

JERSEY / JUDGMENT

Leeds Utd v Admatch [2009]

JCA 097 (19 May 2009)

[2009] JCA 097

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COURT OF APPEAL 19 May 2009 Before : J. P. C. Sumption, Q. C., President; Sir John Nutting, Bt., Q. C., and; M. S. Jones, Esq., Q. C.. Between Leeds United Association Football Club Limited First Plaintiff Leeds United Football Club Ltd (formerly Leeds United 2007 Limited Second Plaintiff/ APPELLANT And The Phone-In Trading Post Limited t/a Admatch Defendant/ RESPONDENT Advocate P. Sinel for the Appellant. Mr R. L. Weston as Director of the Respondent.

JUDGMENT

sumption ja: 1. These appeals arise out of two orders of the Deputy Bailiff, dated 21 August and 4 December 2008. Their combined effect was to require the Second Plaintiff to put up security for the Defendant's costs up to and including the trial in the sum of £263,500. That sum was subsequently paid into court, pending the hearing of this appeal. On 17 March 2009, we allowed the appeal and ordered that it should be repaid to the Second Defendant. This is the Judgment of the Court, giving our reasons for that decision. The facts 2. Since the Plaintiff's claim is for a debt of £190,400, which is admitted in its entirety subject to a set-off, the making of an order for security in an amount half as large again might seem disproportionate by ordinary standards. This is not, however, litigation that can be measured by ordinary standards. Behind the issues disclosed in the pleadings, there is a wider dispute which explains much about the way that it has been conducted. 3. The First Plaintiff is an English company which once owned and operated Leeds United Football Club. In 2004, Mr. Robert Weston and Mr. Melvyn Levi, whom Mr. Weston describes as his business partner, had had an interest in the First Plaintiff and some involvement in the management of its affairs. The Defendant, which trades under the name of Admatch, is a Jersey company owned and controlled by Mr. Weston. It acted as the First Plaintiff's agent for the sale of match and season tickets by credit card. Another of Mr. Weston's companies, called Cope Industrial Holdings Ltd., is said to have lent through Mr. Levi a sum of £1,439,734 to the First Plaintiff's immediate holding company for the First Plaintiff's use. 4. In the course of 2005, control of the First Plaintiff was acquired by interests associated with Mr. Ken Bates. Mr. Bates is the former owner of Chelsea Football Club and a well-known figure in the football world. On 4 May 2007, the First Plaintiff went into administration, with net debts reported to be about £40 million. The administrators transferred the assets of the First Plaintiff to the Second Plaintiff, which appears to have been a shell company under their control, and ultimately sold the shares in the Second Plaintiff to a consortium led by Mr. Bates. In due course, the First Plaintiff went

