

JERSEY / JUDGMENT

Home Farm Developments, Strata and Holmes -v- Le Sueur [2015] JRC 146 (01 July 2015)

[2015] JRC 146

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

judgment

the commissioner: 1. By its judgement of 21 st May, 2015, (Home Farm Developments Ltd and Ors-v-Le Sueur

[2015] JRC 110), the Court dismissed the appeal brought by the appellants against the decision of the Master of 26 th March, 2014, (Home Farm Developments-v-Le Sueur

[2014] JRC 079) to strike out their claim. In its conclusion at paragraph 29, the Court agreed with the Master that the proceedings were both scandalous and vexatious and an abuse of process. 2. The respondent now seeks his costs both for this appeal and for the associated claim brought by way of Order of Justice (matter number 2014/156) for the monies due on a promissory note for which judgment was given on the same day in the sum of £21,000. 3. On 16 th June, 2014, the Master ordered the appellants to pay security in respect of their appeal in the sum of £15,000 and that sum was paid into Court on 11 th July, 2014. 4. Two orders for costs have already been made by the Master in relation to the proceedings which are the subject of the appeal and which were not taxed until 2 nd December, 2014, in the sum of £13,027.10p and the sum of £5,872.85p respectively. These sums, which now rank as a civil debt, have not been paid by the appellants. 5. The respondent is reluctant to engage any further with the appellants through the taxation process that would follow any order for costs as he fears it will lead to yet further disputes and appeals and he therefore seeks an order for costs in relation to both the appeal and the Order of Justice on a summary basis. 6. Advocate Taylor for the respondent produced a schedule of his firm's costs which in relation to the appeal show the sum of £16,216 being due applying Factor A with no uplift and £27,799 being due applying a Factor B uplift of 50%, which I understand to be the normal level of uplift applied in litigation of this kind and that is in fact the sum that he has charged his client. In relation to the Order of Justice the schedule shows the sum of £799 being due applying Factor A with no uplift and £1,234 applying an uplift of just under 50%, and again it is the latter sum which he has charged his client. 7. In reliance on the case of Marange Investments Proprietary Limited v La Générale des Carrières et des

Mines SARL

- [2013] JRC 119A , Advocate Taylor sought an order for the payment by way of summary assessment of at least £15,000 for his client's costs on the appeal, which he said equates to a very substantial discount and is a sum which I could be satisfied that the respondent would almost certainly collect following a taxation. In relation to the Order of Justice, he sought the sum of £1,000. 8. Marange was concerned with the payment on account of a sum that would be collected on taxation and it left the payor with the safety net of the taxation process, so that in the event of the Court materially miscalculating the quantum of the sum payable on account, any sums overpaid could be recouped. In this case, the respondent seeks a summary order thus depriving the appellants of the process of taxation. Furthermore, the respondent only seeks such an order if, in the case of the appeal, it is at least £15,000. If I was minded, on a summary assessment, to award less than this sum, then he asked for a payment on account and for taxation. 9. Mr Holmes, for the appellants, informed me that they would be appealing the judgment of the Royal Court, although no notice of appeal had yet been lodged. He agreed to the release of the £15,000 paid in by way of security towards the payment of his liability for costs but in effect asked for a stay of any sums ordered above that amount pending the appeal. I have assumed that he would wish the stay to also apply to the two costs orders already made by the Master and taxed. 10. Mr Holmes did not resist an order for costs in the appeal or the Order of Justice being made against the appellants but submitted that, as with the orders made by the Master, they should be on the standard basis. Costs on the indemnity basis were resisted in particular for the reasons set out in his letter of 20 th May, 2015, addressed to the Court, in essence that evidence which had not been before the Master, had not been advanced or referred to before the Royal Court. 11. Before deciding whether to make a summary assessment of costs I must first decide whether a costs order in favour of the respondent should be made at all and, if so, on what basis. I have had regard to the general principles to be applied when considering applications for costs as set out in *Watkins v Egglshaw*
- [2002] JLR 1 and the principles to be applied in considering an award for indemnity costs as set out in *C v P-S*
- [2010] JLR 645 and *Leeds United Football Club v Weston and Levy*
- [2012] JCA 088 . As Beloff JA said in *C v P-S* :- "The question will always be: is there something in the conduct of the action by one of the parties or the circumstances of the case which takes the case out of the norm in a way which justifies an order for indemnity costs, recognising that there will usually be some degree of unreasonableness?" 12. Following the Court of Appeal decision in *Flynn v Reid*
- [2012] (2) JLR 226 the means of the appellants are not relevant and in any event Mr Holmes did not resist any costs order on the ground that the appellants were impecunious. 13. This is a case in which the respondent, as the successful party, should have his costs. Whilst I

appreciate that the Master ordered costs for the hearing before him on the standard basis (according to Advocate Taylor an award on the indemnity basis was very narrowly avoided before the Master), the appellants have continued with an appeal in respect of a claim which both the Master and the Royal Court have found to be an abuse of process. In my view, to continue with such proceedings takes the case out of the norm and justifies an award of costs in respect of the appeal on the indemnity basis. This does not apply to the Order of Justice where costs should be awarded on the standard basis 14. As to a summary assessment, the Court's jurisdiction to award costs is very wide being contained in 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." Accordingly, the Court has the power to make a summary assessment of costs if it is just to do so. Such orders are made routinely by the Master in interlocutory hearings (other than a hearing for directions) which last more than a day, pursuant to Practice Direction RC15/03. There is no such Practice Direction in relation to the Royal Court although to my knowledge, the Royal Court has made such orders, again I believe in interlocutory hearings where the Court can do so without a detailed review of the successful party's costs. I am not aware of the Court making such orders following a final hearing of this kind, where a summary assessment would be much more difficult to conduct fairly. In any event, because it would be a summary process, I would need to take a more stringent view of the quantum ordered to be paid and I would not have in mind a figure as high as £15,000 in relation to the appeal. 15. Accordingly, I decline to make a summary assessment of costs and I award the respondent his costs of the appeal on the indemnity basis and his costs on the Order of Justice on the standard basis to be taxed if not agreed and paid by the appellants jointly and severally. I would have been minded to order the appellants jointly and severally to pay the sum of £12,500 on account of their liability for costs on the appeal, being an amount which in my view the respondent will almost certainly collect following taxation, but £15,000 has been paid into Court by way of security for these costs. I therefore order the release of the amount paid into Court and any interest earned thereon to the respondent. I appreciate that this is more than I would have ordered on account but I bear in mind the sums that will be due on taxation in relation to the Order of Justice and the appellants' liability for the two costs orders made by the Master. 16. Notwithstanding that there is no application for leave to appeal before me I decline to grant the appellants any stay in relation to these orders, bearing in mind the findings of both the Master and the Royal Court. Any application for a stay must be made to the Court of Appeal if and when a notice of appeal is lodged. Authorities Home Farm Developments Ltd and Ors-v-Le Sueur

[2015] JRC 110 . Home Farm Developments-v-Le Sueur

[2014] JRC 079 . Marange Investments Proprietary Limited v La Générale des Carrières et des Mines SARL

[2013] JRC 119A . Watkins v Egglshaw

[2002] JLR 1 . C v P-S

[2010] JLR 645 . Leeds United Football Club v Weston and Levy

[2012] JCA 088 . Flynn v Reid

[2012] (2) JLR 226. Civil Proceedings (Jersey) Law 1956. Page Last Updated: 27 Sep 2016 BAILII:
Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2015/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/home-farm-developments-strata-and-holmes-v-le-sueur-2015-jrc-146-01-july-2015>

Prepared on 24 October 2026 · Esheria