

JERSEY / JUDGMENT

S and X Properties v T

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Costs [2026]JRC166 Royal Court (Samedi) 16 June 2026 Before : Sir Michael Birt, Commissioner Between S Appellant And X Properties Party Cited T Respondent The Appellant appeared in person. Advocate P. C. Sinel for the Respondent. judgment ON COSTS the commissioner: 1. On 7 April 2026, S v T (Matrimonial) [2026] JRC 091 (“the Main Judgment”), the court allowed an appeal by the Appellant from a decision of the Master dated 21 October 2024, S and Company J Limited v T (Matrimonial) [2024] JRC 230 on procedural grounds, but nevertheless dismissed the application of the Appellant to enforce the undertaking in damages which the Respondent had given in support of a worldwide freezing injunction which he had obtained on 27 August 2021. 2. The court now has to address the issue of costs. Following directions, it has received written submissions from the parties and has considered the matter on the papers.

Background

3. The detailed background is set out in the Main Judgment, to which reference should be made as necessary. Words and expressions defined in the Main Judgment have the same meaning when used in this judgment. For present purposes, the position can be summarised briefly as follows. 4. The parties were divorced in 2019. Following a six day hearing, the Royal Court issued the Ancillary Relief Judgment on 15 January 2019 in which it ordered the payment of cash and assets to the Respondent in order to give him 37% of the assessed value of the matrimonial assets. In due course, indemnity costs were awarded against the Appellant for reasons which included her continued and regular failure to comply appropriately with disclosure orders and the deficiencies in the information which she provided to the reporting accountant. 5. The Respondent subsequently applied in November 2021 to set aside the order made pursuant to the Ancillary Relief Judgment on the ground of material non-disclosure by the Appellant such that, if she had made proper disclosure, the Respondent would have been awarded a significantly larger sum. 6. In anticipation of that application, the Respondent obtained the worldwide freezing injunction referred to earlier, in respect of which he gave an undertaking in damages in conventional terms. The freezing injunction restrained the Appellant from dealing with her assets up to a value of £5m, but she was free to deal with assets above that value. 7. On 16 December 2022, in the Set Aside Judgment, the Royal Court dismissed the Respondent’s set aside application, which decision was subsequently upheld by the Court of Appeal in a judgment dated 26 May 2023, T v S (Matrimonial)

- [2023] JCA 065. The Royal Court found that there had been serious failings by the Appellant in relation to disclosure, but it was not possible on the evidence to say that a substantially different order would have been made. As described at [41] and [42] of the Main Judgment, the Court of Appeal agreed with the Royal Court that there had been disclosure failures by the Appellant in several respects and said that it was dismissing the Respondent's appeal solely on the ground that he could not show that the court would have made a substantially different order if presented with the evidence which had since become available. The Court of Appeal went on to say that, whilst it was possible that, on the evidence of the material now available, the Respondent could have secured a substantially different order, that was not enough; the Respondent needed to show that a substantially different order would, on the balance of probabilities, have been the likely result. 8. As the Respondent's set aside application had failed, the Appellant subsequently applied by summons dated 5 December 2023 for the court to enforce the Respondent's undertaking in damages by ordering an inquiry as to the damage which she had suffered as a result of the injunction. At a procedural hearing on 1 February 2024, the Bailiff, Sir Timothy Le Cocq, ordered that pleadings be filed on this issue. 9. Following the filing of Particulars of Claim by the Appellant and an Answer by the Respondent, the Respondent applied to strike out the Particulars of Claim under RCR 6/13. Following a hearing on the issue, the Master issued a judgment dated 12 August 2024 in which he described the basis of the Appellant's claim for an inquiry into damages as being 'wholly opaque'. He adjourned the matter in order to give the Appellant an opportunity to amend her Particulars of Claim so as to address the deficiencies, which he helpfully set out in the judgment.
10. The Appellant subsequently filed Amended Particulars of Claim and there was a resumed hearing on 9 October 2024. For the reasons set out in his judgment of 21 October, the Master refused leave to amend the Particulars of Claim (because he considered that even in their amended form they had not addressed the deficiencies which he had identified and did not disclose a reasonable cause of action or were otherwise frivolous or vexatious or an abuse of process) and also struck out the existing Particulars of Claim for similar reasons. In particular, he held that the Amended Particulars of Claim concerning the averment that the injunction was wrongly granted had no prospects of success. He further held that the pleaded claims that the injunction had caused the Appellant loss and damage were largely incomprehensible.
11. Subsequently, in a judgment dated 20 November 2024, *S and Company J Limited v T* [2024] JRC 257, the Master ordered that the Appellant should pay the costs of her summons to enforce the undertaking on the indemnity basis. He did so on the basis that her conduct had been unreasonable so as to take the case out of the norm. He pointed out that she had had ample warnings from the Bailiff, the Respondent's advocates and from the Master himself that there were difficulties with her claims for damages. Thus, in January 2024, when dismissing an application by the Appellant for a freezing injunction against the Respondent, the Bailiff had said that quantification of her claim in damages appeared to be 'speculative in the extreme'; following service of her Particulars of Claim, the Respondent's advocates had

