In The Supreme Court of Bermuda

CIVIL JURISDICTION
2019 No: 63

BETWEEN:

DEEPAK RASWANT

Plaintiff

and

CENTAUR VENTURES LTD.

Defendant

RULING

Date of Hearing: 3 September 2019
Date of Ruling: 15 October 2019

Plaintiff/Entitled Party: Matthew Watson, Cox Hallett Wilkinson Limited
Defendant/Paying Party: Richard Horseman, Wakefield Quinn Limited

Taxation of Bill of Costs

RULING of Cratonia Thompson, Acting Registrar

Introductory

1. This is a contested taxation of the Plaintiff's Bill of Costs dated 9 July 2019, which was submitted to the Registrar for taxation pursuant to an order of the Court dated 19 March 2019. The Order of 19 March 2019 (the "Costs Order") awarded, *inter alia*, indemnity costs to the Plaintiff and is the subject of this taxation.

2. The background to the Costs Order was helpfully summarized in the preamble to the Plaintiff's Bill of Costs, the contents of which I did not understand to be in dispute between the parties, and is included (in part) below. The procedural history that follows is significant in understanding the order for costs, as well as this Ruling on Taxation.

Background to Costs Order

3. The Plaintiff filed proceedings seeking to enforce his rights as a director and 50% shareholder of the Defendant Company, Centaur Ventures Limited ("CVL"). The Plaintiff sought inspection of the books and records of CVL, restraint of a proposed share issuance, restraint of a forthcoming special general meeting in which his removal as a director was proposed, and a declaration that the Amended Bye-laws of CVL was unlawful.

4. The Plaintiff filed its Originating Summons and *Ex-Parte* Summons, supported by the Plaintiff's First Affidavit, seeking urgent injunctive relief on 15 February 2019. The *Ex-Parte* Summons was heard in the afternoon of 15 February 2019, and an order granting urgent injunctive relief was granted the ("*Ex-Parte* Order").

5. On 20 February 2019, the Defendant entered an appearance through Wakefield Quinn Limited and filed a Summons seeking to set aside the *Ex-parte* Order, *inter alia*, on the basis of material non-disclosure at the *Ex Parte* hearing (the "Defendant's Set-Aside Application"). The Summons was supported by 3 Affidavits filed on behalf of the Defendant, together with exhibits, collectively running to hundreds of pages.

6. On 6 March 2019, the Plaintiff filed a Notice of Motion in the nature of a contempt application, together with related relief; a Summons seeking further injunctive relief against the Defendant; and a Summons for Directions to trial (the "Plaintiff's Applications"). This was supported by affidavit. Also on 6 March 2019, the Defendant filed further affidavit evidence.

7. On 14 March 2019, the Plaintiff filed further affidavit evidence in response to the affidavits filed in support of the Defendant's Set-Aside Application.

8. On 15 March 2019, the Plaintiff filed its skeleton argument in respect of the Plaintiff's Applications, and the Defendant filed a draft skeleton argument in respect of the Defendant's Set-Aside Application.

9. On 17 March 2019, the Plaintiff was served with further affidavit evidence on behalf of the Defendant.

10. On 18 March 2019, the Plaintiff filed an additional skeleton argument in response to the Defendant's draft skeleton argument, and the Defendant filed its final version of its skeleton argument.

11. The Plaintiff's Applications and the Defendant's Set-Aside Application were heard on 18 March 2019. At the continuation hearing on 19 March 2019, Mr Horseman informed the Court that the Defendant was willing to agree to the substantive relief sought by the Plaintiff in its Originating Summons. As a result, Counsel addressed the Court on a proposed form of Order, which granted the Plaintiff the relief sought. The Order was made on 19 March 2019, and also granted the Plaintiff indemnity costs against the Defendant.

Summary of Bill of Costs

12. The Plaintiff now claims $155,899.10 in costs, which includes the following:

    (1) $152,455.00 in profit costs.
    (2) $3,049.10 in administration charges.
    (3) $375.00 in costs payable to the Supreme Court Registry.

13. The Plaintiff referred to Order 62, rule 12(2) of the Rules of the Supreme Court 1985, which provides as follows:

> "*On a taxation on the indemnity basis all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably 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 receiving party; and in these rules the term "the indemnity basis" in relation to the taxation of costs shall be construed accordingly*."

14. Thus the Plaintiff invited the Registrar to order that the full amount of its costs claimed in its Bill of Costs be awarded to the Plaintiff.

Objections to the Plaintiff's Bill of Costs

15. The Defendant filed and served its objections to the Plaintiff's Bill of Costs at the commencement of the taxation hearing. The Defendant argues that the costs claimed are of an unreasonable amount. The Defendant's objections can be broadly categorized as follows:

    (1) Unnecessary and excessive involvement of UK counsel.
    (2) The costs incurred are of an unreasonable amount.

