be to assume that all issues are equally weighted, which is hardly ever the case in litigation. The case law and Rules make it clear that the issues have to be assessed to determine how they factored into the costs incurred. For example, the case law indicates that such an order is appropriate where "*there is a discrete or distinct issue*" which caused additional costs to be incurred or if the costs were "*materially increased by the unreasonable raising of one or more issues on which the successful party failed*". Further, as indicated in **Pigot v The Environmental Agency,** the Court must always make an order that "*reflects the overall justice of the case*".

33. In any event, the Court's Ruling does not support the assertion that the first defendant succeeded on 6 of the 9 issues. Even in some instances where the sought declarations (as formulated by the plaintiff) were refused, the Court made declarations that were still partially in favour of the plaintiff. For example, with respect to the Issue at (iii), the Court found that there was an agency relationship between the GBUC and the GBPA, even though it did not accept the "*alter ego*" relationship. Secondly, at Issue (vi), the Court refused the declaration that the first defendant could not unilaterally set rates, but found that such rates had to be "reasonable", and the GBPA did not have an absolute discretion in this regard.

34. On the first issue, the first defendant did attempt to walk-back its position slightly on the legal status of the HCA during the trial of the action. It had submitted in the interlocutory application for injunctive relief that "*…it is clear that the provisions of the principal agreement must be construed and have effect 'as part of such Act'…by virtue of section 11 (2) of the Interpretation and General Clauses Act*". There was no indication in its submissions, written or oral, during trial that it was resiling from that position, and therefore to the extent that the plaintiff was required to argue the contrary, costs were incurred. Similarly, on the (ii) and (iv) issues, while the first defendant did take the point on privity, it contended more broadly that the plaintiff did not possess any standing to seek declaratory relief, so this is another issue on which it fought and lost.

35. In its "Responsive Closing Submissions", the first defendant submitted that, as the plaintiff accepted in principle that it had an obligation to pay for the services, the real complaint or gravamen of the case was as follows: (i) the charge and or rate for the supply of water was unreasonable; and (ii) that the first defendant had no right to disconnect for non-payment.

36. The plaintiff succeeded on the first and failed on the second, even though the Court granted a pro-tem injunction. The first defendant succeeded on its alternative claim in *quantum meruit*, but that was not really opposed by the plaintiff. The plaintiff devoted exactly two of 118 paragraphs of its skeleton argument to this issue, and this was only to submit that whilst it does not dispute that the GBUC is entitled to remuneration for the supply of utilities, the fixed rate for such utilities should be reasonable, taking into account various factors which it set out.

37. However, while the plaintiff had a substantial degree of success, I cannot turn a blind eye to the fact that the underlying dispute in this matter was the commercial demand for arrears represented by the utility charges, and this is why I described the plaintiff's claim as a pre-emptive strike. The first defendant claimed by way of counter-claim, but it is trite that a counterclaim is treated as an independent claim. The fact that the first defendant was vindicated on its counter-claim in *quantum meruit* is of some significance. I therefore consider it to be the predominantly successful party. I do not share the plaintiff's enthusiasm that the reduction by the Court in the first defendant's claim (who made a demand for the full bill) should be seen as a victory for the plaintiff. This is because the essence of a *quantum meruit* claim is that it is left to the Court to decide what is a reasonable sum to be awarded in respect of the claim.

38. Having said that, I am satisfied that a significant disallowance should be made to reflect the important issues on which the plaintiff succeeded. The first defendant suggested that only 10% of the costs should be deducted to reflect this, but for the reasons given above, I think that an order that reflects the overall justice of the case would be to allow the first defendant 60% of the costs incurred by it in the action, following the Court's summary assessment.

Public Law Significance

39. I accept that where an applicant raises legitimate public law or constitutional law issues but is unsuccessful, the Court may rightly take that into consideration in deciding whether or not to award costs against him (**The Queen v Dwight Armbrister** [2021] 1 BHS J. No.2 (Charles, J, as she then was), and this Court's Ruling in **Lorenzo Stubbs v. The Attorney General** (2021/PUB/con/00001).

