

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 with John Minns for the Plaintiff
Nicholas Bacon KC with Vanessa Smith for the First Defendant**

Heard: On the Papers

RULING NO. 3

First Defendant's Objections to Award of Fixed Costs in Ruling No. 2

Taxation – Rules of the Supreme Court – Gross sum in lieu of fixed costs – Factors to consider when making order – Objections of Taxation

1. This brief Ruling addresses whether the Court exceeded its jurisdiction to award the First Defendant a gross sum in lieu of taxed costs (fixed costs) in my previous ruling dated 9th March 2026 (“Ruling No. 2”).
2. Definitions from Ruling No. 1 and Ruling No. 2 are adopted herein.
3. By Ruling No. 2, it was ordered, *inter alia*, that the incidence of the costs of the taxation should be fixed costs in the amount of \$300,000.00 and that the costs following the hearing of the “Consequential Matters and Directions Hearing” were also to be fixed in the amount of \$45,000.00. Both awards of costs were made in favor of the First Defendant.

4. The First Defendant objects to the awards of fixed costs by its Objections to Taxations dated and filed 16th March 2026 (the “Objections”).
5. The essence of the First Defendant’s objections is that there was no sound or rational basis upon which the Court could determine the costs of the taxation reasonably and necessarily incurred in amount, that the amount allowed was neither a reasonable sum nor a necessarily incurred sum which fell substantially below a reasonable and necessary sum to allow for the costs of the taxation of the Main Trial Bill.
6. Moreover, the First Defendant submits that there was no information provided to the Court in respect of the amount of costs incurred by the First Defendant in the taxation as there was no bill or statement of costs provided quantifying the costs of the taxation and so submissions by the parties.
7. The issue of fixed costs was recently considered and discussed by Winder CJ in **Gary A. Ritchie v Delores Victoria Cartwright [2024] 1 BHS J. No. 70** who stated,

“[6.] Under the Rules of the Supreme Court, if the Court indicates that it intends to fix costs and the receiving party indicates that they wish to “try their luck” in a taxation instead of having their costs fixed, it appears that, as a general rule at least, they should be permitted to pursue their right to a taxation: Bain v Family Guardian Insurance Co Ltd (2023) 101 WIR 32 at paras [43] to [45]. Here, neither party objected to the Court fixing costs after I indicated my intention to do so. Quite to the contrary, the Defendant acted pursuant to the directions that I gave and filed a bill of costs on 11 January 2024.

[7.] By the bill of costs filed on behalf of the Defendant, Counsel for the Defendant claims professional fees in the amount of \$105,075 net of VAT, VAT on professional fees totaling \$23,116.50, total disbursements of \$3750 and VAT on expenses totaling \$375. No written representations on quantum were received from Counsel for the Plaintiff but the Plaintiff was afforded a reasonable time within which to submit such representations. The Plaintiff’s failure to take up the opportunity to make representations does not relieve me of the need to execute my stated intention of fixing the costs of this action.

[8.] The task undertaken by the Court when it exercises its discretion under the Rules of the Supreme Court to order a gross sum in lieu of taxed costs is not the same as in a taxation within the province of the Registrar. The assessment is not an item-by-item assessment. Rather, it is a broad determination of what is fair and reasonable based on the submissions of counsel and the judge’s own knowledge and experience and familiarity with the matter.

[9.] In William Downie v Blue Planet Limited SCCivApp & CAIS No. 188 of 2019 (5 March 2020), a decision refusing an extension of time to appeal the decision that I made fixing the costs payable to the intended appellant at first instance, Sir Michael Barnett P had occasion to consider in some detail the jurisdiction of the Court to fix costs under the Rules of the Supreme Court. He said at paras [23] to [30]:

23 It is settled law that the court has a wide discretion as to costs. Section 30 of the Supreme Court Act provides:

30. (1) Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid.

24 Order 59 Rule 2 of The Rules of The Supreme Court provides:

(2) The costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that Court shall have full power to determine by whom and to what extent the costs are to be paid, and such powers and discretion shall be exercised subject to and in accordance with this order.

25 These provisions give the court a wide discretion as to whether the costs are payable by one party to another; the amount of those costs; and when they are to be paid. This is specifically set out in the English Civil Procedure Rules Rule 44, but in my judgment represent the law as expressed in the Supreme Court Act and the Rules of The Supreme Court.

26 As far back as Wilmott v Barber (1881) 17 Ch.D. 772 Jessell MR said:

‘The judge has a large discretion as to costs. He may make the defendant pay the costs of some of the issues in which he failed, although he may have succeeded on the whole action. Or he may say that both parties are wrong, but that he could not apportion the blame in a definite proportion, and therefore would dismiss the claim without costs. Or he might say that the plaintiff should have half the costs of the action, or some other aliquot part.

