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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 389 OF 1999

BETWEEN: COURTS OFFICE LIBRARY

CVC/OPPORTUNITY EQUITY PARTNERS LTD.

Plaintiff

-AND-

LUIS ROBERTO DEMARCO ALMEIDA

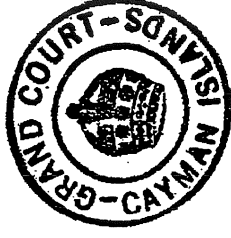
Defendant

Appearances: Mr. William Helfrecht of Bodden & Bodden for the Plaintiff/Paying Party

Mr. Kyle Broadhurst of Broadhurst LLC. for the Defendant/Successful Party

Before: Hon. Justice Henderson

Heard: May 25, 2012



JUDGMENT

1. After the claim against him was dismissed, the Defendant ("the Successful Party") claimed the sum of \$882,099.47 in costs and disbursements. (All figures in this judgment are in U.S. dollars.) After a taxation, the Taxing Officer allowed the claim for costs and disbursements in the total amount of \$648,219.69. Both the

1 Paying Party and the Successful Party have asked for a review of the Taxing
2 Officer's decision.

3

4 2. The Court has jurisdiction to conduct such a review under Order 62, rule 30 of the
5 *Grand Court Rules*. The review is intended to be "inquisitorial in nature": Order
6 62, rule 30(6). The Taxing Officer is not permitted to give reasons for his
7 decision: Order 62, rule 29(6). This gives to my review much of the character of
8 a hearing *de novo*. I have considered all of the material which was before the
9 Taxing Officer together with additional written arguments presented on the
10 review and have conducted an oral hearing.

11

12 3. The Taxing Officer spent several days examining each of the 2181 line items in
13 the Bill of Costs. On this review the parties have presented me with several issues
14 of broader application; it is my hope and expectation that, having decided these, it
15 will be unnecessary for me to provide an individual decision on each line item.
16 The parties are at liberty to apply generally for any further rulings which are
17 needed.

18

19 **Background**

20

21 4. The Plaintiff was the general partner of and provided investment advisory
22 services for an exempted limited partnership established in the Cayman Islands

1 called CVC/Opportunity Equity Partners LP. The Defendant was employed by
2 the Plaintiff and is what has been called a “deal maker” and a shareholder. In
3 1999, the Defendant was dismissed from his employment. The Plaintiff then
4 issued a Writ and Statement of Claim seeking the return of \$1,000,000 which it
5 had provided to the Defendant when he joined the company. The Plaintiff said
6 that the money was repayable upon his dismissal while the Defendant alleged that
7 it was his to keep. Half of the money was in the form of shares in the Opportunity
8 Fund, a Cayman Islands mutual fund.

9
10 5. The Opportunity Fund sought and obtained an order that the Defendant’s shares
11 be redeemed and the proceeds paid into Court. The Plaintiff obtained a Mareva
12 Injunction which the Defendant applied to discharge. An allegation that the
13 Plaintiff had forged certain documents regarding its beneficial ownership of the
14 shares was advanced but not expressly decided. Expert reports concerning the
15 alleged forgery were exchanged. The Plaintiff applied to strike out the
16 Defendant’s application to discharge the injunction but that application was
17 dismissed. Applications were made by both sides concerning disclosure of
18 evidence. A number of other applications were brought and argued.

19
20 6. Almost two years after it had issued its Writ, the Plaintiff introduced by
21 amendment a new allegation that the Defendant had entered into an oral contract
22 to relinquish his shares upon dismissal. At one point the Plaintiff tried

1 unsuccessfully to have Walkers removed from the action (it was acting for the
2 Defendant) because of an alleged conflict of interest.

3

4 7. This brief history, which is far from exhaustive, will suffice to give the reader a
5 taste of the atmosphere in which the litigation was conducted.

