

JERSEY / JUDGMENT

Chernukhin and Anor v Deripaska and Anor 24-Mar-2021 [2021] JRC 084 (24 March 2021)

[2021] JRC 084

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judgment

the deputy bailiff: 1. On 15th March 2021 the Court sat to consider costs applications arising out of the decisions contained in the judgment dated 11 th February 2021 (Chernukhin and Anor v Deripaska and Anor

[2021] JRC 039). I do not propose to set out the detail of those decisions. 2. In briefest summary, the First Respondent succeeded on two of the three applications he made to amend his particulars of claim - the third having been categorised as "hopeless" by the Court. The normal principle that a party should in any event bear the costs of an amendment to their pleading is displaced in this case by reference to the fact that at least two of the three amendments arose from facts that were not known to the First Respondent when he issued his particulars of claim. 3. The Representors say that, as to the amendment that was held to be "hopeless", they should have their costs on the indemnity basis and that costs in relation to the second and third amendment should be reserved; alternatively that the Court should order the First Respondent to pay 30% of the Representor's costs on the amendment application. 4. The First Respondent says that the cost of the summonses should be costs in the cause but, in the alternative, that he should have his costs of and in occasion by the amendment application and that he should bear the costs thrown away by the Representors as a result of the amendment. 5. As to the Request for Further Information, one of these was successful (the most significant of the two applications) and one was unsuccessful. The Representors say that the First Respondent should pay 80% of their costs. 6. The First Respondent, without prejudice to his primary position on costs, says that he should have his costs of and occasioned by the request for further information on the basis that only one of the requests was granted and the request was not previously canvassed in correspondence with the precision that is necessary to comply with the relevant Practice Direction. 7. As to the question of waiver of privilege and the consequential application made by the Representors to amend their affidavits so as to, in effect, " turn the clock back " and cure the prima facie (as it turned out) finding of waiver, the Representors say that they should have their costs paid by the First Respondent on the

standard basis. 8. The First Respondent, again without prejudice to his principal submission, says that he should have his costs of and occasioned by the summons he issued in which he asserted that the Representors had waived privilege in relation to certain categories of documents and that the Representors should have their costs in relation to their application to amend various affidavits so as to delete reference to privileged communications and documents. 9. Both parties agreed upon the relevant principles. The Court has a broad discretion in respect of the costs of and incidental to civil proceedings - see Article 2(1) of the Civil Proceedings (Jersey) Law 1956 . Both parties adopted the guidance set out by Commissioner Page in *Watkins -v- Egglisshaw*

[2002] JLR 1 as endorsed by the Court of Appeal in, inter alia, *Flynn -v- Reid*

[2012] (2) JLR 226, as follows: "(7) The principles that should guide the court in the exercise of its discretion in this area appear to me, therefore, to be as follows, stating them as shortly and simply as possible:

- (a) The court's overriding objective in considering costs is, as in everything else, to do justice between the parties.
- (b) In many cases, that objective will be fulfilled by making an award of costs in favour of the "winning" party, where a "winner" is readily apparent. In any event, the "follow the event" rule can still be a useful starting point.
- (c) It is a mistake, however, to strain overmuch to try to label one party as the "winner" and one as the "loser" when the complexity or other circumstances of the litigation do not readily lend themselves to analysis in these terms.
- (d) The discretion as laid down in art. 2 of the Civil Proceedings (Jersey) Law 1956 is a wide one and ought not to be treated as fettered by any particular supposed rule or practice, other than that the discretion should be exercised judicially and broadly in accordance with the guiding principles referred to in *In re Elgindata* (No.2)
- (5) and *A. E. I. v. Phonographic Performance* (1).
- (e) It is, accordingly, open to the court to have regard to any and all considerations that may have any bearing on the overriding objective of doing justice. Its task is to take an overview of the case as a whole (*Bank of Credit & Commerce Intl. v. Ali* (No. 4) (3), per Lightman, J.). The new Civil Procedure Rules governing civil litigation in the English courts provide that the court "must have regard to all the circumstances" and then go on to spell out certain matters that such circumstances include, the "conduct of all the parties" being one and "whether a party has succeeded on part of his case, even if he has not been wholly successful" another (Civil Procedure Rules, para. 44.3(4)). To a large extent, however, the particular matters mentioned do no more than state the obvious and it is unnecessary to import them verbatim, in any formal way, into the practice of the Royal Court.

- (f) It is implicit in this that, even though a party would otherwise be regarded as having been "successful," justice may require that costs should not automatically follow the event." 10. In addition to the outcome of the various summonses which were determined in this case, I am entitled to take into account and do take into account that almost every aspect of this case, including issues connected to costs, even when the amounts incurred by way of costs are small compared to the resources of both parties, are heavily contested. 11. This is the type of litigation where satellite costs issues should be limited, if possible. That is not to say that a clear winner on any interlocutory application should not have their costs - they should, and indeed I made such an order earlier this week in relation to another summons issued by one of the parties. The extent to which the parties are vindicated in relation to their stances in relation to amendment of pleadings and the request for further information respectively will be something that can only be properly judged at trial. As to the summonses in respect of loss of privilege and consequential amendment to affidavits, the application was a consequence of the original form of the Representors' affidavit evidence which was ultimately remedied by amendments which the Court permitted. Looking at matters in the round, I agree with the First Respondent that the appropriate order for costs in relation to the summonses cumulatively is costs in the cause. *Authorities Chernukhin and Anor v Deripaska and Anor*

[2021] JRC 039 . Civil Proceedings (Jersey) Law 1956. *Watkins -v- Egglshaw*

[2002] JLR 1 . *Flynn -v- Reid*

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