

JERSEY / JUDGMENT

Neville -v- AG [2017]

JRC 043 (16 March 2017)

[2017] JRC 043

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JUDGMENT

THE commissioner: 1. Following conviction before the Magistrate's Court in November 2010, the appellant successfully appealed and the conviction was quashed in October 2013 with an order for costs in his favour. On 11 November, 2016, the Assistant Judicial Greffier ("the Greffier") issued his decision in respect of the taxation of those costs. The appellant now appeals against the Greffier's decision and seeks a greater amount by way of costs.

Background

2. It is necessary first to summarise briefly the background to the order for costs. 3. The appellant is a builder by trade who was engaged in business involving the purchase, development and sale of immovable property. In November 2007 he purchased (with his wife) 17 and 19 Devonshire Place ("the property"). He applied for permission to construct a single storey unit to the rear of the property. This application was refused in June 2008 but permission was granted in May 2009. It appears that he replaced the front door and installed plastic windows in place of the old windows without getting permission and this was identified on 9 December, 2008. A letter was immediately sent to him asking him to submit a retrospective planning application. 4. On 24 July, 2009, that retrospective planning application was rejected and permission to permit the replacement of windows and doors and to install roof lights was refused. The appellant did not appeal against that refusal. 5. On 4 November, 2009, an enforcement notice was served upon Mr Neville. I have not seen that enforcement notice but I understand that it required him to remove the plastic windows that he had installed as well as the doors and to replace them with ones that matched the original timber windows and doors which had been removed. 6. The appellant did not comply with the enforcement notice and was interviewed in that respect by enforcement officers from the Planning Department on 1 June, 2010. 7. On 4 August, 2010, he was charged. It is not possible to identify from the papers before me the exact nature of the charges but they appear to relate both to a failure to comply with the enforcement notice and to carrying out unauthorised development by reference to the replacement of the windows and doors referred to. There were pre-trial reviews on 1 September, 15 September, 13 October and 10 November 2010. There was then a two

day trial in the Magistrate's Court on 25th and 26 th November, 2010, which resulted in the appellant being convicted of all four charges brought against him. There was a sentencing hearing on 10 th December, 2010, when he was fined. The appellant represented himself at all of these hearings except for that on 15 th September when he was represented by Advocate Le Maistre of Collas Crill. 8. The appellant was - and remains - convinced that certain of the witnesses from the Planning Department who gave evidence before the Magistrate's Court committed perjury. In December 2010 he lodged a complaint to that effect with the police. 9. On 24 th August, 2011, the police wrote to him to say that they had found the allegations of perjury to be 'unsubstantiated' . Following further correspondence from the appellant, Superintendent Gull wrote on 15 th September to say that he was satisfied with the police's findings. 10. There then followed communications between the appellant and the Law Officers' Department but in December 2011, that Department wrote to the appellant saying that the Attorney General did not intend to request the institution of a criminal investigation by the police regarding the appellant's allegations of perjury. Between January and March 2012, there was communication between Deputy Higgins (on behalf of the appellant) and the Law Officers' Department concerning the availability of printed/audio transcripts of the trial before the Magistrate's Court. 11. On 5 th November, 2012, the appellant filed a notice of appeal against conviction together with an application for leave to appeal out of time. 12. In May 2013 there was various correspondence concerning extensions of time because the appellant was contending that he had not yet received full disclosure. The appellant made a data access subject request to the Planning Department under the Freedom of Information Code of Practice and the Data Protection (Jersey) Law . There was a hearing before the Royal Court on 29 th May at which time the appeal was adjourned to enable further disclosure to be obtained by the appellant. 13. The matter came back before me sitting in the Royal Court on 18 th July, 2013, and at that stage the appeal was adjourned, an *amicus curiae* (" amicus ") was appointed and the Court ordered disclosure of all documents including internal emails, memoranda etc. which could in any way be relevant to an appeal based upon an abuse of process. 14. On 4 th October, 2013, Advocate Preston, who had been appointed as *amicus* , filed his contentions in connection with the appeal. He raised a number of concerns in relation to the prosecution including most significantly a submission that the enforcement notice was a nullity because of various defects in it which he identified. 15. The appeal against conviction came on for hearing before the Royal Court on 29 th October, 2013, at which time Crown Advocate Gollop, who had been appointed to conduct the appeal on behalf of the Attorney General, did not oppose the appeal. The appeal was therefore allowed, the convictions quashed and the appellant was awarded his costs out of public funds in connection with the appeal and the proceedings before the Magistrate's Court pursuant to Article 20(5) of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 ("the 1949 Law"). 16. On 24 th September, 2014, the Greffier gave his decision ("the first decision") in relation to the taxation of the costs sought by the appellant pursuant to the order of 29 th October, 2013. The Greffier pointed out that the appellant had been claiming the sum of £213,333.32, but had not provided any material asserting how much time he had spent or establishing that he had suffered