6

7 8. Eventually the Defendant succeeded in having the action dismissed. He
8 persuaded the Trial Judge to award him his costs on the indemnity basis. In doing
9 so, the Court said:

10 *I have no hesitation in finding that the prosecution of this action is*
11 *a gross abuse of the process of this court. The evidence put*
12 *forward by the Plaintiff firstly by affidavit and then at trial was in*
13 *my judgment manufactured and false in all of its material respects.*
14 *It has caused the Defendant untold grief and expense and were I in*
15 *a position to award punitive damages against the Plaintiff I would*
16 *not hesitate to do so.*

17
18 *In the circumstances, the least the court can do is award the costs*
19 *of the action to the Defendant to be taxed and paid on a full*
20 *indemnity basis.*
21

22 9. The Defendant then presented the Plaintiff with a claim for costs and
23 disbursements in the amount of \$882,099.47. There were 2,181 individual line
24 items in the Bill of Costs. After what appears to have been a very thorough
25 review, the Taxing Officer issued his Costs Certificate in the amount of
26 \$648,219.69, which amounts to 73% of the amount claimed. Both the Paying
27 Party and the Successful Party now say that the approach taken by the Taxing
28 Officer was flawed.

1 **Basis of Taxation for Items Preceding 2002**

2
3 10. Many of the costs and disbursements of the Successful Party were incurred prior
4 to January 1, 2002 but some were incurred after. The significance of that date is
5 that the **Grand Court (Taxation of Costs) Rules 1995 (“the Rules”)** which were
6 in effect prior to January 1, 2002 contain a schedule of costs which will be
7 allowed on taxation but contain no express provision for the awarding and taxing
8 of costs on the indemnity basis because of improper, unreasonable or negligent
9 conduct of the proceedings.

10
11 11. The Rules do provide in section 3:

12 *“Whenever the Court makes an order for costs to be paid out of a*
13 *fund on an indemnity basis, the scale contained in the schedule*
14 *hereto shall have no application and all fees and disbursements*
15 *shall be allowed except insofar as they are of an unreasonable*
16 *amount or have been unreasonably incurred and any doubts which*
17 *the taxing officer may have as to whether the costs were*
18 *reasonably incurred or were reasonable in amount shall be*
19 *resolved in favour of the party entitled to be paid.” (underlining*
20 *added)*

21
22
23 12. Notwithstanding the absence of any jurisdiction to be found in the Rules, in
24 **Bonotto and others v. Boccaletti and others** 2001 CILR 292, a majority of our
25 Court of Appeal (with Zacca, P, dissenting) held that this Court had jurisdiction to
26 award costs to a Successful Party on an indemnity basis in exceptional
27 circumstances arising from dishonesty or other improper conduct in the
28 proceedings. The majority judgments and in particular the remarks of Taylor, JA

1 at para. 62-3 suggest that an award of indemnity costs was available before
2 January 1, 2002 both in equity and at common law. The only criterion to guide
3 the exercise of the court's discretion would be one of reasonableness. Neither
4 party has taken issue with these propositions. Items in the Bill of Costs
5 Composite Schedule prior to item 1613 relate to work done and expenses incurred
6 before January 1, 2002. These items must be taxed under the **Bonotto** principle
7 with reasonableness as the standard.

8

9 13. The provision (section 3) quoted above applies only where the costs are "to be
10 paid out of a fund". When these Rules were promulgated it was not understood
11 that indemnity costs could be awarded in the Cayman Islands in other
12 circumstances; the **Bonotto** decision in 2001 clarified the point. In my view the
13 principle set out in section 3 of the Rules should apply equally to a taxation of
14 costs on the indemnity basis arising from improper, unreasonable or negligent
15 conduct of the proceedings. The result is that there is no criterion other than
16 reasonableness to be applied to the taxation of items 1 to 1612 in the Composite
17 Schedule; unless the claimed items are clearly unreasonable, they will be allowed.

18

19

1 **Basis of Taxation for Items in 2002 and Thereafter**

2
3
4 14. There was a change in the Rules concerning indemnity costs which took effect on
5 January 1, 2002. Since then indemnity costs are taxed on the basis set out in
6 *Order 62, rule 13(3)* of the *Grand Court Rules* which reads:

7 *On a taxation on the indemnity basis all costs shall be allowed*
8 *except, insofar as they are of an unreasonable amount or have*
9 *been unreasonably incurred and any doubts which the taxing*
10 *officer may have as to whether the costs were reasonably incurred*
11 *or were reasonable in amount shall be resolved in favour of the*
12 *receiving party; and in these rules the term "the indemnity basis" in*
13 *relation to the taxation of costs shall be construed accordingly.*

14 It is helpful to contrast that indemnity costs provision with the basis of taxation on
15 the standard basis set out in *Order 62, rule 13(1) and 13(2)* which read:

16
17 (1) *On a taxation of costs on the standard basis there shall be*
18 *allowed a reasonable amount in respect of all costs reasonably*
19 *incurred and any doubts which the taxing officer may have as*
20 *to whether the costs were reasonably incurred or were*
21 *reasonable in amount shall be resolved in favour of the paying*
22 *party; and in these rules the term "the standard basis" in*
23 *relation to the taxation of costs shall be construed accordingly.*

24
25 (2) *Where the amount of costs is to be taxed on the standard basis,*
26 *the taxing officer will only allow costs which are not only*
27 *reasonable but are also proportionate to the matters in issue*
28 *having regards to-*

- 29
30 (a) *the amount of money involved*
31 (b) *the importance of the case; and*
32 (c) *the complexity of the issues.*
33
34

1 15. The basis of taxation for both types of costs - standard and indemnity - is
2 reasonable. In the case of costs taxed on the standard basis, any doubt about
3 whether the cost was incurred reasonably is resolved in favour of the paying
4 party. In the case of taxation on the indemnity basis, the doubt is resolved in
5 favour of the receiving (i.e. successful) party; unless it is clear that a cost or
6 disbursement was incurred unreasonably, the taxing officer must allow its
7 recovery.

8

9 16. Moreover, on a taxation of costs on the standard basis proportionality must be
10 considered. The taxing officer is directed (by *Order 62, rule 13(2)*) to allow only
11 those costs which are proportionate to the matters in issue, having regard to the
12 amount of money involved, the importance of the case, and the complexity of the
13 issues. There is no mention at all of proportionality in *Order 62, rule 13(3)*.
14 Proportionality is simply not a consideration when costs are taxed on the
15 indemnity basis.

16

17 17. Essentially, the rule since January 1, 2002 is that the Successful Party is entitled
18 to be reimbursed the entire cost of maintaining the action with the exception of
19 those specific items which appear clearly to be unreasonable. My conclusion is
20 that the basis of taxation is the same for both time periods.

21

1 18. I now turn to the specific objections of the parties to the Taxing Officer's
2 decision.

3

4 **Solomon Harris**

5

6 19. The Defendant was represented by three separated law firms: by Solomon Harris
7 for a brief time before the Writ was issued, then by Quin and Hampson for an
8 equally brief time, and by Walkers for the duration of the litigation. The Plaintiff
9 has objected to paying the costs incurred "as the result of the Defendant changing
10 attorneys".

11

12 20. In response, the Defendant says that Solomon Harris and Quin and Hampson were
13 retained by the Defendant "for different purposes". Solomon Harris was retained
14 "specifically for the purpose of seeking to redeem the Defendant's shares..."
15 while Quin and Hampson was retained for the litigation itself. This answer is fatal
16 to the attempt to recover any of the costs of instructing Solomon Harris; the award
17 of indemnity costs is meant to compensate the Defendant for the cost of the
18 litigation, not for the cost of seeking (by some means other than litigation) the
19 redemption of his shares. I will not include anything in the award for the services
20 of Solomon Harris. Line items in the Walkers statements which refer to
21 communications with Solomon Harris are excluded also because I am unable to
22 conclude that they were for the purpose of advancing the litigation.

1 **Quin & Hampson**

2

3 21. It appears that Quin and Hampson became embroiled in a dispute with their client
4 at an early stage over a "missing" document. As a consequence, he instructed
5 Walkers to defend the claim. There is nothing remarkable about a change of
6 attorney, particularly at an early stage of litigation. Any further attempt at
7 enquiry into the reasonableness of Mr. Demarco's decision to change law firms is
8 likely to be obscured by the solicitor client privilege. There can be no doubt that
9 line items 9 to 53 represent in large measure a duplication of work because of the
10 change, but I remain in doubt about whether the decision to change firms (and
11 thus the cost of the change) was reasonable. Because this is a taxation of
12 indemnity costs, I must err on the side of allowing the claim for these items,
13 which I do.

14

15 **Helen Gardner**

16

17 22. Walkers billed the time of Helen Gardner (formerly Helen Smith) at an hourly
18 rate of \$250.00. Although Ms. Gardner has been admitted as a solicitor in
19 England and Wales, she has never been admitted to practice in the Cayman
20 Islands. She is variously described as a "legal assistant" or "paralegal" in the
21 material before me.

