

EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

(CIVIL)

Claim Number: BVIHCMAP 2017/0019

Between

Kevin Gerald Stanford

Appellant/Respondent

AND

1. Mark Byers

2. Mark Mc Donald

(as Joint Liquidators of Chesterfield United Inc. (In Liquidation))

Applicants /Respondents

APPEARANCES :

Mr. Tim Wright for the applicants /respondents

2019. March 19

June 25,

RULING ON ASSESSMENT OF COSTS

1. ACTIE M: - The applicant filed an application for assessment of costs on December 21, 2018 together with supporting detailed bills of costs with supporting affidavits. The application for the assessment of costs is grounded on the following orders made by the Court of Appeal:-

1. On 4th August 2017, Kevin Stanford applied to the Court of Appeal for leave to appeal the decision of Wallbank J dated 21 July 2019. On 26th October 2017, the respondents applied to the Court of Appeal for security for costs of Mr. **Stanford's** proposed appeal. On 24th November 2017, the Court of Appeal ordered Mr. Stanford to pay security for costs in the sum of USD\$295,450.00 or alternate security for the amount with costs to the applicants to be assessed, if not agreed within 21 days. The security for costs was paid into court.

2. On 12th July 2018, the Court of Appeal dismissed Mr. **Stanford**'s substantive appeal with costs to the respondents to be assessed if not agreed within 21 days.
 3. On 1st November 2018, the Court of Appeal dismissed Mr. **Stanford**'s application for leave to appeal to the Privy Council with costs to the respondents to be assessed if not agreed within 21 days.
2. The parties failed to agree on costs and applied to the Court of Appeal for the assessment of costs. The application for costs came on for determination before the Court of Appeal on 22nd January 2019 and the matter was referred to the master for the assessment of the costs. The matter came on for hearing on March 14, 2019. The appellant failed to file submissions in opposition both in the Court of Appeal and at this hearing today. Approximately 20 minutes into the hearing of this application counsel from the firm of Walkers joined the proceedings.
 3. The ruling in this assessment of costs is conducted on the submissions filed by the applicants in keeping with CPR 2000 and established protocols in the assessment of costs. The **appellant's** failure to file submissions in opposition may ineluctably mean that the amount claimed is satisfactory. However, reasonableness is the key governing factor when assessing costs¹. In the absence of a consent position on the fees claimed, the court is required to determine whether the costs are fair and reasonable.
 4. Whether costs had been reasonably or necessarily incurred is derived from what is found in the case of *Lownds v Home Office*² where it states:

“**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 Part 44.5(3) (in *pari materia* with Part 65.3 CPR 2000), 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 cost for that item should be

¹ Paul Webster et al v The AG of Anguilla AXAHCV2008/0015; Mark Brantley v Hensley Daniel et al NEHCV2011/0130

² [2002] 4 All ER 775

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. If, because of lack of planning or due to other causes, the global costs are disproportionately high, then the requirement that the costs should be proportionate means that no more should be payable than would have been payable if the litigation had been conducted in a proportionate manner. This in turn means that reasonable costs will only be recovered for the items which were necessary if **the litigation had been conducted in a proportionate manner.**”

5. CPR 65.2 (1) provides the basis of quantification if the court has discretion as to the amount of costs to be allowed to a party. The sum to be allowed is – (a) the amount that the court deems to be reasonable were the work to be carried out by a legal practitioner of reasonable competence; and (b) which appears to the court to be fair both to the person paying and the person receiving such costs. CPR 2000 Part 65.2 (3) provides a list of factors which the court must take into consideration in determining the reasonableness of the costs claimed.
6. In keeping with the guidelines in an assessment of costs, I must at the outset make a preliminary judgment as to the proportionality of the costs as a whole and then proceed to consider the costs, item by item.

Bill of costs for security for costs and substantive appeal

7. The first bill of costs drawn on behalf of the applicants presented a schedule of costs for the security for costs application made on 26th October 2017 and the substantive appeal dated 21st December 2017 totaling fees and disbursements in the sum of USD \$356,596.24.
8. Upon review, I was of the opinion that the bill of costs was disproportionate and at the hearing I did an item by item assessment which resulted in the reduction of the sum claimed for professional fees from USD \$140,000.00 to USD \$96,442.50.
9. The applicants also claimed disbursements comprising of filing fees- \$1280.00, travel and accommodation- \$6637.32, work permit fees- \$4565.63, The claim for overseas senior counsel

travel expenses and accommodation, work permit and court filing fees, although unsubstantiated, appeared reasonable and I accordingly allowed the total sum of \$12,482.95.

10. The applicants claimed fees for Senior Counsel in the sum of USD \$115,848.38 for (14) hours for the application for security for costs and the substantive appeal along with the sum of USD \$88,050.86 for Junior Counsel. I am of the view that the fees claimed for the two counsel are disproportionate. I take into consideration that senior counsel had the support of local counterparts in the BVI. I am of the view that the application for security for costs is not of such complexity to have engaged some much resources and expense. I consider all the relevant factors of Rule 65.2(3) and will discount counsel fees by 20% and assess costs to Senior Counsel in the sum of USD \$92,678.70 and Junior Counsel in the sum of USD \$70,440.68 respectively.
11. A total assessed costs in the sum of USD \$276,044.83 ($\$96,442.50 + \$12,482.95 + \$92,678.70 + \$70,440.68$) is awarded for security for costs and the substantive appeal.

Bill of costs for notice for motion for leave to the Privy Council

12. With respect to the bills of costs under this head, I did an item by item assessment and discounted the sum of USD \$46,685.20 claimed to USD \$30,315.25.
13. The sum of USD \$8086.72, for disbursements comprising filing and related fees (USD \$386.72), travel and accommodation (USD \$6285.00), work permit (USD \$1415.00) seems reasonable and are accordingly allowed.
14. The applicants claimed legal fees for the application for leave to appeal to the Privy Council in the sum of USD \$67,480.61 for Queen's Counsel, David Allison and USD \$28,275.00 for Junior Counsel, Sharif Shivji. I am of the view that an application for leave to the Privy Council is not of such complexity or novelty so as to engage such resources. An application for leave to Her Majesty in Council is based on well-established principles. The evidence discloses that the application for leave was conducted by Senior Counsel within a day. There is no evidence that Junior Counsel, Sharif Shivji appeared in the proceedings. In the circumstances, the sum of \$28,275.00 claimed for Junior Counsel is disallowed. However, I am of the view that the legal fee

of USD \$67,480.61 claimed by David Allison Q.C for the application for leave to Privy Council is disproportionate and unreasonable and is accordingly discounted by 40% to USD\$40,488.36.

15. In summary, the court assessed costs for the application for leave to the Privy Council in the sum of USD \$78,890.33 (\$30,315.25 + \$8086.72 + \$40,488.36).

ORDER

16. Upon reading the application and supporting affidavit and exhibits, costs are assessed in the sum of USD \$354,935.16 comprising of the following:-

1. Costs for security for costs and substantive appeal in the sum of USD \$ \$276,044.83.
2. Costs for leave to appeal to Privy Council in the sum of USD \$78,890.33.
3. The costs assessed shall be paid within 21 days from **today's** date.
4. The costs of this application are summarily assessed in the sum of USD \$5,682.00.

AGNES ACTIE

MASTER

BY THE COURT

REGISTRAR