

**Judgment 7/2009**

**Ogier v Grand Havre Holdings Ltd – Royal Court  
(Civil Action File 203, Civil Appeal File 376) – 9  
February 2009**

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**Taxation – Royal Court (Costs and Fees) Rules, 2008 – failure by receiving party to specify the relevant hourly rates of charge during period 2000-2007 – benefit of the doubt given to the receiving party**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

Civil Appeal 376  
Civil Action File 203

The 9th day of February, 2009, before Peter Haworth, Esquire, Lieutenant Bailiff; sitting alone

In the matter of

Between:

MAUREEN SYLVIA OGIER

(Paying Party)

and

GRAND HAVRE HOLDINGS LIMITED

(Receiving Party)

In the matter of the application by the Paying Party for taxation of the bill of costs submitted by the Receiving Party in the proceedings in the Royal Court and in the Court of Appeal, which concluded in the Court of Appeal on the 25<sup>th</sup> day of September, 2007;

The Lieutenant Bailiff, having heard the Paying Party in person and Advocate M.G.A. Dunster for the Receiving Party thereon, GAVE JUDGMENT in the terms attached hereto and:-

1. With the consent of the Paying Party, ALLOWED the claim for costs prior to 29<sup>th</sup> June, 2000, in the sum of £2,118.50;
2. ALLOWED the claim for costs from 29<sup>th</sup> June, 2000, onwards in the reduced sum of £27,500;

3. AWARDED interest to date of £3,258.85 on the total recoverable costs of £29,618.50 calculated at the judicial rate of 8% from 25<sup>th</sup> September, 2007; and
4. After hearing the parties thereon, AWARDED costs to the Receiving Party in respect of the taxation on the standard recoverable basis, and summarily ASSESSED those costs at £1,000.

K H TOUGH  
Her Majesty's Greffier.

**OFFICIAL TRANSCRIPT**

smon/OgierTaxation 9.2.09

**MONDAY 9<sup>TH</sup> FEBRUARY 2009**

**IN ROYAL COURT 3**

**Before**

**Peter Haworth, Esquire**

**Lieutenant Bailiff**

**MAUREEN OGIER v. GRAND HAVRE HOLDINGS LTD.**

**Taxation Hearing**

**Judgment given by Peter Haworth, Esquire**

THE LIEUTENANT BAILIFF:

1. This is a judgment in relation to the taxation of the costs of this case. I start by saying that I have read the Advocates files of papers lodged in relation to this very long and convoluted litigation which culminated in the Appeal Court dismissing Mrs Ogiers appeal in September 2007.
2. I have looked at the Bill of Costs which has been presented to me in a slightly unusual format. In particular whilst the bill isolates the time each fee earner has spent on the matter, it does not isolate the amount claimed pursuant to the Guernsey rules, with regard to the recovery of costs. I take on board what has been said to me by Advocate Dunster with regard to how the bill has been prepared, and I now understand how it has been constructed.
3. I have also borne in mind the objections that have been made to the bill by Mrs. Ogier in her correspondence, her points of dispute raised on 31<sup>st</sup> October 2008, and in other correspondence which appears to be dated 15<sup>th</sup> October. I have also taken into account the replies that have been filed by Advocate Dunster on behalf of the receiving party, the Defendants, in this case. I am asked to take a broad brush view with regard to the recovery of costs. Using my experience in relation to these matters, having looked at the files reviewed and cross-referenced a number of the attendances to the file, I have the following comments to make:
4. In relation to "hearing time" I readily accept that the total time of 37 hours 18 minutes is recorded. I have analysed the number of attendances before the Court and they come to no less than twelve in total, be it in respect of Court of Appeal, the substantive hearing which struck out the Claimant's claim or previous directions

hearings before Lieutenant Bailiff Hancox. I do not have an issue with regard to Court attendances.

