

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**Common Law and Equity Division**  
**2022/COM/LAB/01117**

**B E T W E E N**

**NERISSA A. GREENE**

**Claimant**

**AND**

**WILLIAM ARTHUR BRANVILLE MCCARTNEY**

**First Defendant**

**AND**

**W.A. BRANVILLE MCCARTNEY**  
**Trading as Halsbury Chambers**

**Second Defendant**

**Before:** Assistant Registrar Akeira Martin  
**Appearances:** Mrs. Krystal Rolle K.C. and Mr. Darron Cash for the Claimant  
Mr. Carl Bethel K.C. for the Defendants  
**Heard:** On the Papers

**RULING**

**Summary Assessment – Civil Procedure Rules - Withdrawn Applications - Statement of Costs – Necessary and Proper Costs – Fair and Reasonable Costs – Proportionality**

[1] This is a summary assessment of the Claimant’s costs which are set out in the Statement of Costs filed 5<sup>th</sup> May 2025 (the “Statement of Costs”). By Order made 17<sup>th</sup> April 2025, it was ordered that the Claimant provide a statement of costs to set out the costs sought after an award was made for the Defendants to pay costs which were to be summarily assessed. The Defendants filed their objections to the Statement of Costs on 26<sup>th</sup> May 2025 (the “Objections”).

## **Brief Background**

[2] By the Claimant's Amended Writ of Summons filed 29<sup>th</sup> November 2022 (the "Amended Writ") the Claimant sought from the Defendants, damages for breach of a Partnership Agreement, damages for unfair dismissal and wrongful dismissal, general damages, interest and such further or other relief as the Court would deem just. The claim against the First Defendant stemmed from his alleged breach of a Partnership Agreement dated 7<sup>th</sup> March 2008. The Claim against the Second Defendant stemmed from the Claimant's dismissal by the Second Defendant on 5<sup>th</sup> October 2021.

[3] The factual background of the Claim may be found in the Amended Writ.

[4] The Defendants filed and later sought leave to withdraw several interlocutory applications, namely the:

- Affidavit filed 15<sup>th</sup> November 2022;
- Ex Parte Summons and Affidavit filed 19<sup>th</sup> December 2022;
- Summons and Affidavit in support filed 2<sup>nd</sup> March 2023 seeking, inter alia, an Order for Security for Costs on the ground that the Amended Writ was not properly issued in accordance with Order 6 Rule 4 (1) (a) of the Rules of the Supreme Court (the "RSC"),
- Summons and Affidavit in support 4<sup>th</sup> April 2023 seeking an Order to Strike out the Amended Writ on the ground that the Amended Writ was not properly issued in accordance with Order 6 Rule 4 (1) (a) of the RSC,
- Notice of Application filed 24<sup>th</sup> August 2023 again seeking an Order for Security for Costs on the ground that the Claimant failed to give her address in the Amended Writ or gave an incorrect address.

(collectively referred to as the "Interlocutory Applications").

[5] The Interlocutory Applications were never heard and determined by the Court and the Defendants were granted leave to withdraw the Interlocutory Applications. Costs were awarded to the Claimant to be summarily assessed.

## **Summary Assessment**

[6] 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.”**

[7] 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 in to 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;**

(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.”**

[8] 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.

[9] 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.”**

[10] The crux of assessments under a CPR regime is that a Court must ensure that the costs awarded are fair, necessary, reasonable and proper 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.

[11] 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 & Demouloid 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 Statement of Costs**

[12] By the Claimant’s Statement of Costs, the Claimant claims \$20, 625.00, seeking professional charges only.

[13] By the Defendants’ Objections, they submit that the Schedule of Work Done in the Statement of Costs is replete with extravagantly high and unreasonable billings for “reviewing and considering” a number of simple Summonses and comparatively short Affidavits in Support, adding that it would take an experienced Attorney not more than ten (10) minutes at most.

[14] More specifically, the Defendants objected to Nos. 1 – 11 on the basis that they were undated, Nos. 12 – 17 on the basis that the actions therein did not take more than five (5) minutes at most and No. 18 on the basis that the legal submissions were not complex, that they withdrew the Interlocutory Applications, raised no new claims and would have only taken no more than half an hour at most.

