

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 2015/CLE/gen/00341

B E T W E E N

ASHLEY DAWSON-DAMER

Plaintiff

AND

(1) GRAMPIAN TRUST COMPANY LIMITED

(2) LYNDHURST LIMITED

Defendants

Before: Assistant Registrar Akeira Martin

**Appearances: Benjamin Williams KC appearing with John Minns for the Plaintiff
Nicholas Bacon KC appearing with Vanessa Smith for the First Defendant**

Hearing Dates: 26th and 27th January 2026

Ruling Date: 9th March 2026

RULING NO. 2

Taxation – Whether costs should be awarded for taxation – Interim Certificates – Interim Payments - Interim Certificates - Costs of Drafting and Preparing Bill of Costs – Definition of Proceedings – Incidence of costs of taxation proceedings – Rules of the Supreme Court, 1978

Introduction

[1] This Ruling disposes of the following three (3) issues which were ventilated by the parties over a two (2) day period.

- What amount should be awarded for the preparation of the First Defendant’s Main Bill of Costs filed 8th February 2023 (“the Main Trial Bill”)?
- Whether the First Defendant should be awarded the incidence of costs of the taxation?

- Whether there should be an interim certificate and/or payment ordered and a setting off of costs?
- [2] The background of this matter is set out in my first ruling dated 21st November 2025 and does not need to be restated (**“Ruling No. 1”**).
- [3] This second Ruling follows the commencement of the taxation of the First Defendant’s Main Trial Bill, the costs of which were ultimately agreed to by the parties after conducting a weeklong taxation. The parties also later agreed that the Plaintiff should pay interest on the agreed amount.
- [4] I also take this opportunity to annex the complete table of hourly rates which were allowed as only the hourly rates which were allowed for the First Defendant’s Bahamian Attorneys and English Attorneys were annexed to Ruling No. 1 inadvertently.
- [5] The parties now seek the Court’s assistance in the determination of the aforementioned issues.

Issue One - Amount awarded for preparation of the Bill of Costs

- [6] The First Defendant seeks a total of \$441,948.22 for the preparation of the Main Trial Bill. This amount does not include the costs of the incidence of the taxation, but it does include time spent for drafting the Main Trial Bill by Costs draftsmen, and preparation to finalize the Main Trial Bill by the First Defendant’s English and Bahamian Attorneys.
- [7] At the onset the costs claimed are reduced due to the decreased hourly rates for the Costs draftsmen and English and Bahamian Attorneys as reflected in the Addendum to Ruling No. 1 and the Addendum hereafter.

Bahamian Attorneys

- [8] In relation to the First Defendant’s Bahamian Attorneys, namely,
- Mr. Sean Moree (**“Mr. Moree”**). In addition to the decrease in his hourly rate, I have reduced Mr. Moree’s time for reviewing and certifying the bill of Costs and preparing the accompanying Affidavit of Disbursements, Statement of Parties and Notice of Taxation to 5 hours. Additionally, I have not allowed any time for Mr. Moree to prepare for and attend to Court on the Hearing of Taxation, undertaking calculations and settling the Certificate of Taxation as he was not present. Therefore, the amount allowed for Mr. Moree is now **\$3,250.00**.

- Mrs. Vanessa Smith (“Mrs. Smith”). I did not reduce Mrs. Smith’s time for reviewing and certifying the bill of costs and preparing the accompanying Affidavit of Disbursements, Statement of Parties and Notice of Taxation. I did, however, reduce Mrs. Smith’s time for preparing and attending Court on the Hearing of Taxation, undertaking calculations and settling the Certificate of Taxation to 160 hours. Therefore, the amount allowed for Mrs. Smith is now **\$75,000.00**.

[9] This brings the subtotal of the professional charges to \$78,250.00. In addition, Value Added Tax at the rate of 10% is added thereon which brings the total amount of professional charges to \$86, 075.

[10] The photocopying charges remained the same at \$15,000.00.

[11] This brings the total amount allowed for the Bahamian Attorneys encompassing disbursements and professional charges to **\$101,075.00**.

Costs Draftsmen

[12] In relation to the First Defendant’s Costs draftsmen, there were no reductions made to their hourly rates. Notwithstanding, receiving the amount claimed in its entirety is not to be expected on a party and party basis.

[13] The final decision in the action was rendered on 17th January 2021 where the Court stated that “it would hear the parties on costs in the event that something other than the usual order for following the costs following the event” was being advanced.

