

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CHAMBERS

CITATION : GLEW -v- SHIRE OF GREENOUGH [No 2] [2008]
WASCA 75

CORAM : BEECH J

HEARD : 27 MARCH 2008

DELIVERED : 27 MARCH 2008

PUBLISHED : 4 APRIL 2008

FILE NO/S : CACV 3 of 2006

BETWEEN : WAYNE KENNETH GLEW
First Applicant

KYLIE JUNE GLEW
Second Applicant

AND

SHIRE OF GREENOUGH
Respondent

Catchwords:

Practice and procedure - Costs - Taxation of costs - Application to review certificate of taxation - Turns on own facts

Legislation:

Rules of the Supreme Court 1971 (WA), O 66 r 55

Result:

Application dismissed

Category: B

Representation:

Counsel:

First Applicant : In person
Second Applicant : In person, by Mr W K Glew
Respondent : Mr L D Hilton-Barber

Solicitors:

First Applicant : In person
Second Applicant : In person, by Mr W K Glew
Respondent : Civic Legal

Case(s) referred to in judgment(s):

Australian Coal and Shale Employees' Federation v Commonwealth (1956) 94
CLR 621
Glew v Shire of Greenough [2006] WASCA 260
Glew v Shire of Greenough [2006] WASCA 260 (S)
Glew v Shire of Greenough [2007] HCATrans 520
Mossensons v Coastline Associates (Unreported, WASCA, Library No 970661,
2 December 1997)
Pryles and Deferos v Green [1999] WASC 34; (1999) 20 WAR 541
Shaw v McGinty [2006] WASCA 231

1 **BEECH J:** On 1 December 2006 the Court of Appeal dismissed an
appeal by Mr and Mrs Glew: *Glew v Shire of Greenough* [2006]
WASCA 260. The appeal related to an action which had been heard in
the Local Court in respect of arrears of rates and some associated matters.

2 On 10 January 2007 the Court of Appeal ordered that Mr and
Mrs Glew pay the respondent's costs of the appeal to be taxed: *Glew v*
Shire of Greenough [2006] WASCA 260 (S).

3 Mr and Mrs Glew brought an application for special leave to appeal
to the High Court from the primary decision of the Court of Appeal. That
application was dismissed: *Glew v Shire of Greenough* [2007]
HCATrans 520.

4 On 30 August 2007 the respondent lodged a bill of costs for taxation
pursuant to the order made by the Court of Appeal on 10 January 2007.

5 On 8 November 2007 the taxation came before Registrar Powell. He
adjourned the hearing of the taxation sine die, ordering that an amended
bill of costs be filed and served by the respondent by 24 November 2007.

6 The file reveals that by letter of 9 November 2007 Mr Glew made
objections to the taxation of the bill of costs. On 16 November 2007 the
Registrar responded to the letter stating that at present there was no taxed
bill which could be reviewed. The letter concluded by stating that when
an amended bill was filed and taxed, Mr Glew could then request a review
of it if that was his intention.

7 On 21 November 2007 the respondent lodged an amended bill of
costs.

8 On 30 January 2008 the taxation of the bill of costs took place.
Registrar Powell taxed the respondent's amended bill of costs and allowed
costs in the amount of \$8,415.46. On that day, the Registrar certified that
he had taxed the bill of costs and allowed it at that sum, and signed the
certificate to that effect.

9 A transcript of the hearing before the Registrar is not available. The
Registrar's notes record that Mr Glew, on behalf of the applicants,
challenged the right of the Registrar to be in the court, and that at the
completion of the taxation the Registrar explained to Mr Glew his right to
have the taxation reviewed. The notes also record that Mr Glew did not
challenge the amount allowed. Mr Glew said that he intended appealing
on the grounds that the Registrar had no right to be in court.

BEECH J

10 The certificate was signed, as I have said, by Registrar Powell on
30 January 2008, the day of the taxation. I infer that the Registrar took
that step in the light of Mr Glew having said that he did not challenge the
amounts allowed by the Registrar.

11 On 15 February 2008 the applicants filed a chamber summons
entitled, 'Chamber summons in relation to review of bill of costs in matter
CACV 3 of 2006, Order 66 rule 55'. It is that summons which is before
me.

12 An affidavit of Mr Glew sworn 11 February 2008 was also lodged on
15 February 2008. The affidavit was in the following terms:

- (1) I state that Registrar Powell refused to deal with a challenge to his
jurisdiction.
- (2) I further state that Registrar Powell refused to deal with a revealed
fraud on the Court.
- (3) I further state that Registrar Powell refused to deal with revealed
indictable offences.
- (4) I further state that Registrar Powell refused to deal with
constitutional issues raised.

13 Evidence beyond what was before the taxing officer is not admissible
on review without leave of the court; *Rules of the Supreme Court 1971*
(WA) O 66 r 56. However, in this case I treat the affidavit as a statement
of the applicant's grounds for review.

14 On 20 March 2008 the applicants filed a document entitled
'Statement of Issues'. The document identified the issue for determination
as the assertion that Registrar Powell sat out of jurisdiction when
determining the bill of costs, therefore invalidating any orders made by
him. Some 10 subparagraphs were set out in that document in support of
the contention that Registrar Powell did not have jurisdiction to tax the
bill of costs.

