

**ANTIGUA AND BARBUDA**

**IN THE COURT OF APPEAL**

**HCVAP 2008/005**

**BETWEEN:**

**JOSEPH W. HORSFORD**

Appellant

**and**

**LESTER B. BIRD AND OTHERS**

Respondents

**Before:**

Kimberly Cenac-Phulgence

Chief Registrar

**Representation:**

The Appellant in person

Ms. Leslie-Ann Brissett for the Respondent

**On paper submissions**

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2008: November 17.

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**DECISION ON ASSESSMENT OF COSTS**

**Background Facts**

- [1] The appellant, a litigant in person, having obtained an order from the Privy Council allowing his appeal and, inter alia, awarding him costs of the appeal, filed an application for directions accompanied by a bill of costs pursuant to rule 65.12 **Civil Procedure Rules 2000 (CPR 2000)**. Part of the bill of costs related to costs incurred

in Antigua and Barbuda for the preparation of the appellant's appeal to the Privy Council.

[2] The High Court judge disallowed these costs and the appellant appealed to the Court of Appeal. The Court of Appeal in its judgment ordered inter alia:<sup>1</sup>

- (i) ...
- (ii) ...
- (iii) The Chief Registrar of the East[ern] Caribbean Supreme Court shall tax the appellant's costs of the appeal to the Privy Council incurred in Antigua and Barbuda.
- (iv) The taxing by the Chief Registrar shall be on paper submissions. The appellant shall file and serve on the respondent the appellant's bill of costs together with any submissions in support thereof and the respondent shall file and serve on the appellant any submissions in response/opposition thereto within 14 days of the serving of the appellant's submissions on the respondent. Submissions in reply by the Appellant, if any, should be filed within 7 days of the receipt of the Respondent's submissions.
- (v) ..."

[3] The appellant filed his bill of costs along with documents in support of the bill and submissions on October 1, 2008. The appellant served these documents on the respondents on October 1, 2008 as appears by Affidavit of Service filed October 17, 2008.

[4] The respondents filed no submissions in response to the appellant's submissions within the time ordered<sup>2</sup> or at any subsequent date. The appellant in the Affidavit of Service filed October 17, 2008 submitted that the bill as presented by him is unopposed and therefore the respondents do not wish to dispute any item in the Bill. The fact that the bill is unopposed by the respondents is established.

[5] It is to be noted however that the fact that there are no submissions from the respondents does not mean that the costs as claimed by the appellant should be allowed without more. "When assessing costs, even costs which are not disputed by

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<sup>1</sup> Civil Appeal No. 5 of 2008 (Antigua and Barbuda) , delivered September 16, 2008, paragraph 21

<sup>2</sup> Ibid, paragraph 21

the other side, the court retains the right to reduce or disallow costs which it finds are disproportionate.”<sup>3</sup> I go further and state that the taxing officer has a duty to assess each item in a bill of costs to ensure that the costs are reasonable. I therefore proceed to assess the costs as submitted by the appellant in the absence of submissions from the respondents. I am guided in this regard by dicta from the case of **The Attorney General of Saint Christopher and Nevis et al v Queensway Trustees Limited**:

“...the learned trial judge arrived as to the quantum of costs to be awarded on the basis of the bills of costs submitted and the affidavit in support thereof and most importantly, the lack of challenge by the appellants. Unfortunately, we are of the view that the learned trial judge was required to exercise a judgment (discretion) in keeping with the overriding objective. Whether he did this or not does not appear in the Agreed Reasons for Decision...where a discretion is to be exercised it must be so exercised on the basis of the law...”<sup>4</sup>

#### **Basis of quantification of Costs**

- [6] The appellant in his submissions states that ‘The Privy Council Rules provide[s] for £9.75 per hour...’<sup>5</sup> in relation to a litigant in person. In support of this position, the appellant referred to the case of **Brenda Joan Knight et al v Antonio Maggioni et al**<sup>6</sup>. The appellant also made reference to CPR 65.2 (1) and submitted that this rule is consistent with the practice in the English CPR 48.6 (3). He invited the court to draw persuasive support from these rules which set the entitlement and rate applicable to a litigant in person.
- [7] The English Civil Procedure Rules make specific provision in rule 48 for costs to a litigant in person. The rules establish a statutory regime as to what a litigant in person is entitled to be awarded as costs. The rules establish a clear ceiling as to the amount which can be awarded, that is, the costs awarded to a litigant in person must not exceed 2/3 the amount which would have been allowed if the litigant in person had been represented by a legal representative. Section 52.4 of the Costs Practice Direction is where the rate of £9.75 per hour is set but it is in relation to where the

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<sup>3</sup> Blackstone’s Civil Practice 2005 Para 68.35

<sup>4</sup> Civil Appeal No. 15 of 2005 (Saint Christopher and Nevis), delivered December 3, 2007, paragraph 13

<sup>5</sup> Page 3, appellant’s submissions filed October 1, 2008

<sup>6</sup> HCCO, No. 0503654, 10 April 2006

litigant in person fails to prove financial loss. It is quite clear that the statutory regime which operates in England is not replicated in our **CPR 2000**.