5. So far as “personal consultation” is concerned, claimed at 4 hours, again, I do not have an issue with that or with correspondence, bearing in mind that the correspondence that I have seen spans a period of some seven years, albeit that for at least two and a half of those years the Defendant, the receiving party, had closed its file in relation to the matter. E-mail correspondence at 54 minutes is also not an issue so far as I can see. Likewise, perusals or skeleton arguments respectively claimed at 4 hours 6 minutes and 2 hours 30 minutes and telephone calls at 5 hours, are in my judgment reasonable. The time has to be seen in relation to the context of this litigation, which was substantial, it was relatively complex, it was a moving feast in the sense that the Defendants did not always know what case they were going to have to meet and therefore I can understand the time taken in relation to those issues.
6. Where I do have an issue is in relation to items 2, 6, 8 and 10, which are preparation generally, perusals, attending generally, and drafting, and I calculate certainly items 2, 8 and 10, leaving out perusals, total some 174 hours 24 minutes. I remind myself that this is a standard basis taxation. The question I have to determine is what is reasonable for the paying party to have to pay and that any doubt as to reasonableness must be exercised in Mrs Ogier’s favour. Bearing in mind that the hourly rates for each item of work are not set out in the bill, one way of dealing with the matter is to reduce the costs to what would be the recoverable rate in 2000. In other words, there has been a failure by the receiving party to isolate the relevant hourly rate of charge for each individual item, to give Mrs. Ogier the benefit of the doubt and therefore to reduce the figure to what would be the lowest acceptable recoverable rate namely £150 an hour. If one carries out that exercise in relation to items 1 to 10 it reduces the bill to £31,000- or that aspect of the bill- to £31,785.
7. The problem, of course, with that is that that allows for certain fee earners, such as Messrs. Allen, Foster and Ferguson, for example, to recover at £150 per hour and that equally would be wrong as their recoverable rate is less. If one factors in their costs at 50% of the figure that I have referred to the costs are reduced by a further £1,800 and in round figures brings the recoverable costs, utilising the lowest recoverable rate in round figures, and using a broad brush approach, to £30,000.
8. Is that reasonable for the work that has been done? When one looks at the file in some detail, in my judgment, preparation time is somewhat on the high side. I take on board what Advocate Dunster has told me about the fact that Guernsey has a fused Bar. Accordingly ‘preparation for trial’, to use that word in a general sense, is different here from in England Nevertheless, when I have looked at the individual items of work, cross-referenced against some of the preparation items, it appears in my judgment, that preparation is somewhat on the high side.
9. That being said, and being invited now by both parties to take a broad brush view of the amount of costs, I allow the costs shown in the Bill of £1,380. I allow the costs shown in the Bill at £738.50 and in respect of the schedule of costs under the Royal Court Rules 2000, as amended, claimed at £35,082.05 exclusive of interest, I am

going to allow £27,500; therefore the sum claimed of £35,082.05 is taxed at £27,500. That will necessitate the interest figure to be recalculated and I shall leave that to Advocate Dunster to resolve.

10. Finally to recap; the total costs or the total recoverable costs will be, and what I am prepared to allow by way of a final costs certificate or order of Court, will be in the sum of £29,618.50.

ADVOCATE DUNSTER: With interest, I have chosen 28<sup>th</sup> September to run at 8% simple to the day of payment.

THE LIEUTENANT BAILIFF: At 28<sup>th</sup> September of?

ADVOCATE DUNSTER: Of 2007.

THE LIEUTENANT BAILIFF: That, presumably is the date of the final order?

ADVOCATE DUNSTER: Yes, sir.

THE LIEUTENANT BAILIFF: Yes, well, presumably, according to the Rules interest will run from that date. There is no reason why it shouldn't run at 8%, if that's the appropriate rate, then that's the rate.

ADVOCATE DUNSTER: Yes, sir, that's the appropriate rate, I'm just anxious there should be no misunderstanding and then it will be left for me to simply do the mathematical exercise on the number of days-

THE LIEUTENANT BAILIFF: On the number of days and presumably that can be agreed with the Greffier?

ADVOCATE DUNSTER: Yes, sir.

THE LIEUTENANT BAILIFF: The total costs I am ordering you to pay then, Mrs. Ogier, are £29,618.50. It is a matter for you now to decide whether you want to apply for a stay on the basis of what we discussed earlier or whether you simply will- however you want to deal with the matter, that's a matter for you. Are there any other applications, Mr. Dunster?