(3) Costs claimed for unrelated proceedings.

16. To support the Defendant's assertion that the costs incurred were of an unreasonable amount, the Defendant made a comparison to the fees claimed in the Plaintiff's Bill of Costs, to the fees claimed by the Defendant, arguing that while the Plaintiff's Bill of Costs claims fees in excess of $155,000.00 the Defendant's costs were under $30,000.00.

17. I will address each of these in turn.

Unnecessary and excessive involvement of UK counsel

18. The Defendant contends that there was no need to involve UK counsel in these proceedings, arguing that this was a case where the Plaintiff challenged an amendment of the bye-laws of a Bermuda company which involved the application of Bermuda law. It was further argued that the Plaintiff had the benefit of both Mr David Kessaram, an experienced commercial litigator who has been practicing in Bermuda for approximately 41 years, as well as Mr Matthew Watson, a litigator with a combined practice of approximately 8.5 years (having been first admitted to the Supreme Court of Victoria, Australia in August 2010 and then called to the Bermuda Bar on 2 June 2017), to offer advice on Bermuda law. That being the case, the Defendant argued that there was no need for UK lawyers to be so intricately involved in the proceedings. The Defendant then referred to several specific entries in the Plaintiff's Bill of Costs, which all involved UK Counsel.

19. The Plaintiff rebutted this claim by arguing that commercial matters that are litigated in Bermuda quite often involve overseas counsel. The Plaintiff argued further that firms in Bermuda are routinely instructed by UK firms, who have first been instructed by commercial litigants (as was the case in these proceedings). On this basis, the Plaintiff argued that the collaboration between UK counsel and Bermuda counsel, even as it relates to Bermuda law, is not objectionable.

20. I have considered the submissions by counsel in this regard, and accept the Plaintiff's submission that commercial matters that are litigated in Bermuda quite often involve overseas counsel. I further accept the Plaintiff's argument that Bermuda firms are routinely instructed by UK firms, as was the case in these proceedings. That being the case, I do not accept the Defendant's assertion that it is objectionable that UK counsel were intricately or excessively involved in these proceedings.

21. What I have deduced from a reading of the Plaintiff's Bill of Costs, and from the Plaintiff's oral submissions at the hearing, is that the Plaintiff's attorneys (Cox Hallett Wilkinson Limited "CHW") were instructed by UK counsel, and the relationship between CHW and

the UK counsel was akin to any client/attorney relationship, in that CHW provided its advice to the UK counsel, who in turn instructed CHW on how to proceed in accordance with that advice. What I have further noted from the Plaintiff's Bill of Costs is that no costs have been claimed in respect of the time spent by UK counsel in this matter, which I consider further supports the Plaintiff's argument that the relationship between CHW and the UK counsel was one of a client/attorney relationship. I therefore do not consider that the Plaintiff's costs, where UK counsel was involved, should be disallowed on that basis.

22. I have therefore reviewed the specific entries to which the Defendant has referred that speak to the involvement of UK counsel in the context of the indemnity costs award, and have considered those entries with respect to whether the time spent was reasonably incurred. Items that have been taxed, have therefore been taxed where I have found that the time spent was unreasonable. In making that determination, I have had regard to Part II Division I to Order 62 of the Rules of the Supreme Court, and particularly to:

    (1) The complexity of the matter;
    (2) Skill and specialized knowledge required;
    (3) Volume and importance of documentation prepared;
    (4) The importance of the matter to the Client; and
    (5) The amount of money involved.

Costs unreasonably incurred

23. The Defendant raised both a general objection to the reasonableness of costs incurred, as well as specific objections to the following actions:

    (1) Drafting the Originating Summons and the Plaintiff's First Affidavit in support, for which the Plaintiff claimed a total of 33.4 hours.
    (2) Drafting the Skeleton Argument in relation to the *Ex-parte* hearing, for which the Plaintiff claimed a total of 12.6 hours.
    (3) Hearing preparation, for which the Plaintiff claimed a total of 8 hours.

24. The Defendant also referred to multiple conferences between Mr Kessaram and Mr Watson, arguing that this is "*duplicitous and utterly unreasonable"*.

25. The Plaintiff rebutted these claims by referring to the procedural history of the proceedings, which supports the quantity of work that was required. The Plaintiff also invited the Registrar to consider the Bill of Costs in light of the urgency of the proceedings, as well as the correspondence that was exchanged between the parties, which the Plaintiff had hoped would allow the parties to reach a resolution without going to court. Further, the Plaintiff

referred to the injunction sought (and obtained) by the Plaintiff, which required the Plaintiff to satisfy a requirement of full and frank disclosure. This resulted in the Plaintiff having to obtain detailed instructions in order to produce fulsome affidavit evidence.