pecuniary loss. The Greffier therefore considered the amount of time which he considered reasonable for both the hearing before the Magistrate's Court and the appeal and awarded costs based upon the rate of £20 per hour for a litigant in person. He allowed 84 hours for the hearings before the Magistrate's Court, 2 hours for preparing the notice of appeal, 10 hours for miscellaneous work between the filing of the notice of appeal and March 2013 (during which period he found that not much had happened) and 200 hours for all work in connection with the appeal between March 2013 and October 2013. He therefore allowed £1,680 in respect of the Magistrate's Court hearing and £4,240 in respect of the appeal, making a total of £5,920. He also allowed the fees paid to Collas Crill and others as disbursements. 17. The appellant appealed against that decision. Advocate Preston again acted as amicus and filed a submission querying whether, given that he was a litigant in person, the appellant should not have been given more opportunity to show that he had suffered pecuniary loss as a result of time spent on the proceedings. Crown Advocate Gollop very fairly accepted this point and accordingly the appeal against that first taxation was allowed by consent on 16 th December, 2014, so that the appellant could have a further opportunity of submitting a proper claim for pecuniary loss. The Court gave directions in its Act as to the date by which the appellant should file his case with the Greffier and stated specifically that the case must focus on the issue of the claim of pecuniary loss and must not the repeat the appellant's general grievances in relation to the process which had been well aired. The Court also directed that the appellant's case must make clear the causal connection, if any, between any apparent deterioration in his overall financial position post 4 th August, 2010, and the proceedings brought against him. 18. The appellant duly filed an affidavit dated 20 th March, 2015, which had attached to it a report by his accountant Mr Quenault of Equilibrium Accountancy and Business Solutions Limited ("Equilibrium" and "the Equilibrium Report"). The Crown filed its response on 17 th April, 2015, and there was subsequent correspondence from the appellant and Advocate Preston. The taxation hearing took place on 23 rd August, 2015, and was attended by the appellant, Crown Advocate Gollop and Advocate Preston as amicus . I shall summarise the Greffier's decision after first outlining the relevant rules which apply to the taxation of costs. The Applicable Rules 19. All parties were agreed that, although the award of costs was made under the 1949 Law, the approach to be followed was that set out in Rule 12/6 of the Royal Court Rules 2004 , which deals with the costs of litigants in person. Rule 12/6 provides as follows:- "Litigants in person (1) Subject to this Rule, on a taxation of the costs of a litigant in person, there shall be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by an advocate on the litigant's behalf. (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 thereby causes the litigant pecuniary loss either:-