[14] After hearing the parties on costs, in a decision handed down on 18th October 2022, the Court awarded the First Defendant its trial costs (“**the Costs Ruling**”). Despite this, the time claimed by the First Defendant’s Costs draftsmen begin from February 2022 – September 2022 (**the “Pre-Ruling Period”**) and account for a significant amount of the costs sought for their preparation and drafting of the Main Trial Bill.

[15] Was this early preparation and drafting premature? Or, given the longevity of the matter and the extensive volume of documents filed by all parties involved, was the early preparation, despite not being aware of what the Court’s decision would be in the Costs Ruling warranted?

[16] The earlier entries in the Pre-Ruling Period consist of the Costs draftsmen becoming familiarized with the matter in its entirety, covering invoices, fee and time sheets and engagement letters from both English and Bahamian attorneys. From the latter entries in the Pre-Ruling Period, it appears as if the costs draftsmen began drafting the Main Trial Bill and had sent a draft to the First Defendant’s English attorneys.

[17] After the Costs Ruling was delivered the entries converted to reviewing the same, a continuation of the notes from the First Defendant's English attorneys and editing the Main Trial Bill to ensure its conformity with the Costs Ruling, i.e. omitting the entries claiming costs for the Simon Taube Queens Counsel and Adjournment Application.

[18] As previously stated at para. 155 of Ruling No. 1, costs draftsmen are invaluable to the assistance of costs recovery as they can prepare a bill of costs while a solicitor or barrister carries on the day-to-day legal work on behalf of their clients. While the First Defendant's attorneys took a gamble at beginning the preparation and drafting prior to the Costs Ruling being delivered, it is a gamble that they won and it would be unfair to deprive the First Defendant of the costs incurred by the costs draftsmen prior to.

[19] However, the early preparation did come with some consequences as they had to incur additional work to edit the Main Trial Bill to remove the entries relating to the costs which were being claimed for the Simon Taube Queens Counsel and Adjournment Applications, whereby the Plaintiff was awarded costs. In the circumstances, I do not think that it would be reasonable to allow the entries from 26/10/22 – 07/11/2022. This leads to a reduction of \$7,590.00.

[20] I then conducted a further review of the entries and disallowed numerous entries for perceived excessiveness and the preparation of tables and spreadsheets which related to the matter itself but not the drafting of the Main Trial Bill; those disallowed entries amounted to \$70,240.00.

[21] This leads to a total reduction of 77,830.00 which when deducted from the total of \$183,240.00 amounts to **\$105,410.00**.

English Attorneys

[22] Taylor Wessing claims £123, 546.50 in costs for its part in the preparation of the Main Trial Bill, just £59,693.50 less than the actual costs draftsmen. This raises the question of whether the costs of Taylor Wessing were necessarily and properly incurred as the ideology of retaining costs draftsmen is to permit the attorneys to disburse the burden of drafting the bill of costs from its firm.

[23] I am cognizant of my findings at paras. [102 – 104] and [142] of Ruling No. 1 which highlighted the matter's multijurisdictional and factually complex nature that yielded voluminous documents and ultimately led to the capacious Main Trial Bill and subsequently the decision to allow costs for more than the usual two Counsel.

[24] Except for the time spent by Kirstie McGuigan ("**Ms. McGuigan**") there is no duplication with the time spent by Taylor Wessing for reviewing and preparing the Main

Trial Bill. I do take exception, however, to the amount of time claimed by Ms. McGuigan, Ms. Caroline Tayler and even Ms. Sacha Somerston who, in my view, did not need to put in the amount of time to review and tend to the preparation of the Main Trial Bill when there were Trainee Solicitors and English costs draftsmen attended to the same. With that in mind I consider it reasonable to reduce the total amount by £40,000.00 which amounts to **£83, 546.50** or **\$102,762.20**.

Issue Two - The Incidence of the costs of Taxation

[25] While the parties agree that the First Defendant should receive its costs for preparing the bill of costs, they differ when it comes to whether the First Defendant should receive any further costs regarding the taxation.

[26] The Plaintiff submits that the First Defendant should not be awarded costs and that if an order for costs was made it should be in favor of the Plaintiff as she was successful in reducing the amount of costs originally claimed by the First Defendant.

[27] The First Defendant submits that it should be awarded the costs of the taxation and relies on the interpretation of **Order 62 rule 27 of the English Rules of the Supreme Court** and its interpretation in **Chrulew and Others v. Born-Reid & Co [1992] 1 WLR 176**.

[28] It is well known that costs were usually awarded to the receiving party for the preparation of a bill of costs and its accompanying documents as well as the attendance at the taxation in addition to such disbursements as copies, filing fees and service fees associated with those documents.

