

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2021/CLE/gen/01360

BETWEEN

FREDDY VAN BREUGEL

Claimant

AND

M/V TIRELESS (A Motor Vessel) c/o  
STEERS/CARICONULT INTERNATIONAL LIMITED

First Defendant

AND

BAKER'S BAY DISCOVERY LAND COMPANY

Second Defendant

AND

PASSERINE AT ABACO HOLDINGS LTD.

Third Defendant

**Before:** Assistant Registrar Akeira Martin

**Appearances:** Ms. Glenda Roker for the Claimant

Mr. Edward J. Marshall II for the Third Defendant

**Heard:** On the Papers

RULING

[1] This is a summary assessment of the Claimant's costs which are set out in its Bill of Costs filed 28<sup>th</sup> May 2025 (the "Bill of Costs"). By Order dated 15<sup>th</sup> May 2025 and filed 26<sup>th</sup> June 2025, the claim as against the Third Defendant was struck out and costs were awarded to the Third Defendant to be summarily assessed. The Third Defendant was ordered to file and serve a Statement of Costs on or before the 29<sup>th</sup>

May 2025 and the Claimant was ordered to provide any objections thereto on or before the 12<sup>th</sup> June 2025. However, at the time this assessment was completed, he failed to file any objections.

### **Brief Background History**

[2] Simply put, the Claimant sought damages as a result of injuries suffered after his right leg allegedly fell into a hole or a gap which he claimed was owned by the Second Defendant and managed and controlled by the Third Defendant. The incident allegedly occurred on 23<sup>rd</sup> December 2018 while the Claimant was employed with the First Defendant, M/V Tireless which was docked at a rented dock slip at the Marina at Baker's Bay Golf & Ocean Club from Baker's Bay Marina Ltd.

[3] The Third Defendant alleged that while the Claimant commenced an action against the other Defendants as early as 2021, the claim against the Third Defendant was made on 20<sup>th</sup> November 2023. The Third Defendant sought to strike out the Claimant's action against the Third Defendant on the basis that it was commenced outside of the statutory three (3) year period provided by section 9 (2) of the Limitation Act in addition to the subject premises not being owned by the Second Defendant or managed and controlled by the Third Defendant (**the “Strike-Out Application”**).

[4] Before the Strike-Out Application could be ventilated before the Court, the parties agreed that the claim should be struck out against the Third Defendant and the Claimant agreed to pay the Third Defendant's costs which would be determined by a summary assessment.

### **Summary Assessment**

[5] The **Supreme Court Civil Procedure Rules, 2022** (the “CPR”) states that after the completion of a procedural interlocutory application costs must be summarily assessed. **Part 72 Rule 72.26 of the CPR** states,

**“72.26 Assessed costs – procedural applications.**

**(1) On determining any interlocutory application except at a case management conference, pre-trial review or the trial, the Court must —**

- (a) decide which party, if any, should pay the costs of that application;**
- (b) assess the amount of such costs; and**
- (c) direct when such costs are to be paid.**

**(2) In deciding which party, if any, should pay the costs of the application the general rule is that the unsuccessful party must pay the costs of the successful party.**

**(3) The Court must however take into account all the circumstances including the factors set out in rule 71.11 but where the application is —**

- (a) an application to amend a statement of case;**
- (b) an application to extend the time specified for doing any act under these Rules or an order or direction of the Court;**
- (c) an application for relief under rule 26.8; or**
- (d) one that could reasonably have been made at a case management conference or pre-trial review, the Court must order the applicant to pay the costs of the respondent unless there are special circumstances.**

**(4) In assessing the amount of costs to be paid by any party, the Court must take into account any representations as to the time that was reasonably spent in making the application and preparing for and attending the hearing and must allow such sum as it considers fair and reasonable.**

**(5) A party seeking assessed costs must on making any such interlocutory application supply to the Court and to all other parties a brief statement showing —**

- (a) the attorney's fees incurred or estimated;**
- (b) how that party's attorney's costs are calculated; and**
- (c) the disbursements incurred or estimated.**

**(6) The statement under paragraph (5) must comply with any relevant practice direction.”**

**[6] Rules 71.10 and 71.11 of the CPR sets out the circumstances and factors which are to be taken into account by a Court when exercising its discretion as to costs.**

**“71.10 Circumstances to be taken into account when exercising its discretion as to costs.**

**(1) In deciding what order, if any, to make about costs, the Court must have regard to all the circumstances, including —**

- (a) the conduct of all the parties;**
- (b) whether a party has succeeded on part of his case, even if he has not been wholly successful; Supreme Court Civil Procedure Rules, 2022**
- (c) any payment into court or admissible offer to settle made by a party which is drawn to the Court's attention and which is not an offer to which costs consequences under Part 35 and 36 apply.**

**(2) For the purposes of paragraph (1)(a), the conduct of the parties includes —**

- (a) conduct before, as well as during, the proceedings;**

- (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
- (c) the manner in which a party has pursued or defended his case or a particular allegation or issue;
- (d) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim; and
- (e) unreasonable conduct of any kind by any party in relation to the inclusion or exclusion of documents or authorities in any bundle and whether a joint bundle or otherwise.

(3) The Court may make an order that a party must pay —

- (a) a proportion of another party's costs;
- (b) a stated amount in respect of another party's costs;
- (c) costs from or until a certain date only;
- (d) costs incurred before proceedings have begun;
- (e) costs relating to particular steps taken in the proceedings;
- (f) costs relating only to a distinct issue in or part of the proceedings; and
- (g) interest on costs from or until a certain date, including a date before judgment.

(4) Where the Court would otherwise consider making an order under paragraph (3)(f), it must instead, if practicable, make an order under paragraph (3)(a) or (c).

