

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
**FINANCIAL SERVICES DIVISION**

CAUSE NO. 0040 OF 2011

IN THE MATTER OF THE ARBITRATION LAW (2001 REVISION)

AND IN THE MATTER OF AN ARBITRATION AWARD DATED 28 FEBRUARY 2011

AND IN THE MATTER OF AN ARBITRATION

BETWEEN

A. L. THOMPSON BUILDING SUPPLIES LTD

Applicant/  
Appellant

-and-

(1) BEAZLEY UNDERWRITING LTD  
(2) THE NEW INDIA ASSURANCE COMPANY LTD  
(3) ECCLESIASTIC INSURANCE OFFICE PLC

Respondents

**NOTICE OF ORIGINATING MOTION**

**TAKE NOTICE** that the Grand Court will be moved so soon as Counsel can be heard, by Counsel on behalf of the above-named, A. L. Thompson Building Supplies Ltd ("the Applicant"), for an order that the award made between the parties to the above-mentioned arbitration ("the Arbitration") on 28 February 2011 by Martyn Bould, Dominic Kendrick QC and Richard Siberry QC ("the Arbitrators") be set aside on the following grounds, namely:

- (1) The Arbitrators erred in law in holding that they were not bound to apply the principles and rules governing the recovery of the fees of foreign lawyers set out in Grand Court Order 62 (see Paragraph 36)

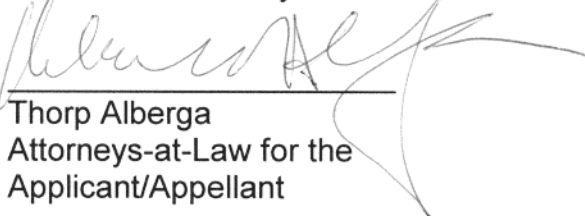
and that their award of costs could include the fees of non-admitted foreign lawyers and their travelling expenses.

- (2) The Arbitration was at all material times conducted pursuant to the laws of the Cayman Islands and the seat of the Arbitration was in the Cayman Islands. The power of the Court to award costs is set out in the Grand Court Rules Order 62 and Practice Direction No 1/2001 entitled "Guidelines Relating to the Taxation of Costs";
- (3) In exercising their power to award costs under and to tax or settle the amount of costs the Arbitrators were either bound to apply the same principles as a judge of the Grand Court would apply in awarding any costs or were bound to adopt important practices with regard to costs in the Cayman Islands.
- (4) Further, Order 62 Rule 1 states that Order 62 shall have effect with such modifications as may be "*necessary*" where the costs of any proceedings before an arbitrator are taxable before the Court. It is not *necessary* in an Arbitration to modify the provisions of Order 62 insofar as they relate to the recovery of fees of foreign lawyers;
- (5) Order 62 Rule 18(1) provides that the work done by foreign lawyers may be recovered on taxation on the standard basis only when the foreign lawyer had been temporarily admitted to practice as an attorney and only in relation to work undertaken after such admission.
- (6) Foreign lawyers cannot recover their fees as a disbursement, will not be allowed travel or accommodations costs and their fees must be itemized and time-costed at no more than specified hourly rates

by virtue of Order 62 Rule 18 and Practice Direction 1/2001 Paragraphs 7.2, 7.3 and 9.4.

- (7) Foreign Attorneys who have not been temporarily or generally admitted to practices as attorneys-at-law under the Legal Practitioners' Law (2010 Revision) cannot lawfully practice as attorneys in the Cayman Islands and are not entitled to recover fees.
- (8) The restrictions on the recovery of the fees and expenses of foreign lawyers set out in Order 62, Practice Note 1/2001 and the Legal Practitioners law represent important aspects of a general principle that costs and expenses of foreign attorneys cannot be recovered unless they are admitted and that fees should not be recoverable to a greater extent that if local attorneys had been involved instead.
- (9) Accordingly, the Arbitrators erred in law in awarding the costs and expenses of non-admitted foreign lawyers and doing so in circumstances when that would not be permitted under Order 62, Practice Note 1/2001 and the Legal Practitioners law

DATED the 10<sup>th</sup> day of March 2011

  
Thorp Alberga  
Attorneys-at-Law for the  
Applicant/Appellant

TO: The Clerk of the Court

AND TO: Taylor Wessing LLP  
Attorneys-at-Law for the Respondents  
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London  
EC4A 3TW  
Ref: AJM/BEA70.1

This NOTICE OF ORIGINATING MOTION was filed by Thorp Alberga, Attorneys-at-Law for the Applicant/Appellant whose address for service is Harbour Place, 2<sup>nd</sup> Floor, 103 S. Church Street, George Town, P.O. Box 472, Grand Cayman, KY1-1106, Cayman Islands (Ref: MLA/A0159-007).