

JERSEY / JUDGMENT

Jensen -v- Jensen [2016] JRC 226 (06 December 2016)

[2016] JRC 226

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

[Home] [Databases] [World Law] [Multidatabase Search] [Help] [Feedback] [DONATE]
Jersey Unreported Judgments You are here: BAILII >> Databases >> Jersey Unreported Judgments
>> Jensen -v- Jensen [2016] JRC 226 (06 December 2016) URL: https://www.bailii.org/je/cases/UR/2016/2016_226.html Cite as:

[2016] JRC 226 [New search] [Help] Costs judgment [2016]JRC226 Royal Court (Samedi) 6 December 2016 Before : Sir Michael Birt, Commissioner, sitting alone. Between Aneta Jensen (née Michalska) Plaintiff And Marc Jensen First Defendant And Anna Kristina Pritchard (née Jensen) Second Defendant And Jensen Equestrian Investments Limited (formally Marc Jensen Limited) Third Defendant And Alexandria Marie Jensen Fourth Defendant And Barclays Private Clients International Limited First Party Cited And The Royal Bank of Scotland International Limited Second Party Cited Advocate R. A. Leeuwenburg for the Plaintiff. Advocate L. A. Ingram for the First and Third Defendants. The other parties did not appear and were not represented. judgment on costs the commissioner: 1. At the conclusion of the hearing on 26 th October, 2016, the Court announced that it was dismissing the application of the First and Third Defendants ("the husband" and "the Company" respectively) for the discharge of the freezing injunction (with accompanying disclosure orders) granted ex parte by the Deputy Bailiff on 16 th September, 2016. 2. The Court invited Advocate Leeuwenburg and Advocate Ingram to present written submissions on costs and they have both subsequently done so. The Court indicated that it would thereafter make its decision on the papers. 3. On 18 th November, 2016, the Court published the reasons for its decision of 26 th October, which are to be found at Jensen-v-Jensen

[2016] JRC 212 . 4. The background is fully set out in the judgment and I do not repeat it. Suffice it to say that, for the reasons set out in the judgment, the Court dismissed the application to discharge the injunction but agreed to vary it so as to permit the payment out of up to £25,000 to the husband subject to the husband complying with the conditions set out in paragraph 40 of the judgment.

Submissions

5. On behalf of the Plaintiff ("the wife"), Advocate Leeuwenburg submitted that the husband and the Company ("the Defendants") should be ordered to pay the costs of and incidental to the hearing of 26 th October both in relation to the discharge application and the variation application. Furthermore, he submitted that such costs should be on the indemnity basis because of the manner in which the defendants had behaved and conducted the litigation. 6. Advocate Ingram, on behalf of the defendants, submitted that all the costs should be on the standard basis and that, while the defendants should be ordered to pay the costs of the discharge application, the wife should be ordered to pay the costs of the variation application (including any costs incurred in relation to the release of the weekly sum of £3,000 per week per defendant). Decision 7. I have reminded myself of the principles as to costs as set out in *Watkins v Egglisshaw*

[2002] JLR 1 at para 7 and *Flynn v Reid*

- [2012] (2) JLR 226 at paras 13-14. 8. I am in no doubt that the defendants should be ordered jointly and severally to pay the costs of the discharge application. The application was unsuccessful and, for the reasons set out in the judgment, it was always an optimistic application. I see no reason to depart from the normal rule that costs should follow the event in relation to that application. 9. As to the variation application, whilst it is true that the Court did accede to the release of £25,000 (subject to compliance with the conditions set out in paragraph 40 of the judgment), I consider that the circumstances in which that order came to be made suggest that the fair order is that the defendants should jointly and severally also pay the costs of that application. 10. I reach that conclusion for the following reasons:- (i) The injunction contained an exception permitting each defendant to spend £3,000 a week towards ordinary living expenses. This therefore totalled £150,000 per annum and did not require the defendant to justify that sum. (ii) The injunction contained a further exception allowing the defendants to spend a reasonable sum on legal advice and representation and the husband to spend a reasonable sum towards his ordinary and proper business expenses. The only limitation on this was that before spending any money in excess of £10,000, the defendants had to tell the wife's advocate the amount concerned and where the money was to come from. (iii) There was further provision that these sums could be increased with the agreement of the plaintiff's advocate. (iv) As set out in the judgment, the Barclays accounts had hitherto been funded by payments from the IG portfolios in London. When the injunction was served, the husband instructed IG to stop making these payments. This therefore starved the Barclays accounts of money such that there was only some £13,000 in the Barclays accounts at the time of the application. If the husband had not given these instructions, there would presumably have been sufficient in the Barclays accounts to pay the living expenses and pay other expenses permitted under the exception. (v) By letter dated 12 th October and an email dated 21 st October, Advocate Leeuwenburg suggested that a way round the difficulty was simply for the instructions preventing payments out of IG to be countermanded so that monies could

