

EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

**BRITISH VIRGIN ISLANDS
COMMERCIAL DIVISION**

Claim No: BVIHC (COM) 142 of 2019

BETWEEN:

PACIFIC FERTILITY INSTITUTES HOLDING CO LTD

Applicant

and

PACIFIC FERTILITY INSTITUTES (HK) HOLDING CO LTD

Respondent

Appearances:

Ms. Rachael Stitt of Campbells for the applicant

Appearance by Conyers for the respondent excused

2020: April 9

JUDGMENT ON THE COSTS OF THE COSTS APPLICATION

[1] **JACK, J [Ag.]:** This is now the third written judgment I have handed down in this matter. The first was the substantive judgment delivered on 22nd January 2020. In it I set aside a statutory demand served by the respondent on the applicant.

[2] The second is dated 12th March 2020. In it I assessed the costs payable by the respondent to the applicant. The first issue was whether the respondent should pay the whole of the applicant's costs or only a proportion, on the basis that there

were some issues on which the applicant had lost. I awarded the whole of the costs and assessed the amount.

- [3] This third judgment concerns the costs of and in the costs assessment, which was the subject of the second judgment. The background to the second judgment is this. The parties considered that a paper determination of the costs might save costs and were agreed that the detailed assessment of the applicant's costs of the substantive application should be considered on paper. I acceded to that joint request. There has been discussion, for example most recently in the Commercial Court Users' Group, as to whether costs could be saved by doing detailed assessments on paper.
- [4] The facts of this case show that paper determinations of costs do not save costs. Instead the costs are very considerably increased. The statutory demand was for \$500,000. The costs claimed on the applicant's behalf were \$54,477.30, reduced on taxation to \$54,096.05. That was, I held in my second judgment, proportionate. The respondent has been represented by leading counsel and it was likely the respondent's costs would be of the same order or more.
- [5] The costs claimed in respect of the assessment of costs are \$12,915.42. These comprise legal fees already incurred of \$11,847.50, the predicted legal costs of the hearing before me of \$1,050 and disbursements of \$17.92. Although I had originally indicated that I would determine the costs of the costs hearing on paper, after seeing these costs claimed by the applicant I decided that it would be more economical to determine the costs of the costs after an oral hearing. Conyers, who represent the respondent, are applying to come off the record and their attendance has been dispensed with. They did not ask for additional time to make submissions.
- [6] This does not mean that the applicant is entitled to a default costs assessment. The Court has still to make a judicial assessment of the costs. However, it

obviously does not have the assistance of detailed submissions from the paying party.

[7] In my second judgment, I stated the law as follows:

“[10] Neither side took me to any case law on the approach to be taken to assessing costs. My understanding is that the first question, I need to address is whether, overall, the costs claimed by the receiving party are proportionate...

[11] Having determined that the sums claimed are proportionate, it is not, at least as I understand the case law, appropriate to take a “broad brush” approach and knock a quarter off the costs incurred. (That would only be appropriate if the costs were disproportionate.) I must, instead, look at any individual items which are disputed as unreasonably incurred or unreasonable in amount.”

Ms. Stitt, who appeared before me, accepted this as an accurate statement of the law.

[8] Thus, the first question I need to determine is whether the sum of just under \$13,000 is proportionate. In my judgment it is not. This amounts to 24 per cent of the cost of the substantive application. That is excessive. Now it is true that some of the costs are referable to the need for the parties to make written submissions and to consider the other side's written submissions. Given that the Court has acceded to the request to deal with the matter on paper, it would be churlish to criticize a party for the time cost of making and considering written submissions.

[9] Nonetheless the overall time spent in respect of the costs is in my judgment excessive. This is in part due to the practice of Campbells billing in units of a quarter of an hour. I am not dealing with a solicitor and own client taxation, so I do not need to consider whether such a charge out unit can ever be reasonable. However, it is not in my judgment reasonable on a party and party taxation.

[10] If the claim to costs was in respect of an oral hearing, as would have been normal, the total costs would have been very much less. There would have been a couple

of hours work to prepare the bill of costs and then the time for a short hearing before the Court. However, it would be unfair to reduce the costs to that figure, when both parties and the Court were willing to deal with the matter on paper.

[11] I need to look at what figure would be proportionate. In my judgment a figure of \$7,500 would be proportionate. I am satisfied that (even making allowance for the 15 minutes units) the applicant can justify that figure from the time sheets. That is the figure I shall allow.

[12] As will be clear from the discussion above, moving to a system of assessment of costs on paper is unlikely to save costs. It is also inefficient in terms of the use of judicial time, since a written judgment invariably takes more time to prepare than an oral judgment.

Justice Adrian Jack [Ag.]
Judge of the Commercial Division

By the Court

Registrar