- (i) the amount that the litigant can prove he or she has lost for time reasonably spent on doing the work, 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 does not cause the litigant pecuniary loss, at such rate per hour as determined by the Greffier in respect of the time reasonably spent by the litigant (or, in the case of a body corporate, a director of a litigant) on the work within a range or band specified in practice directions issued in accordance with Rule 12/14. (3) (4) Disbursement shall be allowed to the extent that they are actually and reasonably incurred and are reasonable in amount. (5)" [emphasis added] 20. The following consequences follow from the wording of Rule 12/6(2): (i) In accordance with paragraph 2(a)(i), it is for the litigant to prove that he has suffered pecuniary loss as a result of time reasonably spent on doing the work. The burden therefore lies on the litigant to prove this on the balance of probabilities. (ii) The pecuniary loss must be caused by the work undertaken by the litigant and this must be time reasonably spent on doing that work. Thus, to take a simple example, let us suppose a case of a tradesmen who earns £20 an hour. Let us further suppose that it is simple case and the Greffier considers that it was only reasonable to spend 10 hours working on the case. However, it is well known to the Court that litigants in person can become very stressed and unfocussed at the thought of conducting litigation; let us further suppose therefore that this tradesmen can prove that he in fact spent 50 hours on doing the work. The effect of Rule 12/6(2) is that, even though the litigant can show in that case that he has lost £1,000 (50 x £20), he would only be entitled to receive costs of £200 (10 x £20). The costs awarded would therefore not reimburse him for all of his pecuniary loss. This is because the Rule clearly provides that the paying party should only have to reimburse pecuniary loss caused by time reasonably spent by the litigant in person; otherwise the paying party might end up paying vast sums of money for time which, although actually spent, was unreasonably spent because it was out of proportion to what in reality was required. (iii) The pecuniary loss must be caused by the time reasonably spent on the work, not by the mere fact of the proceedings. To take an example, the stress of the proceedings might render a litigant in person unable to work on health grounds but that is not a pecuniary loss which arises out of the time spent on the case and therefore is not recoverable on taxation. (iv) When assessing the time reasonably spent on doing the work, the Greffier is clearly entitled to take into account that the time is spent by a litigant in person rather than an advocate, who could be expected to do the work more quickly. Indeed that is what the Greffier did in the present case. Thus the Greffier might allow as reasonable a greater number of hours than he would have allowed for an advocate. However, if the Greffier ends up taxing the amount pursuant to paragraph 2(a)(ii), he must revert to the time which the advocate would have taken, because that is the amount which would have been allowed in respect of that item if the litigant had been represented by an advocate. Otherwise, if two thirds of the advocate's rate is calculated by reference to the hours allowed for the litigant in person, one could in theory end up with the paying party paying more to a litigant in person by way of costs than if the

litigant were represented by an advocate, which would clearly not be fair and is not envisaged by the wording of paragraph 2(a)(ii). Thus the wording in the sub-paragraph refers to two-thirds of the sum which would have been allowed in respect of the item if the litigant had been represented by an advocate. That sum would clearly be assessed by reference to the time which would reasonably have been spent by an advocate, not to the time spent by the litigant. 21. As to the approach to be adopted by the Royal Court when hearing an appeal from a taxation decision of the Greffier, the parties were agreed that it is as set out in *Incat Equatorial Guinea Limited v Luba Freeport Limited*

[2010] JRC 165 following *Reg's Skips Limited v Yates*

[2009] JRC 156 . In essence, it is not for the Royal Court on appeal from a taxation to engage in a line by line assessment to the bill of costs. Rather, the Court must intervene if it thinks there has been a procedural irregularity or if, in exercising his discretion, the Greffier has taken into account irrelevant matters, ignored relevant matters, erred as a matter of principle what has gone wrong to the extent that intervention is required in the interests of justice and fairness. The Court will give due weight to the expertise and experience of the Greffier in matters of taxation. The Greffier's Decision 22. The Greffier issued a reasoned six page decision on 18 th November, 2016. He considered first whether the appellant had established any pecuniary loss. He referred to the 'History of Property Transactions' ("HPT") which was a document attached to the Equilibrium Report. This showed the gross profit resulting from the sale of the various properties acquired by the appellant over the years although, in the light of further information which had come to light during the hearing, the HPT had been amended and agreed between the parties subsequent to the hearing before the Greffier. The Greffier attached the amended HPT to his decision. This showed that for the period from 2007 to 4 th August, 2010, (being the date of charge) there had been an aggregate gross profit of £374,251 which had been averaged out at £93,562 per annum. For the period from 4 th August, 2010, to the end of 2014, the aggregate gross profit was £382,319 and the average annual gross profit was calculated as being £95,579. The Greffier concluded that on the face of these figures, there had been no pecuniary loss. 23. He referred next to the submission made by Advocate Preston as Amicus in reliance upon the content of the Equilibrium report to the effect that, had it not been for the prosecution, an average gross profit figure of £170,661 would have been achieved. The Equilibrium report arrived at this conclusion by arguing that there was a history of a general turnaround time of between one and two years between the purchase and sale of properties or sites by the appellant, but that the period before sale of seven of the properties was well in excess of two years and this delay could be attributed to the prosecution against him. The Crown in response had pointed out that the appellant had not in fact purchased a single property after 24 th October, 2008, (which was nearly two years before the appellant was charged) and that accordingly any suggestion that the appellant would have continued to generate profits from property development at that rate was no more than a bare assertion. 24. In the light of the evidence before him, the Greffier concluded that the claim for pecuniary loss was not, on the balance of

