

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FSD CAUSE NO. 143 of 2010

BETWEEN

OPPORTUNITY EQUITY PARTNERS LIMITED

Plaintiff

And

LUIS ROBERTO DEMARCO ALMEIDA

Defendant



Ms. L. Clemens for the Plaintiff

Ms. D. Owen for the Defendant

Henderson, J.

Hearing: June 6, 2014

Ruling: September 24, 2014

**RULING**

1. After he obtained a successful result at trial, the Defendant was awarded costs in the amount of US \$648,219. Both parties then asked for a review of the award by a judge of this Court under Order 62 rule 30 of the *Grand Court Rules*. My Judgment of May 25, 2012 resolved most of the issues and concluded by granting liberty to apply to each party. A number of further issues were presented to me in a hearing on June 6, 2013.

Most of these latter issues were resolved by oral rulings made during the hearing. With respect to one issue (having to do with the recoverability of interest on the award of costs), I requested written submissions on points of law. Another issue – the recoverability of costs for work done by Quin & Hampson – was raised for the first time at the June 6 hearing so I invited written submissions on that question also.

2. At the conclusion of the June 6 hearing I was advised that the effect of my earlier Judgment and of the oral rulings I had made was that the Defendant would receive some \$46,634.87 more than he had been awarded by the Taxing Officer. For that reason, I awarded him his costs of the review to that date. In my order pronounced June 6, 2013 and entered on July 10, 2013 clause 7 reads:

*The Plaintiff shall pay the Defendant's costs of and associated with the cross-applications for review by a Judge, issued on the 14<sup>th</sup> day of November 2003 and the 19<sup>th</sup> day of December 2003, respectively, to be assessed by the Court following the Defendant providing to the Court the sum actually incurred in costs by the Defendant.*

3. The final two outstanding issues were resolved in my written Judgment of August 29, 2013. In my Judgment under the heading "Costs of this Review of the Taxing Officer's Decision", I said the following:

*My decisions given during the oral hearing on this review were divided between the parties in approximately equal proportions. OEP has been substantially successful on the issues addressed in this written ruling and in other circumstances might be entitled to its costs. However, its failure to make the argument mentioned above about Quin & Hampson's fees until the 11<sup>th</sup> hour is to be deprecated. Consequently, I am exercising my discretion against awarding the costs of this review to either party.*  
[underlining added]

4. Unfortunately, this procedural history and the language of the order and Judgment quoted above have caused confusion and have generated further written submissions by the parties. I have, arising from Order 62 rule 4(5) and rule 4(7)(c), (e) and (f), a jurisdiction to award costs for part of a proceeding. At the conclusion of the June 6 hearing I was satisfied that the Defendant should have his costs to that date of the review, that these should be assessed costs, and that this result would be unaffected by any decision I might make on the two outstanding issues. On the other hand, I was satisfied when I issued my August 29 Judgment that the Plaintiff, although substantially successful on these last two issues, should be denied its costs from June 7 onward for the reason stated. I do not agree that my two costs rulings are inconsistent or that I am limited to making just one overall decision on costs. However, I accept that the underlined passages quoted above should not appear in the Judgment, are inapt, and no doubt caused at least some of the confusion.



**Order**

5. My Order is that:
- (a) the Plaintiff shall pay the Defendant's costs of the cross-applications for review by a Judge up to and including June 6, 2013, to be assessed by the Court following the Defendant providing to the Court the sum actually incurred in costs by the Defendant; and

(b) for that part of the review conducted after June 6, 2013 I make no order as to costs.

*Henderson, J.*

Henderson, J.

