

JERSEY / JUDGMENT

Bates v Weston [2023]

JRC 060 (19 April 2023)

[2023] JRC 060

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[2023] JRC 60 [New search] [Help] Costs [2023]JRC060 Royal Court (Samedi) 19 April 2023

Before : Sir Michael Birt, Commissioner Court ref: RE176 Between Kenneth William Bates Judgment Creditor And Robert Lawrence Weston Judgment Debtor Advocate A. D. Hoy for the Judgment Creditor The Judgment Debtor appeared on his own behalf assisted by his wife, Mrs Weston judgment ON COSTS the commissioner: 1. This judgment is supplementary to the judgment dated 17 January 2023, Bates v Weston

[2023] JRC 032 ("the Judgment") and deals with the issue of costs. The parties have filed written submissions on the topic and I have considered the matter on the papers. Words and expressions defined in the Judgment have the same meaning where used herein. Short background 2. On 10 March 2017, on the ex parte application of the Judgment Creditor ("Mr Bates"), the Assistant Judicial Greffier ordered that a judgment of the English High Court dated 11 November 2015 ("the English Judgment"), ordering Mr Weston to pay Mr Bates the sum of £40,000, be registered as a judgment of this Court pursuant to Article 4 of the Judgments (Reciprocal Enforcement) (Jersey) Law 1960 ("the 1960 Law"). 3. Mr Weston subsequently applied pursuant to Article 6 of the 1960 Law to set aside the registration of the English Judgment and it was that application which was the subject of the

Judgment.

The procedural history of the proceedings is described in a judgment dated 27 July 2021, Bates v Weston

[2021] JRC 341 and in the Judgment itself at [27]-[29]. 4. Mr Weston listed nine grounds for seeking to set aside the registration of the English Judgment. For the reasons set out in the Judgment, all nine grounds were rejected by this Court. The Court therefore dismissed Mr Weston's application to set aside the registration. 5. Mr Bates has now applied for costs and

argues that such costs should be awarded on the indemnity basis. Mr Weston, on the other hand, argues that he should be awarded certain wasted costs and that these should also be on the indemnity basis. It seems to me that there are four issues which arise for decision as a result of the parties' written submissions: (i) Subject to (iii) and (iv), should Mr Bates be awarded his costs? (ii) If so, should this be on the indemnity basis? (iii) Should Mr Weston be awarded certain wasted costs and, if so, should this be on the indemnity basis? (iv) Should there be any deduction in any costs awarded to Mr Bates because of the Monaco costs issue? Costs principles 6. I begin by reminding myself of the principles which govern the award of costs. They are set out in *Watkins v Egglshaw*

[2002] JLR 1 at [7]-[9] and were specifically endorsed by the Court of Appeal in *Flynn v Reid*

[2012] (2) JLR at [13]-[14]. I do not think it necessary to set out the extracts from these two cases as they are extremely well-known and I have them well in mind. 7. I therefore turn to consider the application of those principles to the facts of this case.

(i) Subject to (iii) and (iv) should Mr Bates be awarded costs? 8. The first question is whether a winning party can be readily identified. I have no hesitation in concluding that Mr Bates was the winning party. The Court dismissed Mr Weston's application to set aside the registration of the English Judgment and rejected each of the nine grounds upon which he relied. I hold therefore that, subject to issues (iii) and (iv) below, Mr Weston should be ordered to pay the costs. (ii) Whether on the indemnity basis? 9. In order to justify an award of indemnity costs rather than standard costs, a court has to decide that there is something to take the case out of the norm. As *Beloff JA* put it, speaking for the Court of Appeal in *C v P-S*

[2010] JLR 645 at [12]: "We therefore approach the costs contentions on the understanding that in order for an indemnity award to be made there must be something to take the case out of the ordinary and a degree of unreasonableness (of which abuse of process is but an example) but recognising that there is an 'infinite variety' of circumstances where it might be right and proper for the Court to make such an award." 10. Advocate Hoy submitted that Mr Weston's conduct took the case out of the norm. He argued that all the grounds relied upon by Mr Weston were unreasonable and doomed to failure. In particular, the Court had indicated a preliminary view at an early stage that the Set-off Order was unlikely to be an obstacle to enforcement of the English Judgment because Mr Bates was not a party to the proceedings in which the Set-off Order was made. Similarly, the Court had indicated in its judgment of 10 January 2018, *Bates v Weston*

