

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
Claim No. 2025/CLE/gen/FP/00185

IN THE MATTER of a Condominium Declaration dated 4th day of October, A. D. 1988 made in the name of Albacore Development Limited by virtue of the provisions of The Law of Property and Conveyancing (Condominium) Act, respecting the property called Lucayan Towers South Condominium Association situate in the City of Freeport on the Island of Grand Bahama in the Commonwealth of The Bahamas.

AND IN THE MATTER of a Notice of Intention to Revoke Occupancy Certificate respecting the property called Lucayan Towers South Condominium Association given in a letter dated 2nd July 2024.

AND IN THE MATTER of The Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act, and The Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) (Amendment of Agreement) Act, and The Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) (Amendment of Agreement) (No. 2) Act.

AND IN THE MATTER of Bye-laws 11, 12, and 14 and other provisions of The Freeport (Building Code and Sanitary Code) Bye-laws.

AND IN THE MATTER of an application by Lucayan Towers South Condominium Association and Lawrence Investments Limited for permission to make application for an Order of Committal.

AND IN THE MATTER of an *Ex Parte Order* made by the Hon. Mr. Justice Loren Klein dated 18th day of July, A. D., 2024 and a subsequent Order dated 14th day of August, A. D., 2024.

BETWEEN:

(1) LUCAYAN TOWERS SOUTH CONDOMINIUM ASSOCIATION
(2) LAWRENCE INVESTMENTS LIMITED

Claimants

AND

GRAND BAHAMA UTILITY COMPANY LIMITED

Defendant

Before: The Honourable Mr. Justice Loren Klein
Appearances: Ms. Meryl Ginton for the Plaintiff
Mr. Edward Marshall II for the Defendant
Hearing dates: Written submissions, 9 February 2026

RULING

KLEIN, J

Costs—Summary Assessment—Committal Application—Reasonable and proportionate costs—Factors—Set-off—Equitable considerations

INTRODUCTION AND BACKGROUND

1. This is the Court’s short form judgment summarily assessing costs following the claimants’ successful application for committal or, in the alternative, the imposition of a fine against the defendant company and/or its officers or directors for breach of an injunction granted by this Court.
2. In my judgment dated 15 January 2026, I found that the defendant had breached the injunction, for which it was fined \$6,000.00, and the claimants were awarded their costs, which I indicated would be summarily assessed following the receipt of written submissions and any draft statements of costs.
3. The claimants seek their costs of the committal application in the amount of \$26,490.00, including disbursements in the amount of \$990.00. They relied on a draft statement of costs and submissions served on 10 February 2026, which contained 18 entries.
4. The Defendant lodged reply submissions and points of objection on 13 February 2026.

ANALYSIS AND DISCUSSION

Legal principles

5. The principles applicable to the incidence and assessment of costs are well known. In a nutshell, they are as follows:
 - (i) The court has full power and discretion to decide the incidence of costs—that is, whether costs are payable, by whom, the amount, and when they are to be paid (s. 30, *Supreme Court Act*; CPR 71.9, 71.10). In exercising its discretion to order costs, the Court is to have regard (among other factors) to: (i) the conduct of the parties; (ii) whether a party succeeded on some issues, even if not wholly successful; (iii) whether the pursuit of an issue has been unreasonable and increased costs; and (iv) whether reasonable notice of issues intended to be taken was given to the other side.
 - (ii) The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party (“costs follows the event”), although the court has a discretion

to make any other order as may be required to do justice having regard to all the circumstances of the case (CPR 71.6(2)).

- (iii) In carrying out an assessment, the court must only allow costs that were: (a) proportionately and reasonably incurred; and (b) proportionate and reasonable in amount (CPR 71.11(1)). In doing so, the Court must have regard to all the circumstances of the case, but in particular it must give effect to any orders already made, and must also have regard to (among others) the following matters: (i) efforts made to resolve the dispute; (ii) the amount or value of money or property involved; (iii) the importance of the matter to the parties; (iv) the complexity or novelty of the matter; (v) the skill, specialized knowledge and responsibility involved; (vi) the time spent on the matter; and (vii) the care, speed and economy with which the case was prepared (71.11(3)).
- (iv) Further, the court is concerned to ensure that: (i) the sum is reasonable, using the benchmark of work done by the reasonably competent attorney; and (ii) that it is fair to both the receiving and paying party. Factors for consideration include those listed at 5 (iii) above.
- (v) Summary assessment is dealt with at CPR 71.12. In summary, it provides that as a general rule a judge hearing an application will summarily assess the costs of the application immediately or as soon as practicable, or in the case of a trial, immediately after delivery of judgment or as soon as practicable. However, instead of summarily assessing the costs in respect of an application or trial, the judge may direct that a detailed assessment be conducted by the Registrar.
- (vi) The receiving party or party claiming costs must provide to the court a draft Statement/Bill of Costs (“BOC”) to assist with summary assessment and the court must allow the parties a reasonable opportunity to be heard (*Robert Forbes v Ministry of Tourism* [2021/COMO/lab/00038; *Dr. Gauri Shirodkar v Bahamas Medical Council* [2021/PUB/jrv/00030]).

