ANGUILLA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO AXAHCV2008/0015

BETWEEN:

1. PAUL WEBSTER
2. MARJORIE MACLEAN
3. MARJORIE CONNOR
4. PHILLIPPE CHAMLAULT
5. CHRISTINE CHAMPAULT
6. ANNE KELLER
7. LLOYD SINCLAIR
8. NEIL FREEMAN
9. WENDY FREEMAN

Applicants

AND

THE ATTORNEY GENERAL
(FOR THE GOVERNMENT OF ANGUILLA)

Respondent

AND

DOLPHIN DISCOVERY

Interested Party

Appearances:

Mr Gerhard Wallbank, of Webster, Dyrud Mitchell for the Applicants
Mr Ivor Greene for the Attorney General
Ms Yanique Stewart for Interested Third Party

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2011: December 12
2012: June 11
.....

ASSESSMENT OF COSTS

Introduction and background

[1] LANNS, M: This is an assessment of costs pursuant to a Judgment handed down by Her Ladyship Tana'ania Small-Davis J [Ag] on 13th September 2010.

[2] Paragraphs [238] to [241] of the Judgment are in the following terms:

> "Costs
>
> "[238] The parties were directed to file submissions on costs on or before 17th August 2008. The Claimants filed a Skeletal Bill of Costs. The Defendant and the Interested Party filed submissions in each case, arguing that the Claimants were entirely misguided and that the general rule not to award costs against an unsuccessful claimant for judicial review should not be followed."
>
> "[239] The Claimants have been successful on some parts of the claim, and the Defendant and the Interested Party have prevailed on others. Where the Claimants have been successful, it has been on the ground of illegality and or procedural irregularity of the impugned decision. For this reason, I consider that the Claimants should have 50% of their costs."
>
> [240] CPR 65.12 (5) directs me to CPR64.12 as the proper method of assessing costs in judicial review cases.
>
> "[241] The Defendant shall pay 50% of the Claimants' costs, such costs to be assessed pursuant to CPR 65.12(3) on application to the Master for directions as to how the assessment is to be carried out. The Defendant and the Interested Party shall bear their own costs."

[3] The learned Judge concluded her judgment by commending counsel for their tremendous assistance and diligence in the conduct of the case.

The substantive matter

[4] I glean from the judgment and other documents on record that the case concerned the judicial review of a decision by the Land Development Control Committee to approve the planning application of Dolphin Discovery (the Interested Party in this matter) to construct a pier and /or dolphinarium and to carry out associated works at Blowing Point, Anguilla.

[5] Prior to the initiation of judicial review proceedings, an injunction was granted on application by the Claimants, which had the effect of putting on hold the construction works being undertaken by Dolphin Discovery. The Court directed a cessation of all construction works of pier or structure or any encroachment or the foreclosure at the foreshore or floor of the sea at Sandy Point.

[6] I am not familiar with the case, so it is arguable that CPR 65.12 (2) kicks in. This rule provides that if the assessment relates to part of court proceedings it must be carried out by the judge, master or registrar hearing the proceedings. (Emphasis mine). However, it appears that CPR65.12 (2) has to be read in conjunction with CPR 65.12 (3) which provides that if the assessment does not fall to be carried out at the hearing of any proceedings, then the person entitled to the costs must apply to a master or the registrar for directions as to how the assessment is to be carried out. (CPR 65.12 (3).

Status hearing

[7] The matter came before me on 24th January 2011 for status hearing, but it was adjourned to allow the parties to attempt settlement of the assessment of costs. They were unable to come to a final agreement, so the Claimants have approached the court on an application pursuant to the Order of Small-Davis J [Ag] seeking an order that the court assess its costs in the sum of EC$ EC$714,464.14. The Application was filed on 14th January 2011. Accompanying the application was a Bill of Costs fulfilling the requirement of CPR 65 12 (4).

Directions of Assessment/Assessment Hearing

[8] On 28th March 2011, I gave directions on the assessment. The parties complied. After a period of delay, the assessment eventually came on for hearing on 12th December 2011.

[9] At that hearing, the court formed the opinion that the assessment was appropriate for disposition by way of the written representations as filed. The parties agreed. Therefore, the assessment of costs has proceeded on the written representations submitted on behalf of the Claimants and the Defendant.

[10] As can be seen from paragraph [241] of the judgment of Small-Davis J, [Ag], Dolphin Discovery, the Interested Party is not involved in this assessment.