into liquidation. As a result of these events Mr. Weston and Mr. Levi have apparently been ousted from the affairs of the club, the loan of £1,439,734 is said to have remained unpaid, and relations between Mr. Weston and Mr. Levi on the one hand and Mr. Bates on the other became progressively more acrimonious. 5. In December 2005, the First Plaintiff began this action, claiming £190,400 due to it under its agreement with Admatch, representing the proceeds of ticket sales, net of Admatch's commission. Subsequently, in July 2007, the Second Plaintiff was joined to assert the same claim in its own right as assignee of the First Plaintiff, which has since then taken no part in the action. Subject to an issue about the validity of the assignment, Admatch admits that the sum claimed is due. Its defence is based on a provision of its agreement with the First Plaintiff under which it is entitled to deduct by way of set-off from money owed to the First Plaintiff any sum owed at any time for whatever reason by the First Plaintiff to any parent associate or subsidiary of Admatch. What is said is that Admatch is an associated company of Cope Industrial Holdings Ltd., with the result that it is entitled to set off enough of the £1,439,734 loan to extinguish its liability. 6. Throughout the proceedings, the Defendant has been represented by Mr. Weston. On 1 August 2007, it applied for security for costs. In his evidence in support of the application, Mr. Weston said that Admatch was a dormant company, whose defence to the action had been conducted entirely by himself and his wife. They were both employed by a company controlled by them called St. Helier International Ltd., which was engaged in the tourism and accommodation business in Jersey. Mr. Weston claimed that by January 2008 he and his wife had spent 'well over' 550 hours on the matter, or eighty working days of seven hours, in dealing with pleadings, discovery and interlocutory hearings. This, he said, had adversely affected the business of St. Helier International Ltd ("St Helier"). They proposed, therefore, that St. Helier should charge Admatch £181 per hour for their services, making in round figures a total of £100,000. By May 2008, the time claimed had risen to 700 hours. In December 2008, this had risen to 1,600 hours, or 230 working days, which he said had reduced the profitability of his other businesses by at least £300,000. At that stage, they expected to spend a further 126 hours on preparing for and attending the trial. In his most recent affidavit, sworn on 3 March 2009, Mr. Weston says that the tally of hours to date has risen to 1,800 hours, or 260 working days, leading to a reduction of St. Helier's profitability of some £325,000. He exhibited an invoice from St. Helier to Admatch for his and his wife's services in a cumulative amount of £310,000. 7. On 14 February 2008, the Master made an order for security for costs limited to £5,000. On 21 August 2008, the Deputy Bailiff allowed Admatch's appeal and increased the sum to £88,500 up to and including 17 January 2008. He first held that since Admatch was represented by a person other than an advocate, it would be entitled to have its costs taxed under Rule 12/6 of the Royal Court Rules, which deals with the taxation of the costs of litigants in person. Under Rule 12/6, a litigant in person is entitled to his 'actual pecuniary loss' in representing himself, up to a maximum of two thirds of the amount which would have been allowed if the litigant had been represented by an advocate. The Deputy Bailiff reduced the number of hours claimed by 20% and allowed £170 per hour up to 40 hours in any week and £50 per hour in excess of 40 hours. On 4 December 2008, the Deputy Bailiff made a further order for the provision of additional security up to and including the trial. That sum was calculated by taking the number of hours claimed by Mr. Weston, excluding certain items (such as time spent on the present appeal), and reducing

others. There was no additional 20% discount on this occasion. This came to £175,000, bringing the total amount of the security ordered against the Second Defendant to £263,500. Procedural problems 8. On 10 September 2008, the Second Plaintiff appealed, with leave, against the Deputy Bailiff's first order. On 16 September 2008, Carey Olson wrote to the Judicial Greffe on their behalf abandoning the appeal. This was because the Deputy Bailiff had refused to stay his order, the appeal would not be heard until 9 October and the trial was at that stage due to begin on 2 December 2008. They concluded that in these circumstances an appeal would be pointless. Shortly after that, on 28 October 2008 the trial was adjourned to 5 May 2009 on the Defendant's application. So on 11 November 2008, Carey Olsen wrote again seeking to proceed with the appeal. On the following day, they asked for an extension of time for setting it down. The Assistant Judicial Greffier replied that the Second Defendant would have to make a fresh application for leave to appeal. On 7 January 2009, the Deputy Bailiff heard the Second Plaintiff's application for leave to appeal against both orders and an extension of time for setting down the appeal against the first order. He granted leave to appeal against his second order, but dismissed the application for leave to appeal against the first, and declined to extend time, on the ground that these were matters for the Court of Appeal. 9. The first thing that we need to do is to cut through the procedural thicket. The Deputy Bailiff was right to say that once he had made his first order and dealt with consequential matters, including leave to appeal, he was *functus officio* and therefore could not deal with a second application for leave. We also think that he was right to say that the leave to appeal which he granted fell away with the appeal itself, once it was abandoned. In our view, however, this court has an inherent power to allow a party to reinstate an abandoned appeal, thereby reviving both the appeal and the leave. We think that it would normally be right to do so in any case where we would have granted leave to bring an entirely fresh appeal out of time. We are satisfied that it would be right in this case. Carey Olsen resiled from their notice of abandonment less than a month after they had given it. There is no prejudice to Admatch. The appeal raises points of substance, which ought to be heard. They will in any event be heard in relation to the second order, in respect of which leave to appeal has already been granted and no problem arises. We therefore grant the Second Plaintiff leave to reinstate their appeal against the first order notwithstanding their notice of abandonment of 16 October. We direct that the appeal be treated as having been set down. Security for costs 10. Rule 4/1(4) of the Royal Court Rules 2004 provides that 'any Plaintiff may be ordered to give security for costs'. As expressed in the Rules, the discretion to order security for costs is unlimited. However, in practice the principles applied in this jurisdiction have developed by analogy with those applied in England. In England it has for many years been the practice, supported by a specific power in the rules, to order security for costs to be put up by a Plaintiff who resided outside the jurisdiction and had no substantial assets within it. At one time the Defendant was regarded as being entitled to such an order as of right. But in *Sir Lindsay Parkinson & Co. Ltd. v. Triplan Ltd.*

