



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

CAUSE NO. FSD 162 OF 2019 (RPJ)

BETWEEN

RAIFFEISEN INTERNATIONAL BANK AG

AND

RESPONDENT/APPLICANT/PLAINTIFF

SCULLY ROYALTY LTD

(a company incorporated in the Cayman Islands)

First Defendant

LTC PHARMA (INT) LTD.

(a company incorporated in the Marshall Islands)

Second Defendant

MERKANTI HOLDING P.L.C.

(formerly MFC Holding Ltd, a company incorporated in Malta)

Third Defendant

1178936 B.C. LTD.

(a company incorporated in British Columbia, Canada)

Fourth Defendant

GARDAWORLD, CN. LTD.

(a company incorporated in the Marshall Islands)

Fifth Defendant

1128349 B.C. LTD.

(a company incorporated in British Columbia, Canada)

Sixth Defendant

IEM SERVICES CO. LTD.

(a company incorporated in the Marshall Islands)

Seventh Defendant

LTCM ASSETS PRIVATE LIMITED

(a company incorporated in Liberia)

Eighth Defendant



BEFORE: THE HON. RAJ PARKER

**Draft Ruling
Circulated:** 9 September 2022

**Ruling
Delivered:** 20 September 2022

Headnote

Review of taxing officer's decision-exceptional costs order made- GCR Order 62 Rule 30-de novo limited review-no duplication of taxing officer's task- GCR Order 62 Rule 13 (3)- GCR Order 62 Rule 4(2)- Order 62 Rule 18.

Introduction

1. This judgment follows a review of the Taxing Officer's decision to effectively allow all the costs claimed relating to an interim application¹. The application lasted a day on 23 September 2020 and was part of a larger dispute between the parties.
2. As to costs, the Court ordered on 7 April 2021 that:
 1. *The First Defendant shall pay the Plaintiff's costs of and occasioned by the Application, including those in relation to the Costs Application; to be taxed forthwith on the indemnity basis, if not agreed, and paid forthwith.*
 2. *In conducting the above taxation, the taxing officer shall disapply the following provisions as regards the costs of the Plaintiff's foreign lawyers: (a) Order 62, rules 18(3) to (7) (inclusive) of the Grand Court Rules; and (b) Section 6.5 of Practice Direction 01/2001 of the Grand Court.*
 3. *The First Defendant shall pay the Plaintiff US\$196,425.56 as an interim payment in respect of the Plaintiff's costs of the Application by 4pm on the 14th day following the making of this Order. (my emphasis).*

¹ For an anti- suit injunction which was granted.



3. This was an exceptional Order.
4. The First Defendant (“D1”) has objected to the taxation of the Bill of Costs of the “Plaintiff” (or the “receiving party”) and the Amended Costs Certificate dated 17 December 2021, which certified that the total amount payable to the Plaintiff by D1 was **\$473,716.54**².
5. A summary of the costs claimed by the Plaintiff and allowed upon taxation is set out below:

Claimed		Allowed	
Ogier	\$108,886.50	\$108,886.50	
Mishcon de Reya	\$132,163.80	\$132,163.80	
Tim Penny QC	\$113,082.00	\$113,082.00	
Daniel Scott (junior counsel)	\$24,378.60	\$24,378.60	
Jamie Holmes (junior counsel)	\$37,908.60	\$37,908.60	
Mamo TCV	\$51,270.50	\$51,270.50	
Disbursements	\$3,972.83	\$3,972.83	
Bill of Costs	\$9,870.00	\$2,439.02	
Total:	\$481,532.83	\$474,101.85	
Adjustment - Item 27	-\$385.31	-\$385.31	
Total:	\$481,147.52	\$473,716.54	

6. The only reduction applied by the Taxing Officer was to limit the costs of the taxation process from the CI\$9,870.00 claimed to the sum of CI\$2,000.00 in accordance with the maximum prescribed by GCR Order 62 Rule 26.
7. The Taxing Officer has otherwise allowed 100% of the Plaintiff’s costs and no other reductions have been applied.

² The Plaintiff filed its Application for Taxation dated 20 July 2021 seeking costs in the sum of **US\$481,147.52**. An amended costs certificate was subsequently issued in the sum of **US\$473,716.54**.

