

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN CIVIL DIVISION

CLAIM NO 2006 HCV 02180

IN CHAMBERS

BETWEEN	JASPER BERNARD	CLAIMANT
AND	RADIO JAMAICA LIMITED	1 <sup>ST</sup> DEFENDANT
AND	MULTI-MEDIA JAMAICA LIMITED	2 <sup>ND</sup> DEFENDANT
AND	TELEVISION JAMAICA LIMITED	3 <sup>RD</sup> DEFENDANT

Mr Lawrence Philpotts-Brown instructed by Lawrence Philpotts-Brown and Co for the Claimant.

Mr Gavin Goffe instructed by Myers Fletcher and Gordon for the 1<sup>st</sup> Defendant.

**Civil Procedure – Costs – Appeal against taxation – Receiving party filing bill of costs out of time – Whether delay fatal – Judicature (Supreme Court) Additional Powers of Registrar Act, s. 4; CPR rr. 64.2, 65.18 and 65.19**

**7 and 13 June 2011**

**BROOKS J**

On 14 April 2008, Radio Jamaica Limited (RJR) succeeded against Mr Jasper Bernard in respect of a claim which he had brought against it. At that time it secured an order for costs in its favour. The costs were to have been taxed if not agreed.

Unfortunately, RJR failed to file its bill of costs within the three months specified by rule 65.18 (2) of the Civil Procedure Rules 2002 (the CPR). It filed the bill over a year later; on 14 July 2009. The bill came on for taxation before the registrar of this court on 19 January 2010 and Mr Bernard's attorneys-at-law protested the taxation. One of the bases of the protest was RJR's late filing of the bill. Despite the protest, the registrar taxed the bill in the sum of \$100,000.00.

Mr Bernard now appeals against the decision of the registrar and applies for it to be set aside. The main issue to be resolved is whether RJR's failure to comply with the time specified in rule 65.18 (2) renders its tardy bill of costs, sterile.

### **The law**

The matter of costs is governed by Parts 64 and 65 of the CPR. However, the procedure in relation to taxation proceedings is specifically governed by Rules 65.14-65.29. The relevant part of rule 65 (18) states:

“(1) Taxation proceedings are commenced by the receiving party-

- (a) Filing the bill of costs at the registry; and
- (b) Serving a copy of the bill on the paying party.

**(2) The bill of costs must be filed and served not more than three months after the date of the order or event entitling the receiving party to costs.”**  
(Emphasis supplied)

The rules go on to provide for the receiving party's (in this case RJR's), failure to comply with rule 65.18 (2). This is done in rule 65.19, which states:

“(1) When the receiving party fails to commence taxation proceedings in accordance with 65.18(2) the paying party may apply for an order requesting the receiving party to commence taxation proceedings within such time as the Registrar may specify.

(2) On an application under paragraph (1), the registrar may direct that unless the receiving party commences taxation proceedings by a date specified by the registrar, all or part of the costs to which the receiving party would otherwise be entitled will be disallowed.

(3) Whether or not an order is made under paragraph (2), the court may-

- (a) disallow all or part of statutory interest on the costs in respect of any period of delay ;
- (c) disallow all or part of the costs of taxation that might otherwise be awarded to the receiving party.

On the face of rules cited, it would seem that the receiving party is unable to properly file a bill of costs out of time, unless he is given a life-line by the paying party. That life-line would be an application by the paying party pursuant to rule 65.19 (1). In

my view, however, rule 65.19 (3) also gives the receiving party a life-line. The latter rule clearly gives the court the right to tax a tardy bill, which is filed without the benefit of an application having been made by a paying party. This is because rule 65.19 (3) allows the court, which is taxing the bill, to apply a sanction as punishment for the receiving party's delay.