15 For the reasons which follow, I find that this application fails on both
procedural and substantive grounds.

16 Order 66 r 55 of the *Rules of the Supreme Court* must be read in the
context of r 53 to r 56 of that order. Rule 53, r 54 and r 55 are in these
terms:

53. Party dissatisfied with taxation may object

- (1) A party who contends that the Taxing Officer has made an error in principle in allowing or disallowing any item or part of an item in a bill of costs taxed by him may, at any time before a certificate of taxation dealing finally with that item is signed, or at such earlier time as may, in any case, be fixed by the Taxing Officer -
 - (a) deliver to the other party interested in the allowance or disallowance and carry in before the Taxing Officer, an objection in writing to the allowance or disallowance specifying in the objection by a list, in a short and concise form, the items or parts of items objected to, and the grounds and reasons for the objections; and
 - (b) thereupon apply to the Taxing Officer to review the taxation in respect of those items or parts.
- (2) Pending the consideration and determination of the objection, the Taxing Officer may if he thinks fit issue a certificate of taxation for or on account of the remainder or of part of the bill of costs. Any further certificate which may be necessary shall be issued by the Taxing Officer after his decision upon the objections.

54. Taxing Officer may review taxation

- (1) Upon an application under the last preceding Rule to review the taxation, the Taxing Officer shall reconsider and review his taxation in relation to the objections, and he may, if he thinks fit, receive further evidence in respect of the objections.
- (2) If so required by a party, the Taxing Officer shall state in his certificate of taxation or by reference to the objection, the ground and reason of his decision on the objection, and any special facts or circumstances relating to his decision.
- (3) The Taxing Officer may tax the costs of the objections and add them to or deduct them from, any sum payable by or to a party to the taxation.
- (4) Except as provided by this Rule, the Taxing Officer shall not, after a certificate of taxation is signed, review his taxation or amend his certificate, except to correct a clerical or manifest error before payment or process issued for recovery of the costs.

- (5) If a party fails to appear on the taxation the Taxing Officer may, upon an application in that behalf made in writing within 7 days, set aside or vary his certificate of taxation on such terms as he thinks just.

55. Taxation may be reviewed by a Judge

- (1) If a party is dissatisfied with the certificate of the Taxing Officer as to any item or part of an item objected to under Rule 53 of this Order, he may, within 14 days from the date of the certificate, or such other time as the Court, or the Taxing Officer at the time he signs his certificate, allows, apply to a Judge in chambers for an order to review the taxation as to that item or part of an item.
- (2) The Judge, if of opinion that the Taxing Officer has made an error in principle, may thereupon make such order to rectify the error as the Judge thinks just.
- (3) The certificate of the Taxing Officer is final and conclusive as to all matters which have not been objected to in accordance with these Rules.

17 Order 66 r 55 is engaged only in relation to items objected to under O 66 r 53.

18 In respect of items the subject of objection under O 66 r 53, the judge may, if of the opinion that the taxing officer has made an error, make such orders to rectify the error as the judge thinks just. No objection under O 66 r 53 was made by the applicants, with the result that no power arises under O 66 r 55. On an application to the Court under O 66 r 55, only items covered by objections carried in before the taxing officer may be considered - *Australian Coal and Shale Employees' Federation v Commonwealth* (1956) 94 CLR 621, 626. For that reason the application must be dismissed.

19 Further and in any event, the application fails on the 'merits', and would fail even if it were treated as an application under the court's inherent jurisdiction to set aside the certificate of taxation. (As to the Court's inherent jurisdiction to set aside a certificate of taxation, see *Mossensons v Coastline Associates* (Unreported, WASCA, Library No 970661, 2 December 1997), and *Pryles and Defteros v Green* [1999] WASC 34; (1999) 20 WAR 541.)

20 The application does not complain of the amount allowed in respect of any particular item; nor does it complain of the basis of taxation for all or any of the items. Rather, the applicants assert that the Registrar did not

have jurisdiction to tax the bill of costs. There is no merit in that assertion. The Registrar's jurisdiction to tax the bill of costs arises directly from the order of the Court of Appeal that the appellants in the appeal (who are the applicants in this application), pay the respondent's costs of the appeal to be taxed.

21 There is no merit in the 10 contentions set out in the applicants' statement of issues dated 20 March 2008 said to support the proposition that the Registrar 'sat out of jurisdiction'. Nor is there any legal merit in the oral submissions made in support of those contentions.

22 The contentions set out in the statement of issues largely seek to re-agitate arguments put to, and rejected by, the Court of Appeal in this matter. The contentions also include vexatious and unsubstantiated assertions of fraud and of the commission of indictable offences.

23 The applicants have not established any error of principle on the part of the Registrar, nor established any other ground, to enable this court to set aside the Registrar's certificate of taxation.

24 In oral submissions before me this morning, Mr Glew has also raised the question of my authority to sit. Were I to accept his submission, it would lead to the position that I would be unable to determine the application which he has brought. However, that position does not arise because, in my opinion, his contentions in this respect fail. Mr Glew's submissions as to the absence of authority on my part to sit as a judge of this court were, to a large extent, incomprehensible in any legal sense. Insofar as they were comprehensible, the contentions are in my opinion misconceived and devoid of legal merit. I refer in this respect to the decision of the Court of Appeal in this matter [2006] WASCA 260 [16] - [20]; and also to the decision of the Court of Appeal in *Shaw v McGinty* [2006] WASCA 231. Insofar as the oral submissions have been put on a different basis from what was advanced in these cases, they are, so far as they are comprehensible, in my opinion without legal merit.

25 For the reasons which I have given the application must be dismissed.