probabilities, made out. The claim therefore fell to be considered under Rule 12/6(2)(b). 25. He began by concluding that, given the complexity of the planning issues dealt with in the case and the importance of the matter to the appellant, he would increase the hourly rate allowed from £20 (which he had allowed in the first decision) to £25 (being the maximum allowed under the relevant practice direction). 26. He then turned to consider how many hours were reasonably spent by the appellant. For the reasons set out in his decision, he concluded that he would allow a total of 84 hours in respect of the proceedings before the Magistrate's Court, 2 hours for preparing and filing the notice of appeal in November 2012, 10 hours for miscellaneous work done between November 2012 and March 2013, 50 hours in respect of time spent seeking disclosure and a total of 400 hours for all other preparation and appearances in relation to the appeal between March 2013 and October 2013 (having noted that Crown Advocate Gollop's firm had spent 167 hours in this period and that the Crown accepted that a figure double the amount allowed in the first decision (200 hours) would not be unreasonable). He also allowed the fees of Equilibrium. 27. The total that he therefore allowed was as follows: (i) Magistrate's Court $84 \times £25 = £2,100$ (ii) Appeal $462 \times £25 = £11,550$ (iii) Equilibrium £1,752 Total £15,402 Discussion 28. It is quite clear that the appellant has an enormous sense of grievance. This is not surprising. He was prosecuted and convicted on the basis of an enforcement notice which transpired to be defective to the extent that it was a nullity and as a result the Crown eventually conceded his appeal against conviction. However, this took him some three years to establish. 29. But it goes beyond this. The appellant believes that officers from the Planning Department committed perjury when they gave evidence before the Magistrate and that he has convincing evidence to show this by reference to contemporaneous emails which are quite inconsistent with their later evidence before the Magistrate. He believes that officials have been guilty of corruption, malfeasance and misconduct in public office leading to a prosecution which was malicious. 30. I was informed at the hearing that the appellant has launched civil proceedings against the States seeking damages for such conduct. Nevertheless, as I sought to point out to him during the hearing, such matters are not relevant to the task of taxation. If he succeeds in establishing that one or more officers employed by the States have committed wrongdoing for which the States should be liable, he will be able to seek recompense for losses which he has suffered as a result. 31. But, awarding damages for a wrongful prosecution is not the role of the Court upon taxation of a costs award. The Greffier correctly limited his role to applying Rule 12/6 to the circumstances of this case and that is equally the sole task of this Court on hearing an appeal from the Greffier's decision. The Court cannot award by way of costs anything beyond that permitted under Rule 12/6. 32. The first logical step is to determine the hours reasonably spent by the appellant in preparing for and conducting the case before the Magistrate's Court and on appeal to the Royal Court, because it is that number of hours which must be considered when determining whether working on the case for that amount of time has caused pecuniary loss. 33. The appellant asserts that, since the prosecution began, he has in effect worked 'all hours' on the case and has done little else. He submitted in his affidavit filed with the Greffier that a total of 1000 was

