

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION

2018/CLE/GEN/00474

2018/CLE/GEN/01404

IN THE MATTER OF THE WINTER TRUST, THE SUMMER TRUST AND THE SPRING TRUST

BETWEEN

MATTEO VOLPI

Plaintiff

AND

(1) DELANSON SERVICES LIMITED
(2) GABRIELE VOLPI

Defendants

Before: Registrar, Camille Darville Gomez

Appearances: Miss Knidjah Knowles and Miss Alexandria Russell with her for the Plaintiff (the Paying Party)

Mr. Terry North with him Miss Wynsome Carey and Mr. Richard Horton for the Second Defendant (the Receiving Party)

Hearing Dates: 9 September, 2020; 9 October, 2020; 26 November, 2020

Taxation of costs – the recoverability of foreign lawyers' fees on a party and party basis

1. This ruling arises from objections raised by the Paying Party on three issues in respect of a taxation of costs relative to the grant by the Honourable Mr. Justice Ian Winder of a worldwide freezing order in favour of the Plaintiff dated 3 May, 2018 in 2018/CLE/GEN/00474 and subsequently on 4 December, 2018 in 2018/CLE/GEN/01404.
2. The Court has been asked to determine the following issues:
 - (i) Whether the costs incurred post 7 August, 2019 (the date of pronouncement of the Honourable Justice Winder's costs order) in action 2018/CLE/GEN/01404 are recoverable?

- (ii) Whether in both actions, the fees are recoverable for any foreign lawyer not specially admitted to the Bar of The Commonwealth of The Bahamas or registered as a Registered Associate?
 - (iii) Whether the cost incurred of procuring an expert report into English Criminal Law is recoverable.
3. The costs being taxed in relation to this action are on a party on party basis and the Court is guided by the provisions of Order 59, rule 2(2) and rule 26 of the Rules of the Supreme Court, 1978 (RSC).

Costs post 7 August, 2019

4. The Honourable Justice Ian Winder ordered on 7 August, 2019 that the service of the proceedings be set aside, the freezing injunction be discharged and the Plaintiff's application be dismissed. It was further ordered that the Respondents' costs of (i) the Applicant's Originating Summons and Summons and (ii) the Respondents' Summonses be taxed if not agreed and paid by the Applicant..."
5. However, after the date of the order on 7 August, 2019 the Receiving party incurred substantial costs relative to the hearing which occurred on 26 September, 2019 which the Paying Party sought to have disallowed on the basis that there was no authority to recover them.
6. I gave an oral ruling during the course of the taxation in relation to this issue which I repeat here:
- (i) That the Honourable Mr. Justice Ian Winder discharged the injunction and therefore, costs generally follow the event.
 - (ii) That the order of 7 August, 2019 was unequivocal
 - (iii) That the determination of the application to extend the injunction presumed that the application was refused. I am supported in this view by reference to the transcript at page 15, paragraph 7 where Mr. Moran stated, "*we make application to extend*".
 - (iv) That the 26 September, 2019 application/order did not address the issue of costs therefore, there is no authority or basis for the Registrar as taxing master to allow them. I refer to Order 59, rule 19.

Recoverability of Foreign lawyers' fees

7. The issue of the recovery of the fees for foreign lawyers is not novel. This issue was considered in the case of **Hurt and another v Scheck, Exuma Harbour Estates Limited v Siegel, Raymond, Brent Ltd. and another [2008] 3 BHS J. No. 20** by the Honourable Justice Lyons where he readily accepted that foreign lawyers' fees can be claimed in Bahamian litigation, but only if those fees are generated as a result of the Bahamian lawyer requesting those foreign lawyers to do work as agent. The fees of the foreign lawyer would be chargeable as a disbursement. Justice Lyons goes on to state that:

“12.Evidence supporting and particularizing this engagement by the Bahamian lawyer should be made available to the taxing officer, be it, for example, by letter of engagement, email or telephone attendance of some other means.

15.(2) As a general rule the foreign attorneys' costs must have been generated as a result of a request from the Bahamian lawyer (as principal lawyer) to the foreign lawyer for the foreign lawyer to perform a specified task for and on behalf of the Bahamian lawyer that the Bahamian lawyer could not reasonably do himself. In general this is for work carried out in the foreign lawyer's jurisdiction. The costs of the foreign attorney, billed as a disbursement from the local attorney's bill of costs, are subjected to the same test as all costs. Matters of relevance, reasonableness (both as to need and time spent, necessity etc. are considered.