[1973] QB 609, the Court of Appeal in England rejected that view, and held that security should be ordered only when the interests of justice required it. That decision, however, had less impact on the practice than might have been expected. The English court started from the premise that a Defendant ought not to have to pursue a foreign-resident Plaintiff abroad

for his costs. The mere fact of his non-residence was therefore enough to make it just to order security, unless (i) the Plaintiff could be seen, even at the interlocutory stage, to have a high probability of success, or (ii) the Plaintiff's financial situation was such that an order for security would be likely to stifle a claim that was at least arguable. In Jersey, these principles were endorsed by this Court, after many years in which they had been applied in practice, in *A. E. Smith & Sons Ltd. v. L'Eau des Iles (Jersey) Ltd*

[1999] JLR 319 . 11. The assumption that it was necessarily just in principle (other things being equal) to spare a Defendant the need to enforce a judgment for costs abroad, has always been open to two substantial objections. One is that it originated at a time when there were legal and practical difficulties and considerable delay and expense involved in enforcing judgments internationally, especially judgments for costs against the losing party, which were routinely awarded by courts standing in the English common law tradition, but not generally in civil law jurisdictions or the United States. There is, however, no logical relationship between residence outside the jurisdiction and inability or unwillingness to pay a successful Defendant's costs. Moreover, any procedural difficulties in recovering costs from solvent Plaintiffs are much diminished by the reciprocal enforcement of judgments, which has become a normal feature of modern international litigation. The second objection is that an order to a non-resident Plaintiff to put up security for the Defendant's costs in advance of any trial of the merits is an impediment to his access to justice which on the face of it calls for special justification. The fact that such an order is available only where the Plaintiff resides out of the jurisdiction is discriminatory as well. It is worth remembering that others do not always see these matters as we do. As recently as 1999, the French Cour de Cassation regarded it as contrary to public policy to enforce the order of an English court awarding costs against a Plaintiff, after his action had been summarily dismissed for failing to comply with an order for security: *Pordea v. Times Newspapers* , 1 re Chambre Civile, 16 March 1999. 12. In England over the past fifteen years, some of these considerations have led to a fundamental re-examination of the practice. In *Fitzgerald v. Williams*

[1996] QB 557, the English Court of Appeal held that since most non-residents were not British the power to order security against them constituted indirect discrimination on the ground of nationality, contrary to the EC Treaty. This led to a change in the rules in England to provide that such orders could not be made against residents of states party to the Brussels or Lugano Conventions. The incorporation into English law by the Human Rights Act 1998 of the European Convention on Human Rights introduced a more general prohibition of discriminatory acts by public authorities. Article 6 of the Convention, which guarantees a fair hearing before an impartial tribunal, has for many years been interpreted by the European Court of Human Rights as guaranteeing access to a court to vindicate any legal rights. Under Article 14 of the Convention, the enjoyment of the rights conferred by the Convention (including Article 6) is to be secured 'without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other