reasonable for him to have spent in total both before the Magistrate's Court and on appeal. Advocate Preston as amicus submitted before me that, if it were reasonable for an experienced advocate such as Crown Advocate Gollop to have spent 167 hours on the appeal between March and October 2013, it was reasonable for a person such as the appellant, who had left school at 14 without any qualifications, to have spent some five times as long. The Greffier's allowance of 462 hours in connection with the appeal was therefore insufficient. 34. In response to a point raised by the Court, Advocate Preston submitted that, even if the Court were to uphold the Greffier's allocation of 462 hours in connection with the appeal, the amount of 84 hours in connection with the proceedings before the Magistrate's Court was insufficient. There was a mismatch between the amount allowed for the trial itself and that allowed for the appeal. In his experience the time spent on a trial with witnesses, with the need to cross-examine etc. was, if anything, often more than that required for an appeal. 35. In my judgment, there are no grounds for interfering with the Greffier's assessment as to the number of hours it was reasonable for the appellant to spend on the appeal. I agree that it will often be appropriate to allow a litigant in person a greater number of hours than an experienced advocate. However, there is a limit. A paying party is not expected to pay for the fact that a litigant in person spends an unreasonable number of hours on the case and the Greffier accordingly has to reach an objective view as to what is reasonable. The experienced view of the Greffier in this case was that a total of 462 hours should be allowed in connection with the appeal. I see no valid grounds for concluding that decision was wrong. Advocate Preston submitted that 1000 hours would be more appropriate. If one assumes an eight hour day, that is 125 days which assuming a five day week is 25 weeks or six months. In my judgment, to spend this amount of time on this matter would be manifestly unreasonable. Indeed, I consider that the Greffier could be said to have been fairly generous in his allowance of 462 hours. 36. In reaching this conclusion, I wish to make clear that I am not doubting that the appellant in fact spent more than 462 hours. It is clear that these proceedings in many ways took over his life. However, as I have already stated, the test is not the time that he in fact spent, but the time that it was reasonable for him to spend. 37. Turning to the hearing before the Magistrate's Court, the Greffier allowed 84 hours. I have to say that, when viewed against the time allowed for the appeal, this seems on the low side and indeed Crown Advocate Gollop did not really dispute that proposition. The Magistrate's Court involved the original preparation, viewing the statements and preparing cross-examination and submissions. It seems to me that if 400 hours is reasonable for the appeal, a greater number of hours than 84 would be reasonable for the proceedings before the Magistrate's Court given the number of preliminary hearings, the length of the trial and the complexity of the matter. Doing the best I can, I would substitute a figure of 225 hours for that of 84. At £25 per hour, this increases the costs allowed from £2,100 to £5,625, an increase of £3,525. 38. The total time spent on both the trial and the appeal therefore comes to 687 hours rather than the 546 allowed by the Greffier. I wish however to emphasise that this should not be regarded as any form of guidance or precedent for a two-day trial before the Magistrate's Court or an appeal from such a decision to the Royal Court. This is very much a fact specific

conclusion having regard to the complexity and nature of the particular matter and the increase in the time allowed for the Magistrate's Court proceedings is influenced by the allowance of 462 hours for the appeal. (ii) Pecuniary loss 39. I turn now to consider the question of pecuniary loss. As already stated, in order to be taken into account for the purposes of taxation of costs, the pecuniary loss must be caused by the time reasonably spent on working on the case, not by the mere existence of the case or by time actually but unreasonably spent on the case. 40. On the findings just referred to, the appellant reasonably spent 225 hours on the Magistrate's Court proceedings between 10 th August and 10 th December, 2010. Assuming an eight hour day, he spent some 28 days over a four month period i.e. four weeks out of 18, less than one quarter of the total number of weeks. 41. In relation to the appeal, the total time allowed as being reasonable is 462 hours between 5 th November, 2012, and 29 th October, 2013. Assuming an eight hour day this equates to 58 days (just over eight weeks) out of a total of 51 weeks i.e. less than one sixth of the total number of weeks. It is against that background that the claim to pecuniary loss caused by this work must be assessed. 42. I should add that I entirely agree with the Greffier that time the appellant spent between 10 th November, 2010, and 5 th November, 2012, (apart from the limited aspects already allowed by the Greffier) cannot be properly regarded as falling within the costs of these proceedings. There were no proceedings in being at that time and it is clear that the appellant was spending his time trying to persuade the police and/or Law Officers' Department to investigate and institute a prosecution for perjury. 43. In many cases pecuniary loss is easily established. If a person is paid or earns his income on an hourly basis (or a basis which can be easily translated into hours) the loss can easily be related to the time reasonably spent. But it can be rather more difficult where that is not the position. As previously stated, the appellant is a builder by trade but he has earned his income in recent years from buying and selling property. He says sometimes he buys a property and manages to sell it on at a profit for someone else to develop (perhaps having obtained planning permission), but on other occasions he has developed it himself by carrying out the necessary work himself - he says he is a one man band - and selling it thereafter. His income is derived from the profit representing the difference between the purchase cost and the sale proceeds (after allowance for development costs etc.). 44. The HPT prepared by Equilibrium shows that the appellant bought a total of 16 properties between July 2002 and October 2008. Of these, eight were sold prior to August 2010 and six have been sold since August 2010. This suggests that two are still retained, namely Rake House, St Clement and 1 Regency House, St Helier. However, the appellant informed me that, apart from his home which is not included in these figures, he retains only one property, namely Rake House whereas the HTP does not show 1 Regency House as being sold. If it has been sold, the Court has no information as to when it was sold or for what price. 45. As already stated, the HPT shows an aggregate gross profit from 2007 to August 2010 of £374,251 and an aggregate gross profit from November 2010 (being when the next property was sold) to the end of 2014 as £382,319. Whoever prepared the revised HPT has calculated the average annual gross profit for the first period at £93,562 and for the second period at £95,579. This has been