(5) Where the Court has ordered a party to pay costs, it may order an amount to be paid on account before the costs are assessed.

.....

#### 71.11 Factors to be taken into account in deciding the amount of costs.

(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 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
- (i) in the case of costs charged by an attorney to his or her client —
  - (i) any agreement about what grade of attorney should carry out the work;
  - (ii) any agreement that may have been made as to the basis of charging; and
  - (iii) whether the attorney advised the client and took the client's instructions before taking any unusual step or one which was unusually expensive having regard to the nature of the case."

[7] In addition to those circumstances and factors a Court must ensure that the costs are necessary and proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being assessed.

[8] **Rule 72.13 of the CPR** states,

**“Assessment of costs.**

- (1) This rule applies to costs which by, or under these Rules, or any order or direction of the Court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund, other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative.
- (2) Subject paragraph (3), costs to which this rule applies shall be assessed on a standard basis, and on an assessment on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being assessed.”

[9] The crux of assessments under a CPR regime is that a Court must ensure that the costs awarded are reasonable and proportionate to ensure compliance with the overriding objective of the CPR that cases must be dealt with justly and at proportionate costs. This rationale has been confirmed by Klein J. in **Dr. Gauri Shirodkar v The Bahamas Medical Council (2021/PUB/jrv/00003), 6 February 2025.**

[10] As to what is reasonable, proper and proportionate, Klein J., in **Gateway Ascendancy Ltd. v. Bertram Alexander Wallace et al (2013/CLE/gen/01179)**, 2 May 2025 made the following findings,

**7. 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...”.

**8. 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 2022, 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].

**9. As a matter of general principle**, in conducting a summary assessment of costs, the court must apply the same principles as would be applied on a detailed assessment. However, 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)). This is also made clear by CPR 71.12 (3), which provides that a judge may, instead of summarily assessing costs, “direct that

**the whole or any part of the costs payable shall be subject to 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.”**

**10. In other words, the procedure was intended to achieve savings of time and effort by having costs speedily assessed by the judge who heard the application or trial and was therefore very familiar with the nature of the matter and what was involved. As noted, it does not require a line-by-line assessment and allowance or disallowance of the amounts claimed, although a judge may look at each item in considering whether the charges are reasonable and proportionate.”**

### **Assessment of the Bill of Costs**

- [11] As stated in the introductory paragraph, the Claimant failed to file his objections by the time ordered and up to the time of the assessment. Notwithstanding the lack of objections I am still duty bound to assess the Bill of Costs to ensure conformity with the aforementioned legal principles.
- [12] The Strike-Out Application, an interlocutory application, dealt with principles of law which are not novel to the jurisdiction. Despite the recent introduction of the CPR into the Bahamian jurisdiction, the principles applicable to a striking out application also basically remain the same.
- [13] I begin by considering the Schedule of Attorneys at pg. 2 of the Bill of Costs which lists the name of two Attorneys, Mr. Robert K. Adams KC (“**Mr. Adams**”), who was admitted to the Bahamas Bar in 1994 and Mr. Edward J. Marshall II (“**Mr. Marshall**”) who was admitted to the Bahamas Bar in 2011.
- [14] The Third Defendant seeks \$1,000.00 for Mr. Adams for the periods 2023 – 2025.
- [15] The Third Defendant seeks \$500.00 for Mr. Marshall for the 2023 period and \$600.00 for the 2024-2025 period.
- [16] The entries for Mr. Adams are claims for work done after the Third Defendant was served with the Claimant’s originating documents and for discussions with General Counsel for the Third Defendant on what strategy would be utilized. Notably, a claim is also made for time for Mr. Marshall for discussing strategy.

[17] I will not allow the entries claimed for Mr. Adams at Nos. 1, 2, 3 and 4. This reduces the Bill of Costs by \$4,500.00.

[18] As for the hourly rate for Mr. Marshall, I am of the view that \$500 for an Attorney 12 – 14 years' called from 2023 – 2025 is a reasonable rate. The reduction of the hourly rate from \$600 to \$500 for the 2024 – 2025 period again reduces the costs by another \$6,975.00.

[19] Turning to the remaining entries claimed in the Bill of Costs, upon reviewing the Bill of Costs in its entirety, I find that the work done was necessary and proper for the intended litigation and disposal of the case against the Third Defendant.

[20] When considering the proportionality principle, I am of the view that the time claimed for in some of the entries are excessive however as the principles for the consideration of a strike out application are not novel, as previously stated and in addition, Mr. Marshall is an Attorney with a considerable amount of experience. Moreover, the Claimant's application launched in response to the Strike-Out Application also did not contain principles that warranted the time spent and claimed.

[21] On the other hand, I take note of the fact that while the parties did eventually settle without the Strike-Out Application being determined by the Court, there was delay in doing so which led to the Third Defendant incurring additional costs to defend itself.

[22] I also take note of the fact that the agreement to discontinue the action as against the Third Defendant signifies that this brings the action against the Third Defendant to an end and there would not be any further opportunity to recoup the costs incurred by the Third Defendant.

[23] Accordingly, I reduce the costs claimed by a further \$10, 000.00.

[24] As for the entries for disbursements, inclusive of Messenger Services, Electronic Printing and Copies I find that the amount claimed for the costs, \$337.00, is reasonable.

[25] In view of the foregoing, the costs for professional charges in the Bill of Costs is reduced by \$21,475.00. \$45,950.00 reduced by \$21,475.00 amounts to 24,475.00 Value Added Tax in the amount of 10% is added therefore the total professional charges amounts to \$26, 922.50.

[26] In totality, the Bill of Costs, inclusive of the professional charges and disbursements is assessed in the amount of \$27,259.50.

**Dated this 16<sup>th</sup> day of January, 2026**

  
**Akeira D. Martin**  
**Assistant Registrar**