

JERSEY / JUDGMENT

Leeds -v- Admatch [2015]

JCA 219 (30 October 2015)

[2015] JCA 219

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Court of Appeal 30 October 2015 Before : J. W. McNeill, Q. C., President C. Montgomery, Q. C., and D. Perry, Q. C. Between The Phone-in Trading Post Limited (t/a Admatch) Defendant And Robert Lawrence Weston Appellant/Party Convened And Leeds United Association Football Club Limited (in liquidation) First Respondent/First Plaintiff And Leeds United Football Club Limited Second Respondent/Second Plaintiff The Appellant appeared in person. Advocate S. M. J. Chiddicks for the Second Respondent.

judgment

the president: 1. By our judgment in this matter dated 30 July 2015,

[2015] JCA 159A , we dismissed the appeal and confirmed that the approach adopted by the Royal Court (Sir Michael Birt, Kt, Bailiff) had been an appropriate approach to a non-party costs order in circumstances where the opposing party had not issued a warning that it might make a non-party costs application against the individual. 2. The appeal having been unsuccessful, the Second Respondent makes an application for costs and, further, seeks that costs be awarded on the indemnity basis. The Appellant submits that each party should bear their own costs of and incidental to the appeal. The Appellant's Submissions 3. The Appellant submits that the meaningful input by the Second Respondent was minimal and to a major degree irrelevant, misleading or tactical. He identified five elements which he listed in chronological order rather than in order of importance. He also reminded us that leave to appeal had been granted by the Royal Court. 4. The first element was the attitude of the Second Respondent to the application by the Appellant for admission of certain material before us notwithstanding that the material might be considered as fresh evidence. The Second Respondent had objected to the use of certain of the material provided by the Appellant as, in its submission, containing fresh evidence and maintained that an application for its admission should be made. The Appellant duly made that application out of an abundance of caution. As we observed in Section 18 of our judgment, before us Advocate Chiddicks on behalf of the Respondent was not able to identify any fresh evidence in the material, in the sense of material containing new facts which would not have been known to the Bailiff when making his order for costs. We therefore did not consider it necessary to give leave but would have done so if it had been necessary. 5. In

our view this was not a major issue which should impact upon the ordinary approach that the unsuccessful party should be liable for costs. 6. The second element was that the demand by the Second Respondent in June 2015 that the Appellant's appeal scheduled for July should be struck out, was merely a tactical distraction as it was not subsequently pursued. 7. As no formal strike-out application was made, we do not consider that this matter would have given rise to material wasted costs for the Appellant which should be reflected in a change to the ordinary approach in favour of a successful Respondent. 8. The third element was that the written contentions for the Second Respondent were minimal and repetitious and could not support a claim by the Second Respondent to have undertaken substantial work in considering and responding to the Appellant's contentions and documents. 9. Again we do not consider that this matter should disturb the ordinary rule. Any issue as to the nature and extent of work actually undertaken can be aired at taxation, if taxation is required. 10. The fourth head was tactical delay in that the Second Respondent unnecessarily delayed in filing its contentions on appeal until a few minutes before the expiry of a timetable extension which the Respondent had been granted, notwithstanding that the document had been completed and signed off a week earlier. 11. This matter could not justify modifying the usual rule. 12. The last element was that the advocate for the Second Respondents had had a minimal input into the appeal proceedings in court, spending only forty minutes in addressing the court and being unable to give a meaningful reply to specific questioning by the court. 13. Neither the succinctness or limited nature of a Respondent's oral submissions nor the use, if any, which a court makes of a Respondent's submissions in its written judgment are, in themselves, reasons for denying the successful party an award of costs. 14. For all these reasons we reject the Appellant's

submissions.

