In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2016: 10

LATISHA CHERYL MORANDA LIGHTBOURNE

Appellant

-v-

SHAWN AMIEL AINSWORTH THOMAS

Respondent

JUDGMENT

(in Court)[1]

Review of Registrar's taxation of costs-scope of Registrar's discretion-importance of conducting civil litigation in 'small-money' cases in a proportionate way-impact of 'overriding objective' on Bermudian costs regime

Date of hearing: August 3, 2016
Date of Judgment: August 23, 2016

Ms. Nancy Vieira, MacLellan & Associates, for the Appellant
Ms. Alma Dismont, Marshall Diel and Myers Limited for the Respondent

[1] The present judgment was circulated to the parties without a formal hearing in order to save costs.

Background

1. On November 3, 2015, the Family Court (Wor. Shade Subair Williams, Acting) ruled (upholding the preliminary objection of the Respondent) that it lacked jurisdiction to make orders for the custody, care and control of the parties' child, a vulnerable young adult whose care had previously been supervised by the Family Court before she attained 18 years of age. The Learned Acting Magistrate further found that relief sought by the Appellant could only be sought from the Supreme Court, because the Family Court had no inherent jurisdiction to grant relief beyond the limits of its statutory jurisdiction. The Appellant appealed against this decision on various grounds, but only actively pursued the complaint that this jurisdictional determination was legally flawed.

2. On March 23, 2016 I dismissed the appeal after a hearing that lasted for no more than 1.5 hours[2]. I indicated that while the appeal had been found to lack merit, it had usefully served to highlight the need for a legislative framework to regulate the welfare of vulnerable adult persons. The costs of the appeal were awarded to the successful Respondent. Reasons were given for the substantive decision to dismiss the appeal on April 5, 2016.

3. On March 29, 2016, the Respondent filed a Bill of Costs claiming $12,705. Unsurprisingly, perhaps, the Bill was disputed. The taxation hearing took place before Acting Registrar Mr Peter Miller on May 17, 2016 and lasted approximately 1.5 hours. $9552 (roughly 75%) was taxed off and the Respondent was awarded $3,152. Unsurprisingly, perhaps, the Respondent sought a review of what from his and/or his counsel's perspective was a savage slashing of his Bill.

Overview

4. Regretfully the conduct of the taxation review hearing became a case study of how not to conduct civil litigation in a proportionate manner in a case originating in the Magistrates' Court and/or 'small-money' cases. Such cases are often high-value cases in human terms. But a balance needs to be struck between the extent to which diligent lawyers are entitled expend effort in preparing and presenting the best possible arguments with ensuring that litigants are not deterred from seeking recourse to the courts by unbearable legal costs bills.

5. Although the hearing was scheduled for two hours, the Respondent's counsel (unwilling to give any quarter or move on from points which clearly did not find favour with the Court) devoured the whole afternoon (a full 2 hours) with her submissions. The hearing was adjourned to enable the Appellant to file written

[2] According to Court Smart, the actual hearing lasted for 1 hour 20 minutes.

submissions and for the Respondent, if so advised, to reply. Those submissions represent at least a further hour of oral hearing time. In summary:

(a) the substantive hearing in relation to which the costs award relates lasted less than 1.5 hours;

(b) the taxation of costs hearing lasted for 1.1 hours, almost as long as the main hearing;

(c) the review of the taxation of costs hearing lasted (effectively) for 3 hours, twice as long as the main hearing;

(d) the Respondent's counsel submitted written arguments for the review hearing running to 18 pages and supported by 18 authorities compared with written submissions running to only 11 pages supported by 11 authorities at the main hearing to which the costs order being enforced relates.

6. The overly-enthusiastic manner in which the attack on the taxation was conducted did little to create the impression that the costs claimed by the Respondent had been incurred in a proportionate manner. Rather, it encouraged this Court to view the broad complaint that the Taxing Master had been unduly harsh in overall terms with a healthy dose of scepticism.

7. The range of cases where it is mutually agreed by the litigants that lawyers can spend ample amounts of time constructing near-perfect arguments and incur costs which the unsuccessful party will bear is fairly narrow one. Even in 'big-money' cases and in important public interest and/or publically funded litigation, there is a well-recognised need for proportionality. There was no basis for viewing the present case as anything other than a case where the parties were ordinary litigants whose ability to pay was at the modest end of the scale.