communicated to her that it did not constitute a proper pleading and was not supported by any proper evidence, to which the Appellant responded in vituperative terms stating that, amongst other things, the Respondent was delusional and that his advocate was wasting court time; and finally, the Master himself had adjourned the hearing in August 2024 in order for the Appellant to cure the deficiencies in her Particulars of Claim but the Amended Particulars of Claim did not remedy those deficiencies. He held that the elements of unreasonableness which he had described would have resulted in additional work for the Respondent's advocate.

12. By the time of the appeal to this court, the Appellant, who, before the Master, had acted in person, had instructed Advocate Jones. In the Main Judgment, the court accepted his submission that the wrong procedure had been followed and that the Master did not have jurisdiction effectively to determine whether an inquiry as to damages should be ordered. Such a decision was a discretionary decision which rested with the Royal Court itself, to whom the undertaking had been given. Accordingly, the court allowed the Appellant's appeal on this procedural ground and quashed the Master's decision.
13. The court then went on to consider in its discretion whether to enforce the undertaking by ordering an inquiry as to damages. For the reasons set out at [56]-[94] of the Main Judgment, the court refused to do so and dismissed the Appellant's application to enforce the undertaking. In essence, its reasons were as follows: (i) Although the freezing injunction had been wrongly granted (not in the sense that the Bailiff had been in error in granting it, but in the sense that he would not have granted it if he had known that the Respondent's set aside application would in due course fail), the Appellant had failed to produce any credible prima facie evidence that the injunction had caused her loss. (ii) In any event, as a matter of discretion, it would be inequitable to enforce the undertaking by granting an order for an inquiry as to damages because the Appellant was the author of her own misfortune and had brought the injunction upon herself by reason of not being truthful during the ancillary relief hearing and not complying properly with her duties of disclosure during the ancillary relief proceedings. Submissions on costs
14. The Respondent submits that the Master's order for indemnity costs should remain unaltered and that the Appellant should also be ordered to pay the costs of the appeal on the indemnity basis. Advocate Sinel accepts that the appeal was technically successful, but submits that, looked at in the round, the Respondent was the winner in relation to the hearing before the court because the Appellant's application to enforce the undertaking in damages was dismissed. He submits that costs should be awarded on the indemnity basis because the Appellant's claim was not simply weak; it was hopeless.
15. Although she was represented at the hearing of the appeal by Advocate Jones, who presented her case with considerable skill and persuasiveness, the Appellant is now once again representing herself and put in submissions on 21 and 23 April. In essence, she submits that she was successful, in that the court set aside the Master's decision and also disagreed with his conclusion that she had no reasonable prospect of showing that the

injunction was ‘wrongly granted’. She therefore opposes the Respondent’s application for costs. It is not entirely clear whether she is applying for her own costs but I shall treat her as having done so. She further submits that, as she intends to appeal against the Main Judgment, the question of costs should be deferred until the outcome of her appeal. I say at once that I do not think that deferral would be a satisfactory course of action. Discussion

