

JERSEY / JUDGMENT

Leeds -v- Admatch [2011] JRC 217A (07 November 2011)

[2011] JRC 217A

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

judgment

the bailiff: 1. The application before me this morning is one by the second plaintiff for an order that, following the decision in its favour on 15 th August, (

[2011] JRC 159) Mr Weston should be ordered to pay the costs of the hearing jointly and severally with the defendant, and that such costs should be on the indemnity basis. 2. The background has been set out in a number of previous judgments. After prolonged litigation, judgment in the sum of £190,400 was given against the defendant on 19 th May, 2011, (

[2011] JRC 101) following the defendant's failure to comply with various unless orders made in January. The defendant has been represented throughout by Mr Weston, its beneficial owner and one of its directors. According to Mr Weston, as set out in the judgment of 15th August, the defendant has no assets; it cannot therefore satisfy the judgment. On the other hand, as also set out in that judgment, Mr Weston admits that the defendant received the £190,400 from the sale of season tickets on behalf of the first plaintiff, but he says that sum has been dispersed for the benefit of other companies which he owns. 3. It is in these circumstances that, for the reasons set out in its judgment, the Court ordered that a director of the defendant should swear an affidavit setting out the financial position of the defendant. The second plaintiff was therefore successful in its application; the Court made an order essentially in the form of the summons save that it changed the commencement date for the information to be provided from 1 st January, 2003, to 1 st January, 2004. 4. The defendant does not dispute that an order for costs on the standard basis should be made against it, but this application raises two issues. First, should an order also be made against Mr Weston personally; secondly should the order against the defendant and Mr Weston (if granted) be on the indemnity basis rather than the standard basis. 5. I take first the issue of whether an order should be made against Mr Weston personally. The principles as to when a costs order may be made against a non-party were authoritatively stated in this jurisdiction in the case of Minister for Planning and Environment-v-Yates and Reg's Skips

- [2008] JLR 486 at paragraph 74. I do not intend to repeat those principles; they were helpfully set out at paragraph 17 of Advocate Chiddicks' skeleton. The Court of Appeal in that case essentially adopted the principles laid down in the case of Dymocks Franchise System (NSW) PTY Limited-v-Todd
- [2004] 1 WLR 2807 , a decision of the Privy Council. Further consideration of these principles was given by the Court of Appeal in relation to this particular case in its judgment of 9 th June, 2011, (
- [2011] JCA 110). At paragraph 4, Jones JA said that in relation to a director of an insolvent company the principle was that:- "Where a director "promotes and funds proceedings by an insolvent company solely or substantially for his own financial benefit, he should be liable for the costs if his claim or defence or appeal fails." If, however, he "can realistically be regarded as acting rather in the interests of the company (and more especially its shareholders and creditors) than in his own interests", it is likely that a costs order will not be made against him." That really endorsed the principle laid down in the Dymocks Franchise case. 6. Advocate Redgrave argues that there is a gloss on this principle and he referred me to the New Zealand case of Carborundum Abrasives Ltd-v-Bank of New Zealand (No) [1992] 3 NZLR 757 at paragraph 25. This was quoted by Lord Brown in the Dymocks Franchise case and the relevant passage reads as follows:- "In many cases a major consideration will be the reason for the non-party causing a party, normally but not always an insolvent company, to bring or defend the proceedings. If a non-party does so for his own financial benefit, either to gain the fruits of the litigation or to preserve assets in which the person has an interest, it may, depending upon the circumstances, be appropriate to make an order for costs against that person. The relevant factors will include the financial position of the party through whom these proceedings are brought or defended and the likelihood of it being able to meet any order of costs, the degree of possible benefit to the non-party and whether, in all the circumstances, the bringing or defending of the claim - although in the end unsuccessful - was a reasonable course to adopt." 7. Advocate Redgrave referred in particular to that last passage concerning whether it was reasonable for the insolvent company to defend the proceedings. But this reference to the reasonableness of unsuccessfully defending or bringing a claim being a factor in whether a non-party funder should be ordered to pay the costs of the insolvent company, did not find its way into Lord Brown's formulation of the principle at paragraph 29 of the Dymock Franchise case; nor was it referred to by the Court of Appeal in this jurisdiction in either the Yates case or in the present case. I do not rule out the possibility of this being a relevant consideration but I have to say that I think it unlikely to be so in most cases. If a funder has, for his own benefit, caused an insolvent company unsuccessfully to defend a case and has thereby caused the plaintiff to incur costs, I do not see why he should not ordinarily pay the plaintiff's costs even if it was reasonable for the insolvent company to defend the case. After all, in those circumstances, the defending company would normally be ordered to pay costs on the standard basis and it is hard to see why a plaintiff should be left out of pocket in those circumstances where the insolvent company has no money and