[8] This statutory regime in England was established by the **Litigants in Person (Costs and Expenses) Act 1975**. Prior to this Act coming into force, a litigant in person was entitled to recover from the paying party no more than such out of pocket expenses as he had properly incurred.<sup>7</sup> There is no evidence to suggest that the **Litigants in Person (Costs and Expenses) Act 1975** or the equivalent of rule 48.6 of the English CPR has been incorporated into any civil procedure rules or other legislation in Antigua and Barbuda. It therefore means that the appellant's submission that a rate of £9.75 per hour should be used for the purposes of taxing costs cannot be upheld.

[9] CPR 65.2 (1) of the **CPR 2000** states that in exercising the discretion as to the amount of costs to be allowed, the court must allow as costs a sum that (1) it deems reasonable were the work to be carried out by a legal practitioner of reasonable competence and (2) which appears to it to be fair both to the paying and receiving party. This rule sets out very clearly the basis of quantification of costs. This basis is to be used whether a legal practitioner of reasonable competence is used or not. This is unlike the English position as outlined above. It would appear that the CPR does not intend that the litigant in person is to be disadvantaged or favoured in recovering his/her costs just because he/she is a litigant in person.

[10] In deciding what is reasonable, the court must take into account all the circumstances including (a) any order that has already been made; (b) the care, speed and economy with which the case was prepared; (c) the conduct of the parties before as well as during the proceedings; (d) the degree of responsibility accepted by the legal practitioner; (e) the importance of the matter to the parties; (f) the novelty, weight and complexity of the case; and (g) the time reasonably spent on the case.<sup>8</sup>

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<sup>7</sup> Cook on Costs 2007, Chapter 39, page 510

<sup>8</sup> CPR 2000, rule 65.2 (3)

[11] Costs must be proportionate as well as reasonable. In the case of **Lownds v Home Office**,<sup>9</sup> Lord Woolf CJ in discussing the approach to be adopted in assessing costs stated:

"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 particular regard to the considerations which CPR 44.5 (3) *[which is similar to our CPR 65.2 (3)]*<sup>10</sup> 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 costs of 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."<sup>11</sup>

### Assessment

[12] I will now proceed to look at each item of the bill of costs individually with a view to assessing whether that item was reasonably incurred and whether the costs claimed are reasonable.

ITEM	AMOUNT CLAIMED \$	AMOUNT AWARDED \$	REASONS
1. Drawing application, affidavit in support and draft order for Application for leave to appeal to her Majesty in Council 6 hrs.	277.50	277.50	Costs claimed reasonable.
2. On filing application	250.00	250.00	Amount claimed in accordance with <b>Antigua and Barbuda Statutory Instruments No. 29 of 1996, Supreme Court (Court of Appeal) (Amendment) Rules 1996</b> ) See No. 7
3. Filing affidavit with Exhibit	15.00	10.00	Amount awarded is in accordance with Statutory Rules S.I. No. 29 of 1996 for documents for which no special fee is provided. See No. 12

<sup>9</sup> [2002] 4 All ER 775

<sup>10</sup> My insertion

<sup>11</sup> [2002]4 All ER 775 at 782 para [31]

ITEM	AMOUNT CLAIMED \$	AMOUNT AWARDED \$	REASONS
4. Drawing up conditional order for leave to appeal 4 hrs	185.00	100.00	The order granting conditional leave is a standard order which would first have had to be approved by the court and therefore would not have required 4 hours to be drawn up.
5. Attending in Court 7 hours over 2 days	323.75	400.00	This amount was increased as I am of the opinion that the amount of \$200.00 per day is reasonable when one considers the costs which would be awarded to junior counsel for appearance in court on account of an application for conditional leave to the Privy Council. Costs to a junior counsel would usually be \$300.00-\$500.00 per day
6. Drawing Bond 15 hrs	693.75	300.00	The Bond to be prepared is a standard document and therefore would not have required 15 hours to be drawn up. Applying the standard in CPR 65.2 (1), if the work had been carried out by a competent legal practitioner he could not have been awarded more than \$300.00 for drawing up a standard court document.
7. On filing Bond	250.00	250.00	Amount claimed is in accordance with Statutory Rules S.I. No. 29 of 1996 No. 8
8. Drawing Notice of appointment to settle Record 3 hrs	138.75	100.00	The Notice of Appointment to settle the Record is a standard document and would not have required any substantive amount of drafting.
9. On filing Notice	250.00	250.00	Amount claimed is in accordance with Statutory Rules S.I. No. 29 of 1996 No. 10
10. Serving Notice, and drawing affidavit of service 5 hrs	231.25	200.00	\$100.00 is a reasonable sum for drawing an affidavit of service as this is a fairly standard document. The sum of \$100.00 is reasonable for serving of the Notice of appointment to settle the Record as this is the cost allowed by CPR 65-Scale of fixed costs No. 2.
11. On filing Affidavit of Service	10.00	10.00	Amount claimed is in accordance with Statutory Rules S.I. No. 29 of 1996 No. 12
11A. Attending to settle the Record 2 hrs	92.50	92.50	Amount claimed is reasonable.
12. On drawing certificate of compliance 3 hrs	138.75	100.00	The Certificate of Compliance is a standard document which could not have needed 3 hours to draft.
13. On filing certificate of compliance	25.00	25.00	Amount claimed is in accordance with Statutory Rules S.I. No. 29 of 1996 No. 21
14. On filing Application for final leave to appeal to the Judicial Committee of the Privy Council	250.00	250.00	Amount claimed is in accordance with Statutory Rules S.I. No. 29 of 1996 No. 7
15. Filing affidavit in support with 1 Exhibit	15.00	10.00	Amount awarded is in accordance with Statutory Rules S.I. No. 29 of 1996- No. 12