16. The principles as to the award of costs in this jurisdiction are well-established and I do not need to repeat them. They are to be found in *Watkins v Egglshaw* [2002] JLR 1 in the Royal Court and *Flynn v Reid* [2012]
- (2) JLR 226 in the Court of Appeal. As to indemnity costs, the position was clearly set out in *C v PS* [2010] JLR 645 where the Court of Appeal said at [12]: “...in order for an indemnity award to be made there must be something to take the case out of the ordinary and a degree of unreasonableness (of which abuse of process is but an example) but recognising that there is an “infinite variety” of circumstances where it may be right and proper for the court to make such an award.”
17. The circumstances in this case are not entirely straightforward. In one sense, the Appellant could be said to be the ‘winner’ of the appeal in that the Master’s decision to strike out the Particulars of Claim was overturned. However, that would be to ignore the underlying reality. The hearings both before the Master and this court were in connection with the Applicant’s summons applying for the court to enforce the undertaking in damages by ordering an inquiry as to damages. The Master held that the pleading did not make an adequate case in this respect and struck it out. Having held that the Master should not have been dealing with the matter, this court considered the matter afresh as a matter of discretion and also concluded that the Appellant’s application should be dismissed. Accordingly, the underlying reality is that the Respondent was the winner in respect of the proceedings before this court because the Appellant’s summons to enforce the undertaking in damages was dismissed.
18. The first issue is whether I should interfere with the Master’s costs decision. I do not consider that I should. Whilst the wrong procedure was followed, it was not objected to by either side before the Master. Furthermore, the material produced for the Master would have had to be produced by the Appellant even if the matter had remained before the Royal Court and the Respondent’s advocates would have had to spend time in considering and responding to that material.
19. Taken in the round, I consider that the fair outcome is to leave the Master’s decision in respect of costs unaltered. I agree with him that the Appellant’s conduct of the proceedings leading up to the hearing before him merited an award of indemnity costs.

20. That leaves the costs of the appeal. For the reasons which I have given, I consider that taken overall, the Respondent is the 'winner' of the appeal despite the fact that the appeal was technically successful on procedural grounds. As I have already indicated, the reality is that the court considered and dismissed the Appellant's application to enforce the undertaking in damages. I consider that in the circumstances, the starting point is that the Respondent should be entitled to an award of costs in his favour in respect of the appeal.
21. However, one must also consider the fact that the Respondent lost on a significant aspect of the appeal, namely the procedure to be followed and whether the Master should have been considering the matter at all. Advocate Sinel chose to contest this aspect of the appeal and on that aspect, his arguments were unsuccessful. The arguments on procedure took up a material part of the appeal hearing and accordingly justify a reduction of the costs to be awarded to the Respondent in accordance with principle (iii) of the well-known passage in the judgment of Nourse LJ in *Re Elgindata (No 2)* [1992] 1 WLR 1207 at 1213, which was specifically approved by the Court of Appeal in *Flynn v Reid*. Adopting, as the authorities suggest, a broad approach in order to avoid an unnecessary and expensive taxation, I consider that a deduction of one-third would be fair.
22. The next issue is whether the court should accede to the Respondent's application that the costs of the appeal should be awarded on the indemnity basis. As I have said, I agree with the Master's decision that indemnity costs were appropriate to reflect the Appellant's conduct of the proceedings leading up to the hearing before him. However, in relation to the appeal, I do not accept the submission that the Appellant's conduct of the appeal was unreasonable such as to attract an award of indemnity costs.
23. In the first place, she was successful on the procedural aspect and was therefore justified in bringing that part of the appeal. Furthermore, in relation to the substantive part of the hearing before the court, namely whether the court should enforce the undertaking, there was nothing unreasonable in the manner in which Advocate Jones presented that aspect of the appeal on her behalf even though the court ultimately rejected his submissions. In my judgment, the justice of the case is adequately met by an award of standard costs.
24. Accordingly, I order the Appellant to pay two-thirds of the Respondent's costs in connection with the appeal to the Royal Court, such costs to be on the standard basis and to be taxed if not agreed. Stay of enforcement
25. In this long-running dispute, there have at various times been costs orders made in both directions, some of which have not yet been taxed. The Respondent submits that there should be a stay of enforcement of any costs orders until the overall net position is established, with the net sum then being paid by the paying party to the receiving party.
26. The present position is said by Sinels in its letter of 24 April 2026 to be as follows: (i) In respect of various orders made against the Respondent in connection with the set aside proceedings, the Appellant's costs have been taxed at £191,134.59 (taxed down from £743,978.80). The Appellant is appealing against that taxation and contends that her costs

have been taxed down too much. (ii) The Respondent has taxed costs in his favour totalling £92,446.85 and has claims for further costs of £64,275.04 which have not yet been taxed. (iii) In addition, the Respondent has not yet quantified or taxed his costs pursuant to the Master's order in his favour of 20 November 2024 (see para 11 above), as the Master imposed a stay on taxation pending the determination of the appeal to this court. In addition, the Respondent now has the benefit of the costs order in respect of the appeal which I have just made.