26. The Plaintiff also argued that the value of the Plaintiff's shareholding in the Defendant Company was estimated at approximately $8 million, and submitted that costs of $155,000.00 in a case worth approximately $8 million was not unreasonable.

27. It is clear from the procedural history in this matter that the proceedings were contentious and generated, in very short order, a substantial volume of affidavit evidence, submissions and correspondence between the parties, which required a considerable amount of work to be carried out on the Plaintiff's behalf. Having had regard to the volume of pleadings filed, the length and scope of those pleadings, as well as the costs at stake, I consider that the costs incurred by the Plaintiff in pursuit of these proceedings while substantive are not unreasonable generally.

28. That said, while I accept that the Plaintiff's costs are not unreasonable generally, in reviewing the Plaintiff's Bill of Costs I have found that certain of the costs claimed are duplicated, in that there have been costs claimed in respect of the same action by both Mr Watson and Mr Kessaram. This includes costs claimed in respect of multiple conference between Mr Watson and Mr Kessaram. I have therefore disallowed such items, and taxed the Bill of Costs accordingly.

29. I have also considered and found that certain costs claimed in the Plaintiff's Bill of Costs are excessive. I have disallowed those costs and taxed the Bill of Costs accordingly. Such items include costs claimed in relation to drafting the Originating Summons, the Plaintiff's First Affidavit and the Plaintiff's Skeleton Argument, which I have reduced by 6 hours.

30. I have considered the time spent in respect of hearing preparation and the attendance at the hearing and for the avoidance of doubt consider the costs claimed to be reasonable.

Costs claimed for unrelated proceedings

31. The Defendant argued that certain costs sought by the Plaintiff were in relation to separate and unrelated proceedings involving the parties, which are still underway. Those proceedings are not the subject of the Costs Order, and as such, any actions relating to those proceedings should not be allowed.

32. The Plaintiff argued that the advice given in these proceedings which related to the separate proceedings was part and parcel of the work that was carried out in these proceedings, in that

the Plaintiff was advised (and had a reasonable expectation to receive such advice) concerning all available options in resolving this matter, and that the advice relating to those separate proceedings was relevant in deciding strategy with respect to the present proceedings. The Plaintiff argued that those costs are recoverable on the basis that such costs were "incidental" to the proceedings and should be allowed in accordance with the Costs Order. The Plaintiff also indicated that any work carried out in relation to the separate proceedings would not be sought at a later date, should those costs be allowed on this taxation.

33. I agree that the costs recoverable on this taxation are the Plaintiffs costs *of an incidental to these proceedings*, as provided in the Costs Order. On the Defendant's submission the costs associated with the separate proceedings are neither associated nor incidental to these proceedings, and should be disallowed. Where such costs relate to discussing strategy as it relates to the present proceedings, I would accept that those costs are incidental to these proceedings. That said, there are costs claimed in the Plaintiff's Bill of Costs which, as detailed in its respective narrative, relate only to consideration of those separate proceedings. I do not consider such costs as costs of or incidental to these proceedings, and have disallowed those costs accordingly.

Comparison of Plaintiff's costs to that of the Defendant

34. In support of its position that the costs incurred are of an unreasonable amount, the Defendant argued that the costs claimed by the Plaintiff far outweigh the costs claimed by the Defendant. In considering this position, I have been guided by the decision of Registrar Shade Subair Williams (as she then was) in her Ruling in *Capital Partners Securities Co. Ltd. and Sturgeon Central Asia Balanced Fund Ltd.* [2017] SC (Bda) 32 Com (1 May 2017).

35. In that Ruling, the then Registrar cautioned against any comparison between the fees of opposing parties, indicating that such an exercise should be *generally avoided or done broadly and cautiously when appropriate.* Having been urged by the Defendant in those proceedings to consider the contrast between the Plaintiff and the Defendant's costs in the overall assessment of the Plaintiff's Bill of Costs, the then Registrar highlighted that that approach is potentially misleading given that a comparative analysis of this kind would likely not take into account the many plausible factors, which would explain the difference in fees charged by the opposing parties.

36. In line with that position, I have not considered the Plaintiff's costs in comparison to the costs charged by the Defendant in my overall assessment of the reasonableness of the Plaintiff's costs, but rather, as discussed earlier in this Ruling, in line with Part II Division I to Order 62 of the Rules of the Supreme Court.

