

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law and Equity Division  
2010/CLE/gen/1137**

**BETWEEN**

**RICHARD ANTHONY HAYWOOD ET AL**

**Plaintiffs**

**AND**

**STRIKER TRUSTEES LTD ET AL**

**Defendants**

**AND**

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law and Equity Division  
2018/CLE/gen/0252**

**BETWEEN**

**JULIUS TREVOR BETHEL**

**Plaintiff**

**AND**

**PATRICIA BLOOM ET AL.**

**Defendants**

**Before Hon. Mr. Justice Ian R. Winder**

**Appearances: Maurice O Glinton QC with Meryl Glinton for Maurice O Glinton & Co. (a firm)**

**Harvey Tynes QC with Tanisha Tynes for Daisy Betty Bethel (Administrator for the estate of Trevor Bethel)**

**Christopher Jenkins with Ramoone Gardiner for the Judicial Trustee**

**Robert Adams QC with Edward Marshall II for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in the 2018 action**

**Camille Cleare for the Plaintiffs in the 2010 action.**

**Matthew Paton for 9<sup>th</sup> and 10<sup>th</sup> Defendants in the 2010 action and the 1<sup>st</sup> Defendant in the 2018 action**

**RULING**

## WINDER, J

On 1 March 2022 I gave a decision on several preliminary issues as to the Court's jurisdiction to hear two applications brought by the firm of Maurice O. Ginton & Co. (MOG) seeking essentially to establish a Solicitor's lien, with respect to costs orders made in favor of the late Trevor Bethel. I promised to put the reasons for my decision in writing and I do so, briefly, now.

### Background

[1.] It is perhaps useful to briefly set out the relevant factual matrix of the two actions:

#### *The 2010 Action:*

[2.] This was an action brought by the several plaintiffs who were excluded as beneficiaries of a discretionary settlement. The plaintiffs brought these proceedings for breach of trust seeking to set aside the exclusion. Bethel was a beneficiary under the discretionary settlement in which the plaintiffs were excluded. A Tomlin Order was entered into by way of a compromise in the action but subsequently set aside, as there were representations which were made, in relation to Bethel, when the Tomlin Order was sanctioned, which ultimately turned out to be inaccurate. Following the setting aside of the Tomlin Order, I recused myself from further participation in the action as I had been privy to confidential material which may have impacted any further decisions which may have had to be made. Costs orders were made in favor of Bethel prior to the recusal order and I am advised that cost orders have been made against him since. None of the costs orders in this action, it appears, have been taxed.

#### *The 2018 Action*

[3.] This was an action brought by Bethel seeking various relief as a trustee and beneficiary of an inter vivos trust created by the Late Sir Jack Hayward. Bethel sought certain injunctive relief in the action which, although refused in the Supreme Court, ultimately resulted in a measure of success before the Court of Appeal. When the appeal of the Supreme Court refusal was allowed, costs were awarded in favor of Bethel. Bethel obtained an additional order for costs against the defendants following an unsuccessful application for leave appeal to the Privy Council. Certificates of Taxation in the amounts of \$18,673 and \$64,340.50 respectively were issued in the Court of Appeal.

[4.] MOG represented Bethel in both the 2010 and 2018 actions.

[5.] Bethel died on 17 January 2020. His mother Daisy Bloneva Bethel (the Administrator) was granted letters of administration with respect to his estate.

## The Applications

[6.] MOG filed separate applications in each action which were heard together. The relief sought by the MOG in each action are essentially for a solicitor's lien over the taxed and untaxed costs which were ordered to be paid to the Bethel. On 24 January 2022 I heard objections to the application and determined that I would render a preliminary decision on these objections. I invited the parties appearing on the application to provide these objections in writing.

[7.] The applications are supported by the affidavit of V. Stephanie Cox.

[8.] The three issues raised were the following:

- (1) Whether the Court had jurisdiction to hear the application under the common law or by statute.
- (2) What is the effect of the Court's earlier recusal decision in this matter?; and
- (3) Whether the matter could proceed to be determined ex parte.

## The Jurisdiction

[9.] Despite earlier and vigorous objections raised by the Judicial Trustee when the matter first came before me on 24 January 2022, there was ultimately little objection to the existence of such a jurisdiction in their written material. Mr. Adams QC, helpfully identified the case of *Harajchi v Mosko's United Construction Co.* [1998] BHS J. No. 48. In that case, Sawyer CJ (as she then was), stated as follows:

14Prior to 1971, the Supreme Court Act, 1897 (Ch. 35 of the 1965 Edition of the Statute Laws of the Commonwealth of the Bahama Islands), sections 25 and 26 contained the relevant provisions relating to fees of counsel and attorneys. Those sections read:

"25. All persons enrolled as counsel and attorneys of the court shall be entitled to practise as such in all courts in the Colony. And every counsel shall be entitled to practise as an attorney and to sue for and recover his fees and costs in respect of services rendered as a counsel or attorney; and shall be subject to all the liabilities which by law attach to an attorney.

26. Every person practising as an attorney and whose name is enrolled as aforesaid shall be deemed to be an officer of the court. And the laws of England for the time being relating to attorneys and to the taxation and recovery of costs shall be extended to the Colony and shall apply to every such person." (Emphasis mine).

15The effect of the words underlined above was that whatever procedure was available to solicitors in England to recover their costs and fees from their clients or former clients would have been available to counsel and attorneys of the Supreme Court of The Bahamas.

...