the defence has been carried on for the benefit of the funder. 8. Turning to the facts of this case, Advocate Redgrave argued that there were differences between the circumstances of this particular application and that in respect of which the Court of Appeal had ordered Mr Weston to pay the costs personally in its judgment of June. That had been an application for leave to appeal which had been unsuccessful. The defendant was therefore initiating the matter. This application was not initiated by the defendant. It was an application being resisted by it. I do not see that that makes any difference; the principle which I have described above is stated in all the cases as being equally applicable whether the company is a plaintiff or a defendant. 9. Secondly, he says that there was no failure to comply with a court order in this case, whereas in the proceedings before the Court of Appeal, there had been. But again I do not see that as being a distinguishing feature as to whether a funder, for whose benefit litigation has been carried on, should be ordered to pay the costs. 10. Thirdly, he argues that it was reasonable for the company to defend the matter because the request as originally framed by the second plaintiff in correspondence was wider than it should have been and wider indeed than the summons and the order actually made. Again, that may be a relevant consideration in deciding whether the costs should be on the standard basis or indemnity basis but I do not see that it assists on the question of whether an order should be made against Mr Weston personally. 11. In my judgment the critical consideration here is that set out in the cases which I have referred to; namely was this application resisted in the interests of the company or its creditors, or was it resisted in the interests of Mr Weston or one or more of his other companies? I am in no doubt that the defendant had no interest of its own in opposing the application for information about its financial position and what had happened to the £190,400. According to Mr Weston it has no assets and it has been dormant since 1999 apart from a few months of activity in 2004/5 in relation to the agreement with the first plaintiff which has given rise to these proceedings. According to Mr Weston, the £190,400 which the company undoubtedly received, was applied for the benefit of other companies within his group. In my judgment the only real interest in opposing this application lies with Mr Weston and/or his other companies. 12. If information is produced pursuant to this order one can envisage that two things might follow. If details are provided which show the identity of which companies have received the money, one can envisage the possibility of proprietary claims being made against the recipients. Fear of that happening is something which would affect Mr Weston and his companies but would be of no concern to the defendant. Alternatively, it may be that disclosure of the information will show that the monies transferred to other companies are in fact to be treated as loans with the result that, contrary to what Mr Weston says, the defendant may have some assets in the form of claims against the entities to which the money was paid. In that event one can envisage the possibility of a désastre and claims being made to enforce that. All in all, I am in no doubt that the sole reason for defending this application and refusing to provide the information requested in the summons was because it did not suit Mr Weston and/or his companies to do so. It was irrelevant to the defendant. 13. I therefore consider this to be a suitable case in which to order costs personally against Mr Weston and I so order. 14. I turn next to the question of

whether the costs should be on the standard basis or indemnity basis. The principles on this subject are well established and I was helpfully referred by Advocate Chiddicks to the case of P S-v-C

[2010] JLR 645 a decision of the Court of Appeal. The Court there reviewed the various previous judgments on this topic and in particular the decision of Commissioner Page in the Royal Court in Pell Frischmann-v-Bow Valley

[2007] JRC 143 . Beloff JA summarised the position at paragraph 11 as follows:- "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." I should add that the Court in passing had approved the formulation of Commissioner Page in Pell Frischmann . 15. So one is, therefore, looking for some special or unusual feature which will usually amount to some unreasonable conduct on behalf of the paying party. Advocate Chiddicks argues that it was unreasonable for the defendant, and therefore Mr Weston, to oppose the application. He argues that it was only done for Mr Weston's interests and therefore this of itself should lead to an indemnity costs order. I do not accept that argument in the same way that the Court of Appeal did not do so at paragraph 15 of its judgment of 9 th June. The fact that the litigation is carried on for the benefit of a funder will determine whether that funder is ordered to pay costs, but it will not determine additionally that costs should be on the indemnity basis rather than on the standard basis. That falls to be considered in the ordinary way as to whether the particular application was conducted unreasonably. 16. Advocate Chiddicks argues that it was unreasonable in two ways. First, Mr Weston, on behalf of the defendant, raised five issues during the hearing all of which, he says, were dismissed by the Court with little difficulty. Secondly he says the Court should have regard to the history; in other words the failure of the defendant to comply with a number of orders and the fact that its answer was eventually struck out for failure to comply with unless orders. Advocate Redgrave, on the other hand, says that it was reasonable to oppose this particular application; the information originally sought was wider than that for which the plaintiff was justified in asking and wider than the summons; this was not a proprietary claim and therefore there was limited information to which the plaintiff was entitled. He says it is a case for standard costs. 17. In my judgment the application itself was not conducted in an unreasonable way by the defendant to the extent that I should order indemnity costs. This was a standard

case where information post-judgment was sought and it was opposed. An order for costs must follow but I do not consider that there was anything special or unusual about the way in which the application was opposed which justifies costs on an indemnity basis. 18. Therefore my order is that there is standard costs to be paid, jointly and severally, by the defendant and Mr Weston. 19. Leave to appeal is granted. Authorities Leeds-v-Admatch

[2011] JRC 159 . Leeds-v-Admatch

[2011] JRC 101 . Minister for Planning and Environment-v-Yates and Reg's Skips

[2008] JLR 486 . Dymocks Franchise System (NSW) PTY Limited-v-Todd

[2004] 1 WLR 2807 . Leeds-v-Admatch

[2011] JCA 110 . Carborundum Abrasives Ltd-v-Bank of New Zealand (No 2) [1992] 3 NZLR 757 P S-v-C

[2010] JLR 645 . Pell Frischmann-v-Bow Valley

[2007] JRC 143 . Page Last Updated: 18 Aug 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/2011/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/leeds-v-admatch-2011-jrc-217a-07-november-2011>

Prepared on 27 October 2026 · Esheria