



IN THE GRAND COURT OF THE CAYMAN ISLANDS

G 70 of 2018

IN THE MATTER OF SECTION 27(1) OF THE ACCOUNTANTS LAW, 2016

AND IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE COUNCIL OF
CAYMAN ISLANDS INSTITUTE OF PROFESSIONAL ACCOUNTANTS

BETWEEN

ROBERT PATRAULEA

Appellant

AND

THE COUNCIL OF THE CAYMAN ISLANDS INSTITUTE OF PROFESSIONAL
ACCOUNTANTS

Respondent

ON THE PAPERS

Before: Hon. Justice Marlene I. Carter (Actg.)

Submissions: Priestleys for the appellant/applicant
Bedell Cristin for the respondent

Draft Ruling circulated: 21 January 2022

Ruling Delivered: 7 February 2022

HEADNOTE

Review of taxation by Taxing Officer – standard of review – taxation on the standard basis - Grand Court Rules Order 62, r.30(1)

RULING – REVIEW OF TAXATION

Background

1. The appellant who is the President, founder and shareholder of Dominion Business Solutions Limited (T/A Dominion), sought to renew his Licence to carry out *public accounting services pursuant to the Accountants Law* for the period 1 January 2018 to 31 December 2018. The respondent, the Council, refused to grant the renewal application.



2. Pursuant to s.27 of the Law the appellant appealed against this decision to the Grand Court. The Grand Court found that the Council was not wrong in deciding to refuse to renew the appellant's Licence.
3. On the matter of costs, the Court found:

“My provisional view is that costs should follow the event, and therefore the Appellant should be ordered to pay the Respondent's costs. At this time I see no reasons why those costs should not be made on the standard basis.”

Issues on the Review

4. The respondent claimed legal fees in the sum of US\$118,361.57. These were not agreed by the appellant. Upon the taxation of the respondent's bill of costs, the taxing officer awarded costs in the amount of US\$101,158.52. The taxing officer made reductions in respect of a separate Freedom of Information application for which no costs order was made, and in respect of the respondent's claim for legal fees in excess of the statutory capped amount.
5. The appellant contends that: *“The taxing officer failed to give due consideration to the fact that costs are awarded on the standard basis, and the correct burden of proof and tests to be applied...”*

The appellant's arguments

6. The appellant submitted that the taxing officer should have had in mind the two-stage approach laid down by the Court of Appeal in *Lownds v Home Office*¹ and invited the court to consider its review of the taxing officer decision in line with that approach. The appellant argues that:

“22. On a global basis the costs awarded by the taxing officer are on any reasonable view, wholly disproportionate to the case.

*23. Costs claimed in respect of the appeal, have been allowed by the taxing officer at a nearly 100% recovery. ...the taxing officer erred in his failure to take into consideration and apply the test for taxation of costs on the standard basis.”*²

¹ [2002] All ER 775

² Application for Review of Taxing Officer's Decision filed on the 30 October 2020



7. On the first of the two stage approach in *Lownds*, “*whether the total sum claimed is or appears to be disproportionate*” the appellant submitted that the award of costs on the rehearing of an application for which the appellant was given an automatic right of appeal was grossly disproportionate to the nature of the case and the complexity of the issues; that the rehearing was a straightforward case, the issue in the case was not complex and “*the Appellant had no expectation that a case of this nature and duration would incur legal costs of this magnitude, particularly where the Appellant’s own legal costs were significantly less.*”
8. The appellant submitted that the taxing officer had erred
- (i) In finding that the case warranted representation throughout by two attorneys for the respondent – the duplication of work throughout the entirety of the case led to the bill of costs being almost doubled: “*The taxing officer has awarded costs claimed by an associate plus a second, third and fourth partner working on the case which is unreasonable and excessive.*”
 - (ii) In failing to take into account that the respondent’s disproportionately high costs were due to work being undertaken by the respondent which was unnecessary – it was submitted that the affidavits filed by the respondent, were “*near identical in their content and unnecessary to the issue being tried. Four affidavits were filed from four members of the same committee which served to repeat the same evidence four times and were essentially a copy and paste of the same paragraphs and included the same exhibits.*”
 - (iii) In failing to take into account the respondent’s failure to use support staff to carry out simple administrative tasks whereby the taxing officer allowed substantial costs in excess of US\$7000.00 for such tasks.
 - (iv) In failing to consider the effect of his award which could set a precedent whereby no private individual can exercise his right of automatic appeal against a decision made by the respondent where disproportionately high costs could be awarded against them.
9. The appellant on the second stage of the *Lownds* approach, submitted that the taxing officer’s similarly failed to apply the proper test. On this aspect, the appellant pointed to instances on the bill of costs where there may have been doubts caused by a lack of particularisation, which doubts ought to have been resolved in the appellant’s favour, but the taxing officer erred in failing to do so.



