IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 00456 of 2022

BETWEEN

FABIA INVEST LTD.

1st Plaintiff

JEAN-CLAUDE FABIANI

2nd Plaintiff

AND

XAIBAS INC.

1st Defendant

JAN GERARD BOON

2nd Defendant

OHTLI INC.

3rd Defendant

PRICEWATERHOUSECOOPERS (BAHAMAS) LIMITED
In its capacity as registered agent of Ohtli Inc.

4th Defendant

Before: The Honourable Madam Justice Simone I. Fitzcharles

Appearances: Mr Sean Moree KC with Peteche Mitchell for the 1st and 2nd Plaintiffs

Ms Gabrielle Rahming with Ms Yvette Rahming for the 1st and 2nd Defendants

Mr Audley Hanna with Ms Oluwafolakemi Swain for the 4th Defendant

Hearing date: On the Papers

RULING

FITZCHARLES, J.

Introduction

1. This is my Ruling on costs following the Court's decision to dismiss the application of the 1st and 2nd Defendants to set aside the writ of summons in this action and all subsequent proceedings or to be granted a stay of proceedings, among other relief.

2. The 1st and 2nd Plaintiffs (the "Claimants") prevailed in the application and were awarded costs. Specifically, I made the following Order:

(1) The 1st and 2nd defendants' conditional appearance shall stand as unconditional;

(2) The costs of and occasioned by the application shall be paid to the [Claimants] defendants to be summarily assessed if not sooner agreed; and

(3) The [Claimants] shall file and serve a pro forma bill of costs within 30 days for a summary assessment of costs in the event costs are not agreed by the parties.

3. We are now at the stage of summary assessment of the costs of Fabia Invest Ltd and Mr Fabiani, the Claimants. They have submitted a pro forma Bill of Costs for the total amount of $143,538.69. The 1st and 2nd Defendants, Xaibas Inc and Mr Boon (the "contesting Defendants") urge the Court to either disallow or reduce certain identified items in the Bill of Costs.

4. In addressing this application, the Court has reviewed the Statement Pursuant to CPR Rule 72.7(5)(b) and Bill of Costs of the Claimants, along with various pleadings on file and the submissions as to costs provided by the parties.

Background

5. The proceedings from which the present application arises were commenced by the Claimants by Writ of Summons filed on 22 March 2022. The substantive claim concerns a dispute between long-standing commercial associates. The matter relates to the ownership and transfer of shares and associated rights in a Bahamian International Business Company, Ohtli Inc. This is pursuant to an alleged agreement dated 29 February 2020 ("the 2020 Agreement"). Underlying the dispute is high-value international real estate.

6. The Claimants contend that, pursuant to the 2020 Agreement, Xaibas Inc, acting through its principal Mr. Jan Gerard Boon, agreed to transfer its entire shareholding to Mr. Jean-Claude Fabiani. Related current account interests in Ohtli Inc were also to be conveyed to Mr. Fabiani, either personally or through Fabia Invest Ltd, for nominal consideration. The contesting Defendants dispute both the validity and enforceability of that agreement and the capacity in which the parties entered into it. These issues form the substantive dispute between the parties and remain to be determined at trial.

7. Following commencement of the action, issues arose concerning the validity of the Registrar's leave obtained by the Claimants to serve the Writ out of the jurisdiction on Mr Boon, the jurisdiction of the Court to hear the matter, and the appropriate forum for the resolution of the dispute, amongst several other ventured grounds of challenge.

8. The contesting Defendants pursued a series of interlocutory challenges at an early stage of the proceedings. They obtained leave to enter a conditional appearance, and sought to set aside the Writ and all subsequent proceedings. Alternatively, the contesting Defendants sought a stay on the basis of an arbitration clause contained in the Articles of Association of Ohtli Inc. This argument mushroomed into a challenge on the basis of what is called the 'Extended Fiona Trust' principle. The contesting Defendants advanced further grounds, including alleged defects in service; non-disclosure; asserted invalidity, or repudiation of the 2020 Agreement, and contentions that the proceedings were frivolous, vexatious, or an abuse of process.