[29] Due to the magnitude of the Main Trial Bill, understandably, the receiving party requests an award of costs outside of the aforementioned scope.

[30] The relevant provisions of the **Rules of the Supreme Court, 1978 ("RSC")**, with respect to awarding costs are set out below.

[31] **O. 59 r. 3 of the RSC** states,

"3. (1) Subject to the following provisions of this Order, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceeding except under an order of the Court.

(2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs."

[32] O. 59 r. 4 of the RSC states,

“4. Costs may be dealt with by the Court at any stage of the proceedings or after the conclusion of the proceedings; and any order of the Court for the payment of any costs may, if the Court thinks fit, require the costs to be paid forthwith notwithstanding that the proceedings have not been concluded.”

[33] O. 59 r. 5 of the RSC states,

“The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account —

(a) any such offer of contribution as is mentioned in Order 16, rule 10, which is brought to its attention in pursuance of a reserved right to do so;

(b) any payment of money, into court and the amount of such payment.”

[34] O. 59 r. 9 (1) (2) and (4) of the RSC 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.

(2) Paragraph (1) shall not apply to costs which by or under any order or direction of the Court —

(a) are to be paid to a receiver appointed by the Supreme Court in respect of his remuneration, disbursements or expenses; or

(b) are to be assessed or settled by the Registrar, but rules 26, 29 and 30 shall apply in relation to the assessment or settlement by the Registrar of costs which are to be assessed or settled as aforesaid as they apply in relation to the taxation of costs by the Registrar.

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

(a) to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified; or.

(b) to a gross sum so specified in lieu of taxed costs.”

[35] **Rules 26, 29 and 30** of the RSC pertain to costs payable to one party by another or out of a fund, costs payable to a trustee out of the trust fund and applications of general order under the Bahamas Bar Act respectively, therefore I do not find them applicable.

[36] The remaining provisions set out above give the Court a discretion with respect to the awarding of costs. Although in most cases, the successful party to litigation is entitled to the costs of the litigation, to be paid by the unsuccessful party.

[37] While the provisions are usually interpreted as the Court having a discretion to award costs in relation to an interlocutory hearing or a trial, the issue raised by the parties in the instant case has led me to consider the interpretation of the word “**proceedings**” referred to in the provisions.

[38] **The Legal Information Institute of Cornell Law School** defines a proceeding as,

“Proceeding refers to any method by which the authority of a court, tribunal, or administrative agency is invoked. The term broadly encompasses all procedural steps or means of seeking judicial or administrative relief, including individual motions, hearings or stages within a larger legal action. In its broadest sense, a proceeding includes the regular progression of a lawsuit or the conduct of any formal legal process from initiation to resolution.”

[39] Based on this definition a taxation hearing is a proceeding and under the RSC a Registrar, acting as a taxing master, is vested with the discretion to award costs at any time during the taxation or its conclusion, to be taxed if not agreed, at a specified proportion or to a gross sum so specified in lieu of taxed costs.

[40] In addition to considering any payment of money into court, a taxing master should also consider the well-known factors recited by Charles J. (as she then was) in **Lyford Holdings N.V. v. Vernes Holding Ltd. 2018/CLE/gen/1050**.

[41] The First Defendant was the overall successor in the litigation between the parties and was awarded its costs to be taxed if not agreed. As a result, it filed the Main Trial Bill which was to be taxed on a party and party basis. While there was an offer to the First Defendant by the Plaintiff, prior to the commencement of the taxation, it was not satisfactory to the First Defendant which resulted in the taxation hearing being conducted.

[42] Despite not receiving the totality of its costs after the taxation commenced, this is the basis of a ‘party and party’ taxation, and it should have never been the expectation of

either party that the First Defendant would receive all of its costs or that the Plaintiff was the victor because the costs were reduced.

[43] Both parties no doubt incurred costs for travel, accommodation and other miscellaneous items not included in the entries for the preparation of the Main Trial Bill. However, one must not stray away from the fact that the taxation proceedings resulted from the First Defendant's overall victory in the litigation. While there is no Bahamian equivalent to the English O. 62 rule 27 RSC, I do consider that the First Defendant should be awarded the costs of the taxation, which the Bahamian Order 59 of the RSC allows a taxing master to do.

[44] The issues between the parties have been ongoing for nearly a decade. As this is not an order for costs that is usually made on taxation and bearing in mind that an amount has already been awarded for the preparation of the Main Trial Bill, instead of ordering costs to be taxed if not agreed, I find that costs should be awarded in the amount of **\$300,000.00**.

Issue Three - Whether a certificate should be issued and/or interim payment and set off of costs should be ordered?