[15] The Defendants also took objection to the entries for the stale dated Affidavits in Response as they were not filed by the Claimant until the 5<sup>th</sup> May 2025, after the start of the assessment and there was no explanation whatsoever for the delay in filing them.

- [16] The Defendants rely on their legal submissions and the precedent set in **Minette Cartwright v Halsbury Chambers et al 2022/COM/lab/00017**, where Darville-Gomez J., after a full hearing where multiple Affidavits were filed by both parties, fixed costs at \$2,500.00.
- [17] Beginning with the hourly rates claimed, \$1,000.00 is claimed for Mrs. Krystal D. Rolle, K.C. (“Mrs. Rolle K.C.”) who was called to the Bahamas Bar on 20<sup>th</sup> October 1995 and designated as King’s Counsel on 31<sup>st</sup> January 2020. Given the nature of the matter, I reduce the hourly rate of Mrs. Rolle K.C. to \$900.00.
- [18] I find that the \$500.00 claimed for Mrs. Nadia A. Wright who was called to the Bahamas Bar on 20<sup>th</sup> October 2002 is reasonable.
- [19] Turning to the objection that the items at Nos. 1 – 11 are undated, I refer to Practice Direction No. 12 of 2023 (the “Practice Direction”) which specifies the format that should be followed when drafting a bill of costs. Seen throughout the Practice Direction is the requirement to date the items at 2.3 (ii) and place the items in chronological order at 2.3 (iv) and 3.5.
- [20] What, if anything, is the penalty for failing to date the items in accordance with the Practice Direction? The determining factor is the language used in the Practice Direction. 2.3 (ii) (iv) and 3.5 of the Practice Direction which states,
- “2.3 Every bill of costs should be divided into eight columns as follows –**  
**(ii) Column 2 should contain the items’ dates.**  
**(iv) Column 4 should contain a description of each item of work arranged chronologically; the date (s) on which or period (s) during which it was done; the identity of the person (s) doing the work; the time spent; the applicable hourly rates; and any disbursements.”**  
**3.5 The work done and disbursements incurred should be itemized and set out chronologically....”**
- [21] The language used in the Practice Direction is should as opposed to must. This makes the inclusion of the dated items and placing the items claimed in chronological order discretionary rather than mandatory. They cannot be said to be necessary information for the assessment.
- [22] In this instance, Nos. 1, 3, 4, 7, 8, 9 and 10 are all entries for time spent reviewing and considering the Interlocutory Applications and meeting with the Claimant to discuss the same. In the entries that follow, steps were taken by the Claimant, showing that work was done as a result. Therefore, those entries are allowed but at a reduced time of a quarter of an hour.

[23] Notwithstanding Nos. 6 and 11, while they can be allowed theoretically despite being undated, they were filed after the Defendants' Interlocutory Applications were withdrawn which does not provide any comfort to the Court that they were in fact prepared or considered before the withdrawal. The evidence before me suggests that they were not.

[24] As for the items in Nos. 12, 13, 14, 15, 16 and 17 they included entries for reviewing letters and drafting email correspondences, each at a quarter of an hour, which although objected to by the Defendants, I accept as a reasonable time to perform the tasks set out and will allow.

[25] In relation to No. 18, I agree with the Defendants' objection that the legal submissions were not complex and raised no new claim and reduced the time sought to one hour.

[26] No further objections were taken with respect to the remaining entries Nos. 19 – 23 which included time sought for two attendances before the Court, reviewing, amending and preparing the draft Order, drafting and preparing submissions on Costs and reviewing and considering submissions.

[27] The reductions upon the completion of the aforesaid assessment leads to the amount of \$8,775.00.

[28] While \$8,775.00 has been found to be the reasonable amount, for entries deemed to be necessary and proper, the question of proportionality comes into play. While there were several Interlocutory Applications filed by the Defendants those applications were not heard as they were withdrawn.

[29] Accordingly, I do not consider that figure to be proportionate in the circumstances and reduce it by an additional \$3,000.00.

[30] In view of the foregoing, the final sum awarded to the Claimant is **\$5,775.00**.

**Dated this 24<sup>th</sup> day of March, 2026**

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