9. The Defendants' challenges were pursued by Summons filed on 21 October 2022. The interlocutory applications were heard over the course of several hearings and were supported by several affidavits and rounds of submissions from both sides. In response to the Court's directions, the parties filed supplemental written submissions. They addressed, inter alia, the scope and applicability of the arbitration clause and its implications, if any, for the alleged 2020 Agreement. The arguments required a certain level of detail to address some of the points; to a degree they transcended the non-complex or commonplace.

10. The Claimants successfully opposed the application, refuting all grounds. By a detailed ruling dated 4 July 2025, I dismissed the applications of the contesting Defendants in their entirety. The application, which was hard-fought by all sides, resulted in a 43-page decision.

11. The Court held, inter alia, that the arbitration clause relied upon did not apply to the dispute, that the Extended Fiona Trust principle in all the circumstances did not apply, that the service out of the jurisdiction was properly authorized by *Registrar Delancy* (as she then was), that the proceedings disclosed triable issues, and that none of the grounds advanced justified setting aside or staying the action.

Issue

12. The central issue for the Court is whether the Bill of Costs is reasonable and proportionate. The Court must determine the appropriate amount to be allowed through summary assessment, weighing the nature, complexity, and importance of the issues raised in the application. The Court must ensure that the Claimants are properly compensated for the costs arising from the application, as directed by the Court's order.

The Bill of Costs and Argument

13. In compliance with the Court's Ruling and Order dated 4 July 2025, the Claimants, by their Counsel, McKinney, Bancroft & Hughes, submit a Bill of Costs amounting to $143,538.69. This

figure encompasses costs, fees, and other charges, which are subject to summary assessment unless sooner agreed.

14. The Bill of Costs reflects a wide range of professional services rendered, for which reimbursement is sought. These services include but are not limited to: attending several telephone consultations and conferences; drafting and reviewing various forms of communication such as letters, emails, and messages; preparing documents; conducting extensive legal research; attending Court and overseeing the general care and conduct of this matter. Further, the Claimants submit the charges for Professional Services incurred during the period from 14 October, 2022 to 11 July, 2023. The fee earners and their rates are:

(1) Mr. Sean N. C. Moree, KC, Partner, who was called to the Bar in 2003 billing at the rate of $800-$1000 for his work.
(2) Ms. Beatrice E. Miranda, Consultant, Registered Associate since 2006 billing at the rate of $500-$600 for her work.
(3) Mr. Miguel A Darling, Associate, who was called to the Bar in 2019 billing at the rate of $250 for his work.
(4) Ms. Petеché A. Mitchell (neé Bethell), Associate, called to the Bar in 2020 billing at the rate of $250 for her work.

15. These rates are contested by the contesting Defendants, as well as items in the Bill of Costs concerning correspondence conducted by Mr. Moree, KC, and Ms. Miranda. I consider the rates charged by Mr Moree KC, as well as Mr Darling and Mrs Mitchell to be fair and in keeping with rates of persons of similar standing at the Bar. Additionally, I accept that $500 per hour is a fair rate for a Registered Associate of Ms Miranda's standing.

16. As to the amounts billed and the general principles on costs and summary assessment, the contesting Defendants cite the overriding objective, referencing **Rule 1.1** of the **Supreme Court Civil Procedure Rules 2022** (the "**CPR**"), **3.5** of **Practice Direction No. 12 of 2023**, **Gateway Ascendancy Ltd. v Bertram Alexander Wallace and Keva Monique Wallace** Claim No. 2013/CLE/gen/01179 and **Shirodkar v The Bahamas Medical Council** 2021/PUB/jrv/00003. As these are all well-rehearsed, I will not set them out in any great detail in this ruling.

17. The contesting Defendants highlight the need for Taxing Officers to approach their assessment of a Bill of Costs both reasonably and proportionately. They identify particular items that the Court should disallow because they do not pertain to the 21 October 2022 application and/or are duplicative work by BEM and SNM. They further argue that there is no novelty or complexity regarding the concepts argued by the parties, and as such, the Claimants' Bill of Costs in the amount of $143,538.69 for an interlocutory matter is wholly disproportionate.