8. The case of Hurt and another v Scheck supra was followed by Madame Deputy Registrar Delancy in the case of Wesley International Limited and Super-Mas Mauritius v Nominee Group of Directors of Wesley International and Actis Consumer Grooming Products Ltd. In this case, the Paying Parties opposed the recoverability of the foreign lawyers' fees because it amounted to a duplication of work of Bahamian counsel and the work performed by the foreign lawyers ought to have been limited to providing formal instructions to Bahamian counsel because they were not specially admitted to practice in this jurisdiction.
9. Madame Deputy Registrar applying Hurt and another v Scheck supra ordered the production of documentation or otherwise to support and particularize the engagement of the foreign lawyers. She went on further, to state that should the taxing master be satisfied on the evidence that the foreign lawyers were engaged in accordance with the dictum of Lyons, J in Hurt and another v Scheck supra then, the disputed costs should be scrutinized in accordance with Order 59 of the RSC to determine whether such costs were necessary or proper for the attainment of justice or for enforcing or defending the rights of the Defendant.
10. The Receiving Party cited the case out of the Eastern Caribbean Supreme Court of Finecroft Ltd. v Lamane Trading Corp. (Claim No. BVIHCV2005/0264, August 31, 2006) where Hariprashad-Charles, J found that a foreign solicitor must be treated for the purposes of taxation, simply as a foreign agent and the charges incurred by these solicitors are charges properly taxable as disbursements in the ordinary course.
11. Further, the case of Mottley (Re) [1987] BHS J.No.163 while insightful on the issue of the employment of foreign counsel for complex matters, is clearly distinguishable from the instant case. The case concerned the refusal by the Bahamas Bar Council to grant special admission in respect of foreign counsel and not the recoverability of foreign lawyers' fees specifically.

12. The Paying Party relied on Hurt and another v Scheck supra to support their submission that the fees in respect of the services of foreign lawyers who never obtained work permits are not recoverable on that basis. Lyons J, stated:
“any foreign person who, without a work permit, works gainfully in The Bahamas, or any person who so engages them, is liable to prosecution.” Thus, if a local attorney in this case were to claim, as a disbursement, the costs of a foreign attorney for work done in The Bahamas... and that foreign attorney did not possess a work permit for that work, both the Bahamian and foreign attorneys may well have committed a criminal offence.”
13. The Paying Party noted that there was no claim in the Bill of Costs for a work permit fee with respect to Ms. Meredith, however, there was one claimed in respect of Stephen Smith. Therefore, it appeared that Ms Meredith never obtained a work permit. Accordingly, it was submitted that the fees relative to work performed by Ms Meredith and frankly, others like her, cannot be recovered in view of Hurt and another v Scheck supra.
14. The necessity of the work permit was also considered in Re Mottley supra however, the case was concerned with the refusal for special admission to the Bar and not the recoverability of foreign lawyers’ fees, particularly where they are recovered as disbursements in accordance with the approach in Hurt and another v Scheck supra.
15. The cases are pellucid that a condition for the recoverability of foreign lawyers’ fees is a specific request for their services from a Bahamian lawyer. Therefore, it is unnecessary for the foreign lawyer to be specially admitted to recover their fees since their fees are treated as disbursements of the Bahamian lawyer’s services.
16. The Receiving Party at paragraph 13 of their submission dated 19 October, 2020 stated:
“Although it may have been more appropriate to enter Mr. Rivett’s charges on the Bill as a disbursement than as time sheets, it is submitted that there is no substantial difference. GV ultimately paid Mr. Rivett’s fees, whether those fees were routed through Alexiou, Knowles’ bank account, or, whether the fees were paid directly to Mr. Rivett from the client.”
17. I do not accept this submission. Hurt and another v Scheck supra has determined that in order to recover the fees of foreign lawyers that the Bahamian lawyer must instruct them. It would appear without more details, that the Receiving Party’s client (that is, the Second Defendant) gave the instructions. There is the further issue of whether the work performed by Mr. Rivett or others (who were not specially admitted) was work that could have been performed by Bahamian lawyers.
18. The Court is satisfied that any work performed by Mr. Rivett and others in The Bahamas will not be recoverable if they were not specially admitted. This is pellucid from the Legal Profession Act and is further supported by the Lyons J, in Hurt and another v Scheck supra. Further, I reject the “fine distinction” argument by the Receiving Party that section

24 of the Legal Profession Act does not prohibit the recovery of fees charged by a Barrister from England and Wales.

19. Accordingly, I arrive at a similar if not, identical conclusion of Madame Deputy Registrar Delancy regarding the recoverability of foreign lawyers' fees.
20. The Receiving Party must produce such documentation or otherwise to support and particularize the engagement of those foreign lawyers not specially admitted or registered as Registered Associates. Should the Registrar as taxing master be satisfied on the evidence presented that Mr. Rivett, Ms Meredith and others were engaged as per the dictum of Lyons, J in **Hurt and another v Scheck supra** then the disputed items will be considered in accordance with Order 59 to determine whether such costs were necessary or proper for the attainment of justice or for defending the rights of the Defendant.

Recoverability of Criminal Law Expert Report

21. The determination of whether the Criminal Law Expert Report is necessary for the attainment of justice is an example of why costs are best addressed by the judicial officer hearing the matter.
22. While I accept that the Expert Report would have demonstrated the seriousness of the act carried out by the Plaintiff and the fact that it was criminal in nature; it is not easy to determine whether the Honourable Justice Winder placed any weight on its submission. I am not willing to infer that its absence from the judgment made it immaterial.
23. However, I am of the view that the cost of the report has not been justified and I find the sum being claimed of almost \$30,000 to be excessive. The Receiving Party must provide details of the time spent of hourly rate so that the reasonableness of the fee being claimed can be assessed.

Dated the 18th day of February, 2021


Camille Darville-Gomez
Registrar