

## BRITISH VIRGIN ISLANDS

### COURT OF APPEAL

***Sheikh Mohamed Ali M Alhamrani and others -v- Sheikh Abdullah Ali M Alhamrani***  
**(Delivered on the 27 November 2017)**

BVI LITIGATION & RESTRUCTURING -  
COMMERCIAL LAW - APPEAL - ASSESSMENT OF  
COSTS - BURDEN OF PROOF IN COST  
ASSESSMENT PROCEEDINGS - WHETHER THE  
LEARNED JUDGE EFFECTIVELY REVERSED THE  
BURDEN OF PROOF AND REQUIRED THE PAYING  
PARTY TO PROVE THAT THE DISPUTED ITEMS OF  
THE CLAIM WERE UNREASONABLE AND SHOULD  
NOT BE ALLOWED - WHETHER THE LEARNED  
JUDGE MADE ERRORS IN PRINCIPLE IN  
CONDUCTING THE COST ASSESSMENT  
PROCEEDINGS - WHETHER THE LEARNED JUDGE  
IMPROPERLY EXERCISED HIS DISCRETION  
DURING THE COST ASSESSMENT PROCEEDINGS

In *Sheikh Mohamed Ali M Alhamrani and others -v- Sheikh Abdullah Ali M Alhamrani* the Court of Appeal considered an Appeal against the assessment of costs arising from unfair prejudice proceedings, a subsequent appeal to the Court of Appeal, as well as an injunction application. The costs awarded at first instance amounted to US\$9,361,244.02 (plus interest). The Court of Appeal's Judgment provides some useful guidance for practitioners in relation to costs assessment.

The Appellants complained that the trial Judge had effectively reversed the burden of proof and required them, as the paying party, to prove that disputed items of the costs claim were unreasonable and should not be allowed.

The Court of Appeal held that Part 65.2 of the *Civil Procedure Rules, 2000* ("CPR") sets out where the burden of proof lies in an assessment of costs and outlines the principles that the assessor should follow and that there was no room for the application of Rule 44.3 of the CPR, which covers substantially the same point. Rule 44.3 provides that in an assessment on a standard basis,

any doubt as to whether any costs were reasonable and proportionate in amount should be resolved in favour of the paying party. This case makes clear that that rule does not apply in BVI.

The burden of proof in the BVI rests throughout on the receiving party. In the present case, the fact that the Judge had given the Appellant an opportunity to give examples of what they claimed were unreasonable fees did not amount to overturning the burden of proof.

Perhaps also of interest to BVI law firms with offices abroad, the Court of Appeal determined in relation to travel time that the Learned Judge should have had more regard to the differences between attending court in England and travelling overseas to attend the Commercial Court in BVI (where there is likely to be significant 'down time' during travel because of long journey times).

The Court determined that 'down time' while travelling (i.e. non-working time associated with overseas travel) is not allowable and, accordingly, reduced travel time to be one-half the fee earner's usual hourly rate to reflect this.

Additionally the Court confirmed applying the decision in *Olive Group Capital Limited -v- Mayhew* BVIHC(COM)2015/115 (another case in which Conyers appeared, for the Applicants) the (now settled) point that in relation to pre-action costs, the costs claimed must be relevant in the sense that they were incurred to produce material that ultimately proves to be of use and service in the subsequent action.

The Court of Appeal also made some useful comments in relation to the relevance of the parties' conduct to costs award.

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