IN THE SUPREME COURT OF BELIZE A.D. 2014
(CIVIL)

CLAIM NO. 587 of 2014

BETWEEN

RF&G INSURANCE COMPANY LTD. Claimant/Applicant

AND

JODY RENEAU 1st Defendant/Respondent
DINSDALE THOMPSON Ancillary Defendant

Before: **The Honourable Madame Justice Griffith**

Date of hearing: **10th June, 2016; Oral Decision 21st June, 2016.**

Appearances: **Mr. Jaraad Ysaguirre, Barrow & Co. for the Claimant/Applicant, Mr. Darrell Bradley, Bradley Ellis & Co for the 1st Defendant/Respondent and no appearance by or for the Ancillary Defendant.**

DECISION

Assessment of Costs by Registrar – Appeal against Assessment – Section 5(2) Supreme Court of Judicature Act, Cap. 91 – Review of Assessment by Judge.

Introduction

1. This is an appeal by RF&G Insurance Company limited ('RF&G/the Claimant') pursuant to section 5(2) of the Supreme Court of Judicature Act, Cap. 91 against an assessment of costs by the Registrar. Costs were awarded to Jody Reneau ('Mr. Reneau/the Defendant') upon his obtaining judgment in the claim herein in January, 2016. The claim was filed by RF&G against Mr. Reneau in October, 2014, for damages arising out of a road accident which occurred in 2010. Mr. Reneau disputed liability and in turn issued an ancillary claim for damages against Mr. Dindsdale Thompson ('Mr. Thompon/the Ancillary Defendant'), the driver of the vehicle insured by RF&G. The trial was heard in December, 2015 and in January, 2016 RF&G's claim was dismissed against Mr. Reneau whilst the latter's ancillary claim for liability and damages was successful against Mr. Thompson.

2. Damages in the total sum of $6,500.00 were awarded to Mr. Reneau together with costs against both RF&G and Mr. Thompson, to be assessed if not agreed. There being no agreement as to costs, Mr. Reneau's attorney submitted a bill of costs which was taxed by the Registrar in April, 2016. The amount claimed was $42,474.00 and the amount allowed by the Registrar was $19,012.50. Dissatisfied with what was felt to be an amount disproportionate to the value of the claim, RF&G has appealed pursuant to section 5(2) of the Supreme Court of Judicature Act, Cap. 91 of the Laws of Belize ('the Supreme Court Act').

The issue and submissions

3. The singular issue to be determined in this appeal is whether there exists any basis for the Court to disturb the Registrar's assessment of costs. Counsel for the Claimant based his objection to the final amount assessed on the primary ground that it was disproportionate to the value of the claim, which he says is the $6,500 awarded as damages to the defendant. It was also submitted that the Registrar adopted an item by item approach which was incorrect, as the correct approach was to have been a global sum considered reasonable in the circumstances, taking into account the factors set out in **Rule 64.2(3)** of CPR 2005. Of those factors, counsel for the claimant highlighted sub-paragraph (d) – 'the time reasonably spent on the case'; sub-paragraph (f) – 'the care, speed and economy with which the claim was prepared'; and sub-paragraph (g) – 'the novelty, weight and complexity of the case'.
4. With respect to these factors, counsel advanced that the time claimed, (which was in the first instance 50.5 hours and thereafter taxed down by the Registrar to 33 hours), was unreasonable, given the simple nature of the claim - namely, the issue of negligence - in liability for a traffic accident. It was further submitted that the claim was advanced relatively quickly thus there was no question of any delays in the litigation and lastly, that albeit there was the additional issue of subrogation and the standing of the insurance company to bring the claim, these were neither novel nor complex issues, having arisen before on prior occasions with the same counsel.

There was also the point made that costs were generally to be payable on an indemnity basis and in this regard there was no record presented of what amount was actually charged to the client.

5. On the other hand, learned counsel for Mr. Reneau firstly alluded to the exercise of the Court's power on appeal, which is to not lightly interfere with the discretion exercised by the court or tribunal below (in this case the Registrar, exercising a judicial function). Save a clear error of law, the interference it was submitted, is only warranted where the discretion exercised can be said to have been so unreasonable or improper and the burden of establishing such want of reason falls on an appellant. Additionally, learned counsel observed that the Claimant undertook the possibility of having to bear the legal costs of the defendant in choosing to commence litigation and thus is taken to accept the consequences following from his unsuccessful result. With respect to the exercise of discretion by the Registrar, it was submitted that the Registrar properly addressed her mind to the appropriateness or reasonableness of the costs claimed and this was demonstrated by the careful allowance or disallowance of each claimed item.
6. It was also submitted by learned counsel Mr. Reneau that it was clear that the bill of costs contained no extraneous items (there was no claim of such made nor were any items disallowed on that basis), thus the element of reasonableness in what was claimed was clearly established. Insofar as the methodology applied by the Registrar was concerned, it was submitted that during the assessment, learned counsel for the claimant declined address the items when individually raised by the Registrar, instead preferring to maintain that a global figure should be considered and applied. In that circumstance, it is therefore not open for counsel for the claimant to attempt to now make submissions as to the reasonableness or otherwise of the items on an individual basis. This view notwithstanding, with respect to the factors to be considered in Rule 64.2(3), it was submitted that the legal issues of subrogation and standing of the insurance company were issues of complexity in respect of which written submissions were requested by the trial Judge; that 33 hours represented just about one and one half days' worth of work which was not unreasonable and the issues on subrogation were of importance to the

claimant itself, as an insurance company. The overall submission was that there was no error of law made by the Registrar and given the clear evidence of how and the extent to which the Registrar exercised her discretion in the assessment, there is no basis for the Court to disturb the result of the assessment.

