McCALLISTER

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
BEFORE THE HON. CHIEF JUSTICE, SIR JOHN SUMMERFIELD
IN CHAMBERS

CAUSE 426 of 1982
CIVIL APPEAL NO. 1 OF 1984

16-09-85

5TH SEPTEMBER 1985

BETWEEN	JAMES D. McCALLISTER	PLAINTIFF/ APPELLANT
AND	SANTA CRUZ INVESTMENTS CO. LTD. (TRADING AS TORTUGA CLUB)	DEFENDANT/ RESPONDENT

Mr. C. Adams for plaintiff/appellant
Mr. T. Shea for defendant/respondent

RULING

This is an application to review taxed costs pursuant to section 30 (4) of the Judicature Law. Unfortunately we do not have a provision corresponding to O 65 r 35 of the English Rules of the Supreme Court 1965 and so I do not have before me the reasons why any particular item was allowed or taxed off by the learned Clerk of the Court. At best I have counsel's recollection of the verbal reasoning of the learned Clerk of the Court at the relevant time. It was agreed, therefore, that I should confine myself to expressing a view as to the law and principles applicable, including the interpretation of certain key items in part B of the Schedule to the Judicature Law, and if those views and interpretations are at variance with the law, principles and interpretations apparently applied by the learned Clerk of the Court, remit the matter to the Clerk of the Court to apply the law, principles and interpretation set out in this ruling for the purpose of taxing the costs in this case.

It was submitted that, by virture of section 13 of the Grand Court Law, the taxing authority is not confined to, or circumscribed by, part B of the Schedule to the Judicature Law but should look to the law relating to this matter in England, in particular O.62 of the English Rules of the Supreme Court 1965. Section 13 (1) reads:

> "The Court shall be a superior court of record and, in addition to any jurisdiction heretofore exercised by the Court or conferred by this or any other law for the time being in force in the Islands, shall possess and exercise, subject to the provisions of this and any other laws of the Islands, the like jurisdiction within the Islands which is vested in or capable of being exercised in England by -
> (a) Her Majesty's High Court of Justice; and
> (b) the Divisional Courts of that Court,
> as constituted by the Supreme Court of Judicature (Consolidation) Act, 1925, and any Act of the Parliament of the United Kingdom amending or replacing that act.".

In my view, that provision does not import any of the English substantive law into these Islands. The use of the expression "jurisdiction" in that subsection does not have that effect. That expression is confined to its technical meaning, namely, range of judicial power e.g. actions in admiralty, matrimonial causes, jurisdiction in civil and criminal matters, prerogative writs etc. It defines the scope of the Grand Court's jurisdiction. Other sections amplify this provision and also specifically import some of the Law of England e.g. Common Law and Equity. But section 13 (1) does not import the substantive law contained in Order 62 (i.e. those parts specifying what may be recovered by way of party and party costs and solicitor and client costs) any more than it imports the English company laws, trade union laws or revenue laws.

Further, section 20 of the Grand Court Law (or rule 62 of the Grand Court (Civil Procedure) Rules) does not assist in this direction either. Section 20 reads:

> "(1) Subject to the provisions of this or any other Law, the jurisdiction of the Court shall be exercised in accordance with any Rules made under this Law.
> (2) In any matter of practice or procedure for which no provision is made by this or any other Law or by any Rules, the practice and procedure in similar matters in the High Court in England shall apply so far as local circumstances permit and subject to any directions which the Court may

give in any particular case.".

Subsection (2) imports the English practice and procedure where our law is silent on a matter - not the substantive law. Furthermore, our law is not silent on the matter. Specific provision is made in section 30 of the Judicature Law, read with the Schedule, and that ousts the operation of section 20 (and rule 62).

Therefore, in my opinion, there is but one basis for the taxation of costs in these Islands and that is contained in the Judicature Law, section 30 read with the Schedule. There is no such thing as party and party costs, solicitor and client costs or solicitor and own client costs. There are just costs or, if one must append a description, scale costs. That scale is set out in the Schedule. (I do not think that rule 55 of the Grand Court (Bankruptcy)Rules provides any exception to the foregoing. It merely provides for Attorneys' costs to be taxed before they can be charged.)

It was agreed by the parties that the provisions regulating costs (particularly part B of the Schedule) were outmoded and unsuited to current conditions. I support that view. However, they are all we have got for the time being and we have to live with them.

There remains the question of how certain items should be interpreted. In particular, four items in part B appear to have been causes for contention and have been interpreted differently by successive Clerks of the Court. I will take the two relating to the Grand Court. (The other two relate to the Summary Court in exactly the same language.)

The first is: "Instructions to sue or defend in the Grand Court ... ... minimum $100 or at the discretion of the taxing officer".

