



Neutral Citation Number: [2025] CIGC (Civ) 16

Cause No: G 2016-0136

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

BETWEEN:

(1) ERIC BRADLEY

(2) JACQUELINE CHUANG

Plaintiffs

-and-

LINDA FRYE-CHAIKIN

Defendant

Appearances: Mr Michael Wingrave of Dentons for the Plaintiffs

Ms Linda Frye, Defendant in person

Before: The Honourable Justice Jalil Asif KC

Heard: 14 April 2025

Ex tempore judgment delivered: 14 April 2025

Finalised judgment approved: 22 April 2025

Costs—basis of taxation—whether to order payment on the indemnity basis

JUDGMENT

1. This is the adjourned hearing of the issue of costs relating to the Defendant's application for leave to appeal, and for a stay pending appeal of, my original judgment in this matter granting the Plaintiffs summary judgment. The matter has been listed today on 14 April 2025. The Plaintiffs are represented by Mr Michael Wingrave, and Ms Linda Frye has represented herself, as she has done throughout the proceedings before me.
2. It is not really disputed that Ms Frye should in principle pay the costs of her application for leave to appeal and for a stay, and it seems to me that must be the right outcome, as Mr Wingrave has submitted. The Plaintiffs are the *successful party* for the purpose of GCR O.62, r.4(2) and therefore the presumption is that their costs should be paid by Ms Frye. The real question on this application is whether those costs should be taxed on the standard or the indemnity basis.
3. Mr Wingrave draws my attention to my judgment in Armand Hammer Foundation Inc. v Hammer International Foundation (unreported, FSD 2023-0113 (JAJ), 6 November 2024) in particular paragraph [16] in my judgment, where I said:

“In order to obtain an order for costs on the indemnity basis, the applicant must persuade the Court that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably or negligently. The Court should not seek to apply a gloss to the plain words of the Rule. The cases cited seem to me to provide examples of the kinds of considerations that the Court might take into account in a particular case and the kinds of situations where an order for indemnity costs may be appropriate. But, ultimately, each case must be considered individually and a decision made whether or not the threshold test in the Rules has been met, before the Court then considers how to exercise its discretion as to costs. Whether or not the proceedings have been conducted improperly, unreasonably or negligently is much easier to determine in the context of the particular case before the Court than trying to describe those characteristics in the abstract.”

4. Mr Wingrave reminds me of the decision of Smellie CJ in Ahmad Hamad Algosaibi and Brothers v Saad Investments Company Ltd [2012] 2 CILR 1 that the discretion as to costs is “*broad and flexible*”, and also the judgment of the Court of Appeal in AHAB referring to Bennett v Attorney General [2010] 1 CILR 478 and approving the idea that cases which are weak or unlikely to succeed may, depending

on the context, cross the threshold into being cases where an order for indemnity costs is an appropriate outcome.

5. Mr Wingrave argues that this is a case properly characterised as being an abuse of process on the ground that Ms Frye's application for leave to appeal was always completely hopeless. He puts forward as the basis for that submission that Ms Frye did not engage with the need to demonstrate that it was arguable that my decision on the summary judgment application was wrong. He says that she did not put forward any basis either to impeach the Michigan judgment on which I had granted summary judgment in the Cayman Islands, or to undermine the reasoning in my judgment on the summary judgment application.
6. For that reason, he argues that, at best, Ms Frye's application for leave to appeal was essentially an attempt simply to delay enforcement of the judgment that I had ordered should be entered.
7. In those circumstances, he says that the application for leave to appeal was hopeless and was always hopeless, so that it justifies an order for indemnity costs; or at the very least, it was always very weak within the *Bennett v Attorney General* approach, and that Ms Frye should have appreciated that it was very weak and highly speculative, and therefore her continued pursuit of the application could justify that an order for indemnity costs be made against her.
8. In addition to those general points about the costs of the application for leave to appeal generally, Mr Wingrave makes further submissions in relation to more confined aspects of costs incurred after the hearing of the application for leave to appeal. I will come to those later.
9. Having considered both the nature of the application for leave to appeal and the arguments that were put before me on that application, having listened to Mr Wingrave's submissions this morning, and having given Ms Frye the opportunity to respond to those submissions, in my judgment it is appropriate to describe Ms Frye's application for leave to appeal as one that was "*improper, unreasonable, or negligent*" within GCR O.62, r.4(11), so that Ms Fry should pay the Plaintiffs' costs of the application for leave to appeal on the indemnity basis generally.

10. I go on to say that, even if I had not reached that conclusion, I would have ordered that Ms Frye should pay the post-hearing costs on the indemnity basis in any event, for two reasons. First of all because, as Mr Wingrave has argued, Ms Frye sent to the Court multiple further written submissions for the Court to read, none of which grappled with the live issues on the application for leave to appeal; they all simply repeated the arguments on the merits which she previously put before the Court on the application for summary judgment, and which the Court had rejected.
11. Secondly, there are the particular submissions provided by Ms Frye and which I concluded had been prepared using an AI tool. I once again stress that it is not in itself improper to use an AI tool, but it is improper not to check the accuracy of material generated by an AI tool. In this case, it is absolutely clear that Ms Frye did not do so. Indeed, my recollection is she said that in correspondence with the Court. The result was that the written submission she sought to put before the Court advanced arguments based on Court rules that do not exist in the Cayman Islands, and purported legal authorities that also do not exist, and as a result, wasted both the Court's time and that of the Plaintiffs.
12. For all of those reasons, I conclude that Ms Frye should pay the Plaintiffs' costs on the indemnity basis for her application for leave to appeal. But even if I had not reached that conclusion, I would have ordered that she should pay the Plaintiffs' costs of considering and responding to her post hearing submissions on the indemnity basis in any event.

Dated 22 April 2025

Filed April 2025



**THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT**