

**THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE**

Civil Division

**FEDERATION OF ST CHRISTOPHER AND NEVIS  
ST. CHRISTOPHER CIRCUIT**

**Claim No: SKBHCV2019/0177**

**BETWEEN:**

[1] **IRMA ANNETTE HUGHES** also known as  
**IRMA ANNETTE FARRELL**  
[2] **OLIVER HUGHES**

Claimants

-and-

[1] **JOSEPH SMITH**  
[2] **STEPHEN SMITH**

Defendants

**Before Master Alvin Pariagsingh**

**Appearances:** Natasha Grey and Hasani Mc Donald for the Claimants; and  
Tamara Malcolm and Siobhan Phipps for the Defendants

-----  
2023: June 27;  
July 13.  
-----

**JUDGMENT**

**Defendants' assessment of costs.**

[1] **PARIAGSINGH, M:** - This is the Defendant's assessment of costs pursuant to the order of Ward J (as he then was) made on March 31, 2022.

**THE CLAIM:**

[2] The claim surrounded a motor vehicle accident which occurred on July 05, 2013. The Claimants were passengers in a motor vehicle which was involved owned by the First Defendant and owned by the Second Defendant. At the trial both Claimants gave

evidence and called PC Bartlette as a witness. The Defendants gave evidence on their behalf. The learned judge ultimately dismissed the Claimants with 'costs to be assessed, if not agreed within 21 days.'

#### THE ORDER:

[3] At the hearing of the assessment of costs both parties addressed the Court on the interpretation of the order. Counsel for the Claimants submitted that costs fell to be quantified under the prescribed costs regime. Counsel for the Defendants submitted that the order of the judge was clear. It was submitted that costs did not fall under the prescribed costs regime but rather the assessed costs regime.

[4] I agree with Counsel for the Defendants for the following reasons. Firstly, the order is expressed to be assessed costs. Secondly, there has been no appeal of the order for costs any different interpretation may be inconsistent with the order of the judge. Thirdly, the Board in **Rampersad v Ramlal**<sup>1</sup>, in determining an appeal where the similar argument advanced by the Claimant has made stated:

'36. The Board therefore turns to consider first the appellants' contention that in this case the fixed costs regime did not apply and there were no costs budgets and so the prescribed costs regime necessarily applied, as set out in CPR r 67.5. The appellants also contend that the judge erred in awarding costs to be assessed rather than prescribed costs (ground 6); that in so far as the judge was minded to order that the appellants should pay assessed costs, she ought first to have given the parties, and in particular the appellants, an opportunity to make submissions (ground 7); and that she also erred in that she failed to give any reasons for making the order in the terms that she did (ground 8).

37. In the Board's view, these grounds of appeal have no merit, for they have no or no sufficient regard to the nature of the allegations made in the proceedings or the findings made by the judge as to the lack of honesty and integrity of the appellants themselves. As the Board has foreshadowed, this was a claim which was based upon allegations of fraud and it failed. Still worse, the appellants were found to have engaged in a shameless distortion of the truth. The respondents had no choice but to come to court

---

<sup>1</sup> [2022] UKPC 50

and defend themselves, and they did so in proceedings involving extensive cross examination which took place over several days. Circumstances such as these would normally justify an order that the appellants should pay the respondents' costs to be assessed on an indemnity basis. The Board does not accept that the judge intended by her order to require the appellants to pay the respondents' costs to be assessed on an indemnity basis in this case because there is no mention of that in her order, but the Board has no doubt that she did intend to order the appellants to pay to the respondents their costs to be assessed on the standard basis, and that this order was entirely justified in the exercise of the court's discretion.

38. The Board recognises that this order may have been considered out of the norm for proceedings of this kind, subject to the allegations and findings of fraud and dishonesty to which the Board has referred. The Board also accepts that parties should generally be given an opportunity to be heard or make representations before the court makes an order for costs, for fairness and justice demand no less, as the Court of Appeal of Trinidad and Tobago explained in *Pan Trinbago Inc v Simpson* CA Civ App No S-027 of 2013 (23 February 2015) at para 74. The Court of Appeal also explained in *Pan Trinbago*, at para 75, that the court has a discretion to vary costs orders prescribed by the CPR, but where the court intends to move away from the CPR guidelines, it is generally appropriate and indeed necessary to give a reason for doing so. 39. The Board has no hesitation in approving these principles. Indeed, they are entirely in accordance with those explained and applied by the Court of Appeal of England and Wales in *English v Emery Reimbold & Strick Ltd*, [2002] EWCA Civ 605; [2002] 1 WLR 2409. There, Lord Phillips of Worth Matravers MR, giving the judgment of the court, explained, at para 16, that the need for reasons is, at its simplest, that justice will not be done if it is not apparent to the parties why one has lost and the other has won.'

- [5] Given the dicata in **Rampersad** above and the written decision of the judge it is my view that it is not open to the Court to use any other regime except assessed costs to quantify the Defendants' costs.