The respondent's position

10. In submissions to the Court, the respondent asked the court to refer to the taxation response arguments before the taxing officer, which were adopted for the purpose of the respondent's review response. The respondents noted that arguments advanced by the appellant on this review were advanced before the taxing officer. In particular, the respondent point to the appellant's arguments before the taxing officer at paragraphs 18-22 of the Taxation Objections which were almost identical to paragraphs 9-14 of the instant Review Objections.
11. The respondent submitted that the appellant had not identified "*any good cause why the Taxing Officer's findings on reasonableness and proportionality*" should be ignored. Respecting the appellant's submission summarized at paragraph. (iv) the respondent submitted that such was only "*a sweeping statement of no forensic value whatsoever.*" The respondent further submitted that "*a party's expectation of the amount of costs that would be incurred is irrelevant to the independent assessment of those costs by the Court.*" as is "*the professed ignorance of the scale of incurred costs*" in this case.
12. The respondent invited the court to find the appellant's submission regarding his being represented by a sole attorney as also being irrelevant. It was not the appellant's costs that were taxed by the taxing officer neither are those costs under consideration on the instant review. The respondent submitted: "*The fact that the paying party's costs are, or may be, less than that of a receiving party is not indicative of a lack of proportionality or reasonableness*".
13. With regard to the application of the principles in **Lownds** the respondent submitted that the approach in **Lownds** was neither applicable nor persuasive in the Cayman Islands. The respondent argues that "*In summary whereas GCR Order 62 places the concept of "reasonableness" first and foremost (albeit with references to proportionality), as did the Rules of the Supreme Court; The Civil Procedure Rules gave the rule of proportionality greater prominence than reasonableness, as then applied in Lownds v Home Office. This English authority therefore came about by way of the introduction of the Civil Procedure Rules, which have not been adopted in the Cayman Islands.*"³

³ See paragraph 26 of the Respondent's Responses to the Statement of Objections



14. The respondent urge the court to find that the appellant's objections are not based on a sound legal footing in this jurisdiction.
15. The respondent does accept that the costs of the taxation proceedings should be capped at CIL\$2000.00 and that an item at 291 for 93.33 should not be payable by the appellant.

Court's conclusions

16. GCR Order 62 states as follows:

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

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

- (a) the amount of money involved;*
- (b) the importance of the case; and*
- (c) the complexity of the issues”.*

17. Order 62 r. 30 (6): *“A review under this rule shall be inquisitional in nature and the Judge may receive further evidence and may exercise all the powers which he might have exercised on an original taxation, including the power to award costs of the proceedings before him.”* The taxing officer is not required to give reasons for his decisions.⁴ The reviewing court essentially hears the application de novo.
18. I have considered the Taxation Objections and the Taxation Response on this Review. I have also considered the submissions, namely the Application for Review and accompanying Statement of Objections and the Responses to the Review. These submissions were quite comprehensive, I do not believe that I could benefit from further oral submissions.