status.' In Nasser

v. United Bank of Kuwait

[2002] 1 WLR 1868, the English Court of Appeal held that an order for security for costs was not in itself contrary to Article 6 of the Convention. However, to treat the foreign residence of the Plaintiff as prima facie justifying such an order discriminated against him contrary to Article 14. 13. It is well established that Article 14 does not require that there should have been a breach of some other Article of the Convention. It requires only that there should have been discrimination which in some respect fell within the ambit of another Article and was not objectively justified. In the view of the Court of Appeal in Nasser, the practice was discriminatory because in like circumstances security would not have been ordered against a Plaintiff resident in England or in a state party to the Brussels or Lugano Conventions. This did not mean that security could never be ordered in such a case. But it did mean that there had to be an objective justification for the order in the particular case, based on some real obstacle or burden associated with enforcing a judgment for costs in the country or countries where the Plaintiff had his assets. For the generality of foreign jurisdictions, the Court of Appeal considered that it would be possible to make assumptions about any special difficulties about enforcement, or indeed about the absence of such difficulties. But in the case of Commonwealth countries with legislation equivalent to Part I of the Foreign Judgments (Reciprocal Enforcement) Act or Part II of the Administration of Justice Act 1920, a Defendant should be required to prove that he would face sufficient difficulty to justify an order. In that case, which concerned a Plaintiff resident in the United States, the Court ordered security in the sum of £5,000, being an instinctive assessment of the likely additional cost of enforcing a judgment in the United States, by comparison with the cost of enforcement in the United Kingdom or a state party to the Brussels or Lugano Conventions. The Judgment of the Deputy Bailiff 14. Jersey does not belong to the European community, and the prohibition against discrimination on the ground of national origin in the EC treaties has no application here. However, the European Convention on Human Rights has the force of law by virtue of the Human Rights (Jersey) Law 2000. Article 7(1) of the Law makes it unlawful for any public authority (including a court) to act in a way that is incompatible with a Convention right. 15. The critical reason why the Deputy Bailiff allowed the appeal from the Master was that he did not accept that the practice of making orders for security for costs against Plaintiffs resident outside Jersey was contrary to Article 14 of the Convention. He observed that the position in Jersey was not the same as it was in England, because in England almost all Plaintiffs not resident in states party to the Lugano or Brussels Conventions would not be foreign nationals, whereas in Jersey many non-resident Plaintiffs will be British nationals, like almost all residents of Jersey. There was therefore in his view no discrimination on the ground of national origin. However, the Deputy Bailiff did not decide the appeal on that ground. He decided it on the ground that, even assuming that discrimination on the ground of mere residence would be contrary to Article 14, an order for security pursued a legitimate objective and was proportionate to that objective. In this respect he disagreed

with the view of the English Court of Appeal in *Nasser*. 16. His reasons for regarding the object of an order for security as legitimate are summed up in paragraph 32 of his Judgment:- "Where an unsuccessful Plaintiff resides in Jersey, it is straightforward for the successful Defendant to enforce an award of costs in his favour against the Plaintiff. Conversely, where a Plaintiff resides outside Jersey, it will often be extremely difficult, expensive and time consuming for a successful Defendant to recover his costs from that Plaintiff. Such an outcome could well lead to serious injustice with the defendant having won his case but being left out of pocket." 17. Having decided that the objective was legitimate, he went on to hold that the jurisdiction to order security against a non-resident Plaintiff was also proportionate. In summary, his reasons were these. A non-resident Plaintiff is unlikely to have assets within the jurisdiction. There will therefore be 'enormous prejudice' to a successful Defendant if he has no or only limited security. The Deputy Bailiff thought that it would be 'invidious' to take judicial notice of these matters in the way suggested by the English Court of Appeal in *Nasser*. The Court would therefore be faced with disputed evidence about the practice regarding enforcement in the relevant foreign jurisdiction, if this were to be regarded as a relevant factor. And, after winning the action, the Defendant would have to take advice from foreign lawyers and institute new proceedings in a foreign country to enforce his costs order. This could be expected to be stressful, expensive and time-consuming. Moreover, its outcome might be uncertain, for the Plaintiff might be insolvent, or hide his assets or take technical points. These factors might deter the Defendant from enforcing his order altogether, or drive him to an unfavourable compromise. Jersey, as the Deputy Bailiff pointed out, has no reciprocal enforcement arrangements with any countries other than the British Isles. By comparison, once it was accepted that security would not be ordered where its effect was to stifle a claim, there was no substantial prejudice to the Plaintiff. 18. In our judgment the Deputy Bailiff's approach to Article 14 of the Convention was mistaken. 19. We deal first of all with the question whether the current practice discriminates on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.' The Deputy Bailiff doubted whether it did. But the short answer to his doubts is that for the purpose of Article 14 of the Convention, there is discrimination on grounds of 'status'. The sweep-up term used in the Article ('or other status') refers to any characteristic of the individual which can be described as personal to that individual: *Kjeldsen and others v. Denmark*