[2018] JRC 006 (quoted at [65] of the Judgment) that the fact that Leeds may have agreed to pay Mr Bates' costs in the defamation proceedings did not mean that he would not be able to enforce the English Judgment. Despite these provisional indications, Mr Weston had nevertheless proceeded to maintain the arguments. 11. Advocate Hoy also referred to the fact that Mr Weston had ignored the advice from the Court to obtain legal representation and this had led to unreasonable points being taken. It had also led to unacceptable delays. 12. I have carefully considered the points raised by Advocate Hoy in order to

decide whether, taken cumulatively, they lead to the conclusion that costs should be on the indemnity basis. I have come to the conclusion that they do not. Whilst I consider that Mr Weston's decision to represent himself was ill-advised (as I suspect he may well end up spending more in the long run than if he had instructed an advocate who had given him firm advice), any litigant is entitled to represent himself and should not be penalised merely for having done so. The lengthy delays in this matter arose initially because of certain interlocutory applications (which were not unreasonable) and thereafter largely as a result of health issues of Mr and Mrs Weston. I do not think it would be right to inflict an order for indemnity costs because of such issues. As to the merits of the various points taken by Mr Weston, I agree that a number of them were weak, but this is often the case with a litigant acting in person and I do not consider overall that the points taken by Mr Weston were such that I should make an award of indemnity costs. 13. On balance, I consider that the right order is that Mr Bates should have his costs against Mr Weston, but on the standard basis rather than the indemnity basis. (iii) Wasted costs 14. In his written costs submissions, Mr Weston lists in section B thirty-five occasions on which he has requested information from Mr Bates, which information Mr Bates has failed or refused to supply. Apart from those referring to the Monaco costs (as to which see (iv) below), these requests were seeking information as to whether Mr Bates had paid the legal costs in the English defamation proceedings personally or whether these had been paid by Leeds. Mr Weston argues that, if only Mr Bates had answered these requests for information, much time and effort would have been saved. Mr Bates should therefore pay the wasted costs caused as a result. 15. I do not consider that Mr Bates should be ordered to pay any costs under this heading. In the first place, the Judgment makes clear at [64]-[69] that it is irrelevant whether Leeds paid the fees of Carter Ruck on behalf of Mr Bates. Mr Bates was legally liable to Carter Ruck for his fees and it makes no difference to his right to enforce the English Judgment that Leeds paid the fees on his behalf. 16. Secondly, although in July 2017 the Master ordered Mr Bates to give discovery of all the costs incurred in the defamation proceedings identifying which of those he had paid personally, that decision was overturned on appeal to this Court in its judgment of 10 January Bates v Weston

[2018] JRC 006 . In that judgment, I held that the issue of who had actually paid the fees was not relevant on the basis that Mr Bates remained legally liable to pay them. Although Mr Weston indicated on various occasions that he proposed to appeal my decision to the Court of Appeal, he never did. Accordingly, Mr Bates was under no obligation to provide the information requested repeatedly, particularly in circumstances where the Court had held that the information was not relevant. 17. In the circumstances, I do not consider that Mr Weston should be awarded costs relating to such enquiries and I reject his application for costs under this heading. (iv) The Monaco costs 18. The circumstances surrounding this issue are set out at [12], [90]-[94], [112] and [120]-[131] of the Judgment, to which the reader is referred. In short, during the course of the English defamation proceedings, Mr Bates objected to the method of service of the proceedings upon him in Monaco. His objection was rejected by Master McCloud on 17 November 2011 and Mr Bates' appeal

against that rejection was dismissed by Tugendhat J on 7 March 2012. Mr Weston said on a number of occasions that his costs in relation to the resolution of that issue before Master McCloud and Tugendhat J were likely to be in the region of £70,000 (subject to taxation).

