

**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA**

CONSTITUTIONAL AND ADMINISTRATIVE DIVISION

PROCEEDING FOR JUDICIAL REVIEW

2019 HC DEM CIV FDA-103

BETWEEN: **Paul James, trading as THE FIX IT DEPOT**
Applicant

-and-

1. GUYANA POWER AND LIGHT

**2. NATIONAL PROCUREMENT AND TENDER
ADMINISTRATION BOARD**

Respondents

Jointly and Severally

Mr. T. Jonas for the Applicant

Mr. D. Kissoon with Ms. N Viera for the Respondent

DECISION

SEWNARINE-BEHARRY, P. J:

On October 2, 2019, this Court ordered the Claimant to pay the first Respondent (GPL) costs in the sum of one million dollars.

The Claimant appealed this decision to the Full Court. On December 5, 2019, the Full Court found that this Court having decided that costs were

appropriate erred in not assessing costs and remitted the matter to this court for costs to be assessed.

Pursuant to that ruling, GPL filed a Notice of Application (NOA) for assessed costs in the sum of \$5,700,000 (five million seven hundred thousand dollars). Attached to the NOA was a Bill of Costs claiming the sum of \$5,700,000 (fees in the sum of 5,000,000 and VAT 700,000). It stated the fees charged and paid as per an invoice dated 12 February 2019 which was attached represented an estimate of the hours spent in the action by Counsel for the Applicant in the context of the value of the subject matter and were approximately 0.2 % of the value of the subject matter of the litigation. The Table set out eleven fee items and the amount of hours spent on those items. Although the Bill of Costs made reference to rates sought for fees and the rates usually charged by the party's attorney-at law for the services it did not specify what those rates were. The Bill of Costs claimed fees for Counsel for the Applicant, an attorney of 23 years standing at the Bar.

A Claimant who discontinues a Claim is liable for the costs incurred by a Defendant against whom the claim is discontinued: Part 37.05(1) of the CPR 2016; Upon hearing proceedings for Administrative Orders, the court may make orders as to costs it considers just which costs must be assessed: Part 56.04 (4). In determining by whom, to what extent and by when costs must be paid the court may have regard to the factors enumerated in Part 64.02(2)(3)(4). Further, where an Order specifies that costs are to be assessed regard must be had to Part 64.05. Part 64.05 in so far as it is relevant to this application specifies that: (1) An application must be made on notice to a party liable to pay costs in writing by the party seeking assessed costs; (2) The applicant must attach its Bill of Costs in Form 64B showing the legal fees incurred in relation to the proceeding or part thereof and how the party's attorney-at-law's legal fees were calculated; See Part 64.04(4) (5). An attorney-at-law's bill is sufficient in form if it contains a reasonable statement or description of the services rendered with a lump sum there for: See Part 65.03(1)

In assessing costs the court may consider the factors such as the conduct of the parties, whether a party succeeded on particular issues; whether it was reasonable for a party to raise or pursue a particular issue, whether the successful party increased the costs of the proceeding by the unreasonable pursuit of issues; the manner in which a party pursued the case and whether

that manner increased the costs of the proceeding, whether the successful party exaggerated its claim and its conduct before and during a proceeding.

This Court in its ruling on October 2, 2019 at pages 4 to 6 of its decision considered the facts of this case and the factors in Part 64.2 and ruled that an award of costs was appropriate. The Full Court having reviewed the decision of this Court did not reverse this Court's finding as it relates to the appropriateness of a costs order and in this regard I decline the invitation, by Counsel for the Claimant to re-visit this aspect of the decision.

Assessment of Costs

In the case of ***Lownds v Home Office***[2002] EWCA Civ 365, Lord Woolf CJ in discussing the approach to be adopted in assessing costs stated:

"In other words what is required is a two-stage approach. There has to be a global approach and an item by item approach. The global approach will indicate whether the total sum claimed is or appears to be disproportionate having particular regard to the considerations which CPR r. 44.5 (3) states are relevant. If the costs as a whole are not disproportionate according to that test then all that is normally required is that each item should have been reasonable. If on the other hand the costs as a whole appear disproportionate then the court will want to be satisfied that the work done in relation to each item was necessary and, if necessary, that the cost of the item is reasonable."

In the instant case, it appears that the Applicant is claiming costs on an indemnity basis. The CPR 2016, however, does not recognise such a concept. Part 64.05(6) requires that the court in assessing costs to take into account any representations as to the *time* that was reasonably spent by the Attorney-at-law and must allow such sum as it considers *fair* and *reasonable*.

In the instant case, the Bill of Costs sets out eleven fee items and the amount of hours spent on those items but does not particularise the rates sought for fees and the rates usually charged by the party's attorney-at law for these services. Notwithstanding, considering the legal fees charged and the number of hours spent on the eleven fee items, the breakdown of the rates charged, would be approximately USD726 per hour(\$5,700,000 divided by 36 hours further divided by 218, the current rate of exchange offered at a commercial bank).

In the instant case, the Claimant approached the court by way of Urgent Exparte Application for Administrative Orders and for exparte interim relief

on January 22, 2019. Service was ordered, effected on 24th January 2019 and matter returnable for January 25, 2019. The application comprised of 130 pages and attached a flash drive containing a further 1800 pages of documents. This case involved Constitutional and Public Law and a consideration of the recent Judicial Review Act. The matter was of utmost importance to GPL who ran the risk of losing IDB funding for the contract. Retained and instructed, Counsel for the Applicant in a narrow window of time had to research, advise his client and prepare for litigation.

I find that the Fee items and hours devoted to that work do not appear to be unreasonable or unjustifiable.

In assessing costs this court must also consider the conduct of the Claimant. The Claimant unreasonably pursued an application for urgent interim relief, raised unnecessary issues and increased costs. He exaggerated his claim by refusing to accept that his loss was confined to damages.

While the work in relation to each fee item was necessary, this Court applying **Lownds** finds that the rate of \$726 USD is unreasonable and disproportionate to the weight, novelty and complexity of the matters in issue and would reduce this to an award in the sum of \$400 USD which I find to be fair to the standing of Counsel for the Applicant.

In the circumstances, costs are assessed in the sum of **\$3,139,200 GYD** (\$400 USD rate x 218 rate of exchange x 36 hours), an approximate rate of \$87,200 GYD per hour.

Priya Sewnarine-Beharry

Puisne Judge

31 August 2020.