(1976) 1 EHRR 711 ; *R (S) v. Chief Constable of South Yorkshire Police*

[2004] 1 WLR 2196 (HL), at paragraph 48 (Lord Steyn). In *R (Carson) v. Secretary of State for Work and Pensions* [2006] 1 AC 176, it was conceded that a British subject's settled residence in South Africa was a personal characteristic in this sense, and the concession appears to have been approved by the Committee. It is fair to say that residence will not in all circumstances be a matter of status. In particular, different considerations may apply if the residence relied upon is purely ephemeral. However, it is enough for the determination of this case to say that a person's settled residence in a distinct territory is

part of his status for the purposes of Article 14. In particular, the domicile of a company, which in both England and Jersey depends on the place of its formal incorporation and registration, is part of the status of a company. It follows that the residence of an individual or the incorporation of a company in Jersey confers a status distinct from that conferred by residence or incorporation in the United Kingdom. It follows that Article 14 extends to discrimination between a Jersey and United Kingdom litigant. 20. We agree with the Deputy Bailiff that protecting the interest of a Defendant in being able to enforce a judgment for his costs if he succeeds is in principle a legitimate objective of the practice. However, like the English Court of Appeal in *Nasser*, we are unable to accept that a blanket presumption that such protection is appropriate where the Plaintiff is resident outside Jersey is a proportionate way of achieving that objective. 21. In the first place, we do not accept the Deputy Bailiff's view that if a Plaintiff's claim is not stifled by an order for security, he suffers no substantial prejudice by providing it. The Plaintiff is forced to lay out funds equal to the other side's costs in addition to paying his own, at a time when the Court is rarely in a position to form any view of the merits. The provision of cash security by the usual method of paying it into court has implications for his cash-flow which are likely to be significant, even if they are not ruinous. It ties up funds which would otherwise have been used in his business or deposited at interest. If the security is not funded from cash balances, it will cause him to incur borrowing or guarantee charges. 22. Secondly, in considering the prejudice to the Defendant in having no security, the Deputy Bailiff looked at the matter globally, pointing to the worst possible cases. We do not doubt that there may in some cases be serious difficulties about enforcing a judgment for costs. The foreign law may be obscure. Its procedures may be slow or expensive. To the extent that these things are true, the experience will no doubt be stressful. But the question is not what may happen in the worst cases, but what is likely to happen in this case. The Second Plaintiff in this case is British. As the Deputy Bailiff himself observed (para. 30), most non-resident Plaintiffs in Jersey are British. The law relating to the enforcement of judgments in England is not obscure, and Jersey lawyers, who deal with English law every day, can reasonably be expected to be familiar with it. A Jersey judgment for costs will be enforceable in England in the same way as an English judgment by registration in the United Kingdom under Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933. The Deputy Bailiff has not suggested that registration is a problematical procedure, and indeed it is not. We have had put before us a letter from a firm of English solicitors indicating that it would cost £50 in court fees and that their charges would be £500. The grounds for setting registration aside are narrowly defined by the statute, and there is no reason to think that any of them would apply in this case. 23. Like the Deputy Bailiff, we are perfectly prepared to accept that some Plaintiffs may have no assets or may hide them. If this is established as a probability on the application for security, then unless the effect would be to stifle the claim the application will probably succeed. But the Deputy Bailiff has not found that the Second Plaintiff's assets will be hidden away or otherwise unavailable to satisfy a judgment. Mr. Weston has invited us to make such a finding, but we see no basis for doing so. He argues that the old Leeds United

