COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Commercial Division
Claim No. COM/lab/00054 of 2022

BETWEEN:

MAURICE JOHNSON

Claimant

AND

BAHAMAS WASTE LTD.

Defendant

Before:	The Hon. Mr. Justice Loren Klein
Appearances:	Krysta Mason-Smith for the Claimant
	Lakeisha Hanna for the Defendant
Hearing Dates:	Written submissions 6, 14 March 2025

RULING

KLEIN, J.

Costs—Summary Assessment—Reasonable and proportionate costs—Proportionality Assessment—Approach—Hourly Rates—Guideline Hourly Rates—Multiple fee earners—Charges for small fractions of time—Reasonableness

INTRODUCTION AND BACKGROUND

1. This is the summary assessment of costs awarded to the claimant consequential to a judgment delivered 24 February 2025, which arose out of an application by the defendant during the course of trial for the admission of computer-generated evidence. That application was allowed, but because it was made at the 11th hour and forced an adjournment of the trial, the court awarded the costs of the application to the claimant, to be summarily assessed.

2. Attorneys for the claimant ("the receiving party") submitted a bill of costs ("BOC") for $33,201.14, broken down as follows: $29,834.00 for professional fees; $2,983.40 for VAT; and $384.00 for disbursements. The defendant ("the paying party") describes the BOC as "staggering" and complains that such an amount is "*not only excessive but also fundamentally inconsistent with the principle of reasonableness and proportionality, having regard to the fact that it was an interlocutory application on the admission of hearsay evidence*."

ANALYSIS AND DISCUSSION

Legal Principles

3. The principles relating to the summary assessment of costs under the CPR 2022 were considered by this Court in **Dr. Gauri Shirodkar v The Bahamas Medical Council** (2021/PUB/jrv/00003), 6 February 2025. In accordance with the overriding objective, the Court is required "*to deal with cases justly and at proportionate costs*" (CPR 1.1). The combination of the various rules dealing with the assessment of costs requires the court to ensure that costs are both reasonable and proportionate in relation to the matters in issue.

4. In assessing the reasonableness and proportionality of the amount of costs incurred, the court will have regard to all the circumstances, including the conduct of the parties, the value of the claim, the importance of the matter to the parties, the complexity of the case, and the time reasonably spent on the case (CPR 71.9 (4), 71.11, 72.21).

5. In the **Dr. Shirodkar** case this Court stated that [at 42]:

> "… a judge conducting a summary assessment or a registrar conducting a detailed assessment would have properly discharged their function if he or she applied the twin tests of reasonableness and proportionality, paying due regard to the factors at 71.11(3) or any wider factors considered appropriate under 71.11(1). He or she need not follow any particular formula or methodology in doing so, although as stated, it seems only logical and sensible that the starting point should be an assessment of the bill on the traditional basis of reasonableness, before any global adjustment is made for proportionality."

6. As to reasonableness, in **Francis v Francis and Dickerson** [1955] 3 All ER 836, Sachs J. said:

> "When considering whether or not an item in a bill is "proper" the correct viewpoint to be adopted by a taxing officer is that of a sensible solicitor sitting in his chair and considering what in the light of his then knowledge is reasonable in the interest of his lay client…".

7. On the matter of proportionality, this court in **Shirodkar** endorsed the UK Court of Appeal's decision in **West & Demouloid v Stockport HNS Foundation Trust** [2019] EWCA Civ 1220, which articulated the modern approach to proportionality in the UK. I summarized the approach there as follows:

(i) Costs must first be considered on a line-by-line basis to ensure that they are reasonable, then assessed by reference to CPR 44.3 (5) and, if relevant, the wider circumstances under CPR 44.4 [*cf.* CPR 71.11]. The court may also consider the proportionality of a particular item during its assessment for reasonableness. At the end, if the court considers the total proportionate, then no further assessment is necessary.

(ii) If the figure is disproportionate to the matters, the judge then undertakes a further assessment, looking at each category of costs claimed (such as disclosure or expert reports) and should make such further reductions as appropriate. In doing so, the judge should ignore unavoidable items such as court fees and VAT. Once this is done, "…*the*

resulting figure will be the final amount of the cost assessment. There would be no further standing back and if necessary, undertaking a yet further review by reference to proportionality." [para. 93 of **West**].

