

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 2023/CLE/gen/00461

BETWEEN

DANIELA ROKER

First Claimant

and

MARIA DAXON

Second Claimant

AND

**(1) LAKERA ROKER
(2) OSWALD POITIER JR
(3) STEPHEN SYMONETTE
(4) STEPHANIE GOODMAN
(5) ALTON O. ROKER SR**

Defendants

Before: The Hon. Madam Justice Simone Fitzcharles

Appearances: Mr Sidney Dorsett for the Claimants

Mr Ramonne Gardiner with Ms Tinarje Moxey for the 5th Defendant

Hearing: On the papers

DECISION ON COSTS

FITZCHARLES, J.

1. This is an application by the Fifth Defendant, Mr Alton O Roker, for a costs Order in his favour in the amount of \$25,687.75 against the Claimants.

2. The Court has considered the pleadings on file, the Fifth Defendant's Submissions on Costs along with his Bill of Costs and the Skeleton Argument on Costs prepared for the Claimants.

Background

3. The Claimants filed an Amended Claim Form on 4 August 2023 against the Fifth Defendant and others seeking damages for an alleged assault. The relevant portion of the pleading stated:

“The 5th Defendant, ex-husband of the 1st Claimant, assaulted the 1st Claimant at her residence, with a mob, placing her in fear of mortal harm and dismantling her fence and she claims damages.”

4. The Fifth Defendant filed a Notice of Application on 30 September 2024 seeking to strike out the Amended Claim Form filed on 04 August 2023 as against the Fifth Defendant. A further or alternative application was brought by the Fifth Defendant on 30 September 2024 seeking further and better particulars in respect of the claim of the alleged assault. The application for further and better particulars was necessarily brought as the attempted solicitation of such particulars by letter from Counsel for the Fifth Defendant to Counsel for the Claimants was not answered. The Claimants’ Counsel then amended the Amended Claim Form and filed the same without the necessary leave to do so on 13 September 2024.

5. The Fifth Defendant also brought, by Notice of Application filed on 2 October 2024, an application for an order that the action by the First Claimant against the Fifth Defendant be tried as a separate action from the other Defendants.

6. Further, the Fifth Defendant applied for the Amended Claim Form and Statement of Claim as filed on 04 August 2023 and amended without leave on 13 September 2024 to be struck out. The Court acceded to this application. The Second Claimant’s claim against the Fifth Defendant was not suitably joined in the action and ought to have been separately brought. Moreover, the Amended Claim Form was amended without the required leave of the Court and no relief from sanctions was sought by the Claimants. Additionally, the Second Claimant had no apparent claim against the Fifth Defendant, yet he was joined and named in an action brought by such Second Claimant.

7. On 4 December 2024, the Fifth Defendant was successful in his application to strike out the Amended Standard Claim Form of the Claimants filed on 04 August 2024 as amended on 13 September 2024. Additionally, the Fifth Defendant obtained an Order that the claims against him by the First Claimant shall, if brought again, be tried in a separate action between the First Claimant, Daniela Roker and the Fifth Defendant, Alton O. Roker Sr. The Court ordered that the issue of costs be reserved.

Argument on Costs

8. Counsel for the Fifth Defendant, Mr Ramonne Gardiner, submits that costs should follow the event. Counsel asserts that this is the general rule according to the **Supreme Court Civil Procedure Rules 2022** (the “CPR”), **Part 71.6** and that there is no reason in the circumstances of this case, why that rule should not be followed. Reliance is also placed on provisions of **CPR Part 71**.

9. Mr Gardiner also cites the general principle in relation to the Court's discretion to deviate from the general rule. He refers to **The Attorney General of the Commonwealth of the Bahamas v Westmor Ltd** BS 2023 CA 74, where Evans JA stated:

"It is clear then that whereas a successful party has a reasonable expectation of obtaining an order for his costs to be paid by the opposing party he has no right to such an order, for it depends on the exercise of the court's discretion. That discretion is an unlimited discretion to make what order as to costs the court considers that the justice of the case requires. It is well accepted that this means that this discretion is not one to be exercised arbitrarily: it must be exercised judicially, that is to say in accordance with established principles and in relation to the facts of the case."

10. Counsel for the Claimants, Mr Sidney Dorsett, answers the application for costs on two main grounds which are encapsulated in the following passages from his written submissions:

"3. ... The defendant has submitted a bill of costs exceeding \$20,000. The claimant will object on grounds of overpricing and on grounds of failure to request in any the (sic) slightest manner certification from the court for the necessity of two attorneys in handling this uncomplicated case.

"4. It will be contended that certification is essential and the absence of it renders the claim for costs attributable to the second attorney unreasonable and excessive.

"6. ...It will be contended that the principle of requesting exactly what is being requested includes requesting certification for multiple attorneys and it is vital consideration to prevent undue costs burden on the opposing party."

11. Reliance is placed on the case of **Allsop v Banner Jones LLP** [2017] EWCA Civ 7. Counsel contends that this authority "is important in the context of this case because it emphasizes the need for timely and clear actions when seeking certification for multiple attorneys.

12. Counsel also urges the Court to exercise its discretion in scrutinizing the costs presented and ensuring they are proportionate to the work required. Mr Dorsett submits that "given the failure to seek certification and the untimely applications, the claim for costs attributable to the second attorney should be denied; ...what is not asked for is not granted."