Disputes

[11] The Defendant disputes the amount claimed by the Claimants, but has not put forward any serious challenge to the costs claimed. The Defendant's main ground for the disputes is a bald disagreement with almost all of the items, on the basis that the costs claimed appear excessive. The Defendant gives no or no sufficient supporting basis for the bald assertions that the costs appear excessive. His submissions in response to the Claimants' Bill of Costs are woefully inadequate to assist the court in carrying out the assessment.

[12] The Claimants were careful to point out that the Bill of Costs gives figures before the 50% reduction was applied by the Judge.

[13] They urged that in carrying out the assessment, the court should consider that this matter concerned issues of foremost public importance to Anguilla, i.e., whether or not permission for an international dolphin tourist facility located within the limits of Blowing Point Harbour

should be overturned or allowed to stand. This issue, they submitted, required the degree of preparation and professional attention which the Claimants lawyers applied to it.

[14] Neither party provided the court with any authority in support of the assessment, although they were not directed to do so. Part 2 of the CPR require the parties to assist the court in furthering the overriding objective to save expenses and to deal with the case in a way that is proportionate to the nature of the case. Upon review, it would appear that evidence on affidavit and authorities in support of each party's position would have greatly assisted the court with the assessment of the Bill of Costs to determine the reasonableness of the costs claimed. The directions may have been inadequate in this regard.

[15] Notwithstanding the odds, I will attempt to do the best I can with what I have before me.

[16] The court has before it

a) The Claimants' Second Bill of Costs; which obviously supersedes the first one that was before the learned Judge
b) Copies of Counsel's fee notes
c) Experts' fee invoices
d) Accounts for other disbursements
e) The Defendant's response to the Bill of Costs; and
f) The Claimants' submissions in reply to the Defendant's response to the Claimants' Bill of Costs.

[17] I have carried out the assessment based upon the principles which govern assessment of costs, the rules of court, the documents on record and the written submissions in support of, and in opposition to the Bill of Costs.

Principles of Assessment

[18] The principle upon which costs are awarded is laid down in CPR, 65.2(1) which is to the effect that a party can only be allowed costs which the court deems reasonable.

[19] The principle of reasonableness has been expounded and applied in several cases and in several Papers on costs.

[20] In a Paper entitled "Costs under the CPR", dated 24th February 2003, Sir Dennis Byron Chief Justice (as he then was) outlined the principles of reasonableness by stating among other things that

> "The Court must consider the time spent in making, preparing for and attendance at hearing and allow a reasonable and fair sum…."

[21] In Michael Wilson & Partners ltd v Temujin International Limited et al – Claim No. BVIHCV2006/0307 – British Virgin Islands, Her Ladyship Indra Hariprashad-Charles stated at paragraph 39

a) "Ultimately, the court must allow such sum that is reasonable taking into consideration the matters set out in CPR 64.6 (6) and CPR 65.2(3).

[22] And in Peter Maxymych v Global Convertible Megatren Ltd and Anor Claim No 246 of 2006, Olivetti J found it necessary to refer to the Privy Counsel decision in Horsford v Bird 43/2004 (28the November 2006), for the principle that no party can be expected to be fully indemnified for his costs; he is only entitled to reasonable costs.

In Horsford v Bird supra, Lord Hope of Craigshead stated:

> "It has to be borne in mind in judging what was reasonable and proportionate in this case, that the basis of the award was not that the appellant was to be indemnified for all his costs. The respondent was to be required to pay only such costs as were reasonably incurred for the conduct of the hearing before the judge and were proportionate."

[23] It is clear from the above paragraphs 18 to 22 that reasonableness is key. The Claimants must satisfy the court that their costs are reasonable. To do this, the Claimants must produce evidence that their costs are reasonable as the court, in assessing costs is required to be fair and reasonable. Any doubts must be resolved in favour of the paying party. The Claimants cannot just say that the Defendant has not shown any bases for saying the costs are excessive, or that that the Defendant makes a bald assertion of disagreement. He who asserts must prove. At the same time, it behoves the Defendant to show some basis for concluding that the costs are excessive. The Defendant cannot just limit himself to saying that the costs appear to be excessive for the work performed, and that a lower sum has been claimed for similar cases. As noted by Sir Dennis, in his paper "Costs under the CPR" the parties must assist the court.

Factors to be taken into account in assessing costs

[24] CPR 65.2(3) sets out a list of factors that the court is required to take into account in assessing costs, namely:

i) 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;

g) the time reasonably spent on the case; and

…."