Governing principles

8. Ms Vieira referred the Court to:

(a) the statement of Sykes J that "[t]*here is a well-established principle that this court will not permit appeals on questions which are ultimately matters of judgment for the Costs Judge*": *Kris Motor Spares Ltd-v-Fox Williams LLP* [2010] EWHC 1008 (QB) at paragraph [55]; and

(b) the proportionality requirements contained in CPR 44.3.2 and 44.4.

9. Ms Dismont correctly retorted that English CPR authority was not directly relevant to Bermuda and our own pre-CPR Rules. However, the first principle relied upon by Ms Vieira does in my judgment apply to a Bermudian taxation, and simply means that where the taxing master is better placed than a reviewing judge to assess the merits of a discretionary item, the reviewing judge ought properly to give credit for that fact. In *Kris Motor Spares Ltd*, the Master had tried the relevant issues and managed the case throughout (see paragraph [54]).

10. As regards the deference to be shown to the Registrar more generally, the position is a far more nuanced one. Ms Dismont rightly identified as the best summary of the governing principle the following dictum of Ground CJ in *Moulder-v- Cox Hallett Wilkinson (Taxation Review)[*2012] Bda LR 1:

> "*6…I do appreciate that on a review such as this that I have a discretion to reconsider the taxation afresh and am not fettered by the manner in which the Registrar exercised her discretion: see Mudrasinghe v Penguin Electronics [1993] 3 All ER 20. That does not mean that I will attach no weight to the Registrar's decisions on the various items. Nor does it mean that I will tinker with the amounts allowed or disallowed.*"

11. Surprisingly the Bermudian courts do not appear before to have directly addressed, in terms at least, the role of "proportionality" in the Bermudian pre-CPR costs regime. There are admittedly no proportionality criteria contained in Order 62 which correspond exactly to the codified principles found in CPR 44.3.2/44.4.

12. However Order1A of our Rules provide as follows (emphasis added):

> "***1A/1 The Overriding Objective***
>
> *(1) <u>These Rules shall have the overriding objective of enabling the court to deal with cases justly.</u>*
>
> *(2) <u>Dealing with a case justly includes, so far as is practicable</u>—*
>
> *(a) ensuring that the parties are on an equal footing;*
>
> *(b) <u>saving expense</u>;*
>
> *(c) <u>dealing with the case in ways which are proportionate—</u>*
>
> *(i) <u>to the amount of money involved;</u>*
> *(ii) <u>to the importance of the case;</u>*
> *(iii) <u>to the complexity of the issues; and</u>*
> *(iv) <u>to the financial position of each party</u>;*

(d) ensuring that it is dealt with expeditiously and fairly; and

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

1A/2 Application by the Court of the Overriding Objective

The court must seek to give effect to the overriding objective when it—

(a) exercises any power given to it by the Rules; or

(b) interprets any rule.

1A/3 Duty of the Parties

The parties are required to help the court to further the overriding objective."

13. Costs fell to be taxed in the instant case on the standard basis. Order 62 rule 12 sets out the governing principle:

> "*(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; and in these rules the term "the standard basis in relation to the taxation of costs shall be construed accordingly."*

14. The Court is required by Order 1A of the Rules to (a) deal with cases in a proportionate way (as a key element of achieving the overriding objective), and (b) seek to achieve the overriding objective when it applies or interprets any of the Rules. As a result in considering whether costs have been "*reasonably incurred*", the Court is duty bound to consider whether the amounts claimed are "*proportionate*" having regard to the following Order1A/1 (c) requirements:

> "
> *(i) to the amount of money involved;*
>
> *(ii) to the importance of the case;*
>
> *(iii) to the complexity of the issues; and*
>
> *(iv) to the financial position of each party.*"

15. In the final analysis therefore, the practical result must be that a Bermudian taxation is governed by a construct of reasonableness incorporating requirements of proportionality which broadly correspond to the proportionality requirements more explicitly expressed in CPR 44.3(2) and 44.4. In fact, Order 62 itself does incorporate most of the proportionality requirements of Order1A/1(c), without attaching the 'proportionality label'. Part II of the Schedule to Order 62 provides as follows:

> "*(2) In exercising his discretion the Registrar shall have regard to all the 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, specialised 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 or property is involved, its amount or value…*"

16. The importance of these overarching and case-specific taxation principles was recognised by Richard Ground CJ when he issued Circular No. 11 of 2006 ('*Guideline Figures for Hourly Rates*'). This opened with the following statement of principles:

