

JERSEY / JUDGMENT

# Nautech -v- CSS Ltd and Others

## [2013] JRC 152 (31 July 2013)

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### judgment

the deputy bailiff: 1. This is the Court's judgment in relation to the application of the plaintiff for a springboard injunction, which was refused. 2. As a consequence, the defendants apply for costs. Furthermore they apply for costs on an indemnity basis because the judgment of the Court of 13 th May, 2013 made it plain at paragraph 93 that the Court rejected the assertion that the plaintiff was entitled to a springboard injunction which would prevent the defendants from doing business. 3. Advocate Baker asserted that I should not take into account in this respect any shabby conduct of the defendants, because this was a discrete matter where the plaintiff, like the other parties, had the obligation to conduct litigation in a responsible way. The Court had found that there had been an intention on the part of the plaintiff to strangle the defendants' business at birth (see paragraph 64 of the judgment of 13 th May, 2013) and if the Court did not make a costs order, that might help the plaintiff to achieve that very intention. The Court had therefore discouraged a springboard injunction application, and a costs sanction on an indemnity basis was the correct answer. 4. In his response, Advocate Sinel submitted that the springboard application had been brought properly. When it came to policing the question of deletion of material wrongly taken by the defendants, he submitted that the defendants had not agreed to an independent expert being appointed, and the Court had made the order that such an expert should be appointed. He asserted that conduct prior to and during the legal procedure should be taken into account, and in particular the Court should take into account the late filing of affidavits and the incorrect affidavits which have been filed by the defendants. 5. In a written submission on 30 th July, prior to the formal judgment on the springboard application being handed down, the plaintiff submitted a further document in which it was asserted that the Court could not know at this stage whether the defendants had been truthful in the evidence put before the Court and whether their evidence will stand up to cross examination at trial. The plaintiff contended that a demonstration of the operation of the database which had been copied, removed and misused by the defendants would at trial satisfy the Court that final injunctions, damages or an account of profits and costs should be ordered. In those circumstances the Court, it was said, should be reluctant to award costs against the plaintiff at this stage. The factual matrix had to be properly tested at trial. 6. Accordingly, the plaintiff submitted that the costs of an incidental to the application for a springboard injunction should be costs in the cause. 7. In my judgment, these

submissions are misconceived. The application for a springboard injunction was a separate matter from the claims which are found in the Order of Justice. It was for special and immediate relief, and the application failed. In those circumstances, costs should follow the event. 8. The next question is whether the costs should be on a standard basis or an indemnity basis. As is indicated in the judgment refusing the springboard injunction application, the material for requesting such an injunction was the same material as was put before the Court at the hearing earlier this year, following which, at paragraph 93 of the Court's judgment in May, the Court made it plain that it did not consider a springboard injunction was warranted. Despite that indication, the plaintiff went ahead with the application. It did so notwithstanding that on 13 th May, 2013, I indicated that the Court accepted that a springboard injunction was possible as a matter of law but on the facts the Court was not satisfied that it was appropriate to make such an order, this being the explanation of the language "on the material in this case" in paragraph 93 of that judgment. Despite these indications, the plaintiff went ahead. 9. In my judgment, the application should not have been brought, and in those circumstances the plaintiff is ordered to pay the costs of the defendants of an incidental to the application for a springboard injunction on an indemnity basis. This order does not extend to the costs of the other matters raised in the plaintiff's summons heard on 3 rd June, 2013. Authorities Nautech-v-CSS Ltd and Others

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Prepared on 24 October 2026 · Esheria