## THE METHOD OF ASSESSMENT- the two stage approach

[6] In **Home Office v Lownds**<sup>2</sup> the approach to the proportionality when assessing costs was stated as a two-stage approach. It was stated that:

“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 particular regard to the considerations which Part 44.5(3) (Same as Rule 65. 2 (3) of the ECSC 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.”

[7] The sum to be considered in the first stage is the sum claimed before VAT as stated in **Giambrone v JMC Holidays**<sup>3</sup>. Once the Court is of the view that the sum claimed as a whole is not proportionate, then every item then must be considered under the headings of necessity and reasonableness, the item-by-item approach. Even if the Court considers that the sum claimed is proportionate, the Court can still examine items on the basis of necessity and reasonableness. The rationale behind this approach is proportionality being the guiding principle.

[8] In **Loveday v Renton** [1992] 3 ALL ER 184 at page 191f it is stated :

“.... in allowing fees the taxing officer should have regard to the other fees and allowances payable to counsel in respect of other items in the same case when the work done in relation to those items has reduced the work which would have otherwise been necessary in relation to the item in question, I should as a first step identify what items of work are to be treated as covered in by the brief fee and refreshers and to what extent fees already allowed overlap into the brief fee”

[9] In **Simpsons Motor Sales (London) Ltd. v Hendon Borough Council**<sup>4</sup> Pennycuik J stated that:

---

<sup>2</sup> [2002] 4 All ER 775 CA

<sup>3</sup> [2003] 2 Costs LR 189.

<sup>4</sup> [1965] 1 W.L.R. 112

“the proper measure of counsel’s fees **is to estimate what fee a hypothetical counsel capable of conducting the particular case effectively** but unable or unwilling to insist on the particularly high fee sometimes demanded by counsel of pre-eminent reputation, would be content to take on the brief: but there is, in the nature of things, no precise standard of measurement and the costs assessment officer must, employing his knowledge and experience, determine what he considers the proper figure.”

[10] In **Loveday v Renton and The Wellcome Foundation Ltd (No.2)**<sup>5</sup> in determining what items falls under the umbrella of fee on brief, it was stated that preparation by counsel of his examinations in chief, cross-examinations and final submissions are an ordinary part of his conduct of a trial on behalf of a client and fall within the brief fee together with:

1. preparation work before the delivery of the brief on the faith of a solicitor’s (instructing attorney’s) statement that it will be delivered;
2. preparatory work in counsel satisfying himself that he should accept the brief;
3. evening preparation;
4. any consultations between members of the team of counsel (other than conferences or consultations at the behest of the client or instructing solicitor (attorney));
5. advising experts at weekends;
6. conferring with experts without separate instructions;
7. lost opportunities;
8. chronologies, etc.;
9. skeleton arguments save for the Court of Appeal. See *Hornsby v Clark Kenneth Leventhal (A Firm)* [2000] 4 All E.R. 567;
10. *dramatis personae*;
11. opportunities to prepare further when the court is not sitting;
12. preparation of draft terms of collateral arguments;
13. where a case is sufficiently complex, a separate fee for final written submissions can be claimed, where it has been specifically agreed and not covered by the brief fee. See *Chohan v Times Newspaper* unreported, September 17, 1998 per Nelson J;
14. note of judgment.

## GOBAL SUM CLAIMED

---

<sup>5</sup> [1992] 3 All E.R. 184

[11] The Defendants have claimed the sum of \$60,133.33 in their bill of costs. I find this sum to be disproportionate given the nature of claim, the issues involved, the number of witnesses, the counsel involved, the time spent and the general nature and complexity of the dispute. I therefore proceed to the item by item approach.

#### **ITEM BY ITEM CONSIDERATION:**

[12] At this stage, each item would be considered individually. It would be considered whether the items claimed were necessary and if so, whether the sum claimed is reasonable.

[13] Having considered the items, all items claimed were necessary. I therefore proceed to determine the reasonableness of the sums claimed under each item.

| <b>No.</b> | <b>Item</b>                                                           | <b>Claimed (hrs)</b> | <b>Reasonable</b> | <b>Allowed</b> | <b>Total</b> |
|------------|-----------------------------------------------------------------------|----------------------|-------------------|----------------|--------------|
| 1.         | Reviewing claim form and statement of claim with attachments          | 2                    | Yes               | 2              | 733.34       |
| 2.         | Taking instructions and drafting defence                              | 4                    | No                | 2              | 733.34       |
| 3.         | Stamps for filing defence \$50                                        |                      | Yes               |                | 50           |
| 4.         | Service of a defence (\$100 claimed)                                  |                      | No                |                | 50           |
| 5.         | Preparation of order for case management                              | 20 mins              | No                | 10 mins        | 61.20        |
| 6.         | Stamp for filing order \$25                                           |                      | Yes               |                | 25           |
| 7.         | Service of order \$100                                                |                      | No                |                | 50           |
| 8.         | Stamps for list of documents \$25                                     |                      | Yes               |                | 25           |
| 9.         | Service of the list of documents \$100                                |                      | No                |                | 50           |
| 10.        | Taking instructions for witness statements                            | 2                    | Yes               | 2              | 733.34       |
| 11.        | Drafting of witness statements                                        | 3                    | No                | 2              | 733.34       |
| 12.        | Stamps for filing of witness statements \$20                          |                      | Yes               |                | 20           |
| 13.        | Costs on reviewing witness statements of the Claimants (5 statements) | 6                    | No                | 5              | 1833.35      |