once again be paid to the Barclays accounts, thereby permitting the amounts payable pursuant to the exceptions to be paid. This suggestion was not taken up by the defendants. (vi) The figure of £25,000 was first mentioned during Advocate Ingram's opening remarks at the hearing. There had been no indication previously as to exactly what variation was required. It rapidly became clear during the hearing that, provided the defendants swore an affidavit justifying the requirement of £25,000, payment of that sum would not be opposed by the wife provided that payments from the IG portfolios were resumed. (vii) That in effect was what the order of the Court provided. The Court agreed in principle to release £25,000 but required an affidavit from the defendants justifying that sum and required an undertaking that payments out of the IG portfolio into the Barclays accounts so as to fund such payments would be resumed. 11. Putting these matters together, I consider that the responsibility for incurring the costs of the variation application fall fairly and squarely on the defendants, who could have avoided the need for the hearing had they not cut off the cash flow into the Barclays accounts, had they explained and justified the requirement of £25,000 and had they responded positively to the open letters and emails of 12 th and 21 st October. I therefore award the costs of the variation application against the defendants as well as the costs of the discharge application. 12. The next issue is whether those costs or any of them should be on an indemnity basis. I remind myself of the principles as to indemnity costs, conveniently summarised in the judgment of Beloff JA in the Court of Appeal in *C v P-S*

- [2010] JLR 645 at paragraph 11 where he said:- "The husband, relying on the change brought about by the Practice Direction, refers to the Pell Frischmann decision and submits that "the concept of an indemnity costs order now is so draconian in its nature that the same should only be considered by the court where the actions or intentions of the paying party are malicious or vexatious." We do not accept that it is appropriate to impose such a restrictive approach on the discretion of the court to make an award of costs on the indemnity basis. 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? We do not consider that there is a need for the claiming party to show a lack of moral probity or conduct deserving of moral condemnation, or malicious or vexatious conduct." 13. I consider that the defendants have conducted this litigation in such a manner as to justify costs being awarded on an indemnity basis. I would summarise my reasons as follows (acknowledging of course that some of these were reasons for awarding costs in the first place but they are also relevant as to whether costs should be on an indemnity basis):- (i) The defendants failed to comply properly with the disclosure requirements of the injunction (see paras 31(vi) - (vii) of the judgment). This meant that the Plaintiff and her lawyers could not assess the reasonableness of any request by the defendants for discharge or variation. They were forced therefore to allow the matter to come before the Court. (ii) The husband caused any cash flow shortage by instructing IG to stop the payments to the Barclays

accounts the moment he was served with the injunction. If he had allowed payments to continue, the exception for living and other expenses would probably have sufficed without the need for any application. (iii) At no stage before the hearing did the defendants quantify how much they were looking for by way of payment out of the Barclays accounts. It was only at the beginning of the hearing that the figure of £25,000 was mentioned. In the absence of a figure, the wife had no alternative but to allow the matter to proceed to a hearing. (iv) The discharge application itself was, in my view, doomed to failure given the facts of the case and it was unreasonable to persist with it. (v) The defendants failed to accept or even respond to the reasonable suggestions put forward in the letter of 12 th October and the email of 21 st October referred to earlier. 14. Putting all these matters together, I consider that the wife was driven to incur the costs of the hearing in the face of unreasonable conduct on the part of the defendants. In the circumstances I consider costs should be on an indemnity basis so that she is left out of pocket to the least extent possible. 15. As to the costs of the work undertaken by the parties after the hearing in preparing written submissions on the issue of costs (see para 2 above), I consider that the wife has been successful and should therefore be awarded her costs. However, I consider that all of Advocate Ingram's submissions on costs were perfectly reasonable and accordingly the award is on the standard basis. Authorities Jensen-v-Jensen

[2016] JRC 212 . Watkins v Egglshaw

[2002] JLR 1 . Flynn v Reid

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

[2010] JLR 645 . Page Last Updated: 09 Dec 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: https://www.bailii.org/je/cases/UR/2016/2016_226.html

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/2016/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/jensen-v-jensen-2016-jrc-226-06-december-2016>

Prepared on 30 October 2026 · Esheria