ADVOCATE DUNSTER: Sir, I think you have the power to order the costs of the taxation.

THE LIEUTENANT BAILIFF: I normally have.

ADVOCATE DUNSTER: Of course this application has not sprung out of nothing, the amount of work involved, and all this, I would invite you simply to make a summary ruling in a fixed figure today so that there can be finality.

THE LIEUTENANT BAILIFF: Can you give me some indication of the length of time that it's taken you to prepare?

ADVOCATE DUNSTER: Sir, I- the answer is that it has taken many hours but I invite the Court to choose a figure of perhaps £1,000 which would represent part of my time but many more hours of a non-Guernsey qualified advocate's time at half that rate.

THE LIEUTENANT BAILIFF: Alright-

ADVOCATE DUNSTER: Bearing in mind the recoverable rate is now in excess of £200 an hour- £206 an hour.

THE LIEUTENANT BAILIFF: £200 an hour. And like most Court proceedings, Mrs. Ogier, taxation proceedings are no different in the sense that the winning party is entitled to ask for their costs. They are in other words asking for their costs of these taxation proceedings and they are asking for me to make a summary assessment of those costs today without looking at any further documentation. They are simply saying that they are prepared to accept a figure of £1,000 by way of the costs of taxation. Mr. Dunster is saying that it has taken many more hours than effectively 5 hours, which is what £1,000 represents of his time, to prepare for today.

MRS. OGIER: Yes, I understand. I don't get paid £200 an hour if I do any work, which is unfortunate.

THE LIEUTENANT BAILIFF: Well, Advocate Dunster gets paid a great deal more than £200 an hour, that's his recoverable rate to you.

MRS. OGIER: Yes, well I don't get paid any more than that either.

THE LIEUTENANT BAILIFF: Well, if it's any consolation neither do I but that doesn't get us round the application that is being made for costs.

MRS. OGIER: No, I understand. I do find 8% very high for Guernsey though.

THE LIEUTENANT BAILIFF: Well, I'm afraid I don't set the rules and if the rules are, with regard to interest at 8%, then 8% it is, I'm afraid. So far as the question of costs are concerned I have to say that Advocate Dunster's application for costs at £1,000 is a very modest one in the circumstances, bearing in mind- and I know, I can see what work has gone into the preparation for today, the bundles that were prepared have been very useful in assisting me in what was not a straightforward case-

MRS. OGIER: Yes, sir, because I'm not privy to seeing the work that's gone into it, am I?

THE LIEUTENANT BAILIFF: Well, no, because of course they are the Defendant's files and they have the benefit of litigation privilege.

MRS. OGIER: This is why I didn't understand when I received the bill just, you know, the way it was percented.

THE LIEUTENANT BAILIFF: Alright, well, I've tried to explain that to you as we've gone through it today-

MRS. OGIER: Yes, I understand.

THE LIEUTENANT BAILIFF: And what I'm going to do therefore is to, in addition to the figure that I've just ordered, I'm going to order you, Mrs. Ogier, to pay the costs of taxation but limited to £1,000.

MRS. OGIER: So that means he can go and get a Court Order and come and seize my goods now or what happens?

THE LIEUTENANT BAILIFF: Well, that's really not for me to say, I'm afraid, that's for you perhaps to discuss the next steps with Advocate Dunster and/or take separate legal advice. So do I take it that there are no further applications from either of you?

ADVOCATE DUNSTER: No, sir.

MRS. OGIER: No. I have to go through the Court for a stay of execution?

THE LIEUTENANT BAILIFF: I'm sure the Greffier will give you some information concerning that if you need it. Alright, thank you very much.

**(4.29 p.m. Hearing concludes)**

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I, Suzanne Margaret O'Neill, hereby certify the foregoing to be a correct and complete extract, prepared to the best of my skill and ability from the tape-recording of the proceedings in this case.

..... Suzanne M. O'Neill  
Wednesday 11<sup>th</sup> February 2009