

JERSEY / JUDGMENT

Hodges v Trenouth-Wood

[2021] JRC 179 (30 June 2021)

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[2021] JRC 179 [New search] [Help] Costs [2021]JRC179 Royal Court (Samedi) 30 June 2021
Before : R. J. MacRae Esq., Deputy Bailiff, sitting alone Between (1) Darren Paul Hodges (2) Mary Hodges Plaintiff And Roger Brian Trenouth-Wood Defendant Advocate O. A. Blakeley for the Plaintiffs. Mr Trenouth-Wood in person. DECISION ON COSTS the deputy bailiff: 1. The Court's judgment in this matter was finalised on 21 st May 2021. 2. The trial of this action occurred on 16 th March 2021 and was followed by a view on 19 th March 2021 and a hearing on damages and costs on 21 st April 2021. The Court's findings on the Plaintiffs' claim and the arguments in respect of damages are set out in the 21 st May 2021 judgment (Hodges v Trenouth-Wood

[2021] JRC 146). 3. The Plaintiffs claim costs on the indemnity basis. The Defendant argues that there should be no order as to costs. 4. It is appropriate to set out the principles before considering the competing arguments in a little more detail. The principles 5. In the recent case of Financial Technology Ventures and others -v- ETFS Capital Limited and Tuckwell

[2021] JRC 118 , the Court said: "7. It is accepted that the Royal Court has a broad discretion in relation to costs pursuant to Article 2(1) of the Civil Proceedings (Jersey) Law 1956, which provides that: "The costs of and incidental to all proceedings in the Royal Court shall be in the discretion of the court, and the court shall have full power to determine by whom and to what extent the costs are to be paid."

8. This discretion is to be exercised in accordance with well-established principles. The starting point is the decision of Commissioner Page in *Watkins v Egglshaw*

[2002] JLR 1 , as approved by the Jersey Court of Appeal in *Flynn v Reid*

[2012] (2) JLR 266.

9. In *Watkins v Egglshaw*, Commissioner Page said: "(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) and *A. E. I. v. Phonographic Performance*.
 - (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) , 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." 6. In respect of indemnity costs, generally they should only be awarded in circumstances where a party has conducted the litigation in an unreasonable fashion. It is necessary for a party seeking an order for indemnity costs in its favour to identify something in the conduct of the action of the other party or the circumstance of the case which takes the case out of the norm, recognising that there will nearly always need to be a clear demonstration of a degree of unreasonableness on the part of the other party. It is evidence of unreasonableness which is the hallmark of an award on the indemnity basis. The facts of this case 7. The Plaintiffs succeeded on their principal argument. They did not succeed in establishing that the posts erected along the right of way impeded them or infringed their rights - as found by the Court subsequent to the view which took place on th March 2021. 8. The Defendant's arguments in relation to the construction and effect of the terms of the relevant contracts were

unsustainable but were pursued in good faith. 9. The Defendant's counterclaim was unsustainable, but the costs incurred in respect of it were de minimus . 10. The Plaintiffs say the Defendant should have sought legal advice and his reason for not doing so, namely that it was too expensive was, with hindsight, an error as the costs of fighting and losing this litigation are far higher than early legal advice would have been. However, the Defendant's decision not to take legal advice is not relevant to the incidence of costs. 11. Various criticisms of the Defendant's conduct in the litigation were made by the Plaintiffs but, in my view, they are not of substance and, in any event, do not amount to unreasonable conduct. The Court imposed a tight timetable on the parties which both parties managed to keep to ensure that this matter was determined quickly as a cause de briev  t   . The Defendant more or less complied with the Court's directions even though he was unrepresented. As to the correspondence between the parties prior to litigation, which was pointed to by both parties as evidence of unreasonableness on the part of the other, the contents of the same were unremarkable in the context of this sort of dispute. In any event, the criticisms made by the parties regarding each other in this regard do not have any impact on the costs incurred. 12. It is a great pity that this matter was not the subject of neighbourly communication by way of a direct meeting between the parties prior to proceedings being commenced and both parties share some responsibility for that. 13. Taking all the circumstances of this case in the round, I order that the Defendant pay 80% of the Plaintiffs' costs to be taxed if not agreed on the standard basis. Authorities *Hodges v Trenouth -Wood* [2021] JRC 146. Financial Technology Ventures and others -v- ETFS Capital Limited and Tuckwell

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