40. However, while the matter engaged issues which were admittedly of wide public interest, the claim was one in private law and not a public law claim. It was a claim in which the plaintiff sought to use the HCA, a governmental agreement with some public law attributes, as a sword against a commercial debt which was not disputed (except for the quantum). I do not therefore think that the plaintiff can use the public law features of the litigation to protect itself from costs.

41. I am also not of the view that it is appropriate to have any regard to the position of the second defendant for deciding the incidence of costs, for the reasons given by the Court in the Judgment. The Court decided that the claims against the second defendant were more effectively dealt with in a concurrent conjoined action involving the second defendant (and others) in respect of the same claims. In that other action, the Court awarded the plaintiff (also plaintiff in the conjoined actions) the costs incurred by the application, as well as ancillary relief, including assessment of damages (see Ruling in *Lucayan Towers South Condominium Association et. al. v Douglas Prudden et. al.* (2013/CLE/gen/02044) and *Douglas Prudden et. al. v. Maurice Glinton et. al.* (2013/CLE/gen/FP/00230), 11 April 2025).

42. The plaintiff also adverted to the "Corner House" principles, which operate in the field judicial review and which allows a public law litigant to protect himself in costs by seeking a cost capping order. The Privy Council affirmed that such a jurisdiction exists in The Bahamas by virtue of the wide discretion to deal with costs under s. 30(1) of the Supreme Court Act (**Responsible Development for Abaco (RDA) Ltd. v The Right Hon. Perry Christie et. al.** [2023] UKPC 2). However, as explained at para. 83 of the Ruling, to obtain costs protection in relation to its claim under these principles, it would have been necessary for the claimant in that case (RDA) to show that it "*had no private interest in the outcome of this case*". The plaintiff would have been unlikely to meet this requirement. As explained, this was a private law claim in which the plaintiff was asserting its own interest, even if the issues affected and benefitted the wider group of Port Licensees.

43. At the time of the **RDA** Ruling, there were no rules or provisions providing for capping costs, as exist under the UK *Criminal Justice and Courts Act 2015*, which provides that a court may make a costs capping order in connection with judicial review proceedings if it is satisfied that the proceedings are "*public interest proceedings*", a term defined in the Act. Since then, Part 72.10 of the CPR 2022 provides for the Court to make a cost capping order in several circumstances, including where "*…it is in the interest of justice to do so*" or where there is a risk that without such an order "*costs will be disproportionately incurred*." Part 72.11 provides for an application to be made by Notice for such an Order. Notably (and somewhat curiously), unlike the UK provisions, the ability to seek a costs capping order under the CPR is *not* said to be confined to judicial review and public interest proceedings.

44. In any event, it is clear that the plaintiff did not seek a costs capping order in this case, either at common law, or under Part 71, which it could possibly have done to protect its position. So I am not of the opinion that any reliance can be placed on these principles to give any protection in costs.

Summary Assessment

Legal principles

45. The same general principles apply to both summary assessment and detailed assessment, and the goal is to ensure that only reasonable costs are allowed and that such costs must also be proportionate. In assessing the reasonableness and proportionality of the amount of costs incurred, the Court will have regard to all the circumstances, including the conduct of the parties, the value of the claim, the importance of the matter to the parties, the complexity of the case, and the time reasonably spent on the case (CPR 71.9 (4), 71.11, 72.21).

46. 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."

47. 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…".

48. On the matter of proportionality, this court in **Shirodkar** endorsed the UK Court of Appeal's decision in **West & Demouilpied 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): if the reasonable costs allowed are proportionate, then no further assessment is necessary; (ii) if the figure is disproportionate to the matter, then the Court may make further global reductions as necessary.

49. As a matter of general principle, the summary assessment is not intended to be a mini detailed assessment or a "*line-by-line billing exercise*" (see, e.g., **Axnoller Events Ltd. v Brake and Anor (Summary Costs Assessment)** [2021] EWHC 2362 (Ch). (23 August 2021). It has been described as a broad-brush exercise, although the parties should be able to understand in broad terms the basis on which any deductions are made.