The Court's Consideration

7. As a first consideration on this issue of costs, reference is made to Section 87 of Part VI (*Practice and Procedure*) of the Supreme Court Act, which provides as follows:-

> *"87. (1) The fees and costs payable and allowable in the Court shall be regulated by rules of court and, where provision is not made by those rules, the existing tariffs and regulations as to fees and costs shall remain in force.*
>
> *(2) Subject to section 88 and to rules of court, the costs of and incidental to any proceeding in the Court shall be in the discretion of the Court or judge*."

Upon consideration of both sub-sections (1) and (2), what is extracted, is that whilst in the discretion of the Court or judge, the quantification, determination of entitlement and basis of the Court's discretion as to costs, are subject to the rules of the Court which would be those rules provided under Parts 63 and 64 of the Civil Procedure Rules, 2005. By way of exclusion of its applicability to the issue under consideration, section 88 addresses the implication for costs with respect to matters properly the subject of the jurisdiction of a District Court.

8. With respect to the issue at hand, on a fair interpretation of Rule 64.3 it usually is the case, that outside of the application of fixed costs, the usual order for costs should be prescribed costs. In this case however, within the limited window afforded by Rule 64.3(b)(iii), the order given by the Court upon the conclusion of the trial, was that costs were to be assessed if not agreed and that prescribed costs was not to apply. Liability to costs was apportioned between the Claimant and Ancillary Defendant at 50% each. Costs having not been agreed, the assessment was carried out pursuant to Rule 64.12 according to the procedure provided under Rules 64.12(3,4&5). As correctly submitted by counsel for the Claimant, notwithstanding that an assessment was being carried out by the Registrar, costs assessed were nonetheless to be determined with reference to Rule 64.2.

This Rule provides that '*where the Court has any discretion as to the amount of costs to be allowed to a party*' – that amount is to be reasonable according to a standard referable to the average practitioner, but also fair within the context on the one hand, of the person paying and on the other hand, the person receiving the costs.

9. With respect to the determination of what is reasonable in terms of such costs, there are then the factors enumerated in Rule 64.3 which include time reasonably spent, complexity of the matter, importance of the matter to the parties and several other factors. In this regard, in **Norgulf Holdings Ltd et anor v Michael Wilson and Partners Ltd**.[1] then Barrow JA of the Eastern Caribbean Supreme Court observed that the provisions of Rule 65.12 (Rule 64.12 in Belize[2]) were merely procedural so that in any event, the actual quantification of costs was nonetheless to be determined according to the principles otherwise provided in the Rules. It is clear, that these principles are those provided in Rule 64.2. The Court's review of the assessment is therefore to be conducted with reference to the overall principles stated in Rule 64.2(1) within the context of the relevant factors enumerated in Rule 64.2(3).

10. The first point considered is learned counsel for the Respondent's submission that as a matter of general principle, a Court on appeal, absent an error of law, should be slow to interfere with a discretion exercised by the Court or tribunal below, unless there is a clear case of an improper exercise of such discretion. As a matter of general principle, this submission is found to be correct and illustrated by Byron CJ in **Dufour et al v Helenair Corporation Ltd et al**[3]. It being the case that the Registrar was carrying out the order of the Court to assess costs, and the procedure for so doing being stipulated by Rule 64.12, no question of error of law arises thus the consideration of the Court is the correctness or otherwise of the Registrar's exercise of discretion. Counsel for the Appellant contended that the Registrar wrongly adopted an item by item approach to the assessment instead of considering the matter in the round, but there is no merit in this submission.

[1] OECS Civil Appeal No. 8 of 2007 paras 13 et seq.

[2] (the entire regime applicable to costs in Belize is, save for assignation in number, identical to that in the Eastern Caribbean's CPR 2000 so that Rule 65.12 therein, is Belize's Rule 64.12)

[3] (1996) 52 WIR 188 per Byron CJ.

A bill of costs is by its nature an item by item account of costs claimed, thus there can be no other approach on assessment but to consider each item separately. What ought to be considered is whether the assessment of each item was carried out with appropriate reference to the factors for reasonableness as enumerated in Rule 64.3.