19. As described at [90]-[91] of the Judgment, the Court understood at a number of interlocutory hearings that Mr Weston had an order for costs in his favour in relation to the Monaco costs and it was simply a question of getting those costs taxed. An example is the ex tempore judgment of 7 August 2020 when I said this: "5 If it is the case that these costs orders in the English proceedings are in due course taxed and if it is the case that, as a result, Mr Bates owes Mr Weston money in respect of those costs, then there are very strong grounds for Mr Weston to argue at the trial that, even if he loses on registration of the English Judgment for £45,000 [that is clearly a mistaken reference and should be £40,000], any costs payable by Mr Bates should be set off against that sum; and if they are not yet ascertained, then provided the Court is satisfied that Mr Weston is proceeding promptly to tax them, there should be a stay of execution in Jersey pending taxation. But, all this depends upon Mr Weston getting the Monaco costs taxed. This he has signally failed to do so far. He told me that he had a draft letter to his lawyers asking them to tax the costs. This is far, far too late, but hopefully he is now aware of the importance to his case of getting these costs taxed and he should do so as a matter of extreme urgency, exerting all the pressure he can on his former English solicitors or current English solicitors to undertake the taxation. Unless or until there are taxed costs, there will be nothing to set off against any judgment. Once there are taxed costs then there will be. So the remedy lies entirely in Mr Weston's hands." 20. As appears at [91], it appeared from Mr Weston's written submissions for the main hearing - the main hearing was on the papers but I shall refer to it as a hearing for convenience - that there might not even be a costs order in relation to the Monaco costs and that Tugendhat J on 11 November 2015 had referred the whole matter back to the Master. As the Judgment said, if that was right, it followed that Mr Weston needed first to obtain a costs order in respect of the Monaco costs and then needed to get any such costs order taxed. 21. On the basis of the submissions before it, the Court held at [112] that it was not willing to stay the enforcement of the English Judgment until either there was a costs order in respect to the Monaco costs or taxation of any such order. 22. As described at [120] of the Judgment, when the draft judgment was sent out, Mr Weston produced a copy of a costs order made by Tugendhat J on 7 March 2012 ("the 2012 Order") of which the Court had not previously been aware and to which it had not been referred by any of the parties in their submissions. The 2012 Order ordered Mr Bates to pay to Mr Weston the sum of £20,000 as a summary assessment of the costs of the appeal to Tugendhat J and £10,000 as an interim payment in respect of the hearing before Master McCloud. Thus Mr Bates was ordered to pay Mr Weston £30,000 in respect of the Monaco costs within 14 days. Having been alerted to this, the Court directed that evidence be obtained as to whether this sum had been paid. As described in the postscript at [120]-[130], in the light of the additional evidence then produced, the Court found that the sum of £30,000 had in fact been paid and accordingly there was no liquidated sum due by Mr Bates to set off against the sum due under the English Judgment,

only the prospect of taxation of the hearing before Master McCloud and Mr Weston's right to seek recovery of any difference between the costs so assessed and the sum of £10,000 ordered by way of interim payment. 23. Mr Weston points out in his costs submissions that he had in fact supplied a copy of the 2012 Order to Voisin Law (Mr Bates' advocates) on more than one occasion prior to the main hearing. The first occasion appears to have been on 16 October 2019 (item 18 of section B) and it seems to have been supplied again (usually in the form of an attachment to another document) at items 20, 22, 23, 24 and 28. He further points out that, on a number of these occasions, he asked Mr Bates to confirm specifically whether he had paid any sums in respect of the Monaco costs. There was never any positive response to such requests. 24. He submits, therefore, that the fault for the time wasted in respect of the main hearing and the extra work incurred in relation to the postscript arose because of Mr Bates' failure to respond. Once the Court raised the issue in its draft judgment, it took Mr Bates only a matter of hours to produce email evidence (summarised at [125] of the Judgment) to show that the sum of £30,000 due under the March 2012 Order had been paid. If only Mr Bates had responded to Mr Weston's requests on this aspect earlier, the main hearing would not have been conducted on an erroneous basis and it would not have been necessary to have the extra work done as set out in the postscript. 25. In my judgment, there can be no question of Mr Bates being ordered to pay any costs to Mr Weston in respect of these matters. I accept that costs have been wasted, in that time was wasted by all parties at the main hearing because the existence of the March 2012 Order (and whether the sum of £30,000 had been paid) was not raised or addressed, with the result that further time and expense was incurred after circulation of the draft

judgment.

However, the primary responsibility for drawing the existence of the 2012 Order to the attention of the Court lay with Mr Weston. But at no stage either when asking for information from Mr Bates or in his submissions for the main hearing did Mr Weston point out that Mr Bates had been ordered to pay £30,000. Indeed, as summarised above, he thought that a costs order still had to be made and taxation was certainly still required. It seems, unfortunately, that, although he must have been aware of the 2012 Order because he had drawn its existence to the attention of Voisin Law, he had forgotten its content by the time he came to file his submissions for the main hearing. In those circumstances it could not possibly be right that Mr Bates should have to pay towards Mr Weston's costs when the primary responsibility for such wasted costs lay with Mr Weston. 26. However, I am equally of the view that Mr Bates should not be able to recover, as part of his costs, the costs unnecessarily incurred at the main hearing as a result of the matter proceeding on an erroneous basis and any extra costs incurred in respect of the matters described in the postscript. Voisin Law had seen the 2012 Order on more than one occasion and were, or should have been, aware that Mr Bates had been ordered to pay the sum of £30,000 in respect of the Monaco costs. Yet they made no reference to this in their submissions for the main hearing and allowed that hearing to proceed on the erroneous basis either that there had not yet

