

hibans



*11/8/2007
cont.*

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

CAUSE NO. 116 OF 2006

**IN THE MATTER OF STINGRAY CONSTRUCTION CO. LTD. AND IN THE MATTER
OF THE COMPANIES LAW (2004 REVISION)**

Appearances: Mr. Anthony Akiwumi of Stuarts for the Petitioner
Mr. Jonathan Tarboton of Appleby for the Respondent

Before: Hon. Justice Henderson

Heard: August 1, 2007



RULING

1. The petitioner asks for two orders in two actions extending the time for commencing a taxation of awards of costs in its favour.

2. In Cause 97 of 2006 the petitioner was successful in having certain applications by Stingray Construction dismissed. In an order pronounced March 17th, 2006, it received an award of costs on an indemnity basis. That order was filed April 6th, 2006. In Cause 116 of 2006 the petition was withdrawn. The petitioner received an award of costs on the standard basis. The order was pronounced May 16th, 2006, and filed June 9th, 2006.

3. By Order 62 Rule 28 (2) a taxation of costs must be commenced within three months after the judgment or order in question is filed (not pronounced). Therefore, the deadlines for taxation of these two awards of costs were July 6th, 2006 and September 9th, 2006, respectively. It follows that the delay has been 13 months in the former case and 11 months in the latter.

4. Mr. Gabel, for the petitioner, attributes the delay to the fact that the company could not afford to proceed with a taxation as the respondent had failed to pay what it should have paid under the order disposing of the actions. Mr. Gabel also says that the intervening time has been occupied by an attempt on his part to negotiate a global settlement of the various outstanding differences between the parties.
5. Mr. Miller, for the respondent, replies that even if the petitioner was without funds until recently, a sister company owned by the same individual did have enough funding to advance the cause. He suggests, therefore, that the explanation concerning a lack of funding is a mere artifice. Mr. Miller also denies that there was any negotiation at all between the parties. He says the respondent heard nothing of substance from the petitioner for several months after these orders were obtained.
6. On the question of prejudice, the respondent points to the fading of memories and the need to marshal the relevant documents again as factors to be considered.
7. The first of the two awards of costs was an award on the indemnity basis. I consider that significant. Under Order 62 Rule 4 (11) this court may make an order for costs to be taxed on the indemnity basis "only if it is satisfied that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably or negligently".

8. Thus, there has been a delay in commencing the two taxations which falls within the moderate range. There is an assertion of prejudice to the respondent, but, in my view, that prejudice would be minimal and only the sort of prejudice which arises in virtually every case where an extension of time is requested. Reasons for the delay have been advanced, but the accuracy of those reasons cannot be resolved without a cross-examination of witnesses and an assessment of credibility.
9. Overall, the balance is tipped in favour of an extension by the nature of the award of costs on an indemnity basis. The aim of such an award is, at least in part, to punish the party against whom that award is made. The court itself has an interest in ensuring that litigants who conduct a proceeding improperly, unreasonably or negligently suffer a financial penalty as a result. I would, therefore, be somewhat more reluctant to refuse an extension in a case where the award is of costs on the indemnity basis.
10. For these reasons, the application is allowed in each of the two actions before me. Each party may have an extension of time to August 15th, 2007, for initiating a taxation of any award of costs in its favour. (I should note that there was an award of costs to the respondent which has not been pursued and which the respondent is now at liberty to pursue through taxation.)

Dated this 1st day of August, 2007

Henderson, J.

Henderson, J.
Judge of the Grand Court