18. Further, the contesting Defendants argue that the Claimants engaged the Legal Services of four attorneys, including a King's Counsel with billing rates of $800-$1000 and a Registered Associate with significantly high billing hours.

19. Addressing costs which they contend fall outside of the Costs order, the contesting Defendants analyze applicable principles in the Court of Appeal decision of **Johann D Swart et al v Apollon Metaxides et al** SCCivApp. No. 78 of 2012 ("**Swart**"). They note that this case emphasizes that a taxing officer is bound to tax only those costs authorized by a court order, per **Rule 35 of the Court of Appeal Rules**. Consequently, any such costs outside the Court Order must be excluded.

20. The contesting Defendants argue that there are items in the Bill of Costs which predate their application and are not covered in the Court Order filed 16 July 2025. Additionally, some items listed by the Claimants include the consolidated hearing of the Summons filed by the contesting Defendants in the current matter on 2 September 2022 for Leave to enter a Conditional Appearance. It is stated that these items are not within the scope of the Costs order, therefore, they should not be considered by the Court. Further, duplicative items should be disallowed.

21. Regarding costs for the Registered Associate, the contesting Defendants challenge fees billed by the Claimants for a Registered Associate who lacks a right of audience in that capacity. Further, it is contended that the Registered Associate is the agent of her principal, Mr Moree KC so they are one and the same. Work billed by the two of them is duplicative and cannot be charged for twice, the contesting Defendants contend.

22. Referencing **Maurice Johnson v Bahamas Waste Ltd.**, COM/lab/00054 of 2022 ("**Maurice Johnson**"), the contesting Defendants note deductions made in that case for professional fees associated with clerical or administrative tasks. As a result, they propose that certain administrative expenses labeled as Items 35 and 38 in this matter should similarly be disallowed or reduced from the Plaintiff's Bill of Costs. Moreover, the Defendants argue that Items 41 and 43 lack specificity in their description and should therefore be disallowed as it is difficult to properly assess these items. See paragraph **3.5** of **Practice Direction No. 12 of 2023.**

23. These submissions reveal the general tenor of the objections taken by the contesting Defendants. I will deal with these and other objections raised by them in the Analysis and Disposition section below.

Relevant Law

24. This application is to be determined according to established principles governing the summary assessment of costs. The Court's task is not to revisit the question of whether the Claimants are entitled to costs, that matter was resolved conclusively by my Order which was filed on 16 July 2025. In that Order, the application of the contesting Defendants was dismissed, and the Claimants were awarded "*the costs of and occasioned by the application*", subject to summary assessment if not sooner agreed. The sole issue that remains is the appropriate quantification of those costs.

25. The applicable legal principles are outlined firstly in **Rule 1.1** of the **CPR** which sets out the overriding objective of dealing with cases "*justly and at proportionate cost*". This principle establishes a critical standard for the Court's assessment. It demands balancing fair compensation for the successful party against avoiding excessive recovery, duplication, or disproportionate burden on the paying parties. (See **Lownds v Home Office** [2002] EWCA Civ 365; [2002] 1 WLR 2450).

26. Secondly, **CPR 72.7(5)(b)** empowers the Court, on summary assessment, to allow only those costs which have been "reasonably incurred and are reasonable in amount." The language of the rule makes plain that both limbs must be satisfied. Costs may be genuinely incurred and yet not be reasonable in amount. (See **Harrison v University Hospitals Coventry and Warwickshire NHS Trust** [2017] EWCA Civ 792; [2018] 1 WLR 445). Conversely, an amount may be unobjectionable in the abstract, yet irrecoverable because the work to which it relates ought not reasonably to have been undertaken.

