

SOUTH AFRICA / JUDGMENT

Alpherea Financial Services v Grove (6299/11) [2011] ZAKZPHC 55 (1 September 2011) [2011] ZAKZPHC 55

COURT

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Ploos van Amstel

CASE / FILE NUMBER

6299/11

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IN THE KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG

REPUBLIC OF SOUTH AFRICA

CASE NO: 6299/11

In the matter between:

ALPHERA FINANCIAL SERVICES

a division of BMW financial services (South Africa) PTY LTDPlaintiff

and

CARL GROVEDefendant

REVIEW OF TAXATION Date: September 2011

Ploos van Amstel, J

- [1] This is a review of a ruling of the taxing master in terms of rule 48 of the Uniform Rules. The ruling with which the defendant is dissatisfied relates to the amount of counsels fees which the taxing master allowed as part of the costs occasioned by an adjournment.
- [2] The matter arises out of an apposed application for summary judgment. On 10 January 2011 the matter was adjourned the 3 May 2011 on the apposed role the plaintiffs heads of argument were filed with the registrar on the 19 April 2011 on 14 January 2011 the plaintiffs attorneys delivered a notice confirming that the matter would proceed on the opposed motion court roll on 3 May 2011 and would be argued.

- [3] On the 3 May 2011 the matter came before Patel AJP who adjourned the matter the 9 June 2011 on the opposed role and directed the defendant to pay the costs occasioned by the adjournment.
- [4] A bill of costs was prepared and submitted to the taxing master. The costs occasioned by the adjournment on 3 May 2011 were taxed in an amount of R9 865, 18 this included a sum of R 7000 in respect of counsel's fees.
- [5] The notice by the defendant's attorneys to the taxing master requiring her to state a case for the decision for a judge in terms of rule 48(1) relates to one item only, namely the sum of R 7000.00 in respect of counsel's fees.
- [6] The taxing master stated that counsel's fee note stipulated a sum of R 2500.00 in respect of heads of argument and a further sum of R 7000.00 in respect of the opposed application. She disallowed the sum of R 2500.00 as she did not regard this as a wasted cost. She allowed the amount of R7000.00 because in her view it was reasonable and less than the amount usually allowed by the taxing master in respect of counsel's fees for opposed applications, which is between R 9000.00 and R 13 000.00.
- [7] In the plaintiffs written contentions reference is made to a document headed "survey of fees ordinarily charged by Silks as at 1 July 2004 ". The plaintiff's attorney sought to justify the fee of R7000.00 with reference to the survey which reflects a daily rate of R 9000.00 and R 15000.00 for counsel between 0 and 5 years. The attorney has misread the document. The survey of fees annex to the plaintiffs written contentions relates to fees charged to senior counsel. The reference to "0 – 5 years "is a reference to counsel who have been Silks for between 0 - 5 years.
- [8] In the defendants reply to the taxing masters stated case and the plaintiffs written contentions it is contended that the taxing master does not normally allow a separate fees for a heads of argument and that such fee is included in counsels fee allowed in respect of an opposed application. On that basis it is contended that the sum of R 2500.00 should be deducted from the sum of R 7000.00 charged in respect of the opposed application. This is refuted by the taxing master in her reply, who says that the fee allowed by her in respect of opposed applications does not included the fee for drafting heads of argument. She deals with them separately. She did not regard the fee for charged for heads of argument as a wasted cost and on that basis disallowed it. The fee of R 7000.00 which she allowed in respect of the opposed application did therefore not include any allowance for heads of argument.
- [9] The rest of the contentions in the defendant written submissions relate to the circumstances which lead to the adjournment on 3 May 2011. They are irrelevant to this review because of the order made by Patel AJP that the defendant was to pay the costs occasioned by the adjournment. It is not for me to consider whether or not he should have made that order.

[10] In the circumstances I am not persuaded that the taxing master erred in allowing counsel's fees in the sum of R7000.00 as part of the cost occasioned by the adjournment.

[11] The review of taxation is dismissed with costs.

PLOOS VAN AMSTEL J

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