[45] By an Amended Summons filed 22nd January 2026 ("**Amended Summons**") the First Defendant seeks orders for (1) the costs payable to the Plaintiff by the First Defendant from various costs orders to be set off against the costs claimed in the First Defendant's Main Trial Bill pursuant to **O. 59 r. 16 of the RSC** and (2) the issuance of an interim costs certificate pursuant to **O. 59 r. 15 of the RSC** and/or interim payments on account of the costs settled by the parties for various costs orders.

[46] The First Defendant also seeks an order for the Plaintiff to pay the costs of the Amended Summons to be taxed if not agreed. The Amended Summons is supported by the Fourth Affidavit of Flodira Colle filed 17th December 2025.

Interim Certificates

[47] **O 59 r. 15 of the RSC** states,

"15. (1) The Registrar may from time to time in the course of the taxation of any costs by him issue an interim certificate for any part of those costs which has been taxed."

[48] **O 59 r. 31 (5) of the RSC** states,

“(5) An application under this rule for review of the Registrar’s decision in respect of any item shall not prejudice the power of the Registrar under rule 15 to issue an interim certificate in respect of items his decision as to which is not objected to.”

[49] The provisions were made clear by Alfred J. in **Albury v. Albury [1998] BHS J. No. 74**, who had to consider whether a deputy registrar was correct in issuing an interim certificate for costs more than the number of unchallenged items. He succinctly held,

“16.....That is, an interim certificate can be issued only "in respect of the items his decision as to which is not objected to" and calculated in accordance with the sum of each such specified item in the Bill of costs.”

[50] The First Defendant argues that interim certificates should be issued as follows:

**“Main Trial Bill – The agreed sum of \$4,333,012.18 plus the taxed costs of preparing that Bill of Costs
Amended Account Summons Bill – The agreed sum of \$179,762.72 (\$171,812.72 plus the agreed costs of preparing the Bill of Costs in the sum of \$7,950.00)”**

[51] The Plaintiff has already made a good faith payment of \$3,000,000.00 which renders a payable balance of \$1, 333,012.18.

[52] The Plaintiff argues that there should be no issuance of interim certificates as the parties are on the verge of completing the taxation and being issued final certificates.

[53] By the Court’s interpretation of **O 59 r. 16 of the RSC** a discretion is given to issue an interim certificate on sums which are not objected to. While I have made decisions at the beginning of this ruling with respect to the incidence of the costs of the taxation and the amount allowed for preparing and drafting the Main Trial Bill, those decisions are subject to review and appeal which would result in a delay in issuing a final certificate.

[54] In the circumstances, it is ordered that interim certificates be issued for the agreed sum of the Main Trial Bill only and for the agreed sum plus the agreed costs of preparing the Amended Account Summons Bill of Costs; payment of such sums shall be made within ninety (90) days of this ruling.

[55] For clarity, an interim payment pursuant to the RSC is not being awarded as the Rule under the RSC refers to interim payments for damages.

Setting off costs

[56] **O 59 r. 16 of the RSC** gives the Court the discretion to set-off costs and states,

“Where a party entitled to be paid costs is also liable to pay costs, the Registrar may —

(a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or

(b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.”

[57] Both the Plaintiff and the First Defendant have been awarded costs which, at this juncture, have been quantified. Aside from the Main Trial Bill and the Amended Account Summons Bill however, there still appears to be a discrepancy between the parties with respect to the amounts that should be awarded. Despite the generally adversarial relationship between the parties, their attempts to settle, while always not fruitful, have been observed. Accordingly, I decline to make the order setting off costs at this time. This decision does not prevent the parties from filing any further applications for setting off costs.

[58] With respect to the issue of costs for the “Consequential Matters and Directions Hearing”, the hearing itself involved attorneys for both parties presenting detailed arguments in support of their respective positions over a 2 day period, namely who should be awarded the incidence of the costs of the taxation and whether there should be an interim certificate issued and a setting off of the costs. Ordinarily, a directions hearing would require no more than an hour for the Court and the parties to determine the way forward.

[59] In addition to the amount awarded to the First Defendant for the preparation of the Main Trial Bill, the First Defendant is awarded its costs for its successful arguments on the incidence of the costs of the taxation along with its successful arguments on the issuance of interim certificates. The First Defendant’s arguments were not successful however in relation to its setting off arguments.

[60] In keeping with the spirit of awarding a gross sum in lieu of taxed costs, the First Defendant is awarded costs in the amount of **\$45,000.00**.

Dated this 9th day of March 2026


Akeira Martin
Assistant Registrar