27. Thirdly, **Practice Direction No. 12 of 2023**, particularly **paragraph 3.5**, emphasizes that work for which costs are claimed must be detailed and particularized adequately to allow proper assessment. This requirement is not merely procedural but essential to maintain the integrity of the taxing process. Without enough detail, the Court cannot ascertain whether time was justifiably spent, whether any actions were duplicative, or whether the charges are proportionate to the issues at hand.

28. Those principles are reinforced by legal authority, specifically, **Gateway Ascendancy Ltd v Bertram Alexander Wallace and Keva Monique Wallace**. There, *Klein J* emphasized that a summary assessment obliges the Court to examine not only whether work was performed but also whether claimed costs are "*reasonable and proportionate having regard to the nature of the proceedings.*" Similarly, in **MacDonald v Taree Holdings Ltd** [2020] EWHC 94 (QB) the principle was upheld.

29. On the scope of taxation, this Court adopts the principle outlined in **Swart**. It was held that the taxing function is limited to costs explicitly ordered by the Court. Accordingly, a bill of costs cannot lawfully be employed to recover expenses for work beyond what is covered in the Court's order.

30. As to duplication of work, I considered **Swart** in which *Registrar Ferguson* (as she then was) made deductions in taxing costs for work which had been duplicated by more than one person. Further, as to recoverability of clerical or administrative work, I considered **Swart** and **Maurice Johnson**, in which the taxing officers made deductions where professional charges essentially reflected administrative tasks.

31. The assessment of all items will therefore proceed in light of these principles.

Analysis & Disposition

32. The Court is satisfied that the contesting Defendants' objections to Items 1, 2, 3, and 4 are not completely well-founded. Those entries concern work that was conducted in relation to the hearing on 14 October 2022 in which the Court gave directions relevant to the applications heard by the Court. These directions pertained in part to the application which resulted in the judgment of 04 July 2025, and I consider such directions were necessary to the application, the costs of which are now under consideration. The activities billed for include such activities as attendance before this Court, drafting and perfecting the order issued on that date, as well as addressing preliminary matters related to the Summons issued on 21 October 2022. These are, in my view, encompassed in "costs of and occasioned by" the application because such directions were given to get the application before the Court. The Court accepts that these costs, however, are mixed.

33. Items 5 through 9 and Item 26, are further "mixed entries" containing both recoverable and non-recoverable components. These items do not entirely fall outside the scope of recoverable costs but instead represent work conducted in a context where the recoverable strike-out application and issues surrounding the conditional appearance were procedurally interconnected.

34. Although the contesting Defendants have argued for a complete disallowance of these items, the Court does not accept such an absolute position. Doing so would disregard the fact that some portions of this work were evidently necessitated by the unsuccessful applications for which costs were duly awarded. Considering these factors, as well as observing that the descriptions of work reflect an inseparable combination of recoverable and non-recoverable tasks, the Court finds that a reduction of 30% in Items 1 through 9 and 26 is appropriate.

35. In Items 19 through 27, the contesting Defendants argue that the Bill reflects some duplication. The Court acknowledges that the involvement of senior counsel, a registered associate, and junior associates is not inherently objectionable. Some commercial litigation may justifiably require a division of labor. However, this principle does not override the fundamental requirement that recoverable costs must pertain to work reasonably necessary for the litigation, as opposed to all work carried out.

36. The Court observes some repeated charges by Mr. Sean N. C. Moree KC, Ms. Beatrice E. Miranda, and Mr. Miguel A. Darling. In my view, the costs claimed must reasonably correspond to the actual requirements of the litigation. Such costs reflect reviewing, amending, and finalizing largely identical submissions. While the Court rejects the notion that the work of senior counsel and a registered associate is invariably "one and the same", it is also agreed that duplicated efforts may not be recoverable if it is plain that multiple professionals allocated costs for the same task.

37. There is duplication present, but not to an extent warranting a conclusion that over half of the work was unnecessary. The Court recognizes the overlapping attendances and drafting charges but also considers that the review performed can offer legitimate value in commercial matters. A reduction exceeding 30% would undervalue essential legal work. Therefore, a 30% reduction in Items 19 through 27 is deemed appropriate to address duplication while ensuring fair remuneration for work deemed necessary.