Or he may follow the course which I sometimes adopt, and I generally find that the parties are grateful to me for doing so, namely, fix a definite sum for one party to pay to the other, so as to avoid the expense of taxation, taking care in doing so to fix a smaller sum than the party would have to pay if the costs were taxed. [Emphasis Added]

27 The judge has a wide power to fix a definite sum that one party pays the other party instead of ordering costs to be taxed.

28 This is provided for in Order 59 Rule 9 which 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.

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

(b) to a gross sum so specified in lieu of taxed costs. [Emphasis Added]

29 The issue is how does the court go about fixing that sum?

30 In McAteer v Devine [2016] NICA 46, the Court of Appeal of Northern Ireland had to consider an appeal from the exercise by a trial judge of his power to fix cost under the Irish Rule similar to our Order 59 Rule 9. After considering various authorities, including the decision in Leary v Leary (1987) 1 WLR 72 and the other authorities referred to in the intended appellant's skeleton submissions and relied upon by the intended appellant in this application, the court said:

[27] The principles which we have distilled are as follows:

(i) The purpose of the rule is to avoid expense, delay and aggravation involving a protracted litigation arising out of taxation. Such an aim would be achieved especially, though not exclusively, in complex cases.

(ii) The discretion vested in the judge is not subject to any formal restriction.

(iii) The order does not envisage any process similar to that involving taxation. The approach should be a broad one. A judge is not obliged to receive evidence on oath or anything more than some evidence as to the estimated costs before making such an order.

(iv) Although the discretion is unlimited, it must be exercised in a judicial manner. An example of acting in an unjudicial manner would include eg "clutching a figure out of the air without any indication as to the estimated costs".

(v) The court will only interfere with the exercise of the discretion by the trial judge if he/she has erred or was plainly wrong.

8. Therefore, when the Court exercises its discretion to award a gross sum in lieu of taxed costs, i.e. fix costs, it must do so based on some evidence as to the estimated costs before awarding the gross sum. It may consider whether to award the gross sum to avoid

expense, delay and any annoyance in relation to a lengthy litigation stemming from the taxation and is helpful in complex cases but not limited thereto. To award a figure without any consideration of the estimated costs is to act outside of the statutory discretion.

9. Regrettably, the First Defendant refers to the order of the Court as a shortcut as it gleans that there was no evidence and submissions proffered for the consideration of the amount awarded and as it was not satisfied with the reason for the order for gross sums being the awareness of the length of the ongoing dispute between the parties.
10. With respect to the incidence of the costs of the taxation, the order for costs being sought stemmed from the taxation of the Main Trial Bill. Being cognizant of the amount sought in the Main Trial Bill as well as being provided with invoices for items such as travel and hotel expenses and setting hourly rates and other fees for all involved in relation to the trial of the action, I considered that the same categories of costs would be comprised in the incidence of costs of the taxation of the Main Trial Bill and used those as an estimate of the costs incurred by the First Defendant in the ongoing taxation proceedings.
11. It was based on those figures, consideration of the total sum claimed in the Main Trial Bill along with the figure that was awarded for the preparation of the Main Trial Bill that the gross sum of \$300,000.00 was awarded as it was thought to be fair and reasonable in the circumstances.
12. The same information was also considered with respect to the Consequential Matters and Directions Hearing as again, it stemmed from the taxation of the Main Trial Bill, and the Court was apprised of the hourly rates and fees of all involved. Resultingly, the figures were not plucked from thin air.
13. After becoming familiar with the matter, which has previously been acknowledged as a complex and contentious one, with settlements in the taxations only following intense preparations and lengthy hearings, I exercised my wide discretion to fix the costs based on the figures before me for the taxations as those figures as well as the First Defendant's evidence for the Main Trial Bill were considered useful estimates of the costs sought to be claimed.
14. Nonetheless, it is never the contention of the Court to deprive parties of being heard and while I am of the view that the aforementioned Supreme Court and Court of Appeal cases differ slightly on the facts as they did not involve taxations where the Court had certain information before them, the decision to award the fixed costs in Ruling No. 2 is varied as follows:

- The incidence of the costs of the taxation is awarded to the First Defendant to be taxed if not agreed, and
- The First Defendant is awarded 75% of its costs for the Consequential Matters and Directions Hearing to be taxed if not agreed.

Dated this 2nd day April 2026


Akeira Martin
Assistant Registrar