The law

8. The review by the Judge is to be carried in accordance with GCR Order 62 Rule 30:

“(1) Any party **who is dissatisfied with the amount of any costs certificate** may apply to a Judge to review the taxing officer’s decision.

....

(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.”(emphasis added)

9. As the Court held in *Hinds*³, there is a broad discretion to decide the matter on the basis of written submissions and the examination of the relevant documentary material. The Court has all the powers exercisable on an original taxation. The Court should approach the matter based upon the facts as presented and arguments raised on the papers in accordance with the relevant legal principles to do justice between the parties⁴.

10. The standard of review was considered by Justice Kawaley in *In The Matter of General Shopping E Outlets Do Brasil S.A.*⁵:

“12. The Respondents emphasized the breadth of the Review jurisdiction. The Petitioners accepted that “the Review is a *de novo* procedure and the Judge is not fettered by the Taxing Officer’s decision (although, of course, the Judge may take the view of the Taxing Officer into account).” This was common ground. Neither side directly addressed on what basis the Court decided whether to ignore or respect the findings of the Taxing Officer.

³ *Hinds v Hinds* (unreported 25 February 2021 Parker J) §44.

⁴ *Ibid* § 49.

⁵ Judgment dated 25 August 2020.



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.*** (emphasis added)
15. I respectfully agree with Kawaley J's approach. The Court has been astute not to duplicate the function of the taxing officer but to review his approach in principle (not with a decision item by item) and to afford his decision deference. The Taxing Officer has allowed all costs claimed as being reasonable. The Court has carried out its own assessment on a *de novo* basis but has not duplicated his efforts⁶.

Outcome

16. The Court has approached the matter by reviewing whether the allowance of the entirety of the costs claimed is appropriate in all the circumstances.
17. Having done the analysis, and having regard to the facts and matters relating to the 13 specific objections and so-called 'high level indicators' as were relied upon by D1, the Court has come to the view that there should be a 10% reduction in all the circumstances.

⁶ There are no written findings or reasons by the Taxing Officer to be considered and nor would one expect there to be - see GCR Order 62 Rule 29(6).



Analysis

Indemnity costs

18. GCR Order 62 Rule 13(3) addresses taxation on the indemnity basis:

“(3) *On a taxation on the indemnity basis all costs shall be allowed **except insofar as they are of an unreasonable amount or have been unreasonably 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 receiving party; and in these rules the term "the indemnity basis" in relation to the taxation of costs shall be construed accordingly.***” (emphasis added)

19. Accordingly pursuant to GCR Order 62 Rule 13(3), the correct approach is:

- a) all costs should be allowed except where they are unreasonable in sum or have been unreasonably incurred;
- (b) as part of that analysis, there is no requirement for the costs to be proportionate;
- (c) the burden is on the paying party (D1) to establish that the costs objected to are unreasonable in amount or have been unreasonably incurred;⁷ and
- (d) any doubt as to the reasonableness of the costs is to go in the Plaintiff's favour.

20. This principle of reasonableness is also contained in, for example, the Civil Procedure Rules of England & Wales where CPR 44.3(1) states:

“(1) *Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs – (a) on the standard basis; or (b) on the indemnity basis, **but the court will not in either case allow costs***

⁷ See *General Shopping* §33 *ibid*



which have been unreasonably incurred or are unreasonable in amount.”
(emphasis added)

21. This is also referenced by GCR Order 62 Rule 4(2) which states:

*“The overriding objective of this Order is that a successful party to any proceeding should recover from the opposing party **the reasonable costs incurred by him in conducting that proceeding in an economical, expeditious and proper manner unless otherwise ordered by the Court.**”* (emphasis added)

22. However the position with regard to indemnity costs is more favourable to the receiving party. In *Al Sadik-v-Investcorp Bank* [2012 (2) CILR 33] Jones J stated it as follows:

*“7. In principle, an order for costs to be taxed on the "standard basis" in accordance with these rules and guidelines will compensate the successful party in respect of the reasonable legal fees and expenses incurred in conducting his action in an 'economical, expeditious and proper manner.' **The effect of an order for taxation on the 'indemnity basis' is that the paying party is deprived of the protections which apply in the ordinary case. The onus of proof is reversed. The proportionality rule does not apply. The legal fees scales do not apply with the result that the successful party may recover whatever hourly rates have been agreed with his attorneys unless the paying party can persuade the taxing officer that the contracted rates are unreasonably high (relative to those paid by the paying party).**”* (emphasis added)

23. This was confirmed in *General Shopping* by Kawaley J, when referring to the indemnity basis:

*“... but costs may be disallowed if they are shown to be unreasonable in amount or to have been incurred in an unreasonable manner.”*⁸

⁸ §18



ORDER 62 RULE 18

24. The costs of foreign lawyers are dealt with under GCR Order 62 Rule 18:

“... ”

- (3) *Whenever a claim is made for work done by foreign lawyers, the taxing officer will investigate whether it has resulted in a duplication or increase in the cost of the proceedings and any such increase shall be disallowed.*
- (4) *Work done by local attorneys for the purpose of instructing foreign lawyers and vice versa shall be disallowed.*
- (5) *The taxing officer shall disallow any item which appears to have been incurred, or the costs of which appears to have been increased, because the successful party has engaged both local attorneys and foreign attorneys.*
- (6) *Time spent and disbursements incurred in respect of written and oral communication between foreign lawyers and local attorneys will be disallowed.*
- (7) *The overriding principle is that a paying party should not be required to pay more because the successful party has engaged a foreign lawyer than he would have been required to pay if the successful party had employed only local attorneys.”*

25. Paragraph 2 of the Order dated 7 April 2021 states:

“In conducting the above taxation, the taxing officer shall disapply the following provisions as regards the costs of the Plaintiff’s foreign lawyers: (a) Order 62, rules 18(3) to (7) (inclusive) of the Grand Court Rules; and (b) Section 6.5 of Practice Direction 01/2001 of the Grand Court.”⁹

⁹ PD 1/2001 (at paragraph 6.5) states *“Admission fees and work permit fees paid in respect of foreign lawyers are not recoverable on taxation on the basis that such expenses are part of the overheads reflected in the foreign lawyer’s hourly rates.”*



26. The constraints upon the recovery of foreign lawyers' fees have therefore been dis-applied and D1 has the burden of showing that the costs incurred by the foreign lawyers are unreasonable, as otherwise the costs claimed should be allowed.
27. In *General Shopping* no specific application to disapply GCR Rule 62 Rule 18(3) - (7) was made, and so the Court was still bound by those provisions:

“19. *It is common ground that the basic distinction between indemnity costs and standard costs is that in the latter case, foreign lawyers' fees are only recoverable if the foreign lawyer is admitted to the local Bar (GCR Order 62, rule 18(1), (2)). However, the Respondents submit that all such costs should be allowed, while the Petitioners submit that [sub-rules (3) to (7)] in that rule still apply to an indemnity basis taxation...*

20. *The Petitioners' submission is clearly right.*” (emphasis added)

28. In the costs judgment in this matter dated 25 March 2021, the Court stated:

“19. *I accept that the following matters have necessitated a high degree of coordination between a number of international legal teams in the case as a whole: (a) RBI's claims that a formerly Canadian and now Marshall Islands company has been asset stripped by way of transfers of inter alia Canadian, Maltese, Marshall Islands, Slovakian, Ugandan and German assets, to inter alia Cayman, Canadian, Maltese, Marshall Islands, Liberian and Chinese companies; (b) D1's defences and counterclaim as a matter of Austrian law, (c) the Maltese proceedings brought by D1, the Third Defendant and others, and (d) Canadian proceedings that have been filed (but had not at the time of the hearing of RBI's application, or the Judgment, yet been served on RBI) by the Fourth Defendant and Sixth Defendant (of which RBI was first given notice by D1).*”

29. D1 has pointed out that the Bill of Costs, however, does not include any costs of legal teams or legal advisors in Canada, the Marshall Islands or Austria. The only expertise obtained from any of the countries mentioned (other than the Cayman Islands) was the expert opinion from



Mamo TCV (Maltese lawyers) whose fees totalled only US\$51,270.50 or 10% of the Bill of Costs.