11. The next question which then arises is whether in fact the Registrar addressed her mind to the applicable factors of reasonableness in assessing each item. In so doing, one considers the evidence regarding the assessment, which was put forth in an affidavit filed by counsel who conducted the trial for the Defendant and whose bill was the subject of the assessment. In her affidavit, learned counsel for the Defendant attached her bill of costs and inserted against each item, the allowance or amount disallowed as assessed by the Registrar. In particular, the bill illustrates that there were items disallowed, the hourly rate of $600 claimed was reduced to $500, and the hours of work claimed were reduced on more than several items (and as was pointed out during the course of argument the total of 50.5 hours was reduced to 33 hours). The fact that there were items disallowed, multiple instances where hours of work claimed were reduced, together with the across the board reduction in the hourly rate, this all demonstrates that a discretion was actively exercised by the Registrar. With respect to any question of lack of reasonableness, no case on the face of it has been made out by Counsel for the Claimant. For example, there was no evidence put forward that the awarded hourly rate of $500 was undeserved relative to the average practitioner, much less unreasonable.
12. Additionally, the trial having been conducted by this Court I am able to appreciate the fact that whilst not the most complex, the additional issues of subrogation and standing of the Appellant which were raised and ventilated at the trial elevated the matter above a mere case of negligence arising from a road traffic accident. Also, given the fact that these issues have arisen in relation to this very claimant and in the absence of a definitive ruling, would have continued to arise in claims filed by insurance companies, it is found that the issues of subrogation and standing were of considerable importance to the claimant itself, even though it clearly held legal views to the contrary.

As a consequence, no evidence has been advanced, which provide any basis to conclude that there was an improper or unreasonable exercise of discretion by the Registrar. By virtue of the order that costs were not to be prescribed, it was clearly the intention of the court that the dollar value of the claim with reference to the quantum of damages awarded, should not solely determine the amount of costs due to the successful Defendant.

13. There was the additional submission of counsel for the Claimant that costs are firstly awarded on an indemnity basis and in this regard there was no evidence of what the defendant was actually charged by his counsel (notwithstanding the existence of a bill of costs). Authority in support of the applicability of costs on an indemnity basis was provided in the form of reference to Cooke on Costs[4]. Clearly counsel for the Claimant has fallen into error by adverting to principles based entirely on rules not part of the law of Belize. Reference is made to Eastern Caribbean Supreme Court of Appeal decision **Attorney General of St. Christopher and Nevis et anor v Queensway Trustees Ltd.**[5] per Gordon JA where it is made clear that the concept of indemnity costs does not exist within the Eastern Caribbean's Civil Procedure Rules 2000. The Belize Civil Procedure Rules 2005 Parts 63 and 64 on costs as stated before exactly replicate the OECS' CPR 2000 Parts 64 and 65 thus the observations and findings in the said case apply with equal merit. The English position referred to by counsel for the Appellant arises from Part 44.4(1) of the Civil Procedure Rules of England, in which costs to be assessed by the Court are expressly provided to be so done on a standard or indemnity basis. The submission on indemnity costs therefore does not arise for consideration.
14. One final point arises which was not raised by either counsel within the course of argument of the appeal and it concerns the enforcement of the Court's order as to costs. The Court awarded costs to the defendant Mr. Reneau to be borne equally at fifty percent each by the Appellant/Claimant and Ancillary Defendant.

[4] Cooke on Costs
[5] OECS Civil Appeal No. 15 of 2005 @ para. 8.

This appeal has been brought by the Claimant only (the Ancillary Defendant took no part), but it has been brought with respect to the entire amount of costs payable. The affidavit of counsel for the defendant avers that the Appellant/Claimant is liable to pay the ancillary defendant's costs given that it was the insurer of the vehicle the ancillary defendant drove. The resultant liability of the Appellant to pay the ancillary defendant Mr. Thompson's costs as a result of the relationship of insurer and insured vehicle is not a matter which the defendant Mr. Reneau has standing to enforce, as he is not privy to that relationship. It would therefore be for Mr. Thompson as Ancillary Defendant with a primary liability to pay fifty percent of Mr. Reneau's costs, to take action against the Appellant in the event that any contractual obligation of the latter to pay costs as per insurer is not met. With respect to the order for costs in this claim, Mr. Reneau can only properly enforce fifty percent, that being what the Appellant has been ordered to pay. For the avoidance of doubt therefore, it is made clear that the defendant Mr. Reneau, under this claim, can directly enforce only fifty percent of the $19,012.50 in costs assessed under the Registrar's Taxing Certificate.

Final Disposition

15. The final determination in the matter is as follows:

(i) The Claimant's appeal against the Registrar's Taxing Certificate assessing the Defendant's costs in the sum of $19,012.50 is dismissed and the amount allowed on assessment stands;

(ii) The Defendant must enforce the order for costs against the Claimant and Ancillary Defendant in accordance with the apportioned liability of fifty percent each. The costs directly enforceable by the Defendant against the Claimant in this action are therefore in the amount of $9,506.25.

(iii) Costs are awarded to the Defendant on this appeal in the sum of $750.00.

Dated the 01st day of August, 2016.

Shona O. Griffith

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Judge of the Supreme Court.