8. As a matter of general principle, in conducting a summary assessment of costs, the court must apply the same principles as would be applied on a detailed assessment. However, the summary assessment is not intended to be a mini detailed assessment, or a "*line-by-line billing exercise*" (see, e.g., **Axnoller Events Ltd. v Brake and Anor (Summary Costs Assessment)** [2021] EWHC 2362 (Ch). (23 August 2021). This is also made clear by CPR 71.12 (3), which provides that a judge may, instead of summarily assessing costs, "*direct that the whole or any part of the costs payable shall be subject to detailed assessment and he may, when making such direction, indicate which particular matters the Registrar may or shall take into account or exclude in relation to such detailed assessment*."

9. In other words, the procedure was intended to achieve savings of time and effort by having costs speedily assessed by the judge who heard the application or trial and was therefore very familiar with the nature of the matter and what was involved. As noted, it does not require a line-by-line assessment and allowance or disallowance of the amounts claimed, although a judge may look at each item in considering whether the charges are reasonable and proportionate.

Assessment having regard to principles

Reasonableness

10. The claimant submitted a Bill in respect of three fee earners, as follows: a senior silk ("MDD") at $1,400.00 per hour; senior counsel ("KAMS") at 1,000.00 per hour; and junior counsel ("BGB") at $600.00 p/h. Claims were made in respect of 35 items. Because the application was made at a late stage of the trial, the claimant submitted that the defendant should be made to pay the BOC in full, in other words, that costs should be assessed in a manner akin to cost assessed on an indemnity basis. In my judgment, the lateness of the application is not, by itself, sufficient reason to take the assessment out of the standard basis, and I do not consider that there was anything in the defendant's conduct of the matter that would warrant costs being assessed on an indemnity basis.

11. The defendant in its reply to the BOC objected to virtually every item claimed and, allowing for the fees which they say should be disallowed or reduced, submitted that a reasonable and proportionate amount of costs for the application should be rounded off at $2,500.00, based on professional fees at $2,125.00, VAT at $212.50, and disbursements of $82.00.

12. I will say at once that the defendant's assessment is rather parsimonious. However, as discussed below, there is merit in the criticism that the BOC is extravagant, having regard to the nature of the application. The defendant objected on three principal grounds: (i) that the number

of fee earners was inflated; (ii) that the hourly rates submitted were excessive; and (iii) that many of the items billed were not necessary and were unreasonably incurred.

Multiple fee earners

13. The first line of attack is that the BOC is unjustifiably inflated due to the engagement of multiple attorneys for a straightforward matter. The defendant contends that the matter was not certified fit for two counsel and, therefore, only the costs of counsel presenting the matter should be allowed (see **Finlayson v Caterpillar** (SCCivApp No. 99 of 2022). Further, the senior silk and junior counsel did not attend court when the application was presented.

14. I agree with these points. While a silk is entitled to the support of a junior when he is leading a matter, it is not so when he appears as a supernumerary. Unless the court certifies a matter fit for more than one counsel, simply adding additional attorneys, senior or junior, who have no active or discernable part to play in the litigation as fee-earners, is not reasonable. Thus, the items charged at 1, 3, 5, 18, 20, 23, 30 and 34 for the additional fee earners must for the most part be disallowed. The one exception I will make to this is to allow the charge at item 3 for service of documents, but I will reduce the $150 claimed for 15 minutes (at the rate of junior counsel) to a flat fee of $50, which is said to be the going rate for the service of documents. In any event, it is trite that fee earners are not entitled to charge legal rates for clerical or administrative tasks. This immediately results in the deduction of $6,400.00 from the professional charges.

15. Although I disallowed the costs of the additional fee earners for the reasons given, I would venture to say that they were unreasonable in any event. For example, item 34 is a claim totalling $2,800.00 by senior silk for two hours to review the BOC and accompanying submissions. The submissions on costs, such as they were, amounted to all of three paragraphs, and the BOC consisted of 35 items. In fact, the time claimed for preparation of the submissions was only ten minutes, so two hours to review those submissions and the Bill would have been excessive by any standard.

Hourly rates

16. The next criticism of the BOC is that the hourly rates submitted by the receiving party are excessive. As I have decided that the fees in respect of the senior silk and junior counsel will be disallowed, I will say nothing about their rates, and neither does the defendant press the argument with respect to them. The defendant does contend, however, that Ms. Mason-Smith's rate of $1,000.00 per hour is excessive, given her years of call (16 years), and should be reduced to $500.00.