30. I accept the proposition that in a case where much greater fees have been incurred by foreign lawyers than the local attorneys, particular attention should be given to the reasonableness of the charges, but D1 still has the burden of proving they were unreasonable against the Order that sub paragraphs (3) - (7) of GCR Order 62 Rule 18 have been disapplied.

Decision

31. It has not been necessary for the Court to set out in this decision the *minutiae* of the particular objections which have been reviewed. GCR Order 62 Rule 30(4) states that the nature and grounds of the objections should be concise. D1's objections ran to 70 pages plus supporting material. It is not a sensible use of Court time to set out its views on each of these points in detail. I have reviewed each item objected to and the Plaintiff's answer to it.

32. I have had particular regard in my assessment to some high level points which were made by D1 and answered by the Plaintiff's in the respective parties' submissions. My observations are as follows:

a) This was not a hearing which concerned multiple substantive factual disputes which needed to be resolved. However, there was a lot of material adduced in relation to several issues which arose on the application.

b) As to this, the Court said in §§ 12 to 18 of the costs judgment dated 25 March 2021:

“12. However, in my view, the work required to meet this case and the evidence was significantly increased by the conduct of D1...D1 put almost every point relied upon by RBI in issue in its written argument...

14. D1 continued in its oral submissions to dispute almost every point on RBI relied and which required RBI to fight every point. It made concessions on the expert evidence only in its oral submissions at the



hearing. This approach led to a great quantity of expert evidence on the jurisdiction issue...

18. *In light of the findings in the Judgment as to D1's conduct in instituting the Maltese proceedings, the matters set out above as to D1's conduct in response to this application, the inherently international nature of the application on which RBI has succeeded, concerning, as it did, Maltese proceedings, and the international nature of these Cayman proceedings as a whole (see below), this is an exceptional case in which taxation of foreign lawyers' fees should be without regard to the constraints that would otherwise pertain to the taxation of such costs on the indemnity basis.” (emphasis added)*

- c) There were issues of fact (including evidence of Maltese law) and law. The hearing bundle ran to 1,422 pages and the authorities bundles ran to 1,958 pages. There were five affidavits and five experts' reports. The experts' reports alone ran to 81 pages.
- d) Notwithstanding the volume of material, the summons was issued in early June 2020 and resolved in late September 2020. The matter was urgent and great resource was applied to it.
- e) The fees of the Maltese lawyers were only about 10% of the Bill of Costs. I accept that it is unlikely that the English and Cayman Islands lawyers would have had significant work to do in relation to the preparation or production of the Maltese law opinions.
- f) As set out in D1's Statement of Objections dated 8 July 2021 (page 3), the costs incurred on behalf D1 are far less than the Plaintiff's:

“Appleby's fees, where some of the hourly rates are in excess of those charged by the Plaintiff's Advocates, total in the region of \$112,000 and John Wardell QC's in the region of \$71,000, a total of \$183,000.”

The Court has noted that the Plaintiff's legal costs are more than 2.5 times greater than D1's costs. This can be explained by the relative sizes of the two respective legal teams.

It is also the case that because of the nature of D1's application and litigation strategy, the Plaintiff was put to a huge amount of time and expense to meet what the Court has found to be an unmeritorious claim. The Court's view of this was reflected in the exceptional costs award in the Plaintiff's favour.

- g) As background information, the Court has also noted the position on previous taxations. These have no bearing on the present taxation. They were taxed on the standard basis, not the indemnity basis and costs of about 70% of those claimed were allowed.
- h) As to apportionment of time, D1 has not persuaded the Court that there is anything substantive in the objections made. I accept the Plaintiff's confirmation that Ogier, Mishcon de Reya and Counsel kept a contemporaneous electronic time report detailing the work undertaken and the time spent. I accept that these documents were reviewed by the fee earners at each respective firm and the time spent in relation to the anti-suit injunction was apportioned prior to the bill of costs being drafted, and the bill was then prepared by a costs draftsman who also reviewed the apportionment of time.

Conclusion

- 33. Having considered D1's objections, the high level points, the relevant legal principles, and the relevant circumstances, a reduction of 10% overall will be applied resulting in a reduction to the costs allowed of \$47,371.654.



HON. RAJ PARKER
JUDGE OF THE GRAND COURT