|              |                                                                             |         |     |         |                  |
|--------------|-----------------------------------------------------------------------------|---------|-----|---------|------------------|
|              |                                                                             |         |     |         |                  |
| 14.          | Attendance of PTR - \$500                                                   |         | Yes |         | 500              |
| 15.          | Review of matter for trial \$500                                            |         | Yes |         | 500              |
| 16.          | Preparation of PTR Memo                                                     | 20 mins | Yes | 20 mins | 122.40           |
| 17.          | Stamps for filing \$20                                                      |         |     |         | 20               |
| 18.          | Service of PRT Memo \$100                                                   |         | No  |         | 50               |
| 19.          | Research for skeleton arguments and arguments                               | 8       | No  | 2       | 733.34           |
| 20.          | Stamps for filing arguments \$10                                            |         | Yes |         | 10               |
| 21.          | Printing of submissions \$200.00                                            |         | Yes |         | 200              |
| 22.          | Reviewing the skeleton arguments of the other side                          | 3       | No  | 2       | 733.34           |
| 23.          | Costs on preparation for trial                                              | 72      | No  | 5       | 1833.35          |
| 24.          | Costs of attendance at trial                                                | 36      | No  | 8       | 2933.36          |
| 25.          | Research for closing submissions                                            | 3       | No  | 1       | 366.67           |
| 26.          | Preparation of closing submission                                           | 5       | No  | 1       | 366.67           |
| 27.          | Stamps for filing of the closing submissions \$10                           |         | Yes |         | 10               |
| 28.          | Service of submissions \$100                                                |         | No  |         | 50               |
| 29.          | Drawing of bill of costs                                                    | 2       | No  | 1       | 366.67           |
| 30.          | Preparation of application for assessment of costs and affidavit in support | 1.5     | No  | 1       | 366.67           |
| 31.          | Stamps on filing application for assessment \$81.                           |         | Yes |         | 81.              |
| <b>TOTAL</b> |                                                                             |         |     |         | <b>14,341.38</b> |

#### **SPECIFIC ITEMS:**

[14] Service fees – Counsel claimed the sum of \$100.00 for service of documents filed. I find that sum to be high and disproportionate. I permitted the sum of \$50.00 throughout the bill as this sum of fair and reasonable for service of a document.

#### **Preparation for trial 3 days (72 hours)**

[15] Counsel claimed 72 hours for preparation for trial. This claim is unreasonable. The claim is resolved on a simple point that was by no means novel or complex. At paragraph 25 of his judgment, the learned judge stated that ‘the claimants’ case against the first defendant is a non-starter as proof that the second defendant was driving the vehicle with the first defendant’s consent is not sufficient to ground vicarious liability.’

[16] In relation to the Second Defendant, the learned judge held that ‘I am of the view that negligence cannot be reasonably inferred from the mere fact of the accident nor do I consider the second defendant’s actions were unreasonable in the circumstances judged against the standard of the competent and reasonable driver.’

[17] Having regard to the legal and factual issues raised in the claim, I am of the view that 5 hours for legal research is reasonable for **hypothetical** counsel in this matter.

**Attendance at trial 1.5 days (36 hours).**

[18] With respect to attendance at trial. Counsel claimed the sum of 36 hours. I find this amount of time to be disproportionate. Whilst the trial lasted more than one day, the actual time spent in Court in this matter as far the court’s file notes, did not exceed 8 hours. Counsel has already been compensated for all other work done including research. In addition, a separate sum was allowed for research and preparation of closing submissions. In this regard, I am of the view that 8 hours is reasonable for hypothetical counsel for the trial of this claim.

**COSTS:**

[19] Prior to the Defendants filing this application for assessment, a proposal for costs was sent to the Claimants along with an invitation to engage. There seems to have been no engagement on the proposal and no good reason for not doing so was advanced. This approach is contrary to the overriding objective which seeks to encourage parties to engage each other to collaborate.

[20] There is no good reason to depart from the general rule that costs follow the event. The Claimants shall therefore pay the Defendants costs. These costs are assessed at \$1,000.00 given the time spent on the arguments and the hearings.

**ORDER:**

[21] It is hereby ordered that:

1. The Defendants' bill of costs is assessed and allowed in the sum of \$14,341.38;  
and
2. The Defendants' shall pay the Claimants costs of this assessment in the sum of \$1,000.00.

**Alvin Pariagsingh  
Master**

**By the Court,**

**Registrar**