Administration charges

37. It should be noted that the Defendant did not raise an objection to the administration charges claimed by the Plaintiff, however I have considered those charges whilst bearing in mind the decision of Ground CJ in *Golar LNG Ltd v World Nordic SE No. 163 of 2009 (Commerical List)*. It should be noted that the administration charges have not been particularized in the Plaintiff's Bill of Costs, but have been recorded as being calculated at a rate of 2% of each invoice to cover office expenses and incidental charges, such as photocopying, printing, local and long distance calls, stationery etc. It is further noted that these items, such as photocopying, are not charged separately.

38. The decision of Ground CJ in *Golar*, confirmed that photocopying is not an allowable cost, being already included in the overhead element embodied in the hourly rate. I have therefore disallowed the total amount claimed by way of administration charges which, although not particularized, relate to costs that I consider are already included in the overhead element embodied in the hourly rate given the Plaintiff's indication that those costs relate to photocopying, printing, telephone calls and stationery.

Costs payable to the Supreme Court Registry

39. I have allowed recovery of the costs payable to the Supreme Court Registry, which represents the fees paid by the Plaintiff in respect of revenue stamps.

Costs of Taxation

40. The Plaintiff argued, and the Defendant accepted, that the costs to be allowed in relation to preparation of the Plaintiff's Bill of Costs should be at Mr Watson's hourly rate of $550.00 at a total of 2 hours, and that the costs to be allowed in relation to the costs of the Taxation hearing should be at Mr Watson's hourly rate at a total of 2 hours. In light of the parties' agreement, I order accordingly.

Whether interest should run from the date of the Costs Order

41. The Plaintiff argued that interest on the costs awarded to the Plaintiff should run from the date of the Costs Order. The Defendant raised an objection to this claim, arguing that interest should instead run from the date of the Court's Ruling on Taxation. The parties requested leave of the Court to file supplemental submissions on this point, which was allowed.

42. On 4 September 2019, the parties filed their supplemental submissions. The Plaintiff referred the Registrar to Section 9 of the Interest Credit Charges (Regulation) Act 1975, which provides as follows:

> "*All sums of money due or payable under or by virtue of any judgment, order or decree of any court shall, unless that court orders otherwise carry interest at the statutory rate from the time the judgment is given, or as the case may be, the order or decree is made, until the judgment order or decree is satisfied…"*

43. In further support of its position, the Plaintiff referred to paragraph 19 of *Involnert Management Inc v Aprilgrange Limited & Ors* [2015] EWHC 2834 (Comm) (08 October 2015), which states:

> "*First, it has been assumed and I think it clear that, on the authority of Hunts case, the date when an order for costs is made is "the date that judgment is given" for the purpose of CPR 40.8(1), even though the amount of the costs payable has still to be assessed. This is therefore the default date from which interest payable under the Judgments Act will begin to run if the court does not order the interest to run from a different date*." (emphasis added)

44. The Defendant argued that the authority provided by the Plaintiff was not applicable to Bermuda law. The Defendant referred also to the facts of this specific case, arguing that the Plaintiff delayed filing its Bill of Costs for four months, arguing that the Plaintiff should not benefit from its inaction and delay. Lastly, the Defendant referred to the Interest Credit Charges (Regulation) Act 1975, arguing that while Section 9 of that Act states that interest shall run from the date judgment is given, the Court has a discretion to order otherwise. The Defendant then submitted that the Registrar should, in the circumstances, exercise the discretion afforded to the Court and order interest to run from the date of the Registrar's ruling on taxation.

45. I have considered the authority provided in support of the Plaintiff's position, and agree with the Defendant that the authority provided is not applicable to Bermuda law on the basis that the authority considers the Judgments Act 1838, a UK act which has no equivalent in Bermuda law. The applicable law, as submitted by both counsel, is the Interest Credit Charges (Regulation) Act 1975.

46. As both counsel have rightly pointed out, section 9 of the Interest Credit Charges (Regulation) Act 1975 provides the Court with a discretionary power to order judgment interest to accrue from a date other than the date the judgment or order is given. However,

that discretion, in the facts of this particular case, was to be exercised by the Chief Justice when making the Costs Order, not the Registrar on taxation.

47. Section 9 of the Interest Credit Charges (Regulation) Act 1975 states that, "*all sums of money due or payable under or by virtue of any judgment, order or decree of any court shall, unless* ***that*** *Court orders otherwise, carry interest at the statutory rate from the time the judgment is given…*" (emphasis added). The default position is therefore that interest shall run from the date of the judgment, unless ordered otherwise, and as the Plaintiff has rightly pointed out, the Chief Justice made no such Ruling. In the circumstances, I accept the Plaintiff's submission that interest should accrue from the date the Costs Order was made.

Conclusion

48. I have taxed the Plaintiff's Bill of Costs in line with my Ruling above, which will be distributed to the parties with this Ruling.

Tuesday, 15 October 2019

CRATONIA THOMPSON, ACTING REGISTRAR