The second is : "Every necessary attendance in and about the client's business in cases in Grand Court per hour or part of an hour..... $20".

In interpreting these items one should not lose sight of the purpose behind an award of costs and that is to reimburse the party in whose favour the award is made the cost to him, properly incurred within the ambit of the language of the relevant item in the Schedule, if there is one, of seeking justice in the enforcement or defence of his rights. If, therefore, the language of the item is properly open to the construction which would enable him to be so reimbursed it should be so construed.

Taking the first item, the complaint was that the taxing officer disallowed a number of claims set out in the bill of costs under this head, namely, telephone attendances, perusing or writing letters, telexes and the like whereby instructions were taken for the suit and that, infact, only the first interview or conference was allowed. If that is the case then, with respect, that is the wrong approach.

Taking instructions for a suit or defence means obtaining from the client all the relevant information to launch the suit by way of writ (or other process), with statement of claim, if that is appropriate, or to prepare the defence and counter-claim, if there is one. The attorney is entitled to the complete picture of the suit or defence for the preparation of the appropriate process and any accompanying pleadings or supporting documents. Those instructions may be given over a number of days by personal attendance, by telephone, telex or letter etc. In exercising his discretion to allow a sum over the minimum the taxing officer should take account of the cost of obtaining everything properly forming part of the overall instructions for a correctly framed suit or defence. It will properly form part of the over-all instructions if it is necessary or reasonable for that purpose. This would not include matters of pure convenience, considerations of excess caution or unnecessary repetition. But the taxing officer does have the discretion to fix a fair figure under this head. The computation will be by reference to time involved and any necessary disbursements by the attorney for obtaining adequate instructions. There should be no artificial constraints in giving effect to this item. The

test is whether the time or disbursement was necessary or reasonably expended on collation of facts, and any necessary supporting documents from the client to enable the appropriate process to be prepared. If the expenditure meets that test then the taxing officer should allow fair compensation therefor.

As to the second item, the complaint was that no allowance was made under this head for perusing or writing letters in preparation for trial or a negotiated settlement. The question here is: what is a "necessary attendance in and about the client's business in (a case)"? The normally understood attendances are dealt with specifically e.g. attendance on taxation, attendance in chambers, attendance in court when the case is called and adjourned etc. It is clear, therefore, that this item caters for all other attendances i.e. those not specifically catered for. There are obvious other cases, attending on the client in preparation for the trial, attending on a witness for the preparation of a proof of evidence for that purpose, attending on senior counsel etc. And such attendances can be by telephone (often saving costs thereby); they do not have to be personal attendances. But I would go further. I do not see why the word "attendance" should not be given one of its primary meanings (in the Shorter Oxford English Dictionary) which naturally and aptly suits the language used and the purpose behind an award of costs, namely, "attention .....the action of attending". In my view any form of attention "in and about" the client's business in a case falls within this head, provided that it is necessary. "In and about a client's business" in a case can only mean the preparation for the trial, or the resolution of the case e.g. by negotiated settlement. And so action directed towards those ends, provided that it is necessary action towards those ends, would be allowable at the rate provided by this item. If the necessary criteria are met that would include the perusal and writing of letters or telexes, telephone conversations, taking of proofs etc - in fact any matter to which attention is given in and about the client's business in the case. The allowance is made solely by reference to the time consumed in giving that attention, at a fixed rate. There is no allowance for disbursements under this head.

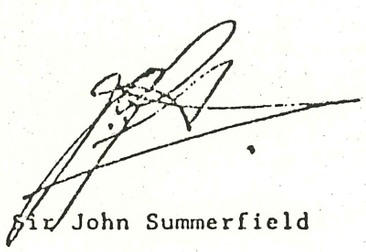
Interpreting this item in this way, which, in my view, the language warrants, more justly compensates the party to whom the award is made for the costs he has had to meet in the pursuit of justice. I get some support for the views I have expressed from the case of Bwanaoga v Bwanoaga 1979 2 All E.R. 105 and In Re Mahon 1893 1 ChD 507 although the latter is not specifically on the point. Furthermore, it would appear that Clerks of the Court in the past have construed these items in the way I have.

As to the last matter of complaint, namely, refusal to allow the cost of the client's air fare to attend the trial, this was not pursued as no special order had been made by the Court concerned. I need only say in relation to this particular matter that a bill of costs is a form of pleading and, like any other pleading, can always be amended - if necessary on terms.

Accordingly I allow the application and remit the matter to the Clerk of the Courts to give effect to the principles set out herein in the taxation of the costs in this cause.

The applicant to have costs to be agreed or taxed.

This application was heard in Chambers, but with the approval of counsel concerned, the ruling is released generally as guidance to those whom it may concern.



Sir John Summerfield

16th September 1985.