Although the term "court" is used in rule 65.19 (3), whereas almost everywhere else in the rule uses the term "registrar", I find that that use does not prevent the registrar from taxing the tardy bill. I so find, because of the definition given for the term "taxation" and because of the powers given to the registrar by the legislature. Rule 64.2 (2) states, in part:

**"taxation"** means the procedure by which the amount of costs is decided by the registrar in accordance with Section 2 of Part 65"

The registrar, having been given the authority to conduct taxations, has the power of the court or a judge, in exercising that authority. That is the effect of section 4 of the Judicature (Supreme Court) Additional Powers of Registrar Act. In the circumstances, I hold that the registrar may, not only conduct the taxation of a tardy bill, which taxation is implicitly authorised by rule 65.19 (3), but may also apply the sanction provided thereby.

There are two previously decided cases which support the view that a tardy bill of costs may be taxed, despite the absence of an application by the paying party. In the first, *Williams and others v Roberts and another* 2003 HCV 0908 (delivered 15 January 2008), Thompson-James J held that a bill of costs may be filed out of time and that a tardy filing, "does not automatically disentitle the receiving party to the costs awarded nor does it entitle the receiving party to basic costs only" (page 6).

The second case is *Auburn Court Limited and another v National Commercial Bank Jamaica Ltd* SCCA 27 of 2004 (delivered 18 March 2009). In *Auburn Court*,

Harris JA, after referring to the power conferred by rule 65.19 (3) ruled that rule 69.18 (2) was directory in effect, rather than mandatory. She concluded at paragraph 15 of her judgment:

“It follows that the word “must” within the context of Rule 65.18 (2) is merely directory and therefore does not impose upon the receiving party any obligation to adhere strictly to the filing of a bill of costs within the requisite period.”

Whereas I agree with Mr Philpotts-Brown, for Mr Bernard, that time periods set by the rules must be obeyed, if the rules allow for flexibility in compliance, then the flexibility in the rule must be given its effect. I also disagree with learned counsel in respect of his submission that the registrar, having been given a discretion by rule 65.19, should decline to tax a tardy bill of costs unless the receiving party has placed material before the registrar explaining why the bill was filed late.

In my view, rule 65.19 does not give the registrar a discretion to refuse to tax the tardy bill. What it does, is to give the registrar the option to apply a sanction for the default. The particular sanction is specified and the registrar is not allowed to impose a different sanction, of his or her choosing.

Mr Goffe, appearing for RJR, correctly pointed out the difference between the sanctions which may be applied, depending on whether or not the registrar issued a direction under rule 65.19 (2). In the event that a paying party complains about the failure of the receiving party to file its bill of costs on time, the paying party may be in a better position, than if it merely sat back and hoped that a bill would not be filed.

Where the paying party is proactive and requests, pursuant to rule 65.19 (1), the registrar’s direction, and the registrar does issue the direction specified in rule 65.19 (2), the paying party may be able to convince the registrar to disallow all or a portion of the costs to which the receiving party is entitled. The registrar may also apply the sanctions allowed by rule 65.19 (3).

In the event that the paying party, or the registrar, fails to act promptly in accordance with rule 65.19 (1) and (2), the range of sanctions allowed thereafter, is restricted to those specified by rule 65.19 (3). When the receiving party does, eventually, file its bill of costs, the paying party, in those circumstances, is restricted to requesting sanctions in respect of disallowing a portion of the interest on the bill and/or disallowing the costs associated with the taxation. Those are the only sanctions that the court may impose at that stage.

### **Application to the instant case**

In light of the findings made above, I find that the registrar was entitled to tax the bill of costs filed by RJR, despite the fact that it was filed late. The late filing did not allow the registrar to decline to conduct the taxation. Since Mr Bernard made no request pursuant to rule 65.19 (1), the registrar was only entitled to apply the sanctions provided for by rule 65.19 (3). As mentioned above, those sanctions only address the matters of interest and the costs of taxation. The registrar did not, it appears, impose any such sanctions against RJR. The order is silent in respect of interest on the taxed bill, but the registrar did allow costs of the taxation.

Based on the above I find that the appeal must fail.

Ordered that:

1. The appeal against the decision of the registrar on the taxation is dismissed.
2. Costs to the 1<sup>st</sup> Defendant to be taxed if not agreed.