achieved in each case by dividing the gross profit by four. I have to say that I am not sure that this is the correct calculation. The first period is one of three years plus part of 2010 whereas the second period covers four years plus part of 2010. I would have thought that a fairer reflection of the average profit over the relevant periods would be to divide the first period by 3.5 and the second period by 4.5. This results in an annual gross profit of £106,929 for the first period and £84,960 for the second period. 46. Two alternative methods of showing and calculating a pecuniary loss were put forward at the hearing of the appeal. 47. First, the appellant put forward the argument that his overall asset position is worse now than it was in July 2009 and that this deterioration was caused by the time spent on defending the proceedings. He produced a document dated 16 th July, 2009, which listed the properties which he then owned. For each property there was a present value (i.e. as at July 2009), the amount of outstanding loans in respect of the property, the required further money for development of the property and the expected sale price after the work had been carried out. The document shows that in 2009 he owned eight properties. They were valued then at £4.13m in total with outstanding loans of £2.298m, leaving equity of £1.832m. The money required to be spent was a further £775,000 and the ultimate sale proceeds were then estimated to be £5.73m. 48. Conversely, he asserted that he now only owned two of those properties. These had an aggregate proposed sale price after development (using the 2009 figures) of £1.55m. After deduction of the outstanding mortgage of just under £260,000, this would leave an anticipated equity of only £1.29m. 49. I have to say that this does not begin to establish a pecuniary loss caused by the time spent on the case. In the first place, there is no current valuation of the two retained properties. The figures above are based on estimates given in 2009. Secondly, the document says nothing about other assets or what has happened to them. According to the HTP, the appellant has made an average annual gross profit of £84,960 since the proceedings began. What has happened to this? Thirdly, any deterioration in the asset position between 2009 and now could be due to any number of

reasons.

Property development is well known as a risky enterprise. Sometimes it is very successful, sometimes it leads to losses. Variable factors (to name but two) include market conditions and the ability to obtain planning permission to do what one wishes so as to improve the value of the property. It cannot possibly be established on the balance of probabilities that any deterioration in the appellant's overall financial position has been caused by the comparatively limited periods of four weeks in 2010 and eight weeks in 2012/2013 that the appellant was reasonably forced to spend on defending and appealing the proceedings. I therefore reject the appellant's case based upon this ground. 50. The amicus felt unable to support the ground I have just been discussing but did support a second argument in respect of pecuniary loss, which was put forward in the Equilibrium report. That report pointed out that the general history of the appellant's business was that he would buy a property or site, develop it and then sell it in a space of one to two years. Equilibrium prepared a document entitled 'Revised History of Property Transactions' ('revised