> "*1. Following the coming into effect of the Rules of the Supreme Court Amendment Rules 2005 on 1st January 2006, the old scales of costs have been abolished. The amount of costs to be allowed on taxation is now in the discretion of the Registrar. In exercising that discretion the Registrar is required by Division 1 of Part II of the Schedule to Order 62, to have regard to all the relevant circumstances, and in particular to the matters set out therein, which include inter alia the complexity of the matter, the skill required, the importance of the matter to the client and the amount of money involved.*" [Emphasis added]

17. Moreover Lord Woolf himself, who recommended the introduction the English CPR, viewed the '*Overriding Objective*' (which does form part of our Rules as amended in

2006) as the main driver for a new costs regime. In *Home Office-v-Lownds* [2002] EWCA Civ 365, he opined as follows:

> "*1. Although this appeal only relates to a detailed assessment of costs in a relatively modest action, it raises issues of principle which have a direct bearing on the policy on which the effectiveness of the Civil Procedure Rules depends. That policy is that litigation should be conducted in a proportionate manner and, where possible, at a proportionate cost. The policy is reflected in the Overriding Objective set out in CPR 1.1 which provides:*
>
> > *'(1) These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly.*
> >
> > *(2) Dealing with a case justly includes, so far as is practicable—*
> >
> > > *(c) Dealing with the case in ways which are proportionate*
> > >
> > > *(i) to the amount of money involved;*
> > >
> > > *(ii) to the importance of the case;*
> > >
> > > *(iii) to the complexity of the issues; and*
> > >
> > > *(iv) to the financial position of each party;'*
>
> *2. Proportionality played no part in the taxation of costs under the Rules of the Supreme Court. The only test was that of reasonableness. The problem with that test, standing on its own, was that it institutionalised, as reasonable, the level of costs which were generally charged by the profession at the time when the professional services were rendered. If a rate of charges was commonly adopted it was taken to be reasonable and so allowed on taxation even though the result was far from reasonable.*
>
> *3. The requirement of proportionality now applies to decisions as to whether an order for costs should be made and to the assessment of the costs which should be paid when an order has been made.*"

18. It also goes without saying that unless a party is enforcing a contractual indemnity or full indemnity clause, the process of taxation as between parties is primarily designed to determine what it is reasonable in the context of the relevant litigation for the

paying party to be required to pay. The taxation process is not designed to determine what it is reasonable for the receiving party's attorneys to have billed or to recover from their own client. The contractual duty of a client to pay a lawyer for work done is generally based on far more inflexible considerations. See e.g. *Marshall Diel & Myers Limited-v-Collingwood Robinson* [2016] SC (Bda) 78 Civ (10 August 2016) (Hellman J).

19. However, in litigation where clients have limited means, in some cases what lawyers actually receive from their clients may on practice be closely linked to what fees the lawyer actually receives. This is not a relevant consideration for the Taxing Master. It will usually be extremely relevant to the lawyers in such cases, who have an added need to ensure that they conduct the relevant matter in a costs-efficient manner.

The disputed items

The appropriate hourly rate

20. The taxation hearing took place while the original scale Circular No. 11 of 2006 was still in force. That Practice Direction remains in force although the scale has now been updated. The governing principles are stated in the Circular as follows (emphasis added):

> "*2. In any particular case the starting point will be the rate which the client is actually obliged to pay his attorneys. The obligation to state that rate accurately in the bill of costs is imposed by the indemnity principle, which is reinforced by the certification required by Ord. 62, r. 29(5)(b)(iii)*[3]*. The question, on a taxation on the standard basis, is then whether the hourly rate actually charged is reasonable. In considering this the Registrar should have regard to the rates charged by comparable firms. For this purpose the fees charged by the paying party may give further guidance in particular cases.*
>
> *3. In order to assist the Registrar when it comes to the appropriate hourly rate the following guideline figures have been derived, with the assistance of the Bar Council, from an informal survey of practitioners' rates for differing levels of post-qualification experience. For the purposes of the guidelines 'post-qualification experience' is distinct from mere length of call, and refers to actual experience in practice after qualification. It can include experience outside of Bermuda as well as experience in Bermuda.*

[3] This is a certification that "*that the costs claimed therein do not exceed the costs which the receiving party is required to pay*".