1 23. The subject of hourly rates is addressed in **Practice Direction No. 1 of 2001**
2 entitled "*Guidelines Relating to the Taxation of Costs*" ("the Guidelines"). The
3 Guidelines are made applicable to taxations after January 1, 2002 on both the
4 standard and indemnity basis: *Guidelines, section 1.5*. At a taxation on the
5 standard basis, the maximum recoverable hourly rate for someone who has not
6 been admitted as an attorney in the Cayman Islands, i.e., an articulated clerk or a
7 paralegal assistant, is \$110. However, *section 7.4 of the Guidelines* provides:

8 *"In the case of taxations on the indemnity basis, the hourly rate or*
9 *scale of rates will be that agreed between the attorney and his*
10 *client provided that such rate or scale is not unreasonable. The*
11 *mere fact that the agreed rate is higher than the maximum rate(s)*
12 *allowable on a taxation on the standard basis shall not be*
13 *regarded as evidence that it is unreasonable."*
14

15 24. It follows that the amount recoverable for Ms. Gardner's services after January 1,
16 2002 could depend upon the hourly rate agreed upon between Walkers and Mr.
17 Demarco. There is, however, no evidence of such an agreement. I must therefore
18 decide the question solely on the basis of reasonableness.

19
20 25. I infer that Ms. Gardner did not possess the requisite qualifications for admission
21 as an attorney in the Cayman Islands and I infer that the work she was doing was
22 the sort of work done ordinarily by a paralegal assistant. I am satisfied that an
23 hourly rate of \$250.00 for such work is unreasonable; an hourly charge of
24 \$110.00 for the services of a person who is doing work which does not require

1 legal training (even though Ms. Gardner was legally trained) is sufficient and
2 reasonable in the circumstances.
3

4 **Disbursements and Expenses**
5

6 26. The Paying Party has objected to a number of the claims for disbursements on the
7 ground that they exceed the maximum rates set out in the *Guidelines*. The
8 *Guidelines* contain provisions limiting the amounts recoverable for disbursements
9 (section 6) and for travelling and hotel expenses (section 9). The Paying Party
10 says that these limitations should apply equally to taxations on the indemnity and
11 on the standard basis. The Successful Party says these provisions in the
12 Guidelines are not intended to apply to a taxation on the indemnity basis which is
13 an extraordinary award of costs available only after the Court has determined that
14 the paying party has conducted the proceedings “improperly, unreasonably or
15 negligently”: see *Order 62, rule 4(11) and rule 11(2)*.
16

17 27. The starting point is the basis of taxation on the indemnity basis set out in *Order*
18 *62, rule 13(3)*: that all costs shall be allowed unless they are clearly unreasonable.
19 The Practice Direction (like any practice direction) cannot have the effect of
20 revoking or varying this (or any other) rule: *GCR Order 1, rule 12(1)(a)*.
21

1 28. The Guidelines pronounce themselves to be “intended to be a comprehensive
2 code relating to ... the nature and amount of fees, charges, disbursements,
3 expenses or remuneration which may be allowed on taxation”: *section 1.1*. The
4 *Guidelines* also provide expressly (in *section 1.5*) that they apply both to taxations
5 on the standard basis and on the indemnity basis. This intention is further
6 clarified by an assertion (*ibid.*) that

7 “*The only distinction between (sic) a taxation on[the indemnity]*
8 *basis is (a) the difference in the burden of proof and (b) the*
9 *application of maximum hourly rates for attorneys fees in the case*
10 *of taxations on the standard basis.”*
11
12

13 29. In summary, *Order 62* in its post-January 1, 2002 form contemplates the recovery
14 of all costs except those which are unreasonable. The *Guidelines* cannot have the
15 effect of varying that principle. The wording of the *Guidelines* themselves is
16 unambiguous: with the single exception of maximum hourly rates for attorneys,
17 they are intended to apply equally to both types of taxation.
18

19 30. The *Guidelines* were issued by the Chief Justice in consultation with the Attorney
20 General and two members of the Rules Committee. In general, the principle
21 underlying the *Guideline* provisions about disbursements and expenses is that of
22 reasonableness. Where the *Guidelines* set out maximum amounts which may be
23 recovered for various disbursements and expenses they are expressing a
24 consensus opinion within the legal community about what is reasonable. I
25 conclude that where the amount of a claimed disbursement or expense exceeds the

1 maximum specified in the *Guidelines* the claim is presumptively unreasonable
2 and, in the absence of a convincing explanation, may not be recovered on a
3 taxation on the indemnity basis. This conclusion does not apply to the hourly
4 rates of attorneys which, in any event, should not be treated as disbursements.

