



In The Supreme Court of Bermuda
DIVORCE JURISDICTION
2008: No. 221

BETWEEN:

P.C.W

Petitioner

and

M.W.

Respondent

RULING

Date of Hearing: 1 May 2023

Date of Ruling: 1 May 2024

Petitioner/Entitled Party: In person

Respondent/Paying Party: Mr. Cameron Hill, Spencer West Bermuda

Taxation of Bill of Costs

RULING of Cratonia Thompson, Acting Registrar

Introductory

1. This is a contested taxation of the Petitioner's Bill of Costs filed with the Supreme Court for taxation pursuant to an order of the Court dated 3 February 2022 (the "Costs Order").
2. The Petitioner, a litigant in person, was awarded the costs of her application to the Supreme Court wherein she sought enforcement of an order made in the Court of Appeal for the payment of outstanding sums owed to her by the Respondent (the "Application").

The Costs Order awarded to the Petitioner the costs of the Application on a standard basis.

3. The Petitioner's Bill of Costs filed with the Court claims \$46,000 in profit costs resulting from 920 hours of work charged at a rate of \$50 per hour, plus an additional \$2,891.25 in disbursements. The total costs claim by the Petitioner amounts to \$48,891.25.
4. The Respondent submitted its objections to the Petitioner's Bill of Costs on 25 April 2023. I have categorized the Respondent's objections generally as follows, and will address each objection in turn.
 - (1) The Petitioner's costs are disproportionate and/or unreasonably incurred.
 - (2) The Petitioner has claimed costs that fall outside the ambit of the Costs Order.

The Law

5. The law as it relates to Taxation proceedings is set out in Order 62 of the Rules of the Supreme Court 1985 ("RSC"). As to the law to be applied to these specific Taxation proceedings, I have had regard to the following:

Order 62/12 Basis of taxation

12 (1) On a taxation of costs on the standard basis there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the Registrar may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party.

Order 62/18 Litigants in person

18 (1) Subject to the provisions of this rule, on any taxation of the costs of a litigant in person there may be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by an attorney on the litigant's behalf together with any payments reasonably made by him for legal advice relating to the conduct of or the issues raised by the proceedings.

Part II Division I to Order 62

- 1 (2) *In exercising his discretion the Registrar shall have regard to all relevant circumstances, and in particular to –*
- (a) *the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;*
 - (b) *the skill, specialized knowledge and responsibility required of, and the time and labour expended by, the attorney;*
 - (c) *the number and importance of the documents (however brief) prepared or perused;*
 - (d) *the place and circumstances in which the business involved is transacted;*
 - (e) *the importance of the cause or matter to the client;*
 - (f) *where money of property is involved, its amount or value;*
 - (g) *any other fees and allowances payable to the attorney in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.*

Respondent’s Objections to the Bill of Costs

Petitioner’s costs are disproportionate and/or unreasonably incurred

6. In considering whether the Petitioner’s costs are proportionate, the Respondent argued that the Court is required to assess the Petitioner’s costs on both a global basis and an item-by-item basis in accordance with the principles outlined in *Golar LNG Ltd v World Nordic SE No. 163 of 2009 (Commercial List)*. In particular, reference was made to paragraph 17 of *Golar*, which refers to comments made by Lord Woolf in *Lownds v Home Office [2002] EWCA Civ 365*, and provides as follows:

“In other words what is required is a two-stage approach. There has to be a global approach and an item by item approach. The global approach will indicate whether the total sum claimed is or appears to be disproportionate having regard to the particular considerations which CPR r 44.5(3) states are relevant. If the costs as a whole are not disproportionate according to that test then all that is normally required is that each item should have been reasonably incurred and the cost 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, that the cost of the item is reasonable.” (emphasis added)

7. The Respondent went on to argue that the Court should scrutinize with care whether each item was necessary, and if necessary that the cost of the item is reasonable, particularly in light of the disproportionate nature of the costs as a whole. Of the 920 hours claimed, the Respondent argues that only 5 hours should be allowed.
8. The Petitioner’s response to the Respondent’s arguments relied heavily on the Petitioner’s view that the Respondent (and also his attorney) had behaved unreasonably throughout the proceedings as a whole. The Petitioner argued that the Respondent’s (and also his attorney’s) unreasonable conduct and refusals to enter into any settlement negotiations resulted in the proceedings being protracted, and also compelled the Petitioner to take extra care in drafting and preparing her case. The Petitioner argued therefore that the each item claimed in her Bill of Costs was both necessary *and* reasonable.
9. It is well established that the principles set out in *Golar* are the principles to be applied on Taxation. I therefore accept that the Court is required to assess the Petitioner’s costs on both a global basis, and an item-by-item basis. Taking a broad look at the Petitioner’s costs, I am of the view that the Petitioner’s costs as a whole do appear to be disproportionate. In those circumstances I am required to consider whether the work in relation to each item claimed in the Petitioner’s Bill of Costs was necessary, and if necessary, that the costs of the item is reasonable.
10. In terms of the Petitioner’s arguments concerning the Respondent’s conduct, I would note that litigation conduct is typically taken into consideration upon the making of a costs order. It is accepted by the parties that the costs in these proceedings were awarded by the presiding Judge on a standard basis. I am bound by the provisions set out in Order 62, rule 12 of the RSC, which provides that the Registrar shall allow a reasonable amount in respect of all costs reasonably incurred, and any doubts which the Registrar

may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party.