company went into administration and then liquidation in 2007 with a substantial deficiency, and that some of the directors at the time, including Mr. Bates, are on the Board of the Second Plaintiff. He invites us to infer that the business is being dishonestly run, from this and a variety of other factors, mainly those surrounding the transfer of the business from the old to the new Leeds United company in 2007, which could not possibly bear that imputation. He complains that Mr. Bates has said unpleasant and malicious things about him. There is some evidence that this is so. But we cannot accept Mr. Weston's invitation to infer from this that the management of the Second Plaintiff would be likely to resist or evade enforcement of a judgment for costs, in order to spite him. In our view the salient points to emerge from the evidence are that in the year 2007/8 the Second Plaintiff made a profit of £4,553,000 (including substantial non-recurring items from player trading) on a turnover of £23,249,000 and that it is expected to make a profit of some £600,000 in the year 2008/9. The management is most unlikely to allow the company to become insolvent if they can avoid it, bearing in mind that a 'phoenix' company taking over the business would normally be required to start in a lower league than its predecessor. Mr. Weston himself asserts that the Second Plaintiff has enough free assets to put up the security sought, which is borne out by the fact that it has in fact done so pending this appeal, in response to the Deputy Bailiff's order. For the same reason, there is every reason to believe that it will be able to satisfy an order for costs. 24. Some of the Deputy Bailiff's observations suggest that the Court should not have to decide in each individual case whether it is likely to be difficult for the Defendant to enforce a judgment for costs, because the result will tend to complicate applications for security, making additional demands on court time and adding to interlocutory costs. We accept that this may happen in some cases, although we doubt whether it is generally true. It has not been the experience of the courts in England in the wake of *Nasser*. Indeed it seems more probable that if Defendants have to establish that there is a real need for security for costs before making the application, the volume of such applications will fall, especially in the large proportion of claims where the non-resident Plaintiff is British. However, even if this were not the case, we would reject the proposition on principle. One of the more reliable signs that a measure is disproportionate to its objective is that it is applied in accordance with a blanket rule, instead of being confined to cases where it is actually necessary. Under a proportionate system of procedure, a British Plaintiff would not be required as a matter of course to put up security for costs in cases where it is unnecessary, simply because if it were a Spanish Plaintiff, investigation might show that security was necessary. 25. We have considered whether it would be right to order security in the smaller sum directed by the Master. This was the course taken in *Nasser*, where any enforcement proceedings would have had to be taken in the United States. However, we do not think that it would be appropriate in a case where enforcement, if necessary, would occur in the United Kingdom. The cost of registering a judgment is too trivial to warrant such an order. 26. It follows that the Second Plaintiff's appeal must be allowed, and the security in court repaid. The amount of the security 27. We are reluctant to part with the appeal without saying something about the basis on which the amount of the security was

assessed. There is no appeal against this aspect of the Deputy Bailiff's judgment, and it would not arise anyway given our conclusion that no security should have been ordered. However, in spite of the Deputy Bailiff's observation (at paragraph 37) that he was not 'making any finding as to the basis on which costs will in fact be awarded', we are concerned that as it stands the judgment of the Deputy Bailiff will inevitably stand as authority on the way in which costs are to be taxed in this and other similar cases. The number of hours which Mr. and Mrs. Weston have claimed, amounting to well over a working year on the interlocutory stages of a comparatively straightforward case, and producing a figure for security substantially exceeding the amount in dispute, looks excessive on the face of it. We think that the Deputy Bailiff was insufficiently sceptical about these figures, and in the process has misapplied Rule 12/6 of the Royal Court Rules. 28. Rule 12/6(2) provides:- "(2) The amount of costs allowed where a litigant in person does any item of work for his or her case or part thereof shall be - (a) if the work is undertaken in the litigant's normal working hours and thereby causes the litigant pecuniary loss, either - (i) the actual pecuniary loss, or (ii) up to two thirds of the sum which in the opinion of the Greffier would have been allowed in respect of that item if the litigant had been represented by an advocate, whichever is the lower; or (b) if the work is undertaken outside of the litigant's normal working hours, at such rate per hour as determined by the Greffier in respect of the time reasonably spent by the litigant on the work. (3) Where an assessment is made under paragraph 2(a), the amount of work done in the litigant's working hours shall be calculated by the number of working hours the litigant was away from his or her work in respect of the time reasonably spent by the litigant to do the work, as deposed in an affidavit made by the litigant himself or herself and, for this purpose, the number of working hours in any one week for which the litigant can claim shall not exceed 40." 29. It has been for some years the practice in Jersey to allow companies to appear as of right by their directors or other officers. In this respect the position here differs from that which applies, at any rate in theory, in England. However, it must in our view be highly doubtful whether a company can ever be a 'litigant in person'. In its natural meaning, the expression refers to a litigant appearing without a representative, something which a company is incapable of doing. This was certainly the view taken in England before the rules were changed to broaden the definition: see *Jonathan Alexander v. Proctor*