Application for Costs on the Indemnity Basis 15. The principles which should govern an award of indemnity costs were expressed succinctly in the decision of this court in *C v P-S*

[2010] JLR 645 , at paragraph 11 where Beloff JA, delivering the judgment of the court, stated:-
"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?" 16. As was indicated by this court in an earlier decision in this litigation, *Leeds-v-Weston and Levi*

[2012] JCA 088 , a court will generally look for a special or unusual feature such as culpability, abuse of process, unreasonable behaviour or abuse of court procedures. 17. Upon that basis the Second Respondent made the following submissions. 18. First, the Appellant had failed to prosecute his appeal with reasonable speed and had made every effort to slow down the finality of the proceedings. The judgment below, dated 5 September 2014, had been provided in draft form on 27 August 2014. Whilst a January hearing date had been

moved because of the court's commitments, the appeal hearing had been subsequently adjourned on two further occasions following requests by the Appellant. 19. The first of the appeal adjournments had been granted without notice to the Second Respondent. 20. As regards the second application the Second Respondent had drawn the attention of the court to relevant omissions in the Appellant's adjournment applications. The adjournment applications were not supported by affidavit evidence. The second adjournment application had been refused initially but the court had been invited by the Appellant to revisit its decision following a lengthy email from the Appellant which had not been copied to the Second Respondent. Again in absence of notice to the Second Respondent, the court acceded to the Appellant's request. 21. This conduct was unreasonable. 22. In our view, whilst such conduct is open to question, it is not of such a magnitude as to give rise to a departure from the standard basis for costs. 23. Second, the Respondent submitted that the Appellant, notwithstanding the strictures imposed by the court, had failed to file written contentions and bundles on time. His conduct was unreasonable especially as he had had the benefit of approximately nine months in which to prepare his case for appeal. 24. In our view, absent any other aggravating factors an eight day delay in lodging documents would not support a departure from the ordinary rule. 25. Third, the Appellant's bundle had been deficient. It did not represent the agreed bundle as placed before the Royal Court. The Appellant had sought unilaterally to allow himself the opportunity to file material late. The bundle was not paginated. It also failed to include a transcript of the costs hearing notwithstanding the Appellant's desire to rely on comments said (or not said) at that hearing. Much of the material was irrelevant or did not assist in the appeal. 26. Whilst we see force in some of these submissions, we do not consider that the actions and failures by the Appellant are such as to take his conduct into a degree of unreasonableness justifying an order for indemnity costs. 27. Fourth, the Second Respondent relied upon the lateness of the supplementary notice of appeal, the late submission of an Estimate of Respondents' Legal Costs and further late additional material and authorities. 28. Again, whilst we recognise that this approach, by a litigant in person, may have caused irritation to the Second Respondent and its advisers, it is, again, not of the order of magnitude to instruct a possible award on the indemnity basis. 29. Finally, the Second Respondent drew attention to the unnecessarily lengthy oral submissions by the Appellant and the hopelessness of the appeal. Notwithstanding that leave had been granted, it had been granted both because of the amounts potentially involved and because this was the first time that the Royal Court had had to consider the effect of a failure to warn a person that they might be liable for costs personally. The Appellant's appeal had been without merit. 30. Leave to appeal having been granted, there would have to be singular circumstances to enable the Appellate Court to determine that the very prosecution of the appeal itself was so lacking in merit that costs should be awarded on the indemnity basis. 31. In normal circumstances leave will be granted in civil cases only where it is clear that something has gone wrong: *UCC Ltd v Bender*

[2006] JLR 269 , at paragraph 23. An appeal on which leave has been granted will, accordingly, be one which is well within the bounds of stability. On matters of costs, however, it is highly unusual for leave to be granted and, here, it would seem that it was granted on account of the fact that this was the first occasion when the court was determining a non-party costs order where the opposing party had not issued a warning that it might make a non-party costs application against the individual and the likely size of the costs. 32. It seems to us that, leave having been granted by the court below in the circumstances which we have outlined, the circumstances identified in the Appellate Court would have to amount, in reality, to a situation which showed that leave had been given upon a failure to appreciate the true circumstances. That is not the case here, and in our view the granting of leave, whilst not an indication of something having gone wrong, must be treated as an indication by the court that the issues between the parties were proper ones to be presented in an appeal to this court. We should add the obvious: the circumstance that an Appellate Court agrees with the decision and approach of the court below does not, in itself, indicate that the prosecution of an appeal was without merit.

Conclusion

33. For all these reasons we reject the submissions for the Second Respondent that costs should be awarded upon the indemnity basis and order that costs be awarded in favour of the Second Respondent upon the standard basis. *Authorities Leeds-v-Admatch Weston*

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Prepared on 26 October 2026 · Esheria