[25] As I have already intimated, I am unable to speak to each of these factors with adequate precision, because of my unfamiliarity with the case. Secondly, there is no affidavit evidence which speaks to the claims, to assist me in coming to a determination as to the reasonableness or otherwise of the claims. I can only look at the Judgment, the Bill of Costs, the submissions and other documents, and come to a decision as to whether the costs claimed are reasonable and then consider what would be a just order to make.

(i) Any order already made

[26] The court is duty bound to consider the order already made by the learned Judge that the Claimants are to be awarded 50 % of their assessed costs.

(ii) Care, speed and economy with which the case was prepared;

[27] From Mr Wallbank's submission, it would appear that the case was prepared with care, economy and skill, and dealt with dispatch. His submission is supported by paragraph [242] of the judgment in this case, wherein Small Davis J (Ag) stated: "I must commend all counsel for their tremendous assistance and diligence in the conduct of this case and the high quality of the written and oral arguments."

[28] Nothing more needs be said on that issue.

(iii) The conduct of the parties

As far as conduct of the parties is concerned, the learned Judge may have already taken this into consideration because she has deprived the Claimants of half their costs to reflect that the Claimants were only partially successful. I need not delve any further except to say that the parties failed to agree on costs despite being allowed time to negotiate a settlement. I have no knowledge of what transpired at the pre-assessment negotiations table; so I cannot cast any blameworthiness on either side for failing to settle.

(iii) The importance of the matter to the parties

[29] Given the subject matter of the proceedings, I have no doubt that the outcome of the case was of vital importance to all parties concerned. It necessitated the imposition of a restraining injunction. It required Queen's Counsel. It required experts. There is no dispute that Queen's Counsel from London or elsewhere was not necessary.

(iv) The Complexity of the matter

[30] Mr Greene seemed to have conceded that the matter was a complex one, but not for the period 1st October 2007 to 7th May 2009. Mr Wallbank on the other hand refutes this argument with explanations as to why the matter was complex. He says that the application for judicial review was complex and required thorough research and preparation. The hearing of the application itself he said took a whole day. I take that to mean a working day. Mr Greene did not oppose this submission.

The matter ran from 2007 to 2009. The trial itself lasted four days. It culminated in a judgment consisting of fifty two pages of 242 paragraphs. The documents were voluminous. They seem to have run eight volumes of filings. Volume 8 contains the application for assessment of costs. The case required specialised knowledge. Queen's Counsel was retained on each side. The matter seemed to have been truly exceptional in terms of weight, responsibility and complexity. I am content to accept that the matter was indeed of a complex nature.

(iv) Time reasonably spent on the case

[31] The Bill of Costs relates to the period beginning 1st May 2007 and ending January 2011. The time spent on each item of claim is listed in the Bill of Costs. Mr Greene takes objection to the time spent in relation to the work done. Mr Wallbank sought to justify the time spent working on the case. I am not in a position to form a judgment as to how much time was actually spent on arguments before the judge, but I can say for certain that the assessment hearing did not take three hours. It took about half an hour. It is to be noted however, that the time recorded on the Bill of Costs was an estimate of three hours.

[32] Mr Greene took objection with the time spent on the case, particularly in relation to item 7. Mr Wallbank refuted his submission, submitting that the time includes attendances that are corollary to actual court attendance, but includes work that lawyers do after they leave court and in preparation for the next day of trial. Such attendances, submitted Mr Wallbank are an automatic corollary to a lawyer's attendance at trial.

[33] It seems to me that the words of Walton J in Maltby v DJ Freeman & Co [1978] 2 All ER, 913, support Mr Wallbank's submission:

> "No professional man, or senior employee of a professional man, stops thinking about the day's problems the minute he lifts his coat and umbrella from the stand and sets out on the journey home. Ideas, often very valuable ideas, occur in the train or car home, or in the bath, or even whilst watching television. Yet nothing is ever put down on a time sheet, or can be put down on a time sheet adequately to reflect this out of hours' devotion of time."

[34] I turn now to consider the Bill of Costs

The Bill of Costs

[35] The Claimants filed their Bill of Costs in compliance with CPR 65.12 (4).This was their second Bill of Costs, the first being a skeletal bill, that was filed before the delivery of the judgment, in response to a direction from the learned Judge requiring the parties file submissions on costs. The second Bill is slightly higher than the first Bill, in that it contains invoices submitted by Burges Salmon in the amount of £45,078.87. Whereas the first invoice from Burges Salmon that was attached to the skeletal Bill of Costs amounted to £42, 500.00, the invoice attached to the new Bill is for $45,078.87 – an increase of £2575.87.