- [1996] 2 All ER 334. Neither the ordinary meaning of 'litigant in person' nor the interpretation put on it in England can be decisive in the rather special procedural context of Jersey litigation. What does seem to us to be decisive is that Rule 12/6 has been drafted on the assumption that the 'litigant in person' is a natural person and not a corporation. In particular, the mandatory Rule 12/6(2) is not easy to apply to a corporation, which has no 'normal working hours' and cannot easily be understood to be 'away from his or her work'. 30. The Deputy Bailiff sought to get round this difficulty by treating Mr. and Mrs. Weston as if they were the litigants in person and proceeding on the basis of their normal working hours. In our view, this was a fundamental error. Even if one identifies Mr. Weston with

Admatch for the purpose of classifying the latter as a 'litigant in person', it cannot be right simply to ignore the corporate personality of the companies involved. If there was a litigant in person in this case, it was Admatch, not Mr. Weston as its director and shareholder or his wife as his assistant. It is therefore Admatch's 'actual pecuniary loss' which is relevant, not that of Mr. or Mrs. Weston. On the face of it, Admatch, as a dormant company with no business, has suffered no loss. In his affidavits, Mr. Weston gave evidence that his principal Jersey company, St. Helier International had suffered loss as a result of the diversion of his energies and those of his wife to this litigation. But no attempt was made to prove this, other than by bald assertion, and in any event St. Helier's loss is irrelevant because neither St. Helier nor Mr. Weston as its shareholder is the litigant in this action. The only actual pecuniary loss which might be attributed to Admatch in this case was its alleged liability to pay St. Helier International's invoices for the services of Mr. and Mrs. Weston. We leave aside the fact that this was not an arms length transaction, but a deal made by Mr. Weston in one capacity with himself in another. We also leave aside the fact that the basis of the deal appears to be that the invoices will not actually be paid as and when rendered but simply left outstanding so as to create a book entry to justify an award of costs against the Second Plaintiff. The real problem is that the cost to a company of paying for services rendered to it is not an 'actual pecuniary loss'. It is simply the price of value received. Rule 12/6 is not concerned with the cost to a litigant of paying an agent to represent it but only with the loss suffered by a litigant itself in litigating without one. Nor of course is the Rule designed to enable the directors of companies classified as litigants in person to make a living out of the litigation. 31. The Deputy Bailiff observed (at paragraph 54) that Rule 12/6 is 'not very happily phrased for some individuals, let alone for companies.' We agree. It appears to us that if a litigant is at one and the same time to enjoy the advantage of being unrepresented and the advantage of being able to charge the other side with the cost of paying a representative, the rules will need to be reframed in a way which allows for that. Authorities *Sir Lindsay Parkinson & Co. Ltd.*

v. *Triplan Ltd.* [1973] QB 609. *A. E. Smith & Sons Ltd. v. L'Eau des Iles (Jersey) Ltd*

[1999] JLR 319 . *Pordea v. Times Newspapers*, 1re Chambre Civile, 16 March 1999. *Fitzgerald v. Williams* [1996] QB 557. *Nasser*

v. *United Bank of Kuwait*

[2002] 1 WLR 1868 . *Foreign Judgments (Reciprocal Enforcement) Act 1933 Administration of Justice Act 1920. Human Rights (Jersey) Law 2000. Kjeldsen and others v. Denmark*

(1976) 1 EHRR 711 . *R (S) v. Chief Constable of South Yorkshire Police*

[2004] 1 WLR 2196 (HL). *R (Carson) v. Secretary of State for Work and Pensions* [2006] 1 AC 176. *Jonathan Alexander v. Proctor* [1996] 2 All ER 334. Page Last Updated: 29 Jul 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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