

JERSEY / JUDGMENT

Larsen Limited v Taylor (Royal Court) [2026] JRC 094 (14 April 2026)

[2026] JRC 094

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judgment

the COMMISSIONER:

Introduction

1. This judgment contains my decision in respect of the costs of the Defendants' application for security for costs handed down to the parties on 6 February 2026 when I ordered that the Plaintiff should make a payment into Court in the sum of £100,000 by way of security for costs. 2. This judgment also deals with the costs of the Plaintiff's application for security for costs which was withdrawn on 23 October 2025. In respect of this latter issue, as it arose during the hearing about costs, I directed the parties to file written submissions on this issue. Submissions on costs 3. Advocate MacDonald for the Defendants contended that his client was the clear winner. His client had been successful in that £100,000 had been ordered to be paid into Court by way of security. That had to be contrasted with the fact that no offer had been made at all by the Defendants and therefore there was no offer that the Defendants had failed to beat. 4. What the Plaintiff did was to refuse to provide security on principle. 5. The Plaintiff had also not conducted the case proportionately by the way in which they had responded to the various enquiries about insurance raised by the Defendants. The Plaintiff had also not given relevant financial information about its financial position. The Defendants therefore had no choice but to issue an application. 6. Advocate MacDonald also criticised the Plaintiff for being coy about its financial position. It was only in the hearing that it emerged that the Plaintiff did not have any insurance for defective works. That had not been referred to in previous correspondence. 7. While the Defendants had not recovered the full amount of security it was asking for, the amount of work required for the application was the same and it would not be possible to separate out how far work related to the principle of the application and the amount of security sought. This led to the submission that the onus was on the Plaintiff to make an offer. 8. In recognition of the fact that the Defendants had recovered less than they had asked for, the Defendants were only seeking costs on the standard basis. They also sought a summary assessment. 9. Advocate Littler for the Plaintiff contended that costs should be in the cause because there was no clear winner. This is because the Defendants were seeking some £450,000 in terms of security of costs,

with the Court ordering less than one quarter of that sum. She was critical of the Defendants in not engaging and being unwilling to compromise or put forward a proportionate figure.

10. What the Plaintiff was trying to do by suggesting that both parties put up security was to get the focus on settlement. The Defendants failed to do so. 11. Advocate Littler also criticised the Defendants during the hearing for trying to increase the amount of security sought beyond that referred to in the affidavit. 12. In reply, Advocate MacDonald emphasised that if no costs were awarded against the Plaintiff, this meant that there was nothing to encourage a party to engage openly and frankly. In the present case, the Defendants had been sent on a wild goose chase instead of sharing relevant financial information.

Discussion and decision on costs 13. The parties were in agreement on the applicable principles and it is not necessary for the purpose of this judgment for me to set out these principles which are well-known. 14. The key question I have to answer is whether there is a clear winner. The Plaintiff sought to resist having to provide security at all. The Defendants therefore had no choice but to issue its application. In addition, the Plaintiff failed to provide the sort of information required for the reasons set out in the main judgment. 15. Thirdly, the Plaintiff did not contend that its claim would be stifled. Rather, Mr Robinson for the Plaintiff argued that an order for security was neither "necessary nor appropriate" (see paragraph 83 of the security for costs judgment). 16. The Plaintiff's arguments about the Defendants having been a material cause of the Plaintiff being in financial difficulty and questions of delay were not sufficient to persuade the Court to refuse to order security. 17. In my judgment, the outcome of the first issue that I had to decide, namely whether some form of security was going to be provided, was always going to result in an affirmative answer. 18. Secondly, as Advocate MacDonald observed, the Plaintiff did not offer anything by way of security. There was no offer the Defendants had to beat and it was awarded costs of a significant sum. 19. The above all justifies some form of costs order in favour of the Defendants. 20. However, I have to recognise that the amount ordered was significantly less than the amount claimed for. I consider this justifies some form of reduction. The reference to making no costs order operating as a disincentive, as Advocate MacDonald submitted, applies also to a party seeking security. Given the amount at stake in this claim, the Court was always going to have to carry out some form of balancing exercise as referred to at paragraph 92 of the security for costs judgment. The Defendants should have recognised this and therefore should have suggested some form of figure appropriate to such a balancing exercise. 21. The conclusion that I have reached therefore by reference to the discretion vested in me on costs is that the Plaintiff should pay 75% of the Defendants' costs on the standard basis, with no order as to costs in respect of the balance. In my judgment, this order reflects the fact that while the Defendants were successful in relation to the principle of seeking security, the amount ordered was significantly below the amount sought. The withdrawal of the security for costs application by the Plaintiff 22. In relation to the withdrawal application, Advocate Littler emphasised that the reason the application was made was because the Plaintiff, through Appleby, became aware that the Defendants were being pursued by a mortgage company, leading to an *Acte Vicomte Chargé d'Ecrire* being made against the Defendants. 23. In correspondence on 13 and 14 October, Appleby

confirmed that the creditor had been repaid. More detail was provided on 20 October. It was this that led Voisin to withdraw their application for security for costs. 24. This led Advocate Littler to contend that her client's approach was entirely reasonable. 25. She therefore contended that either her client should receive a costs order in its favour or costs should be in the cause. 26. Advocate MacDonald for the Defendants contended that the without prejudice correspondence should not be referred to because it was not marked without prejudice save as to costs. 27. Alternatively, Advocate MacDonald contended that the Plaintiff had never sought financial disclosure from the Defendants and, secondly, it was always known that there were no circumstances to justify a security for costs order against the Defendants who were local residents with immovable property with equity. 28. Rather, the Defendants contended that the Plaintiff's approach was an attempt to try to distract from the Defendants' own application for security for costs. 29. He also contended that the Defendants, through his firm, replied promptly once specific questions were asked. 30. This led to the submission that the Plaintiff's application for security for costs was unfounded from the outset and was premature. Decision on the withdrawal application 31. The normal practice where a party makes an application which is withdrawn is that the other party should have their costs of that application. However, in every case, the Court always has a discretion to determine what costs order is just where an application is withdrawn and the normal practice should not become an inflexible rule. 32. In this case, the claim and counterclaim were interlinked and were of a broadly similar amount (see the discussion in the security for costs judgment at paragraphs 77 to 81). 33. I therefore concluded that the question of the Defendants' financial position became something of a red herring. For this particular type of claim, my review of the evidence and the conclusions I reached means that I was not satisfied that the Plaintiff would ever be able to recover security for costs from the Defendants for the latter's counterclaim. For the reasons set out in the security for costs judgment, there was no real counterclaim separate and distinct from the defence of set-off pleaded by the Defendants. 34. The fact therefore that the Plaintiff was concerned about the Defendants' ability to pay for the purposes of making a security for costs application was irrelevant because there was no separate counterclaim which could be the subject matter of a security for costs application. 35. This means that the Plaintiff should never have sought security for costs against the Defendants and therefore it follows that the Plaintiff should pay the Defendants the costs of the withdrawal application. This should be on the standard basis because while the application was misguided, I do not consider that this meets the threshold where indemnity costs are ordered which requires the Court to express its displeasure or something has taken the case out of the ordinary. 36. The Plaintiff shall therefore pay the Defendants' costs on the standard basis, to be summarily assessed if not agreed, of the Plaintiff's withdrawn application for security for costs against the Defendants. No

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