Bill of Costs

6. The claimants submitted a BOC in respect of a single fee earner, with 15 years’ call, billing at \$600.00 per hour. The claimants billed 29 hours for pre-hearing correspondence, preparation and drafting, 8 hours’ attendance time at court, and a further 5.5 hours for post-judgment correspondence and preparation of the draft BOC.

Relevant factors

7. The claimants drew attention to a number of factors which were said to be present in the instant case, and which it was contended are matters that the court should consider in determining whether the costs claimed are reasonable and proportionate:

- (i) that there were previous orders made which ought to have been given effect to, and which necessitated the current application;
- (ii) that there were efforts made by the claimant before and during the proceedings to resolve the issues, even during the period when the water supply was disrupted;
- (iii) the issue was important, as it involved the disruption of water supply to a multi-occupancy residential building; and
- (iv) that there were novel issues of procedural law relating to the implementation of the CPR rules and the procedural requirements for commencing contempt applications.

8. The defendant objected to the BOC on three main grounds. Firstly, they submitted that items 1-11 were outside the scope of the costs order made at paragraph 93 of the Ruling and should be disallowed. Secondly, they submitted that the costs claimed do not relate to the Originating Application (“OA”) actually determined by the Court. Thirdly, they submitted that items 15-18 were over-billed, as they should not have required the hours or rates at which the expenses were charged. The fourth objection is not really an objection, but a claim that any costs awarded ought to be set off against the sum of over \$500,000.00 said to be owed by the claimants to the defendant for water arrears, of which the sum of \$427,878.49 was awarded by this Court in a *quantum meruit* claim in a judgment issued 31 March 2025.

Court’s discussion and conclusions

9. It is appropriate to deal with the points of objection first, although the set-off claim will be dealt with later in this Ruling. I can properly take the first and second objections together, since they relate to the scope of the order for costs based on the application before the Court. As explained in the Ruling, the “application” originally came before the court by way of a notice of application (“NOA”) filed 2 October 2025, but the claimants later filed an OA on 9 December 2025. The procedural context of the application was set out at para. 19 of the Ruling, as follows:

“At the outset there was some discussion as to whether leave was required to make the application, and the procedure that should be followed in that regard. During an initial hearing on 1 December 2025, the Court gave the claimants leave to file an originating application and the statement required by CPR Part 51.1. This explains why the instant application has a different number (185 of 2025) from the action out of which it arises (119 of 2024), and why only GBUC (the alleged contemnor) is named as the single defendant. In any event, the application proceeded on the basis of it being an application for permission, but the claimants maintained their application for committal of the directors or, in the alternative, the imposition of a fine (on the hypothesis that no leave was required).”

10. The defendant relies on this paragraph and paragraph 93, where the court simply ordered the “*costs of this application be paid by the defendant*” to contend that only costs incurred pursuant to the 9 December 2025 OA (i.e., items 12-18) were incurred in connection with the application.

11. In my view, this argument is unrealistic and unmeritorious. Firstly, as explained in the Ruling, the OA was issued *abundanti cautela* to put the application on a proper footing. In fact, the issuance of the OA was precipitated to some extent by objections taken by the defendant to the commencement of the application by way of NOA. One of those objections was that the application for committal and/or fine was premature, as such as application was said to first require leave to be sought via an originating application process.

12. Secondly, the affidavit evidence relied on by the claimants and the defendant for the hearing was filed pursuant to the original notice of application and there was, as set out in the passage above, a hearing at which preliminary arguments were made based on the NOA. The OA was the final form in which the application was cast, but it basically restated what had been in the earlier NOA, and the only difference was that it added a prayer for leave to bring committal proceedings—which the court eventually determined was not necessary in any event.

13. I therefore do not find any merit in the claim that items 1-11 were not properly incurred in in connection with the “application” that was determined before the court, and there is nothing in paragraph 93 that can reasonably be taken as restricting it to the OA.

14. I note the specific objections taken to 15-18—that 2.5 hrs. for reviewing a 30-page draft ruling and then 1 hr. for discussing it with the client is excessive; and similarly that the claims of 2 hrs. for preparing the bill of costs and \$1.50 per page for photocopying are excessive. These can be quibbled about, but I do not find that they are either so unreasonable or disproportionate as require any reduction.