ITEM	AMOUNT CLAIMED \$	AMOUNT AWARDED \$	REASONS
16. Attending in Court and waiting time 3 hrs.	138.75	<b>200.00</b>	Amount increased to <b>\$200.00</b> . This is based on the fact that \$400.00 was allowed for two days court attendance.
17. Drawing order for final leave to appeal 3 hrs	138.75	<b>100.00</b>	The order granting final leave is a standard order which would first have had to be approved by the Court and therefore would not have required 3 hours to be drawn up.
18. On filing order for final leave to appeal to the Privy Council	300.00	<b>300.00</b>	Amount awarded is in accordance with Statutory Rules S.I. No. 29 of 1996- No. 9
19. Typing, editing, collating, paginating and printing:384 hrs @46.25	17,760.00	<b>5000.00</b>	The amount to be allowed in relation to preparation of the record takes into account the time spent in preparing the record. The appellant has used an hourly rate of \$46.25 which is based on his submissions that the English statutory rate of £9.75 should apply. This argument was dealt with earlier in this decision. The appellant has provided a sheet detailing the dates and number of hours he spent preparing the record. In particular, he records hours spent for typing and preparing the Record but there is no indication as to what this entailed. In preparation of the Record of Appeal, I am not certain that any typing is involved save for the index. The majority of the time from my experience would be spent in photocopying and collating documents which are to form part of the Record which I doubt the appellant did himself. I therefore cannot see that the costs claimed (\$17,760.00) nor the time expended (384 hours) in preparation of the Record are reasonable and I therefore reduce these costs to \$5000.00 which includes a notional sum for photocopying. In addition, the appellant will be awarded costs of the materials used in preparation of the record.
20. 1 Case A4 paper	232.65	<b>232.65</b>	Receipt provided.
21. 10 Ink Cartridges @ \$165 00	1650.00	<b>1650.00</b>	There is no evidence to oppose this amount claimed and the appellant provided receipts in respect of this amount.
22. 33 Comb binders for A4 paper	184.34	<b>184.34</b>	There is no evidence to oppose this amount claimed and the appellant provided receipts in respect of this amount.
23. Binding	210.00	<b>210.00</b>	Receipt provided.
24. Cost of shipping The record to the Privy council	563.76	<b>563.76</b>	Receipt provided.

ITEM	AMOUNT CLAIMED \$	AMOUNT AWARDED \$	COMMENTS
25. Cost of airfare travel for hearing at the Privy Council	1420.00	1420.00	Receipt provided. In <b>Law Society v Persaud (1990) Times, 10 May, QBD</b> , the costs of travelling from South Africa to England to defend the action in person were allowed. The court felt that the costs sought did not exceed what would have been actual costs and disbursements allowable to a London solicitor including counsel's fees.
26. Embarkation Tax	35.00	35.00	Receipt provided.
27. Drawing bill of costs 9 hrs	413.75	413.75	Amount claimed reasonable.
<b>TOTAL</b>	26,193.25	<b>12, 934.50</b>	

### Award

[13] Taking into account the principles outlined in **Lownds v Home Office**<sup>12</sup> and in light of the costs awarded by the Privy Council for the costs of the appeal in England, I find the sum of \$12, 934.50 to be a reasonable costs sum.

[14] I therefore award costs in the sum of **EC\$12, 934.50** to the appellant as the costs incurred in Antigua and Barbuda in relation to his appeal to the Privy Council. No additional costs are awarded as costs of the assessment pursuant to CPR 65.12 (6) as this assessment was conducted based on paper submissions. Costs have already been awarded in respect of the preparation of the application and bill of costs.

  
**Kimberly Cénac-Phulgence**  
 Chief Registrar

<sup>12</sup> Ibid