50. Further it is important to note that in conducting a summary assessment, the Court is not limited to analyzing objections raised by the paying party or the party against whom costs are sought. The Court is required to undertake its own assessment based on the factors indicated in the CPR. Thus the absence of any point of objection from the plaintiffs is no bar to a summary assessment.

51. On the footing that it was the successful party (or predominantly the successful party), the first defendant lodged a draft statement of costs in the amount of $102,000.00. This was the costs of a single fee earner with 12 years' call billing at $500.00 per hour, for a total time spent of 210 hrs., 45 minutes.

52. Firstly, starting with the hourly rate, I do not think this is excessive for counsel with 12 years' call, and I will allow that rate (see the Court's discussion on this issue and the comments on the lack of guideline hourly rates in **Dr. Shirokar v Bahamas Medical Council**.) I note in passing that subsequent to the referenced case, the Bar Association published an Attorneys Minimum Fee Remuneration Scale, which include suggested hourly rates (3 December 2025), but I need not take any consideration of those in this Ruling.

53. I accept that the claim in this matter raised novel issues of some difficulty, arising as it did within the legal and constitutional context of the HCA, and which required the Court to embark on issues of interpretation that were complex and to some extent matters of first principle. The pleadings and submissions were wide ranging, but it was not a factually complex case. In any event, the main hearing only lasted one day.

54. In light of this, I have some difficulty with the substantial time claim of over 200 hrs. spent in relation to this matter, in particular the time claimed relating to correspondence and telephone calls (52.25 hrs) and preparing legal documents (142.25 hrs). As an example of the former, there are some 6 entries associated with reviewing correspondence in connection with preparing the witness statements of the first defendant's witnesses, for a total of just over 40.5 hours ($20,250.00). In this regard, it is to be noted that the defendant filed 3 witness statements, the longest of which was 3 pp and 13 paras. As an example of the latter, there are four entries associated with the preparation of the first defendant's closing and responsive submissions (44, 45, 47, 48) billed at 10 hrs each, for a total of $20,000.00. The first skeleton argument ran to 24 pp, and the second to 15 pp.

55. I would consider the time spent for both categories to be excessive and a duplication of time, and appropriate deductions ought to be made. In this regard, I would deduct one-third of the hours for both activities, and allow 40 hrs for correspondence and telephone calls and 100 hrs for legal preparation. This comes to some 54.50 hrs deducted from the total hours, for a total of $27,250.00 deducted from the bill of $102,000.00, leaving $74,750.00.

56. As mentioned, Rule 71.11 sets out a non-exhaustive list of factors which the Court is to have regard to in deciding whether costs are proportionate (and reasonably incurred). These include, the amount of value of any money or property involved; the importance of the matter to the parties; the complexity of the matter or novelty of the questions raised; and time spent on the case.

57. The first defendant submitted that its BOC was proportionate to the complexity of the matter, which involved wide-ranging areas such as regulatory law, trust law, general commercial

law, the law relating to the provision of essential services by a private company, and interpretative issues relating to the HCA. Notably, the latter has given rise to inconsistent decisions in this jurisdiction, and was not a settled area of the law. In addition, the first defendant submitted that the money involved in the decision was significant, well in excess of $400,000.00 and, as such, the matter was of considerable importance to the parties.

58. I accept that these are all valid considerations for a proportionality analysis, and I will make a slight adjustment to the final costs figure (see below) to reflect proportionality.

CONCLUSION

59. This judgment was circulated in draft form to allow the parties an opportunity to check the arithmetic of my calculations. Following that exercise, I am able to confirm that the costs payable to the first defendant have been summarily assessed at $74,750.00, and the plaintiff is adjudged to pay 60% of that figure, which is $44,850.00. To this I have added an uplift of $5,000.00 to reflect the importance of the claim on a proportionality analysis, for a total of $49,850.00, which I will round off to **$50,000.00**.

60. The parties are invited to draw up an Order giving effect to this judgment and dealing with any ancillary matter, such as the date by which payment should be made.

Klein J.

14 January 2026