15. The Court has considered the Claimants’ BOC, the hourly rates, time spent, grade of fee earners, counsel’s fee and disbursements. The Court has also considered the reasonableness and proportionality of the costs as required by CPR 71.11(1), and the factors which the court is to have regard to in making these assessments.

16. I do not find anything unreasonable about the number of hours charged, the rates or the disbursements, despite the criticisms of the defendant. Although the work done was before the Bar Council’s suggested hourly rates took effect on 1 January 2026, the rate charged by counsel for the claimants was well within the range that has been allowed for counsel with similar seniority (see **Gateway Ascendancy v Bertram Wallace et. al.** (2013/CLE/gen/01179)), and it would also be within the range of the 2026 hourly rates scheme (\$600-\$750 for over 12 and less than 20 years standing).

17. I accept that these were proceedings in which the claimants were seeking to enforce a previous order of the court, and that is an important factor to bear in mind. I also accept that there were some efforts by the claimants to seek to resolve the matter out of court. Further, there is no gainsaying that the matter was of considerable importance to the claimants, as it deprived them of basic sanitation services for several days with serious health implications. The Court also had to grapple with novel procedural issues relating to the requirements for leave or otherwise in

contempt applications, which was left in a rather ambiguous state following the commencement of the CPR 2022.

18. Having regard to all of these factors, I conclude that the time spent on the application, the costs incurred thereby, as well as disbursements claimed were both reasonably and proportionately incurred and are reasonable and proportionate in amount. I will therefore allow the claim of \$25,500.00 in professional fees and \$990.00 in disbursements, for a total of \$26,490.00.

Set-Off

19. The defendant's claim for a set-off of any award of costs against the debt owed by the claimants to the defendant only arose in their written submissions for the summary assessment. I have therefore not been addressed on the relevant law or the particular circumstances that would satisfy a claim for set-off in this case.

20. The general principles relating to the setting-off of costs may be summarized as follows. Firstly, the power is discretionary; there is no automatic right of set-off. Secondly, costs-against-costs set-offs within the same action are usually regarded as natural and ordinarily appropriate, and this power is recognized by the Civil Procedure Rules ("CPR"), 2022 (see, 71.10 (6) and 72.4, which provide for a court or registrar, respectively, to conduct a set off where a party entitled to costs is also liable to pay costs).

21. More generally, the court has an inherent jurisdiction as part of its control over its own proceedings to allow cross-judgments in the same, or in different actions involving the same parties, to be set-off against each other: see, **Edwards v Hope** (1885) 14 QBD 922; **Ex p. the Petitioning Creditors v The Debtor** [1951] Ch. 612.

22. However, costs-against-damages or debt set-offs require additional considerations by the Court. These scenarios will normally require the Court to be satisfied that there is a sufficiently close connection between the costs and the damages or debt, such that it would be inequitable to enforce one side's entitlement without taking account of the other. In **Locksley v National Blood Transfusion Service** [1992] 1 WLR 492 ("*Lockley's case*"), the UK Court of Appeal considered the jurisdiction to set-off costs against costs and damages and Scott LJ stated five positions, of which the third is relevant:

“(3) The broad criterion for the application of set-off is that the plaintiff's claim and the defendant's claim are so closely connected that it would be inequitable to allow the plaintiff's claim without taking into account the defendant's claim. As it has sometimes been put, the defendant's claim must, in equity, impeach the plaintiff's claim.”

23. While I accept, therefore, that the court has a discretionary jurisdiction to order a set-off between different liabilities in respect of damages or costs for which judgment has been given in the same or different cases, this is a discretion which ought to be exercised judiciously, that is based on submissions as the particular circumstances or equitable considerations which are said to

justify a set-off in a particular case. As has been said in a number of cases, set-off where different liabilities are involved is not as straightforward as costs-on-costs set-offs, which are specifically authorized by the rules.

24. It is impossible to turn a blind eye to the fact that the first claimant owes the defendant a substantial sum of money. Notwithstanding this, I must decline to exercise any discretion to order a set-off with respect to this debt in the absence of submissions and/or evidence from the claimants in response to the claim. It is significant to note that there is a second claimant involved in this application, and the presence of another party in addition to the judgment-debtor is no doubt a factor the court would have to take into consideration in determining such an application.

CONCLUSION AND DISPOSITION

25. The defendant shall pay the claimants' costs of the committal application, summarily assessed in the sum of \$26,490.00, which is to be paid within 21 days of the order, in accordance with CPR 71.14, and which will be subject to interest thereafter at the statutory rate.

26. For the reasons given, I refuse to exercise my discretion to order a set-off.

KLEIN J. .



11 May 2026