11. In exercising my discretion as to the reasonableness of the costs incurred, I am to have regard to the circumstances set out in Part II Division I to Order 62 of the RSC (as set out at paragraph 5 of this Ruling). Of note, given the facts of this particular case, are the following circumstances:

- 1) The complexity of the matter;
- 2) The skill and specialized knowledge required; and
- 3) The importance of the matter to the client.

12. As noted, the application to which these costs relate, was an application for enforcement of an Order made in the Court of Appeal for the payment of outstanding sums due to the Petitioner. The Respondent argued that enforcement proceedings are not a novel area of law and are generally regarded as straight forward proceedings. It was further argued that the procedure is summary in nature and requires a simple summons to be filed with the Court, and that the hearing of that Summons usually takes place in Thursdays Chambers. The Respondent noted that the application filed in these proceedings followed the ordinary course, in that it was listed in Chambers, and involved a 20 minute hearing wherein the Respondent was ordered to pay the then outstanding arrears.

13. I do accept the Respondent's general argument that enforcement proceedings are not a novel area of law and are largely regarded as straight forward proceedings. I also accept that the ordinary course in enforcement proceedings is for the entitled party to file a summons with the Court. In this instance, the Petitioner prepared and filed with the Court a Judgment Summons and then subsequently prepared and filed a Notice of Motion together with an Affidavit in support. It was noted in the Objections filed on the Respondent's behalf that no point was taken by the Respondent of the "*incorrectness*" of this course of action.

14. Of the costs claimed by the Petitioner in respect of the Application, the Respondent has highlighted as being excessive and/or unreasonable the costs claimed by the Petitioner

for (i) preparation of the Judgment Summons, Notice of Motion and accompanying Affidavit; (ii) preparations for the hearing of the Application (including the production of binders); and (iii) the Petitioner's correspondence.

15. As it relates to the preparation of the Judgment Summons, the Respondent noted that the Petitioner has claimed a total of 38 hours in respect of this work. As to the Notice of Motion and the Affidavit in support, the Respondent points out that the Petitioner has claimed a total of 272 hours for drafting the Notice of Motion and accompanying Affidavit, and a further 131 hours of time for updating the Notice of Motion and Affidavit.
16. Although the Petitioner is a litigant in person, given the straight forward nature of the application, I am not of the view that any specialized knowledge or skill is required to effectively present the application in question to the Court. In the circumstances, I feel bound to accept the Respondent's submission that the costs claimed by the Petitioner in respect of preparing the Judgment Summons, Notice of Motion and Affidavit in support is excessively disproportionate. While it was clear throughout the Taxation proceedings that this Application was of supreme importance to the Petitioner, I am not satisfied that 400 + hours of work for simply preparing the Judgment Summons, Notice of Motion and accompanying Affidavit is reasonable. I have taxed the Petitioner's costs in respect of this work accordingly. My decision as to the hours of work I've allowed is set out in the table that follows this Ruling.
17. For the reasons previously set out, I have also found that the costs claimed by the Petitioner for the preparation of binders and documents for the hearing of the Application, as well as the costs claimed for correspondence either to the Respondent's attorney or to the Court are disproportionate and/or unreasonable. Given the nature of the application in question, I cannot accept that the volume of correspondence and the costs claimed in this regard were in fact necessary or reasonable and I have taxed the Petitioner's costs accordingly.

Costs falling outside the ambit of the Costs Order

Work relating to the Court of Appeal proceedings

18. As the Costs Order to which these Taxation proceedings relate is in respect of the Petitioner's enforcement application, it goes without saying that any costs incurred by the Petitioner in relation to the Court of Appeal proceedings are not recoverable on this Taxation. I have therefore disallowed any costs relating to work conducted in relation to the Court of Appeal proceedings.

Preparation of the Bill of Costs

19. The Respondent argued that the Petitioner is not entitled to recover the costs of preparation of the Bill of Costs as these costs do not fall within the scope of the Costs Order. It should be noted that the Respondent's position as to the recoverability of these costs appears to stem from the Respondent's belief that the costs claimed by the Petitioner for the preparation of a bill of costs relates to the preparation of a bill of costs for the Court of Appeal proceedings. I do not take that view. It appears to me that the costs being claimed by the Petitioner relate to the preparation of the Bill of Costs for these Taxation proceedings. That being the case, I am of the view that the Petitioner is entitled to her costs in accordance with the provisions set out in Order 62, rule 27 of the RSC, which provides as follows:

62/27 Powers of Registrar in relation to costs of taxation proceedings

27 (1) Subject to the provisions of any Act and this Order, the party whose bill is being taxed shall be entitled to his costs of the taxation proceedings.