4. <u>These guideline rates are not scale figures: they are broad approximations only. They are intended to provide a starting point. Costs and fees exceeding the guidelines may well be justified in an appropriate case and that is a matter for the exercise of discretion by the Court.</u> In particular, in substantial and complex litigation a substantially increased hourly rate may be appropriate for fee earners over 9 years' call where other factors, including the value of the litigation, the level of the complexity or urgency or importance (public or private) of the matter, as well as any international element, may justify a significantly higher rate.

1-3 years post qualification experience	-	*$200 - $350 per hour*
4-8 years post qualification experience	-	*$250 - $420 per hour*
9+ years post qualification experience	-	*$350 per hours* [+]"

21. It ought to have been common ground that the Respondent's counsel fell at the mid-point in the 4-8 years post-qualification range for which the suggested hourly rate range (by the date of the taxation 10 years old-the rates have since then been uplifted[4]) $250-$420 per hour range. The rate claimed was $450, which Ms. Dismont deposed without contradiction was comparable to rates charged by lawyers of similar vintage in Bermuda. The Appellant had retained a lawyer whose charge-out rate was apparently $500.

22. Before the Acting Registrar it was argued by Ms. Vieira, who reiterated these submissions in reply to the Review application, that:

    (a) the applicable range was the 1-3 years' range based on Ms. Dismont's 2013 call to the Bermuda Bar-this argument was inconsistent with Circular No.11 of 2006 in that it ignored the potential relevance of her overseas legal experience;

    (b) the appropriate hourly rate was one which fell within the guideline range-this argument was inconsistent with Circular No.11 of 2006 as it ignored the fact that:

        (i) the primary criterion of reasonableness was what practitioners of comparable rates and the paying party's counsel charged, and

[4] Practice Direction Issued by the Registrar, '*Filing and Serving Bill of Costs for Taxation*', July 5, 2016. The range for 4-9 years' post-qualification experience is now $350-$500.

(ii) as stated in the governing Practice Direction, "*the guideline rates are not a scale*".

23. Before this Court the Appellant's counsel prayed in aid observations made by Hobhouse J in *Loveday-v-Renton and another (No.2)* [1992] 3 All ER 184. This case deals with assessing the reasonableness of barristers' brief fees which are an entirely different charging system than hourly rates.

24. The Learned Acting Registrar's oral reasons for deciding to reduce the hourly rate to $350 reveal that he correctly rejected the first of the Appellant's submissions and rightly concluded that post-qualification experience should be taken into account. However he appears to have wrongly acceded to the second submission and treated the guideline range as a scale rather than as guide based upon what in 2006 Bar Council had indicated the actual charge out rates at that time were.

25. I find that the rate claimed of $450 was reasonable based on (a) comparable practitioner rates, and (b) the higher charge-out rate of opposing counsel in the litigation in question. The Learned Acting Registrar's taxation award is varied to this extent.

Preparing for appeal etc. (items 7-9, 12-16)

General findings

26. It is clear from the Learned Acting Registrar's oral reasons, that in 'big picture' terms he regarded the size of the sums claimed to be excessive taking into account:

(a) the fact the costs were claimed in the context of an appeal from Magistrates' Court (i.e. implicitly a matter in relation to which one would expect reasonable costs to be on a modest scale); and

(b) the fact that the appeal was determined on substantially the same jurisdictional point which had been resolved in the Respondent's favour in the Court below. Accordingly, little or no additional research was required.

27. These factors were correctly identified as major considerations for assessing the reasonableness of the time-based items claimed. However, since the appeal was argued before me, I am in a better position than the Registrar to appreciate the nuances of how the appeal was argued and to assess the relationship between the impact of the arguments and the time spent preparing them. Two additional factors fall to be taken into account.

28. The most important further consideration is that the Appellant's Notice of Appeal contained seven merits-related complaints and not one explicit challenge to the

jurisdictional ruling itself. Issue was taken with various factual matters set out in the introductory portions of the Ruling which had nothing to do with merits of the jurisdictional ruling itself. The Appellant opened the appeal by, incredibly, contending that the appeal was not about the jurisdictional question at all. As a result of direction from the Bench that the complaints set out in the Notice of Appeal could only be entertained if the jurisdictional issue was resolved in the Appellant's favour, Ms Vieira only then turned to address the jurisdictional issue, relying on the submissions made in the Court below.

29. A second, subsidiary issue is that the jurisdictional arguments so comprehensively addressed by Ms Dismont helped to shed light on a legal vacuum: namely, the absence of any legislative framework for the supervision of vulnerable adults when their supervision as children comes to a jurisdictional dead-end. This was a question of public importance which was closely linked to the more straightforward primary jurisdictional point and which prompted me to deliver a considered judgment in relation to the appeal.

