

JERSEY / JUDGMENT

Autorain Ltd v Pires [2002]

JRC 83 (23 April 2002)

[2002] JRC 83

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judgment

the Commissioner: 1. This is a claim for work done by the plaintiff on the defendant's property. Invoices were sent on the 9 th June, 2000, amounting to £6,418.54. On the 27 th June, 2000, the defendant sought to challenge the quantum and offered £5,418 in full and final settlement. 2. This was refused by the plaintiff on 2 nd July, 2000, when he raised his invoices to £6,622.24 and, crucially, offered to meet the defendant and his legal advisers either on site, or at the latters office. 3. This offer was not taken up by the defendant and on 8 th August, 2000, the plaintiff wrote and reduced the claim to £6,424.24. No response having been received, proceedings followed. The Order of Justice being dated 5 th October, 2000. The defendant issued an answer together with a counterclaim which repeated the offer of £5,418. This was dated 3 rd November, 2000, and was accompanied by a letter suggesting that the claim be referred to a third party for adjudication. This was not acceptable to the plaintiff. 4. There the matter rested until the 22 nd March, 2001, when, again, the defendant repeated the offer. Once again, the plaintiff did not accept this. This was followed by correspondence on 2 nd October, 2001, and as late as the 17 th April, 2002, which the plaintiff's counsel submitted served to reinforce the contentions of the counterclaim. 5. Counsel for the defendant advised the Court that on 18 th April an offer was made by the defendant to hand over the full amount plus the sum of £2,000 to cover the costs, which was rejected by the plaintiff as the sum allocated to cover his costs was in his view insufficient. This was followed on 22 nd April, 2002, offering settlement in full but wishing to limit argument to the question of costs. 6. This also was refused, as the plaintiff wished to apply for costs on an indemnity basis and he therefore came to the Court this morning to ask for judgment. Mr Falle for the defendant withdrew the defence and counterclaim and with the money in hand tendered the full amount of the claim together with the appropriate interest, leaving over the argument as to costs. The Court noted this, and if any dispute arises on the figure it must return to Court. 7. In making his application for costs on an indemnity basis Mr Clarke, for the plaintiff, referred the Court to the case of Dixon & Ors-v-Jefferson Seal

[1998] JLR 47 CofA, (head note on page 48, a passage on page 51 and a passage on pages 52-53: "... Shortly before the hearing was due to take place, the appellant sought to withdraw the appeal, submitting that it wished to do so for "commercial reasons"..... "Held, allowing the

cross-appeal: (1) The appellant's withdrawal of the appeal amounted to a recognition that it was unarguable. It was therefore clear that in seeking to withdraw at such a late stage, the appellant must have been attempting to use the appeal proceedings as a means of obtaining an advantageous settlement, either as to costs or otherwise. In particular, it had clearly attempted to use its strong financial position (i.e., being owned by a bank) to win a war of attrition against the respondents, who were of private means. This behaviour was both unreasonable and an abuse of the process of the court and would be punished by an award of the costs relating to the institution, maintenance and withdrawal of the appeal on a full indemnity basis (page 51, line 30 - page 53, line 26)."..... "Withdrawal for "commercial reasons" can, in my view, only be made sense of as a sanitized description of the recognition of a hopeless appeal. On a smaller scale, there was a similar pattern when the appellant sought a stay in respect of the amounts awarded under the judgements. This caused expense to the respondents in preparation for the hearing of their application. And then, when the matter came before the court on October 4th, 1997, lo and behold, the appellant withdrew its applications. Two issues are before this court for determination, both of which relate to costs. The first arises from the appellant's application to withdraw and relates to the costs of the appeal. The second, which was raised in the appeal by a cross-appeal on behalf of the first and second respondents, related to the costs of the hearing and, indeed, of the action. First, the respondents seek an order for indemnity costs against the appellant, which resisted the application in relation to the appeal, claiming that the proper order was to be for costs on a taxed scale basis. The respondents rely on the decision of this court in *Dick v. Dick (née Naranjo)*. In this judgment of the court allowing indemnity costs, *Le Quesne, J. A.* said this: "Mr Scholefield has explained to us the circumstances which led the appellant to take this decision (that is to say, a decision no longer to continue with proceedings in the Matrimonial Division of the Royal Court). We appreciate those circumstances but it appears to us that if for reasons of his own, whether good or bad, a party who has instituted proceedings subsequently decides to drop them before they came into court, it is fair that he should pay for that conduct the price of compensating the other party by way of indemnity costs. We therefore think that on this ground the order which was made for the payment of indemnity costs by the appellant was properly made and it is for that reason unnecessary to say anything more than we have already said about the letter which was addressed by the appellant to the Bailiff." That was therefore a case in which the proceedings in the court below were withdrawn, indemnity costs were granted and were held to have been correctly granted. Reliance was also placed on a decision of the Court of Appeal for Guernsey in *Main v. Laughton*, in which the court applied a test as to whether an order for indemnity costs was appropriate and took into account, inter alia, the tactical advantages which the defendants insurers had been seeking to make and indeed had made by raising an argument on appeal based on a prescriptive defence which was withdrawn at the last moment. It was not disputed that the Court of Appeal had jurisdiction to make an order for indemnity costs on withdrawal of an appeal. Having regard both to the authorities and to the conclusions which I have drawn as to the conduct of the respondents as already expressed, I have no

hesitation in determining for my part that the respondents are entitled to costs on an indemnity basis arising out of the institution, maintenance and withdrawal of this appeal." 8. In particular Mr Clarke relied first on the remarks of Collins J. A. as to his view of withdrawal for "commercial reasons". Second, he suggested that the defendant had strung out the proceedings in the hope that the plaintiff would succumb and settle, before surrendering at the very last moment. 9. Mr Falle submitted that the withdrawal was not on the grounds that there was no defence but for pragmatic reasons. There had in his view been a suggestion by the defendant of a proper and reasonable way of dealing with the dispute, and the surrender had been made to avoid unnecessary costs. 10. There was in his submission no moral aspect, and no tactical advantage in continuing. Dixon was not relevant in this hearing and it was not unreasonable to offer only taxed costs. 11. In reply Mr Clarke accepted that the plaintiff might have been awarded only taxed costs had the case gone to trial, but it was a late withdrawal which was the aggravating factor. He accepted that the Court should encourage settlement, but his client was entitled to go forward and the capitulation shows only that the offer should have been made some time ago. 12. The Court agrees with the submissions of Counsel for the plaintiff. In the view of the Court the plaintiff was entitled if he so wished to avail himself of his legal right. He made an early offer to meet which was ignored. The Court bears in mind the words of Collins JA in Dixon, and those of Sir Godfrey Le Quesne JA cited therein, and considers that the way the defence was conducted and the very late capitulation was in this case, as in the others cited, both unreasonable and an abuse of the process of the Court. Costs are therefore awarded to the plaintiff on an indemnity basis. Authorities Dixon & Ors-v-Jefferson Seal

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