21In light of those decisions, it appears that at common law, the Judges of the High Court in England had inherent power to order a solicitor's bill of costs to be taxed. As the Supreme Court of The Bahamas has all of the powers of the High Court in

England as well as the Divisions thereof, I think that this Court too had inherent power to order the taxation of a counsel and attorney's bill of costs not only by the common law but also by virtue of the foregoing provisions of the then Supreme Court Act which incorporated the provisions of the relevant English Statutes by reference.

**22**In 1971, The Bahamas Bar Act, 1971, (Ch. 44 in the 1987 Edition of the Statute Laws of The Bahamas) repealed and replaced the above provisions of the Supreme Court Act. Subsections 17(2) and (3) read:

"17.-(2) A counsel and attorney may, subject to the provisions of this Act, sue for and recover his fees and expenses in respect of services rendered as counsel and attorney.

(3) A counsel and attorney shall be subject to all liabilities to which by the common law and the rules of equity a solicitor of the Supreme Court in England is liable." (Emphasis added).

**23**It will be noticed that subsection (3) above, preserved the common law liabilities of a solicitor of the Supreme Court in England and authorised such a person to sue for and recover his fees and expenses in respect of services rendered as such counsel and attorney. It has not been contended that that provision took away the inherent jurisdiction of the Court to order the taxation of a counsel and attorney's bill of costs nor that it took away any accrued rights of counsel and attorneys to have their bills of costs taxed in the way in which it was done in this case.

**24**In principle, I think it requires clear words in a statute to take away a jurisdiction which the Court undoubtedly had prior to its enactment or to interfere with accrued rights.

**25**A further statutory change was made by subsection 18(3) of the Legal Profession Act, 1992 (No. 26 of 1992) which came into force on 1st June, 1993. That subsection reads:

"(3) A counsel and attorney may, subject to this Act, sue for and recover the fees and expenses in respect of services rendered as counsel and attorney." (Emphasis mine)

**26**That subsection is different from its two predecessors which I set out above for ease of reference and appears to enable a counsel and attorney in The Bahamas to sue for and recover fees and expenses in accordance with the provisions of that Act. It does not incorporate the English provisions by reference as did sections 25 and 26 of the 1897 Supreme Court Act. There is no argument before me that it has taken away the inherent jurisdiction of the Court to order the taxation of an attorney's bill of costs or that it has interfered with the accrued right of the firm to have its bill of costs taxed in the way in which that was in fact done.

[10.] In ***Campbell v Campbell and Lewis [1941] 1 All ER 274*** the English Court of Appeal held that, at common law, a solicitor may invoke the inherent jurisdiction of the Court to apply for a charging order as a security for the recovery of fees and costs due and payable to him.

[11.] This is essentially a claim by MOG against the estate of its former client for a recognition of its claim to the fruits of its exertion in its prior representation of the

deceased. Such a recognition whether called a charge or lien seeks the same result. It is my considered view that this jurisdiction exists under the common law inherent jurisdiction of the Court. I am therefore satisfied that the Court has jurisdiction to hear the application of MOG for a charge or lien with respect to their fees upon any costs orders which Bethel would have been entitled.

#### Recusal

[12.] I am also satisfied that I am not precluded from hearing the application, which concerns costs orders made by me, having regard to an earlier recusal decision. This application is essentially a matter between MOG and its client, now the Estate of the late Julius Trevor Bethel and is not concerned with the substantive dispute, which may in fact no longer subsist. This is not an application for payment but merely for the imposition of a charge or lien.

[13.] As indicated, the basis for the recusal related to the fact that I had been shown, in the course of earlier proceedings, certain confidential information which had the potential effect of colouring my views in the substantive application. Clearly the application for a lien by MOG, as against their client, would not, without more, be impacted by my recusal decision.

[14.] The making of a lien/charge does not entitle MOG to proceed to enforce any order for costs. The firm cannot have any greater right with respect to these costs than the estate would. The charge/lien, if granted merely affords protection to MOG against its client, now the estate. Enforcement of that charge is an entirely different matter and may well depend on collateral proceedings now pending by MOG against the estate.

#### Whether application may proceed Ex Parte

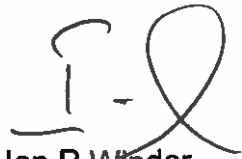
[15.] The applications were filed as ex parte Summonses. Notice was given to the Judicial Trustee who, it seems, notified all of the other parties. An application was being pursued to substitute service on the Administrator. The Administrator has subsequently appeared by her Counsel.

[16.] As the application is against the client (now his estate) it ought to be heard inter partes as between these parties and only in an exceptional circumstances proceed ex parte. An exceptional circumstance may exist where there is a risk to MOG concerning the securing of the property which may be subject to the charge. No such risk has been demonstrated in this case as the estate itself has not entered the substantive action in substitution of the deceased and the other parties to the action seem to dispute the estate's entitlement to receive the costs. Some parties assert that Bethel's death somehow extinguishes the rights of the estate whilst others suggest that the costs could not be paid as a result of other costs orders which they say are owed to them, or due to be decided, by Charles J.

[17.] Any party which may be affected by the charge ought to be permitted to make representations in the application. As the charge is confined to the entitlement of the client, the likelihood of any effect on others, outside of MOG and the client, appears remote.

[18.] I therefore proceeded to hear whether a charge/lien ought to be made in the circumstances and if so the extent thereof. I reserved the question of costs until my determination of the substantive application.

Dated this 8<sup>th</sup> day of April 2022

A handwritten signature in black ink, appearing to read 'I. R. Winder', with a large, stylized flourish at the end.

Ian R Winder

Justice