Discussion and Disposition

13. The Court retains a discretion in relation to awarding costs, including to consider whether it is unjust to apply the usual costs consequences. The Court's discretion as to costs is addressed in **section 30** of the **Supreme Court Act, Chapter 53 of the Statute Laws of The Bahamas** which 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...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.”

14. While the Court has a wide discretion as to costs, to guide it in a judicious exercise of the discretion, the CPR prescribes that account be taken of certain factors. According to **CPR 71.10**:

“(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) ...

“(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.”

15. The Court has considered the circumstances of this case and gauged the necessity of the various applications made by the Fifth Defendant. In my estimation the applications were all reasonably pursued and the Fifth Defendant met with success. It is apparent, as well, that Counsel for the Fifth Defendant attempted in some cases, before applying to the Court, to reach out to the Claimants’ Counsel so that an application to the Court would not be necessary. When the Fifth Defendant’s Counsel received no response, the Court was approached for relief.

16. In the circumstances, the general rule that the Court must order the unsuccessful party to pay the costs of the successful party must apply. There is no reason to depart from this rule.

17. In accordance with **CPR 71.12**, the summary assessment of costs is considered to be an appropriate method of saving of time and expense. In relation to the procedure to be adopted, the Court refers to the guidance of *Winder CJ* in **Robert Forbes v Ministry of Tourism et al** 2021/COM/lab/00038 as follows:

“[11] While the CPR is silent on the details of the summary assessment procedure, and this is not an appropriate occasion on which to attempt to elaborate such details, there must be at least two minimum requirements:

- i. firstly, the Court ought to obtain a bill or statement of costs from the receiving party before it can proceed to summarily assess costs. The detailed provisions of the CPR on costs indicate that the Rules Committee did not intend for the summary assessment of costs to be done on an arbitrary or random basis. The procedure is not intended to be a vehicle for judge to pluck costs awards ‘out of thin air’.
- ii. secondly, the Court must permit the parties a reasonable opportunity to be heard on the assessment. In the absence of any clear words in the CPR compelling a different conclusion, the Rules Committee, must be presumed to have intended a fair procedure in providing for the summary assessment of costs. That opportunity to be heard may, in appropriate cases, take the form of a paper hearing.

“[12] By virtue of Section 30 of the Supreme Court Act and CPR 71.9, the Court enjoys an undoubted discretion as to the quantum of costs. That discretion, like any other discretion vested in the Court, is to be exercised judicially and not arbitrarily or capriciously. Accordingly, the Court must have regard to the provisions of the CPR which deal with the quantification of costs. The discretion of the Court must be exercised consistently with the overriding objective of the CPR, set out in CPR 1.1, which is to ‘deal with cases justly and at proportionate cost.’”

18. As to ensuring costs which are proportionate and reasonable to the circumstances of the case are awarded, the Court considers all factors set out in **CPR 71.11(3)** as follows:

“(3)...

- (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, specialized 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...”.

19. Using these principles as a guide, the Court has chosen to carry out a summary assessment of the costs in this case and is appropriately armed with a Bill of Costs and the Submissions of the parties. Further, having taken the foregoing principles into consideration, I have reviewed the Bill of Costs with a view to disallow costs which are unreasonably or disproportionately incurred or for an unreasonable or disproportionate amount.

20. Firstly, it is noted that the Claimants did not challenge the rates quoted by any of the attorneys listed as performing work as recorded in the Bill of Costs. The Claimants did not venture to address the Bill of Costs in any detail or to put forward a figure they accept is reasonable for the costs of the Fifth Defendant.

21. I have approached the Bill of Costs bearing in mind that the Court will only allow costs that are reasonably and proportionately, regardless of whether they were actually incurred by the receiving party. This was confirmed in **Cotham School v Bristol City Council & others** [2024] EWHC 397 (Ch). Further, on the issue of granting costs for the appearance of two counsel, generally this is allowed where certification for the same is granted by the Court, such certification being based upon whether the nature of the case justifies such retention and where the costs are necessarily incurred. Amongst examples of how the Court in taxation will treat this issue, is the decision of *Registrar Sharada D. Ferguson* in the Court of Appeal in **Johann D Swart et al v Apollon Metaxides et al** BS 2022 CA 091. There, the Court observed, *inter alia*, that the matter was not certified fit for two counsel. As such, minimal costs were allowed in relation to a second counsel.

22. In my view, this matter was not a complex one. As such, there was no requirement for the appearance of two counsel at hearings. I therefore grant costs incurred by Mr Gardiner who presented all applications at the hearings in this matter and exclude any costs for such court appearances by a second counsel. In relation to the preparatory work in chambers, the Court considered the same and reduced or excluded costs where the same appeared to be unnecessary or duplicative, such as items where Ms Moxey read emails sent by Mr Dorsett to Mr Gardiner or costs associated with internal meetings within the firm of Counsel for the Fifth Defendant. The Court also considered that some tasks performed by Ms Moxey were necessary and because Mr Gardiner allowed Ms Moxey to do the same, less costs were incurred. This was in keeping with a reasonable cost-saving approach.

23. The Court accepted flat rates of \$550 for Mr Gardiner and \$250 for Ms Moxey, applying the same to the Bill of Costs throughout. Having considered all matters referred to above, I summarily assess costs of this action at \$13,000. Additionally, disbursements of \$1,364.00 are allowed. Inclusive of value added tax at 10%, the total costs are \$15,800.40. I order that this sum be paid by the Claimants to the Fifth Defendant.

Dated 24 April 2026



Simone I. Fitzcharles

Justice