

BERMUDA

SUPREME COURT

***Allison Thomas -v- Fort Knox Bermuda Limited* [2014] SC (Bda) 70 Com (11 September 2014)**

REVIEW OF REGISTRAR'S TAXATION - COSTS - ORDER 62

The Appellant Plaintiff appealed against the decision of the Registrar that it was open to the Defendant to tax its costs awarded by the Court in an earlier judgment. The Costs Order had provided as follows: “*The Plaintiff to pay the Defendant’s costs, taxed if not agreed. Enforcement stayed pending further hearing to be listed on the first available date in October 2011 or following determination of the Plaintiff’s Section 111 petition, if earlier*”.

The Appellant’s Counsel submitted that the Costs Order had not stayed taxation of costs and the Court had no power, in light of Order 62 Rule 29(1), to postpone the commencement of taxation beyond the standard six months. Counsel for the Respondent submitted that substantial justice favoured the receiving party, as the paying party had escaped paying costs since the date of the judgment, without any liability for interest. The Court’s powers on a review were generous, and if the Registrar was entitled to extend time for taxation, so was a Judge on review from her decision.

The Judge held there was no basis to support the proposition that, in staying enforcement, it was intended to stay taxation as opposed to merely enforcement of the obligation to pay pursuant to an order of taxation. The scheme of the Rules suggests that a trial Judge does not have that power, that power is conferred on the Registrar by Order 62 Rule 21. However, the Judge did not construe the Rules as excluding the Court’s inherent jurisdiction to grant a stay of taxation proceedings altogether, for instance, pending an application for leave to appeal or in other peculiar circumstances where such a stay may be just and convenient. However, a Costs Order which merely stays enforcement cannot properly be construed as, by implication, overriding the scheme

of Order 62 and staying the obligation to commence taxation proceedings within the time fixed by Rule 29.

The Judge then considered what consequences should flow from finding that the Costs Order, properly construed, did not postpone the Respondent’s obligation to commence taxation proceedings. In this respect, it was noted that non-compliance with the Rules, does not make any step taken in breach a nullity. The discretion to extend time is unfettered, and on an appeal from the exercise of this discretion, a Judge can exercise his own discretion anew: Order 62 Rule 35(4); Supreme Court Practice 1999, paragraph 62/21/1. The scheme of Order 62 Rule 29, moreover, provides a paying party who is aggrieved by the receiving party’s delay in proceeding with taxation with a specific remedy: commencing taxation themselves. As such, it was held that where a paying party has sought a stay of enforcement of a Costs Order and does not advise the receiving party that he will complain of delay if the receiving party does not proceed with taxation within a prescribed time period, justice clearly requires that an extension of time should be granted.

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