30. How should the Respondent have discharged his duty under Order 1A of the Rules to achieve the overriding objective in relation to the main appeal hearing? It is of course true that the Respondent's counsel would have been negligent had she not expended any time at all in preparing to meet those wide-ranging points. But as no merits decision had been made in the Magistrates' Court, if this Court did not uphold the Learned Acting Magistrate's jurisdictional decision, the result would have been that the matter would be remitted to the Family Court for the merits of the application to be adjudicated for the first time there. The practical litigation management question which arises is the following: can a litigant faced with a hopeless claim rack up costs preparing for a trial and only at trial submit for the first time that the claim discloses no reasonable cause of action? That question admits only one sensible answer.

31. In my judgment the Notice of Appeal was so patently unmeritorious (in that the formulated grounds of appeal did not challenge the only substantive decision which had been made), that the Respondent's counsel ought to have written to the Appellant's counsel at the outset along the following lines:

> "*We are in receipt of your Notice Appeal which is wholly misconceived. The Learned Acting Magistrate made only one decision, namely that she had no jurisdiction to entertain your client's application for the jurisdictional reasons upon which we relied.*
>
> *Your Notice of Appeal sets out seven grounds, none of which challenges the preliminary ruling on jurisdiction which resulted in your application being dismissed. Please confirm by return that you do not intend to pursue these misconceived complaints and that you will either abandon your*

appeal or limit the scope of it to challenging the jurisdictional ruling which is the only operative decision which is amenable to appeal.

Should you persist in seeking to persuade the Supreme Court to consider the merits of your application, we will be compelled to expend time in dealing with these points for which your client will be ultimately liable in costs.

For the avoidance of doubt we strongly believe that the Learned Acting Magistrate's jurisdictional ruling can only properly be affirmed on appeal. "

32. It seems odd that such costs-sensitive correspondence seems to be only commonplace in the context of larger commercial and (to a lesser extent) public law litigation. It is arguably of greater significance in 'small-money' but high human value cases where there will invariably be a tension between the need to fully prepare cases and the ability of the litigants to bear the costs of the legal work which needs to be done. What impact might such a letter have had in the present case?

33. It is possible that the Appellant might have conceded at the outset that she had no intention of pursuing anything but the jurisdictional challenge. However, had the Appellant insisted on pursuing these hopeless points in the face of such a letter, which would have served as a 'shot across the bows', it would still only have been proportionate for the Respondent's counsel to spend a minimal amount of time pointing out to this Court that the merits-related complaints were redundant and could not on any sensible view of the Record be resolved by this Court.

34. And so, in substance, opposing the appeal merely required counsel to reiterate (and of course to some extent refine) the arguments which had found favour with the Learned Acting Magistrate below. This was the central underpinning of the Learned Acting Registrar's severe approach at the taxation hearing. The cumulative finding across the full range of contested taxation items was that of 21.4 hrs claimed, only 4 hours preparation time should be allowed.

35. For the reasons set out below, I find that the Respondent should be awarded 7 hours for preparatory time. The controversial preparatory items will be considered below in two tranches.

Items 7-9

36. The Bill claimed 1.5 hrs and 2.5 hrs and 1.00 hr, respectively, for reviewing pleadings, reviewing the appeal record and reviewing correspondence and the file in preparation for the appeal. The first two items were refused altogether and 0.5hr was allowed for the third. These claims would have been reasonable and proportional, if

they had generated a clear grasp of how unmeritorious the appeal as formulated was and had led to a narrowing rather than a broadening of the scope of further preparatory work which was done, on the lines suggested above. The challenge to the taxation of these items fails.

Items 10, 12, 14, 15 and 16

37. The Bill claimed 4 hours (review of case law), 6 hours (drafting submissions), 0.4 hrs (for a senior lawyer reviewing and revising submissions), 1.5 (preparing appeal bundle) and 4.5 hrs (preparing for appeal hearing). The Taxing Master allowed 1 hr each for the first two items, disallowed the third altogether and allowed 0.5 hrs and 1.0 hr for the last two items. Of the 16.4 hrs of preparatory time claimed, only 3.5 hrs were allowed.