been a costs order in respect of the Monaco costs or that any such order had still to be the subject of taxation. 27. This was not consistent with the Overriding Objective. Wasted costs have been incurred in relation to the main hearing insofar as it proceeded upon an erroneous basis and certain costs have also been incurred in revisiting the matter as set out in the postscript. In circumstances where Voisin Law were aware of the terms of the 2012 Order, I do not consider that it would be fair or proportionate to allow Mr Bates to recover from Mr Weston for time spent by his lawyers unnecessarily in such circumstances. 28. I do not think it would be right to put the parties to the time and expense of a detailed taxation hearing on this aspect. The Court has frequently said it is better to adopt a broad approach in deciding a percentage of costs to be deducted rather than ordering a detailed taxation; eg, *MB & Services Limited v Golovina*

[2020] JRC 099 at [21]. Doing the best I can, I consider that a deduction of 10% would be a fair reflection of the unnecessary and wasted costs which have resulted from the Court proceeding on an erroneous basis at the main hearing and then having to revisit the matter as set out in the postscript, which costs I do not consider that Mr Bates should be able to recover from Mr Weston. 29. I should add for the sake of completeness and transparency that it is of course the case that some of the exchanges set out in section B which exhibited the 2012 Order were copied to the Judicial Secretary on behalf of the Court. However, the Court does not monitor and analyse emails as they come in. The role of the Court is to consider the submissions of the parties when the matter comes to a hearing and it is the responsibility of the parties to draw the Court's attention to any document or exchange of correspondence which the parties think is relevant to resolution of the case. This they both failed to do. Summary 30. For the reasons given above, I order Mr Weston to pay 90% of Mr Bates' costs on the standard basis, such costs to be taxed if not agreed. Interest 31. In his skeleton argument on costs, Advocate Hoy at paragraph 22 seeks an order for interest on the sum of £40,000 from the date of registration. However, this has already been dealt with when the English Judgment was registered. Thus the Act of 10 March 2017 provides that Mr Weston must pay interest on the sum of £40,000 from 11 November 2015 to the date of registration (10 March 2017) at the rate of 8% pursuant to Section 35(A) of the Supreme Court Act 1981 and Article 4(6) of the 1960 Law and further provides that Mr Weston shall pay interest on the sum of £40,000 from the date of registration (ie, 10 March 2017) until complete repayment at the rate of 4% pursuant to Article 5(1)(f) of the 1960 Law. It follows that it would not be appropriate for this Court to make any order concerning interest as the matter has already been fully dealt with. 32. Mr Weston, in his written submission on costs, seeks some moderation of the order for Interest. I decline to vary the Order of 10 March 2017. Mr Bates has been successful and has been kept out of the money to which the Court has held he is entitled. It is clearly right that interest should be payable until he receives the full amount due. 33. Mr Weston also seeks to argue that any interest payable should cease to be payable from 30 January 2023, being the date upon which Mr Weston lodged £40,000 with the Judicial Greffe. This sum was paid into Court in connection with Mr Weston's wish to appeal to the Court of Appeal, which appeal I understand has now been lodged. Interest will not cease to be payable in

accordance with the Act of 10 March 2017 from 30 January and will only stop running on the date that Mr Bates is paid. However, the sum of £40,000 has no doubt been placed at interest by the Judicial Greffe and any interest earned since then can be used to assist with the interest payable by Mr Weston, with the consequence that, from 30 January, he will only actually have to fund any difference between the rate of interest earned in the Judicial Greffier's hands and the rate payable pursuant to the Act of 10 March 2017. 34. Finally, in his skeleton argument, Mr Weston asked the Court to rule on whether income tax at 20% should be deducted from the interest payable to Mr Bates, who is not a Jersey resident. It is not the Court's role to act as a tax adviser and Mr Weston should seek advice from his accountant as to whether he can or should deduct such tax. 35. As to the costs of this costs hearing, I consider that they should follow the result. I therefore award Mr Bates 90% of the costs of this costs hearing on the standard basis, to be taxed if not agreed.

Authorities *Bates v Weston*

[2023] JRC 032 . Judgments (Reciprocal Enforcement) (Jersey) Law 1960. *Bates v Weston*

[2021] JRC 341. *Watkins v Egglshaw*

[2002] JLR 1 . *Flynn v Reid*

[2012] (2) JLR 226. *C v P-S*

[2010] JLR 645 . *Bates v Weston*

[2018] JRC 006 . *MB & Services Limited v Golovina*

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