*(2) Where it appears to the Registrar that in the circumstances of the case some other order should be made as to the whole or any part of the costs, the Registrar shall have, in relation to the costs of taxation proceedings, the same powers as the Court has in relation to the costs of the proceedings.
(emphasis added)*

20. Having established that the Petitioner is entitled to her costs of the Taxation proceedings, which would include preparing the bill, as well as preparing for and attending the Taxation hearing, I have allowed a total of 2 hours for preparation of the Bill of Costs, a

total of 2 hours for hearing preparations, and a further 3 hours for attendance at the Taxation hearing.

Research

21. At the hearing of these Taxation proceedings, the Respondent argued that the costs claimed by the Petitioner for research should be disallowed on the basis that such costs are not recoverable. While it is the case that research and administrative costs are not recoverable, it is my view this position relates only to attorneys, who are “*assumed to know the law and cannot normally charge for researching it*” (*Moulder v CHW and Ors (Taxation Review) 2012 Bda LR 1*).

22. In *Golar*, Ground CJ citing Cook on Costs Butterworths 2004, p. 230 with approval stated as follows:

“Time spent considering the law and procedure is usually non-chargeable and the higher the expense rate, the more law and procedure the fee earner is expected to know.” (emphasis added)

23. Ground, CJ continued on in his own words as follows, “*Legal research as an element of charge should be constrained, particularly for high fee earners who are entitled to charge a high fee precisely because they are experienced and presumed to know the law.*” (emphasis added)

24. In my view, the above passages suggest that while research costs may not be recoverable by attorneys (who are assumed to know the law), this principle might not apply to litigants in person, who presumably would not know the law. In the circumstances, I do not accept the Respondent’s submission that the Petitioner should not recover any costs associated with research. I do however consider that the costs claimed by the Petitioner for research are excessive given the nature of the application, and have taxed the amount claimed (over 60 hours) to a total of 2 hours.

Additional Considerations

Hourly Rate

25. In the Bill of Costs filed, the Petitioner claims an hourly rate of \$50. At the Taxation hearing, the Petitioner invited the Court to consider awarding a higher hourly rate on the basis that she had suffered financial loss. The Petitioner referred the Court to Order 62, rule 18(3) of the RSC in support of this, and submitted that the Court could reasonably consider raising the hourly rate to \$60 or \$75 Order 62, rule 18(3) provides as follows:

18 (3) Where it appears to the Registrar that the litigant has not suffered any pecuniary loss in doing any item of work to which the costs relate, he shall be allowed in respect of the time reasonably spent by him on that item not more than \$50 per hour.

26. The Petitioner did not offer any evidence in support of the submission that she had suffered pecuniary loss. In the absence of any evidence in support, I do not consider it appropriate to deviate from the hourly rate as set out above, that being the rate of \$50 per hour.

Disbursements

27. I have reviewed the costs claimed under this head and have allowed all costs claimed by the Petitioner in respect of filing fees with the Court, i.e. revenue stamps. This is a standard practice and I see no reason to deviate from that practice.

28. Noting that the Petitioner is a litigant in person, I have also allowed the costs claimed in respect of photocopying charges. Ordinarily such costs are not recoverable when claimed by attorneys on the basis that such costs are “*already included in the overhead element embodied in the hourly rate*” (see *Golar para 20*). I do not consider this principle to apply to litigants in person, and on that basis have allowed the costs claimed for photocopying.

29. I have not allowed the costs claimed by the Petitioner in respect of overseas travel and accommodations in order to file documents with the Court. The Respondent argued that these costs were not necessary and I agree. It was accepted by the Respondent that the Petitioner should have her costs

Conclusion

30. The Petitioner is awarded her costs as follows:

| CATEGORY OF WORK | TIMED ALLOWED |
|---|----------------------|
| Research | 2 hours |
| Preparation of the Judgment Summons, Notice of Motion and Affidavit | 10 hours |
| Correspondence with the Court | 1 hour |
| Correspondence with the Respondent | 2 hours |
| Preparing for the hearing of the Application | 2 hours |
| Attendance at the hearing of the Application | 1 hour |
| Preparation of the Bill of Costs | 2 hours |
| Preparing for the Taxation hearing | 2 hours |
| Attendance at the Taxation hearing | 3 hours |
| TOTAL | 25 HOURS |
| Disbursements | \$1,503.26 |

Dated this 1st day of May 2024



CRATONIA THOMPSON, ACTING REGISTRAR