38. The objection to Item 38 is partially justified. Certain tasks described within this item, such as "*arranging filing of the order*", are administrative rather than professional legal work. As noted in **Maurice Johnson v Bahamas Waste Ltd** by *Klein J*, charges related to clerical and administrative tasks should not be billed at professional rates. However, some of the charges mixed into this item are appropriately charged at professional rates. Consequently, the amount claimed for Item 38 is reduced by 50%.

39. While the Court will allow billing for Items 41 and 43, it is accepted that these descriptions are general in nature, which somewhat hinders the proper assessment of the reasonableness of the fees billed. Claimed work must be particularized according to **Practice Direction No. 12 of 2023**. In the circumstances, a 20% reduction is applied to the total claim for these items.

40. The Court is not persuaded that the attendance of multiple fee earners at hearings should be treated as inherently irrecoverable. Conversely, multiple fee earners may not all charge fees that substantially reflect the same work (**Re Gibson's Settlement Trusts [1981]** Ch 179 considered). As such, costs concerning Item 44, (attendance by Mrs Peteché Mitchell) are allowed in full, as junior support at the hearing was reasonable. Item 45, (Ms Miranda's attendance alongside senior and junior counsel) indicates a duplication and is not allowed, save for the telephone attendance with one of the Claimants. I therefore allow $500 (1 hour for BEM) for this item. Item 46, (attendance by Mr Moree KC) is allowed in full, as senior counsel's preparation and participation are recoverable.

41. For Items 56–58, 62–63, 65–66, 71–75 and 109, the Court finds some overlap in attendances and internal conferences but rejects the exclusion of all such charges. The Court considers the overlap evident but not extensive enough to justify a heavier deduction than 20% on Items 57, 58, 62, 66, 71, 72, 74. This adjustment appropriately addresses duplication concerns while aligning with principles of reasonable cost recovery. Additionally, the Court has generally not allowed items billed as "internal communications" such as in Item 111 and others.

42. Regarding Items 103–120, which were billed in respect of Supplemental Submissions required by the Court, the contesting Defendants argued that the entries in the Bill of Costs are excessive and duplicative. The Court acknowledges that some reductions are warranted but finds the contesting Defendants' proposed adjustments too severe. The supplemental submissions included meaningful legal work on interpreting the arbitration clause and related jurisprudence. Though some overlap is apparent, the entries primarily represent recoverable work. Moreover, the Court required additional submissions from the parties on the basis of issues which arose from the Defendant's objections to the action. Nonetheless, in reflection of the overlay, the Court reduces Items 104-106, 109, 112-114, and 116-119 by 20%. A greater reduction would again, in the Court's judgment, fail to recognize that these entries involve genuine legal analysis as required by this Court. Some of these items were, again, reduced or disallowed for inclusion of billings for "internal communications". Duplications at Items 122 and 123 were not allowed. In addition to costs allowed, I include $2,500 for the preparation of the documentation for summary assessment.

43. The Court has undertaken a measured reduction, where justified. While some of the contesting Defendants' objections are upheld, the Court has resisted calls for sweeping exclusions

on costs that encompass significant professional work. The reductions made ensure fairness to both parties.

44. In applying these reductions to the Bill of Costs, the Court also considers the principles as to reasonableness and proportionality. I bear in mind that the claim against the contesting Defendants is a relatively large one. The importance of the claim to the parties would therefore be obvious. Moreover, the applications engaged important issues of jurisdiction and procedure which, while not novel, were moderately complex.

45. In all the circumstances, the Court summarily assesses costs of the application at \$96,453.00 for professional charges and \$16,093.59 for disbursements. The Court therefore orders that the contesting Defendants pay to the Claimants the total of **\$112,546.59** within 21 days. This sum includes a 10% value-added tax after 2 March 2023. Save as varied by this assessment, the Claimants' rights to recover costs under the Order dated 4 July 2025 remain intact.

Dated 21 July 2026

Simone I. Fitzcharles

Justice