[36] Overall, it appears that the new Bill reflects an increase of EC$8,346.87 for Attorneys' fees, and an increase of EC$424.35 as disbursements, for a total increase of EC$8,771.22 over the first bill. Mr Wallbank says that I should not be concerned with the first Bill. I should only be concerned with the second Bill.

[37] The second Bill of Costs comprises two main categories or columns, 1) costs incurred as Attorneys' fees; and 2) costs claimed as disbursements. These disbursements include fees claimed by London counsel Mr James Michael Ryan and expert fees for Dr Barry Wade. There is also a column headed "Work Undertaken" which gives a narrative or nature of the work performed for costs claimed.

[38] The second Bill of Costs seems to cover a period of three years i.e. from 1st October 2007 to January 11 2011. In some instances, it includes hourly rates and the number of hours spent in performing the work.

[39] As previously stated, the Claimants have claimed a total of EC$714,464.14. The sum of EC$247,024.48 is claimed as disbursements associated with this case, and EC$467,439.66 is claimed as Attorneys' fees.

[40] The Disbursements column of the Bill of Costs contains seven items, whereas the Attorneys' fees column contain eleven items. I shall attempt to address these items chronologically, as far as practicable.

Item 1

[41] This is a claim under Attorneys fees, for EC$147,328.80 for a multiplicity of tasks including, investigations, research, meetings with clients, preparation of letter before action, preparation and filing of application for leave for judicial review, supported by affidavit of Marjorie MacLean; attendance at judicial review hearing; preparation and attendance on hearing of application for permission to commence proceedings for judicial review; court attendance. This claim applies to the period 1st October 2007 to 7th May 2008 for a total of 219 hours.

[42] The Defendant submits that the time and costs claimed are excessive. The matter was not complex at that stage, the Defendant argued. The Defendant submits that costs in the sum of US$3000.00 have been claimed for similar cases.

[43] The Claimants replied with an explanation of how the hourly rates are determined. They dispute that the matter was not a complex one, and they reiterated the many tasks involved during the period 1st October 2007 to 7th May 2009.

[44] They correctly pointed out that the Defendant has not given any comparable cases to justify the suggestion that a mere US$3000.00 has been claimed for similar work in other cases.

[45] The Claimants therefore reject the submission as being unsupported, speculative, and unrealistic given the unique and multifaceted circumstances in the case.

Item 2

[46] This is a claim for EC$66,788.33, as Attorneys' fees for a multiplicity of tasks undertaken e.g., preparing and filing Fixed Date Claim Form and supporting Affidavit of Paul Webster; meetings with Claimants; perusing and considering list of documents; and serving additional disclosure; considering additional disclosure from the defendant; consultations and brief to counsel; case management and further disclosure; preparation for application by Defendant to discharge the injunction, meetings, telephone calls, correspondence and discussions; preparing skeleton arguments; attendance at court and taking judgment.

This item covers the period 8th May to 30th June 2009 for a total engagement of 62 hours 54 minutes.

[47] The Defendant does not agree with the amount claimed. In his opinion, the time and costs claimed "appear to be excessive" He claims that the sum of EC$6000.00 has been claimed for similar tasks in other matters.

[48] The Claimants answer to that submission is that the disparity in the two figures is untenable. The Claimants make the same observations as in item 1, that is, no comparable cases have been put forward, and that the submission by the Defendants is unsupported and grossly unrealistic. Claimants' Counsel reiterated the work done for the period in question that is, 8th May to 30th June 2009.

Item 3

[49] Item 3 is a claim under Attorneys' fees for EC$46,613.39. The Defendant objects to this claim on the ground of excessiveness. He says that a fee of US$3000.00 would be reasonable. He says further that there is no reference or quantification as to the amount of time spent on the performance of this aspect of the work.

[50] Mr Wallbank conceded on the 'time' issue but referred to the narrative describing the work performed. Preparation, Cases Management Directions hearings; extensive research to identify experts; research to identify experts; review of qualification of experts; consultation with counsel; consultation with parties; application to appoint single expert witness; meetings with Mr Webster and others to discuss evidence; settlement discussions

[51] Mr Wallbank made reference to the absence of any comparable cases to justify the low suggestion that a mere US$3000.00 is reasonable. Such disparity is untenable and unrealistic submitted Mr Wallbank.