27. Thus, at present, there is a balance in favour of the Appellant in respect of taxed costs of £98,687.74 (i.e. £191,134.59 less £92,446.85), but the Respondent has untaxed costs of £64,275.04 together with the unquantified and untaxed costs in respect of the Master's order and the order which I have just made.
28. The Respondent contends that, once all the various orders have been taxed, he is likely to be the net recipient. He submits that there may be difficulty in reclaiming from the Appellant any sum that he has paid in the meantime and that the fair outcome is to defer enforcement until the overall net position is established as was done, for example, in the Leeds v Admatch litigation, as described in *Bates v Weston* [2023] JRC 032.
29. The Appellant, on the other hand, submits that she should be paid the amount owing to her in accordance with the present taxed costs.
30. In my judgment, the fair outcome is that there should be a stay on enforcement without leave of the court until the overall outcome is ascertained. In reaching this decision, I take into account that, as set out in summary at [32] of the Main Judgment, the Appellant did not comply initially with the orders in the Ancillary Relief Judgment and the Respondent had to issue enforcement proceedings in order to obtain his entitlement. I also take into account that the Appellant does not reside in Jersey. I consider therefore that if the Respondent has to pay at this stage the net difference in taxed costs of £98,687.74, there is a real risk that he will have difficulty in enforcing any subsequent taxed costs orders in his favour, which may well exceed that sum.
31. Accordingly, I direct that no unpaid costs orders in the proceedings between these parties shall be enforced without leave of this court, such leave being unlikely to be granted unless the parties have established the net sum owed as a result of netting off of all the costs orders payable as between the Appellant and the Respondent, save that if the court is satisfied that either party had failed to act with due expedition in taxing costs so as to arrive at the net sum owed, the court will have regard to such conduct and may as a result grant such leave if satisfied that it is appropriate to do so.
32. I lift the stay on taxation of the costs order made by the Master on 20 November 2024 and would suggest that taxation of that order, together with the outstanding untaxed orders in favour of the Respondent and taxation of the order which I have made today should proceed as soon as possible.

33. On 27 May, a draft of this judgment containing the above 32 paragraphs was circulated to Sinels and to the Appellant in the normal way for comment re typographical errors etc. The standard accompanying email stated specifically that the parties were not being invited to comment on the substance of the draft judgment.
34. Despite this, the Appellant responded the same day by sending two emails, the first attaching a three page letter and the second an affidavit. The effect of these was to raise arguments as to why the court should not order a stay on the enforcement of costs orders (as contained in the draft judgment). The affidavit stated that the Appellant was experiencing acute liquidity constraints and was at risk of exhausting available cash resources imminently. She said that in the absence of interim relief, (i.e. payment of the existing taxed costs orders in her favour), there was a real risk of a loss of income streams, destruction of asset value and disproportionate and irreparable personal financial harm.
35. The Appellant filed written submissions on 21 and 23 April prior to the issue of the draft judgment in which she opposed the idea of a stay on enforcement of costs orders (which had been applied for in Sinels' submissions to which she was responding) for the reasons set out in those submissions. That was the time for her to make all her arguments against the court granting a stay. In her correspondence sent on 27 May, the Appellant sought to raise further arguments as to why there should not be a stay on enforcement. This is not acceptable. Circulation of a draft judgment for comment does not give a party an opportunity to supplement or improve submissions made before the draft judgment is issued.
36. Accordingly, no party having suggested any typographical errors etc, I decline to make any alteration to paras 1-32 of this judgment. In fact, the fact that the Appellant's financial position is, according to her, so parlous confirms the desirability of a stay on enforcement for the reasons set out in para 30 above, as there must be a real risk that the Respondent would be unable to recover any sum which may become payable following taxation of the outstanding costs orders in his favour as set out at paras 26 and 27 above. Authorities S v T (Matrimonial) [2026] JRC 091. S and Company J Limited v T (Matrimonial) [2024] JRC 230. T v S (Matrimonial) [2023] JCA 065. S and Company J Limited v T [2024] JRC 257. Watkins v Egglshaw [2002] JLR 1. Flynn v Reid [2012] (2) JLR 226. C v PS [2010] JLR 645. Re Elgindata (No 2) [1992] 1 WLR 1207. Bates v Weston [2023] JRC 032

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