⁴ See General Shipping E Outlets De Brasil S.A. et al – Kawaley J (unreported 25 August 2020)



19. In *General Shipping Investments Ltd*, Kawaley J made the following observations regarding the court's review of the taxing officer's findings:

"13. In my judgment it is clear from the terms of GCR Order 62, rule 30 that the extent to which the Taxing Officer's decision is reconsidered and the amount of deference (if any) which is given to the Taxing Officer's decision is a matter of judgment for the Judge depending on the specific items or issues in dispute.

14. Yes, this is a de novo hearing, but if the Taxing Officer's findings are ignored altogether without good cause, litigants will always be encouraged to pursue what ought clearly to be a limited remedy of Review. If this Court is obliged to reconsider the minutiae of a taxation whenever invited to conduct a Review, the task of the Taxing Officer would become a thankless and meaningless one and Grand Court Judges would be duplicating the function of Taxing Officers."

20. On this review the taxing officer had before him all relevant materials or submissions at the time of the taxing of the respondent's bill of costs. The respondent submits that due regard should be given to the taxing officer's decision to award the costs in the sum that he did. This court agrees. The court will not lightly move to change the taxing officer's decision.

The duplication of work - "The taxing officer has awarded costs claimed by an associate plus a second, third and fourth partner working on the case which is unreasonable and excessive." The taxing officer did not properly consider the argument as to duplication of work throughout the entirety of the case.

21. The applicant particularised instances on the Bill of Costs where it was submitted there was apparent duplication of work without apparent justification. At paragraph 27 of the application for review the applicant noted as examples:
- (i) April 2018 at items 2, 3 and 4 - two partners and an associate claimed time for reviewing emails;
 - (ii) at items 16 and 17 - a partner and an associate claimed time for attending a call with a client;
 - (iii) At items 79 and 80 - a partner and an associate claimed time for reviewing and discussing the same work.
 - (iv) At items 262 to 268 - preparation for and attendance at the hearing including meeting with the client was similarly billed twice.



22. The respondent submitted that a partner and an associate on a matter is a standard practice and is especially so where “*a matter of this importance, novelty and complexity undoubtedly commands a partner’s involvement...*”. In its responses to the appellant’s objections before the taxing master the respondent explained further: “*For some work there were two partners involved but this was limited to where interpretations of applicable legislation was required where the second partner, Paul Scrivener, was one of the original draftsmen behind the Law and in that context he was equivalent to an expert.*”
23. The taxing officer had before him the appellant objections and the explanation of the respondents. The respondent set out why it considered the matter to be of such importance and complexity:
- “... in order for the Respondent to adequately defend the appeal it was necessary to undertake a considerable review and explanation of the procedures governing the approval of licenses and the conduct of the Respondent’s Membership and Licensing Committee, the governing rules of the International Federation of Accountants, of which CIIPA is a member, its statement of membership obligations that dealt with such things as: the requirements of an IFAC member body’s quality assurance review (“QAR”) systems for its members who perform audits, review, other assurance, and related services engagements of financial statements; the International Accounting Education Standards Board (“IAESB”), an independent standard-setting body and the Code of Ethics for Professional Accountants (IESBA Code of Ethics) issued by the International Ethics Standards Board for Accountants (IESBA), an independent standard-setting body, in order to appropriately deal with the abundant grounds for appeal.”*
24. The respondent also noted that the appeal in its initial form “*listed three grounds of appeal, the last ground sought the reversal of the Respondent’s decision on nine alternative bases. Each of the three grounds and the nine bases was required to be fully considered, explained and rebutted in order to be defended effectively*”. Only the third ground and its alternative bases was pursued at the hearing however the other two grounds were only abandoned at the hearing itself.
25. The taxing officer accepted the respondent’s submissions. There was before him sufficient information for him to find that the respondent required the services of partner and associate to properly respond to the appellant on the appeal and there was no apparent duplication of work as



complained of. This court cannot find that he was wrong to find that such costs were reasonably incurred.

Work being undertaken by the Respondent which was unnecessary – the production of affidavits which were near identical in and unnecessary to the issue to be tried.