5

6 31. For these reasons, I would allow the cost of disbursements and expenses
7 throughout the entire proceeding at the lesser of the *Guideline* maximum and the
8 amount claimed.

9

10 **Attorneys and Hourly Rates**

11

12 32. The Paying Party objects to the hourly rate of Mr. James Bailey (\$300 per hour)
13 on the ground that he was called to the Bar only in 1999 and lacked the
14 experience to justify such a rate. Again, there is no evidence that Mr. Demarco
15 agreed to any particular hourly rate for Mr. Bailey. On the material before me, I
16 am uncertain whether a rate of \$300 per hour for Mr. Bailey is reasonable or not,
17 so I give the benefit of that doubt to the Successful Party. Mr. Bailey's services
18 are to be taxed at the rate of \$300 per hour.

19

20 33. Mr. Michael Black, Q.C., a Barrister practicing in the United Kingdom, was
21 retained by the Defendant. The Paying Party objects to any award of costs for
22 Mr. Black's services on the ground that he is a "foreign lawyer" within the
23 meaning of Order 62 Rule 18 of the Grand Court Rules. That Rule provides a

1 number of constraints on the recovery of fees paid to foreign lawyers in a taxation
2 on a standard basis (see Order 62 Rule 18 (1)). The Paying Party urges me to
3 apply the same constraints to this taxation on the indemnity basis. I decline to do
4 so. There is nothing in O. 62 which suggests that to be the proper course.
5
6 34. The Paying Party must accept that the decision to retain a foreign QC was a
7 reasonable one because the Paying Party was the first to do so: it retained Mr.
8 Trace, Q.C. I am satisfied that the fact that Mr. Black is a foreign lawyer is no bar
9 to the recovery of amounts paid to him in fees. Moreover, his hourly rate of \$429
10 is clearly reasonable. Work performed by local attorneys when instructing Mr.
11 Black is also recoverable. His work permit fee is not recoverable if paid after
12 January 1, 2002 because that is prohibited by ss. 6.5 and 1.5 of the Guidelines; if
13 paid before that date, it is recoverable as a reasonable expense.
14
15 35. The Paying Party also takes issue with the employment by Walkers of what the
16 Paying Party calls a “team” of 8 lawyers. As a Q.C., it was appropriate that Mr.
17 Black have a junior counsel present to assist him (although there is no convention
18 in the Cayman Islands to this effect). In addition, it was appropriate for one
19 instructing solicitor to be present throughout the court proceedings. I would allow
20 the Successful Party to recover the costs of the attendance in court of Mr. Black,
21 one junior counsel, and one instructing solicitor; any additional claim for the
22 presence of other attorneys or paralegals in the court room is disallowed as clearly
23 unnecessary and hence unreasonable.

1 36. It does indeed appear that a total of eight attorneys at Walkers posted time to the
2 Demarco file at one time or another prior to trial. Many of these time entries have
3 been described as “excessive”, “unnecessary”, or “apparent duplication” by the
4 Paying Party.

5
6 37. A bare assertion that services were excessive or unnecessary is only of limited
7 assistance to the Paying Party given that any doubt on the reasonableness of an
8 item must be resolved against it. Unless there is clear evidence of
9 unreasonableness, these claims must be allowed. The reason is that it is
10 impossible, without a very full review of Walkers’ entire file, to conclude that a
11 bit of work actually carried out was excessive or unnecessary. For example, the
12 Paying Party objects to line items 679 and 680 on the ground that they were
13 excessive or unnecessary. Each of these is a telephone call to “Susan” at UBS by
14 an attorney preparing the case for trial; this was the fourth and fifth time on the
15 day in question that the attorney called Susan. Without an inquiry as to Susan’s
16 role and the reason for each individual call it is simply impossible to conclude that
17 the fourth and fifth calls, unlike the first three, were unreasonable, excessive or
18 unnecessary. There are hundreds of items to which similar objection is taken.
19 Our rules do not contemplate that a judge conducting a review will descend into
20 that degree of detail. That would not be a proportionate use of the resources of
21 the court. The consequence is that the Paying Party, having misconducted itself

1 in such a way as to attract an award of indemnity costs against it, must bear the
2 cost of these items.

3

4 38. Items branded as “apparent duplication” by the Paying Party have been explained
5 by the Successful Party: the brief description of the services rendered may be
6 identical in two or more line items but that does not demonstrate or even suggest
7 that the work was duplicated. I accept this explanation and find it reasonable.
8 For example, the fact that one attorney recorded (in items 683 and 685) two
9 separate entries on the same day for “meeting with Leading counsel and client”
10 does not serve to demonstrate or even suggest that he was duplicating work or
11 making duplicate time entries. He may well have met with Mr. Black in the
12 morning and again in the afternoon, making separate entries for each meeting.
13 There are many similar examples. In none of these cases am I satisfied that it
14 would be unreasonable to allow the full amount of the claimed cost.

15

16 39. There are some specific exceptions. Time cost items which pertain to the drafting
17 of statements of account to be sent to the client or discussing those statements
18 with him are a component of overhead and not recoverable. Time spent by
19 Walkers in reviewing Mr. Black’s statements of account are not recoverable for
20 the same reason. Any items described as “preparation for court” by attorneys
21 other than Mr. Black, his junior counsel and his instructing solicitor are
22 unreasonable and cannot be allowed.

23

1 40. There may be a few additional line items which are clearly unreasonable but are
2 not mentioned specifically in this ruling. As I have said, the parties are at liberty
3 to apply.
4

5 **Travel Expenses and Accommodation**
6

7 41. The Paying Party objects to paying for the travel expenses and accommodation of
8 Mr. Black because he is classified as a foreign lawyer under Order 62. The
9 Guidelines provide (in section 9.4) for a complete prohibition on the recovery on
10 taxation of travel and hotel expenses paid to foreign lawyers. The prohibition is
11 made applicable to taxations on the indemnity basis by the express language of
12 section 1.5 of the Guidelines. In light of this unambiguous language, I feel
13 obliged to direct that the Successful Party may not recover any travel and hotel
14 expenses paid to Mr. Black after January 1st, 2002. Before that date, the
15 prohibition in the Guidelines had no application; I consider it reasonable to pay to
16 the Successful Party anything paid to Mr. Black for travel and accommodation
17 during that prior period of time.
18

19 42. The Paying Party objects to the inclusion in the award of costs of any amount for
20 the travel and accommodation expenses of Mr. Demarco himself. I am told that
21 he testified as a witness at trial. The reasonable travel and hotel expenses of
22 witnesses residing outside the Cayman Islands are recoverable under the
23 Guidelines: sections 9.1 and 9.3. It is also entirely reasonable that such expenses

1 be recovered on a taxation on the indemnity basis. I award all such claimed items
2 to the Successful Party.

3

4 43. The Guidelines (in s. 9.3, and see s. 1.5) specify a maximum recovery of \$250 per
5 day for accommodation expenses. That amount reflects a consensus opinion
6 within the legal community about what is reasonable. The Successful Party can
7 recover no more than that for the accommodation expenses of Mr. Demarco and
8 his witnesses.

9

10 44. Mr. Demarco's Brazilian attorney travelled with him to the Cayman Islands. The
11 Successful Party says that the Brazilian attorney's presence was necessary to
12 interpret for Mr. Demarco and to explain certain legal concepts to him. I do not
13 find this an adequate justification for paying the fees and expenses of the
14 Brazilian attorney. Interpreters are available locally. It is the task of the local
15 attorneys to give Mr. Demarco advice about the litigation. In my view it would
16 be clearly unreasonable to expect the Paying Party to finance the cost of
17 importing a qualified attorney from Brazil for this task. I will not allow the award
18 of costs to include anything for the services or travel expenses of the Brazilian
19 attorney.

20

1 **Twenty percent discount**
2

3 45. When billing its client in invoices rendered from March 1st, 2002 onwards,
4 Walkers advised Mr. Demarco that it was giving him a 20% discount on what
5 would otherwise have been its fees. This discount is of no significance to the
6 taxation. The starting point for the taxation must be the cost of legal services
7 actually incurred by Mr. Demarco; the amount which Walkers might have chosen
8 to bill him for its services had it not decided to render a discount is entirely
9 immaterial. It is unclear what use, if any, the Taxing Officer made of the fact of
10 the discount.
11

12 **Conclusion**
13

14 46. The parties are at liberty to apply for a decision on any disputed item (including
15 the effect of the discount) not disposed of by this ruling. The parties are at liberty
16 to apply for the costs of the review itself if they are unable to agree.
17

18 Dated this 9th day of July, 2012.

19 *Henderson, J.*
20

21 Henderson, J.
22 Judge of the Grand Court

