

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
BETWEEN:

2021
CLE/gen/0030

PATRICK TARH, et al

Plaintiff

AND

HON. ELSWORTH JOHNSON
(In his capacity as Minister Responsible for Immigration) et al

Defendant

Before: Deputy Registrar Renaldo Tooté

Appearances: R. Dawson Malone for the Plaintiff
Keith Cargill for the Defendant.

Date: 27 October 2022

RULING

Fixed Cost – whether a Registered Associate can recover cost? – Legal Profession Act section 24 (b)

Toote, Deputy Registrar

1. On 27th October 2022, this court granted leave to the plaintiff to enter a final interlocutory judgment against the defendant for failing to file a defence to the plaintiff's specially endorsed writ of summons. As a result, the court ordered that the cost occasioned by the plaintiff's application (from filing of the writ to assessment of damages) be paid by the defendant. These costs were ordered to be fixed.
2. The hearing was adjourned to allow the plaintiff to submit written submissions on the issue of cost and thereafter the defendants were granted seven days from the date of receipt to respond to the plaintiff's submission.
3. On 3 November 2022, the plaintiff requested an extension of time to submit its bill of cost which was consented to by Mr. Keith Cargill, counsel for the defendants. On 7 November 2022 the plaintiff submitted its quantum on cost and to date there has been no response by the defendants.
4. The plaintiff relies on the authority of **The Comptroller of H.M. Customs v Kelly's Freeport Ltd.** (unreported) 2020/PUB/jrv/0006 to sustain the position that their

submitted bill of costs are reasonable and ought not be reduced by taxation particularly considering the fact that there is no opposition to the bill of costs.

5. Having regard to the circumstances of this matter, I will emphasize that the overriding objective of the court when considering costs is reasonableness. In **McPhee (as administrator of the Estate of Thelma Mackey) v Stuart** [2018] 1 BHS J. No. 18 (unreported) at para 8 the court held:

“in deciding what would be reasonable, the court must take into account all the circumstances including but not limited to: a. any order that has already been made; b. the care, speed, and economy with which the case was prepared; c. the conduct of the parties before as well as during the proceeding; d. the degree of responsibility accepted by the legal practitioner; e. the importance of the matter to the parties; f. the novelty, weight and complexity of the case and g. the time reasonably spent on the case.”
6. I fully endorse the decision of **McPhee** (supra) *ibid*. The court ought not to approve any disproportionate and unreasonable costs.
7. I am further mindful of the fact, that the paying party is not disputing the amount of costs, and that ought to be taken as some indication that the amount proposed by the receiving party is proportionate and reasonable, unless the court is satisfied that having regards to the circumstances, it is necessary to intervene and vary the proposed cost.
8. The English Court of Appeal, in the case of **Home Office v Lownds** [2002] EWCA Civ 365; [2002] 1WLR 2450; [2002] 4 All ER 775 CA., has given guidance on the correct approach to proportionality when assessing costs by introducing a two-stage approach:

“There has to be (1) a global approach and (2) an item by item approach. The global approach will indicate whether the total sum claimed is or appears to be disproportionate having particular regard to the considerations which Part 44.5(3) (equivalent to Part 67.2(3) of the Trinidad and Tobago CPR) states are relevant. If the costs as a whole are not disproportionate according to the test then all that is normally required is that each item should have been reasonably incurred and the costs for that item should be reasonable. If on the other hand the costs as a whole appear disproportionate then the court will want to be satisfied that the work in relation to each item was necessary, and if necessary, the cost of the item was reasonable.”
Emphasis added.
9. The plaintiff submitted a bill of cost in the amount of \$56,251.00 inclusive of disbursements of \$10,063.50 and professional fees at \$46,187.50 at the following hourly rates:
 1. Frederick R. M. Smith QC (“FRMS”) - \$1,000.00
 2. R. Dawson Malone (“RDM”) - \$550.00
 3. Doneth A. Cartwright (“DAC”) - \$400.00
 4. Raven A. Rolle (“RAR”) - \$350.00

10. Having ordered cost to be fixed, I will apply the global approach to the bill of costs and in lieu of the proposed rates, I will re-adjust the rates to reflect a more reasonable and proportionate rate which is in keeping with rates previously awarded. The adjusted hourly rates are therefore:
 1. Frederick R. M. Smith QC (“FRMS”) - \$950.00
 2. R. Dawson Malone (“RDM”) - \$450.00
 3. Doneth A. Cartwright (“DAC”) - \$350.00
 4. Raven A. Rolle (“RAR”) - \$350.00
11. I must apply judicial notice to Ms. Doneth Cartwright and enforce that she is an Attorney of 1 year call. Prior to her being called to the Bahamas Bar, she was a Registered Associate in the firm of Callendars & Co.
12. The issue of whether or not a Registered Associate [Doneth Cartwright] is entitled to recover costs was sufficiently ventilated by the learned Registrar of the Court of Appeal in the decision of **Johann D. Swart, William S. Taylor, Larry Biswanger, Scott Moncrieff v Apollon Metaxides (in his personal capacity as a representative of six others) v Silver Point Condominium Apartments (a body corporate)** (unreported) SCCivApp No. 78 of 2012.
13. Then again in **Caribbean Mining Group Ltd. v O’Brien et al** (unreported) BS 2023 SC 77 where the Assistant Registrar determined that:

“...it matters not whether you are a Registered Associate doing chamber work as opposed to Counsel practicing in court, either way legal work is being performed that ought to be remunerated.”
14. . Therefore, I see no reason to disturb these authorities.
15. I will therefore allow for the recovery of cost at \$350 per hour associated with the chamber work of Ms. Cartwright during the period of her being a Registered Associate.
16. In light of the aforementioned reasons, I have considered the bill of cost as a whole and will allow the disbursement sum of \$10,063.50; however, having considered the circumstances of this matter in its entirety and the work associated with the same, I will fix the professional fees at 35,000.00. Therefore, the total amount awarded is \$45,063.50.
17. I make no further order as to cost.

Dated this 3rd day of May A.D. 2023

**Renaldo Toote
Deputy Registrar**