38. These discounts may seem harsh but there must be limits placed on the extent to which the diligence of the receiving party's lawyer must be recompensed by the paying party in the context of the taxation of costs. Two practical factors mitigate in favour of a marginally more generous approach. Firstly, Ms Dismont prepared and presented the case with scrupulous care, demonstrating a complete command of the law and her file, guaranteeing her client a successful outcome in the process. Secondly, it is important to appreciate as well that the jurisdictional point, narrowly construed, was not simply a novel one, but a novel point decided by an Acting Magistrate. An appellate hearing always requires a higher level of analysis than before a trial court, in any event, even if the main point being argued is essentially the same. Therefore, clearing the mind of the distorting influence of hindsight, there was no justification for the Respondent's counsel to assume that a 'slam-dunk' victory could be assured with only minimal preparation.

39. I would vary the decision of the Learned Acting Registrar as follows:

    (a) Item 10: 2 hrs allowed (revised up from 1 hr);

    (b) Item 12: 2 hrs allowed (revised up from 1hr);

    (c) Item 14: refused (no change);

    (d) Item 15: 0.5 hrs allowed (no change);

    (e) Item 16: 2 hrs allowed (up from 1 hr).

Hearing Time

40. The Learned Acting Registrar reduced the 2.5 hrs claimed for attending Court to 1.5 hrs allowing an additional 30 minutes on top of the actual hearing time. I was given no reason to doubt that this is the customary way in which attendance time is computed for taxation purposes[5]. This finding is not disturbed.

Costs of the Taxation hearing

41. The Learned Acting Registrar made no order as to the costs of the taxation hearing. The Respondent's counsel argued that there was a positive right to the denied award in circumstances where no offer letter was made. Order 62 provides:

> "***62/27 Powers of Registrar in relation to costs of taxation proceedings***
> *(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 proceedings.*
> *(3) Subject to paragraph (5), the party liable to pay the costs of the proceedings which gave rise to the taxation proceedings may make a written offer to pay a specific sum in satisfaction of those costs which is expressed to be "without prejudice save as to the costs of taxation" at any time before the expiration of fourteen days after the delivery to him of a copy of the bill of costs under rule 30(3) and, where such an offer is made, the fact that it has been made shall not be communicated to the Registrar until the question of the costs of the taxation proceedings falls to be decided.*
>
> *(4) The Registrar may take into account any offer made under paragraph (3) which has been brought to his attention.*
>
> *(5) No offer to pay a specific sum in satisfaction of costs may be made in a case where the person entitled to recover his costs is an assisted person within the meaning of the statutory provisions relating to legal aid.*"

42. Order 62 rule 27(2) makes it clear beyond serious argument that although the starting assumption is that the receiving party should be awarded their costs, the Taxing Master can make some other where the Court would do so when dealing with a costs

[5] The reasonable time chargeable to the client may well be the 2.5 hrs amount. I have a dim recollection from my days in practice that attendance time was always taxed more parsimoniously than the full time chargeable to clients.

application. Putting side the matter of settlement offers, which are expressly dealt with under Order 62/7 itself, the most obvious general jurisdiction to depart from the usual rule that costs follow the event is found in the following provisions of Order 62 rule 10. These powers are expressly conferred on the Registrar in relation to taxation proceedings by Order 62 rule 28 ("*Powers of Registrar in relation to misconduct, neglect, etc.*"). It was open to the Learned Acting Registrar to find that as 75% of the total amount claimed was disallowed, the Respondent acted unreasonably in making a disproportionate costs claim.

43. It remains to consider whether that finding should be disturbed in light of the findings made in the present review which by my calculations result in an award of $5490, approximately 43% of the amount originally claimed in the Bill. This level of recovery just falls within the range whereby the receiving party can reasonably expect to recover their costs in circumstances where the paying party has not made any settlement offers at all. The taxation hearing lasted approximately 1.1hrs. A similar amount of time would be reasonable to allow for preparation. In the exercise of my discretion, I summarily assess the costs of taxation at $1000.

Conclusion

44. The appeal by way of review against the decision of Acting Registrar succeeds in part to the extent that rather than reducing the amount claimed in the Bill by 75%, 57% is taxed off instead. However, the main thesis which appeared to me to implicitly underpin the approach of the Respondent (in the main appeal) to the governing taxation costs principles (that proportionality is not an essential element of reasonableness under our costs regime) has been firmly rejected.

45. Having regard to the views expressed in paragraphs 4 to 5 of this Judgment, unless either party applies within 14 days by letter to the Registrar to be heard as to costs, no order shall be made as to the costs of the present appeal.

Dated this 23rd day of August, 2016 _____
IAN RC KAWALEY CJ