26. The respondent's explanation was before the taxing officer. At paragraph 22 of the respondent's responses to the Appellant's Objections:

‘The Appellant has similarly complained of the duplicative nature of some of the Respondent's evidence, particularly an affidavit that was signed by the members of the Membership and Licencing Committee. The evidence in this case was provided because the Appellant was unyielding in the demand that anyone who "purports to give an opinion on Mr Patraulea's competence to carry out public audit work and also whichever witness deals with the procedure by which the 2018 license was issued and then declared void" be witnesses and available to be cross-examined at the hearing. This list of individuals was originally particularly lengthy and involved each member of the Membership and Licencing Committee that was involved in the decision not to grant the renewal of the Appellant's LP License. ... The Appellant did eventually agree to limit the affidavit evidence to be provided but that which was done was driven by the Appellant's case and his approach to witness evidence.’

27. The taxing officer agreed with the respondent that these affidavits were necessary to answer the case put by the appellant on the appeal. Having reviewed the progress of the case, I find that there was before the taxing officer information regarding the progress of the case from which he could have found as he did that the work undertaken by the respondent, complained of by the applicant was necessary.

Failing to take into account the Respondent's failure to use support staff to carry out simple administrative tasks whereby the taxing officer allowed substantial costs in excess of US\$7000.00 for such tasks.

28. At paragraph 30 of the application for review the applicant noted 51 instances when he submits there was a failure on the part of the respondent's attorneys to use support staff to carry out simple administrative tasks. In this instance to fix a date of hearing. The applicant submits that this task is one which ought to be undertaken by support staff with access to the attorney's calendar. He also pointed to other administrative tasks billed at partner and associate rate including the emailing



of the client to arrange a time to meet and preparing hearing bundles which could have been carried out by administrative staff.

29. The respondent denied that much of the work done claimed in the bill of costs was done by secretarial or administrative staff. They submitted that any work actually undertaken by secretarial and or/administrative staff was not claimed in the bill of costs albeit that there was a need for an associate to conduct a wholesale review of the material and that it was reasonable for an associate to do so.
30. It is not unreasonable for a partner and associate to be intimately involved in the all areas relating to the conduct and management of a matter. Given the nature of the issues in this case and the importance to which the respondent attached their resolution, it was not unreasonable for the respondent to engage a partner and for that partner to have a junior and/or paralegals to assist, whom it is expected will be directed by the partner. In such circumstances, the applicant's submission regarding the duplication of work in this regard is unfounded.

Failure to consider the effect of his award, that such award could set a precedent whereby no private individual can exercise his right of automatic appeal against a decision made by the Respondent where disproportionately high costs could be awarded against them.

31. The taxing officer did not provide reasons for his decision. He is not required to do so. GCR Order 62 stipulates that the taxing officer is to award costs that are reasonably incurred or were reasonable in amount. The setting of precedents such as suggested by the appellant is not part of the taxing officer's remit in his consideration to the respondent's bill of costs. I agree with the respondent's submission on this issue.

"A party's expectations of the amount of costs that would be incurred is irrelevant to the independent assessment of those costs by the Court. If it were otherwise, this would be a complete defence open to any paying party who could simply say "I did not know I would be liable for such a sum in costs." This is the reason why a court-appointed taxation process exists. Furthermore, the Appellant was not representing himself, he appointed attorneys, the Appellant could (and should) have asked his attorneys to advise on the likely level of adverse costs he may face in the appeal. Indeed, the Appellant's attorneys could even have raised this question in correspondence with the Respondent – they did not do so. This



professed ignorance of the scale of incurred costs is irrelevant to a standard basis assessment."

32. I note the respondent's concession that the taxing officer did err in allowing costs above the cap of CI\$2000 regarding the costs of the taxation proceedings. Such costs above that statutory cap are disallowed.
33. The applicant's review is granted only to the extent set out above at paragraph 32.
34. The applicant shall pay the respondent's costs on this review.

A handwritten signature in black ink, appearing to read "Carter J.", written over a horizontal line.

**Hon Justice Marlene Carter (Actg.)
Judge of the Grand Court**