17. In **Shirodkar**, I noted that the issue of hourly rates was a matter of some "*difficulty and delicacy*" in this jurisdiction and encouraged the promulgation of guideline or scales for hourly rates approved by the Bar and Bench. I renew that call. The disparity and anomalies between

rates asserted by counsel remains striking. In addition to what was said in **Shirodkar** to commend these guidelines, it is to be noted that two of the factors to be considered in assessing whether a fee is reasonable in the *Legal Profession (Code of Conduct) Regulations* are:

> "(d) the customary charges of other attorneys of equal standing in like matters and circumstances; […]
> (g) scales advised by the Bar Association; …".

18. In **Shirodkar**, I assessed the rate of a silk with nearly 20 years' call at $900.00 per hour, where $1,100.00 was being claimed, and accepted the rate of $350.00 claimed by counsel of about 10 years' call. In light of this, counsel with 16 years' call and not a silk can assert no pretension to an hourly rate of $1,000.00. I would therefore assess her rate at $550.00.

Unnecessary and unreasonable charges

19. The next claim is that many of the items charged (items 2, 11, 12, 13 and 14) were unnecessarily and unreasonably incurred, as they involved interactions with administrative staff, such as meetings, conversations, and follow-ups, and they should not be allowed. For example, the claim at item 11 is for reading messages from the claimant recorded by the support staff (8 secs charged at $250.00), item 12 is getting further details from support staff concerning a message left by the claimant during vacation break (5 mins. at $250) and items 13 and 14 are instructing support staff to follow up with Court on ruling (totaling 7 mins. at $700.00).

20. As I understand the defendant's complaint, it is that these tasks relate to matters that are in the nature of administrative or clerical tasks that would normally be matters for a firm's general overhead. However, there are some aspects of this work that could properly be charged by a fee earner as part of the general care and conduct of a matter, so I will not disallow the items, although I will reduce the rate, as explained below.

21. A more worrisome feature of the BOC is that there are a significant number of items (including those mentioned above) constituting professional fees that are all charged in very small fractions of time, the smallest being 5 seconds and several at one or two minutes, all charged at a quarter hour's rate of $250.00 (5, 15, 16, 17, 18, 21, 23, 25, 26, and 32).

22. Although there is no legislation prescribing minimum billable time increments in this jurisdiction, I believe the practice is that billing is normally structured around minimum time increments of a quarter hour, and that counsel generally do not submit charges for very small fractions of time, such as minutes and seconds. As billed by the claimant, the charges for 15 items billed at small fractions of times at a quarter hour's rate amounts to $3,750.00 I will aggregate the recorded time for these items, which comes to one hour and 12 minutes (rounded off to one and a quarter hours), which totals $687.50 at the reduced rate. It is neither reasonable nor proportionate for counsel to charge for these small fractions of time, which can easily inflate and distort a BOC.

23. Item 4 is charged at $500.00 for service of submissions on the defendant's counsel (on counsel for the claimant's "instructions") charged at half an hour's rate, which is said to be

necessary because there were two visits to the Chambers to serve the documents. The defendant claims that not only were the documents not served (they were laid over in court) but, as has been mentioned, the standard charges for service of documents is $50.00, and cannot be charged at the rate of a legal fee earner. This is therefore reduced to $100.00

24. The majority of the remaining items constituting professional fees relate to reading emails between counsel and the court, meetings with the client, and preparing the submissions for the application and the BOC. The defendant objects to several of these items on the grounds that they are unreasonable and disproportionate. In this regard, items 26 and 28 both relate to the reading of the defendant's notice of application and affidavit in support, which is charged at five hours and 10 mins. in total. I agree that these are excessive and duplicative, and will reduce that to three hours, for a total fee of $1,650.00. All other items are to be assessed at the reduced rate.

25. The defendant also queried the claimed disbursements of $384.00. It was contended, *inter alia,* that the defendant should not be made to pay for the cost of printing "draft" copies of the BOC and submissions, as the requirement is now to upload those documents electronically. There may be some merit in that argument, but I do not find that the claimed disbursements are unreasonable, and so I will not trouble that figure.

26. On my assessment, the total for professional fees comes to $9,087.50, VAT at $908.75, and disbursements at $384.00, for a total of $10,380.25.

Proportionality

27. In my view, this figure is proportionate to the matters in issue, and no further reduction is necessary, applying the considerations set out in **Shirodkar**.

CONCLUSION AND DISPOSITION

28. Based on the foregoing, my Order will therefore reflect that costs be paid to the claimant by the defendant in the amount of $10,380.25, inclusive of VAT and disbursements.

Klein J.

2 May 2025