HPT") which assumed that all the properties which were unsold as at August 2010 (when the proceedings commenced) had in fact been sold within two years of purchase or very shortly thereafter. This resulted in all the properties which were sold in 2012, 2013 or 2014 being treated as being sold prior to the end of 2010. This had the effect of increasing the average annual gross profit for the period up to and including 2010 and extinguishing the profit thereafter. Equilibrium argued that, were it not for the time spent in defending and appealing the proceedings, the sales would have taken place at this time and the appellant would have gone on to buy and develop new properties at a similar level to the revised HPT, which showed an annual average gross profit of £170,661. 51. In my judgment the Greffier was right to reject this argument. In the first place, not all the properties sold before August 2010 were sold within a two year period. For example 6 and 6A Midvale Road was purchased in July 2002 but not sold until September 2007. Secondly, all the properties bar the last three listed on the HPT were purchased more than two years before August 2010 and yet five remained unsold as at August 2010. The last three were bought in October 2008 but were also unsold. The fact that the five properties were not sold within the two year period cannot have been caused by the bringing of the prosecution and calls into question the assumption in the Equilibrium report. Thirdly, the Equilibrium report suggests that, if it had not been for the criminal prosecution of the appellant, 2 and 3 Regency House would have been sold in 2009 rather than 2014. This cannot possibly be correct. The prosecution was not brought until August 2010 and therefore cannot possibly have prevented the sale of these two properties in 2009, as Equilibrium assumes they would have been. 52. In my judgment, this is all far too speculative and the Court cannot be satisfied on the balance of probabilities that these properties would have been sold prior to the proceedings but for the institution of those proceedings. We simply have no evidence as to why 2 and 3 Regency House were not sold until 2014, the garden at Devonshire Place was not sold until 2013 and 33 Aquila Road was not sold until 2012. The Court certainly cannot find on the balance of probabilities that it was the fact that the appellant spent four weeks in 2010 and eight weeks in 2012/2013 which caused these properties to be sold after more than two years or the appellant not to purchase any new properties. He had after all not purchased any property after October 2008, nearly two years before the institution of the prosecution and has not purchased any new properties since then. He is now 68. 53. I have considered whether the adjustment I have made to the amended HPT (summarised at para 45 above) makes any difference. This was not the subject of argument as the point was not ascertained during the hearing, but I conclude that it does not. Although the figures now show that the appellant's average gross annual profit was £21,969 less for the period after the charges were brought than before, the observations at para 49 are equally applicable. There could be a whole host of reasons for the variation and profits made from the sale of immovable property will inevitably fluctuate considerably depending upon the frequency of sales and the profitability of individual developments. I cannot find on the balance of probabilities that four weeks in 2010 and eight weeks in 2012/2013 is the cause of the variation in profit when there are so many other possible causes. 54. I therefore agree with the Greffier that the appellant has not established on the balance of probabilities that, but for the four weeks that he reasonably spent between August and December 2010 in relation to the Magistrate's Court proceedings and the eight weeks he reasonably spent between November 2012 and October 2013 in relation to the appeal, he would

have earned greater profits than he did and has thereby suffered pecuniary loss.

Conclusion

55. It follows that Rule 12/6(2)(b) is the applicable provision. Given that I have increased the time which the appellant is to be taken to have reasonably spent on the proceedings before the Magistrate's Court, the appeal is allowed to the extent of increasing the amount allowed for time reasonably spent from £13,650 to £17,175 (£5,625 + £11,550), together with £1,752 reflecting the disbursement to Equilibrium, making a total of £18,927 rather than the figure of £15,402 allowed by the Greffier. 56. I would add that, had I concluded that there had been pecuniary loss caused by the relevant work, I would not have accepted the amicus' argument as to how two thirds of the sum which would have been allowed if the litigant had been represented by an advocate should be calculated. Advocate Preston noted that Crill Canavan had become involved on 1 st September, 2010, and had attended the pre-trial review hearing on 15 th September on behalf of the appellant, for which work the Greffier had allowed a fee of £9,000. Advocate Preston then applied that so as to take £6,000 per day for the trial, and £3,000 for directions hearings leading to a total of £54,000. 57. In my judgment it would not be right to calculate two thirds of the amount which would have been awarded if an advocate was involved on this basis. In the first place, it transpired that there was doubt as to whether Crill Canavan's fees had in fact been taxed. But more significantly, it is simply impossible without seeing the fee note to know how much time Crill Canavan had spent on the matter and therefore what hourly rate had been allowed. Had I concluded that pecuniary loss had been established, I would have remitted the matter to the Greffier with directions that he should take the Factor A rate for an advocate of the appropriate standing (i.e. partner or non-partner) for the relevant work and uplift this by 25% for Factor B. This resulting hourly figure would then have been applied to the number of hours which it would have been reasonable for an advocate to spend, not the hours which it was reasonable for the appellant to spend. This might well have been 167 hours (the time spent by Crown Advocate Gollop) in connection with the appeal and such number of hours as the Greffier thought appropriate in respect of the proceedings before the Magistrate's Court. 58. However, for the reasons given, that issue does not arise and the appeal is allowed to the extent previously referred to. Authorities Freedom of Information Code of Practice and the Data Protection (Jersey) Law. Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949. Royal Court Rules 2004. Incat Equatorial Guinea Limited v Luba Freeport Limited

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Prepared on 27 October 2026 · Esheria