Item 4

[52] With respect to item 4, this is a claim under Attorneys' fees for EC$77,016.93 for Instructing Dr Wade of Environmental Solution Limited as expert witness for preparation of expert's report on environmental issues. The item covers the period 1st November 2008 to 9th June 2009 for a total of 102 hours 42 minutes. The nature of the work performed is not stated. Nor is the hourly rate stated.

The Defendant's objection to this claim is that it is excessive for the work performed. The Defendant does not agree that the work was of complex nature as it encompassed the issues that were the subject matter of the claim, as well as issues identified by the Claimant's witness.

The Claimants reply was that the work performed by the expert was indeed complex and varied. It did not only consist of preparing his instructions. It entailed 102 hours and 42 minutes, submitted Mr. Wallbank.

Items 5 and 6

[53] Item No.5 is recorded as brief to counsel. There is no figure specifically recorded for Item 5. The figure for items 5 is combined with the figure for item 6 for a total of $76,129.82. The work performed is listed as being preparation for trial, (perusing papers, conference, filing and serving chronology, list of issues and skeletal arguments, liaising with Defendants and Interested Party in relation to agreeing bundles; compiling, serving core bundles; researching authorities; preparing for examination of witnesses of fact and expert witnesses; and for cross examination of Defendant's witnesses and Interested party's witnesses.

In performing those tasks, Webster Dyrud & Mitchell is said to have spent 101 hours and 12 minutes. The period covered is listed as 10th June to 24 July 2009.

The Defendant disputes the amount of $76,129.82 as being excessive for the amount of work. The Defendant considers that the sum of US$4000.00 is a reasonable sum for the work performed.

The Claimants do not agree. Their answer to that suggestion is that it is wholly unrealistic that the items of work covered could be condensed into anything near US$4000.00 worth of time. The Claimants emphasized that in instructing overseas Counsel, who was a specialist judicial review practitioner, the Claimants had the efficiency of having a specialist focus preparation efforts, thereby saving time and costs.

Item 7

[54] This is a claim for EC$39,301.48 for attendance at trial 27th – 30th July 2009, (Tameka Davis and Harry Wiggin) spending 59 hours and 12 minutes.

The Defendant disputes this amount as being excessive. As to the length of trial, the Defendant's recollection is that the trial lasted 28 hours. Additionally, the Defendant pointed out that there is no sum stated for hourly fees.

In their reply, the Claimants maintained that the trial took place over four days. They say that even if the total number of hours in court was less than 59 hours and 12 minutes, it is unavoidable that the lawyers who are engaged on a trial should engage time in preparing immediately before a day in court and afterwards incur further time in analyzing the day's events, reporting, to clients, and adjusting preparations for the following day. Such attendances are an automatic corollary to a lawyer's attendance at trial, argued the Claimants.

Items 8, 9, 10, 13

[55] In items 8-10; and 13, the Claimants claim an aggregate of EC$246,600.13 for various disbursements which the Claimants have itemised. These disbursements include

a) pre-trial fees for Counsel James Michael Ryan for EC$115,428.30;
b) fee on brief for Counsel James Ryan for hearing of trial – EC$$54,319;
c) Refresher for Counsel James Michael Ryan for two and a half days in the amount of EC22,633.00;
d) EC$10,121.60 as fees and expenses for Environmental Solutions and for Barry Wade's Expert Report and attendance in Court;
e) Counsel disbursements (photocopying charges, notary fee, travel expenses, etc at a total cost of EC$1735.14;
f) Webster, Dyrud Mitchel – telephone calls, faxes, courier, postage, stamp duty, printing and photocopying travelling expenses for counsel, Call fee for counsel and searches,; Counsel expenses, namely air tickets, hotel accommodation, fax, meals, etc, at a total cost of EC$ EC$42,462.89;

These items are stated as covering the period 1st May to 16th July 2009.

All the Defendant say in response to these disbursements is that these items are not agreed.

The Claimant in reply made reference to the bald assertion of disagreement with this aspect of the Bill without any support for these assertions.

Items 11 and 12

[56] The amount claimed for each of these items of work is EC$5,010.80. The description of the items of work performed in item 11 is identical to the description of the work performed in item 12.

The Defendant's position in regard to these two items is that item 12 is a repetition of item 11 and they are not agreed.

The Claimants explain items 11 and 12 in this way "Item 12 is not a repetition. The totality of the Claimants' share of the Expert's fee was items 11 and 12 together. Item 11 is the amount the Claimants had already paid as at the date of the Bill of Costs Item 12 is the amount which the Claimants were due to be paid but had not paid as at the date of the Bill of Costs. Items 11 and 12 are cumulative."

Item 14

[57] The Claimants claim EC$5,914.04 as Attorneys' fees for preparation of the Bill of Costs, This preparation apparently took place during the period 12th to 17th August 2009 for a total of 11 hours at EC$200.00 per hour.

The Defendant does not agree with this item, submitting that the time and costs appear excessive for the work performed.

The Claimants rebuttal was that the Defendant has given no support for the bald assertion of disagreement, or that the costs are excessive.

Item 15

[58] This is a claim for EC$1411.31 for liaising with court office on schedule for delivery of Judgment; an attendance at hearing for and taking of Judgment. The time spent is recorded as 1 hour and 30 minutes.

The Defendant disputes this item on the ground that the cost claimed is excessive

The Claimants say this is a bald assertion of disagreement and nothing more.

Item 16

[59] This item applies to the period 16th to 17th September 2010. The Claimants claim costs of EC2,903.26 for reviewing judgment and CPR; and for preparing notice of application for assessment of costs. The drafter is said to have spent 5 hours and 30 minutes on this item.

The Defendant disputes this item as being excessive for the work performed.

The Claimants countered that this objection is nothing more than a bald assertion of disagreement.

Item 17

[60] This item applies to the period January 2011- post judgment. It is a claim for an aggregate of $4,24.35 for disbursements for stamps, attendances for filing and collecting of documents and service of documents on the Defendant; printing and photocopying.

The Defendant does not to oppose the amount claimed for some of the disbursements itemised here. But he opposes the costs of $268.82 which includes a cost for attendances for filing, and collecting documents.

The Claimants say this objection is nothing more than a bald assertion of disagreement.

Item 18

[61] Item 18 applies to attendance at the hearing of the Application for Assessment of Costs, and for extracting an order. The costs claimed is EC$2,822.6. Time spent is estimated at 3 hours.

The Defendant disputes these estimated costs as being excessive for the work performed.

Again, the Claimants reply is to the effect that this objection is nothing more than a bald disagreement.

What is a just order to make?

[62] I have considered the factors as stated in CPR 65.5 (3). I have also considered the submissions in writing from both parties including the Claimant's reply to the Defendant's submission on costs. I have studied and scrutinized the Claimants' Bill of Costs and accompanying invoices; the fee notes in respect of the disbursements.

[63] In all the circumstances, in my opinion, I consider that the most fair and reasonable disposition of the assessment of costs is to order that the Defendants pay three quarters of the costs claimed by the Claimants in the second Bill of Costs.

[64] Small Davis J (Ag) has imposed a cap on the amount recoverable by the Claimants, so I propose to assess the Claimants' costs in the sum of $535,848.11 less 50%. The Claimants' costs are therefore assessed in the sum of EC$267,924.06.

[65] In coming to this determination, I have found that:

a) The work required the degree of preparation and professional attention which the Claimants lawyers applied to it. However, some of the disbursements are far too high, and there is no documentary proof, or no proper account of some of the costs claimed. Item No 13 includes an amount for air tickets, hotel, telephone, fax, meals etc. No documentary proof is shown as to how these

costs were broken down or calculated. How long was the stay in the hotel? Were the hotel costs reasonably incurred? There are some costs which, to my mind are not allowable. For example, meals; in my opinion, no allowance should be made for meals. Counsel would normally be responsible for his own meals;

a) In some cases, the number of hours claimed to have been worked is unacceptable, and the number of hours devoted to the work appear excessive, and include work which appear to be duplicative or repetitious, e.g. item 2 appears to be duplicative or repetitious in relation to disclosure; item 3 in relation to disclosure and research to identify experts.

b) Item 4 does not contain any detail of the nature of the work undertaken.

c) The amount of costs appears high for telephone, copying, courier charges. With no documents to support how the figures were arrived at, it becomes difficult to determine the reasonableness of the costs claimed for certain tasks. Item No 13 is a case in point. The fees there seem exorbitant and there is nothing to show how the figures were arrived at. There is no breakdown for each item. The fees are just lumped together.

d) In some cases, there appear to be some over manning, but the Defendant has pointed to nothing to make me say that there was no justification for utilizing all of these fee earners or claiming costs for all of them.

Conclusion

[66] It is ordered that

1. The Defendant do pay to the Claimants costs assessed in the amount of $267,924.06 within one month of the date of delivery of this decision, or at some subsequent date agreed by the Claimants.

Pearletta E Lanns
Master