

The Defendant is applying for the hearing date for the taxation of costs to be adjourned until after the decision of the Court of Appeal in relation to the appeal against the decision of the Royal Court to refuse the striking out or for such longer period as shall be appropriate.

This is, as far as I know, the first occasion on which such an application has been made and, although I have already given a decision in relation to the application, I believed it right to give written reasons for that decision in order to assist the legal profession.

Advocate Dessain, for the Defendant, raised a number of issues as follows:-

- (1) he asked me to find that, in Jersey, the Courts follow the principles which are set out in Order 62 Rule 8(1) and (2) of the Rules of the Supreme Court:

"(1) Subject to paragraph (2), the costs of any proceedings shall not be taxed until the conclusion of the cause or matter in which the proceedings arise.

(2) If it appears to the Court when making an Order for costs that all or any part of the costs ought to be taxed at an earlier stage it may, except in the case to which paragraph (3) applies, order accordingly."

- (2) alternatively, Advocate Dessain asked me to find that the Court intended, when making its decision, that taxation be deferred until the conclusion of the cause or matter.
- (3) alternatively, he asked me to find that, if the Court did not address the question of the timing of the taxation, then I had a discretion to adjourn the taxation hearing; and
- (4) if I had such a discretion to adjourn then he asked me to exercise it for the following reasons:-
 - (a) if the appeal were to be successful then the Order for costs made in favour of the Plaintiff might well be reversed and the time and costs relating to a complex taxation hearing wasted;
 - (b) if the costs were to be taxed now and paid over, then his client might not be able to set off any order for costs which it might obtain in other interlocutory hearings or in the main hearing against these costs; and

- (c) it was desirable to avoid parties' constantly coming before the Greffier on isolated taxation applications.

Advocate Michel, urged me to find that the Jersey Courts did not follow the English principles on the adjournment of taxation until after the conclusion of the cause or matter. He also urged me to find that I did not have a general discretion to defer taxation and urged upon me that the Defendant should be making an application for a stay of the enforcement of the costs order either to the Royal Court as constituted for the hearing in March, 1992, or to a single Judge of the Court of Appeal.

It is clear to me that the position in England changed on 28th April, 1986, when substantial changes to Order 62 took place. Prior to that the law was summarised in the case of Allied Collection Agencies v. Wood and Another [1981] 3 All E.R. 176. That case indicates that the position prior to 28th April, 1986 was that the Court made a decision in each case as to whether or not it intended the taxation of costs in relation to interlocutory matters to wait until the conclusion of the cause or matter. That decision was enshrined in different forms of wording. If the form of wording "in any event" were used then that meant that a delay in taxation was intended. If, however, the words, "defendant's costs" or "plaintiff's costs" were used then the intention was that an immediate taxation should occur. The head note in the last sentence on page 176 of that Judgment indicates that the latter wording was only used in exceptional circumstances. From 28th April, 1986, the precise wording of the Act became irrelevant and the provisions of Order 62 Rule 8 (1) and (2), which I have already quoted, came into effect.

Although, for some purposes, the Jersey Courts follow English procedure in relation to taxation, there are clearly other ways in which we do not. For instance, we have not followed the change from taxed costs to the standard basis which is set out in Order 62 Rule 12.

Advocate Dessain also referred me to sections from Judgments of Mr. Justice Hoffman in the case of Arab Monetary Fund and Hashim and Others - Chancery Division Unreported 12th May, 1992. From this Judgment it was clear that, in England, there is a provision for interest to run on Orders for taxation from the date of the original Order. No such provision exists in Jersey. Furthermore, all the recent scales of taxed costs, which have been issued by me, have made it clear that the hourly rate for taxation would operate in relation to the date of the Order for costs and not in relation to the date of the taxation hearing. If I were to adopt the English system set out in Order 62 Rule 8 then there could be very substantial delays before taxation because of delays in the conclusion of the cause or matter and clearly the party who obtained the Order would be seriously prejudiced in such a case. Furthermore, I am not aware of any cases in Jersey in which the

English procedure has been followed and I am aware that I have on a number of occasions, during summonses, expressed the view that taxation could proceed immediately unless an Order were made staying the enforcement of the costs until a later stage. Indeed, I have, in the past, made a number of such Orders and have expressed the view that, where an application for a stay is made to me, I would generally follow the English principles. However, no such stay was ordered in this case by the Royal Court and I am firmly of the opinion that the law in Jersey does not follow Order 62 Rule 8 and that Orders for costs can proceed to taxation unless there is a stay.

I move on now to the question as to whether or not the Judicial Greffier has a discretion to adjourn a costs hearing. Clearly, the Judicial Greffier has such a discretion. Indeed, any Judicial body has an inherent discretion to adjourn its own proceedings. However, that discretion ought to be exercised in a judicial manner. In my view, it would clearly be wrong to adjourn a taxation hearing for any of the reasons advanced by Advocate Dessain. The Royal Court has made its Order and the Greffier is under a duty to proceed with a taxation hearing as soon as is reasonably possible. To find otherwise would substitute the Greffier's discretion for the need to apply to the Royal Court or to the Court of Appeal for a stay of the taxation order. The Royal Court is the superior Court and it would be wrong for an inferior Court to undermine the decisions of the superior Court in this way. However, I do not thus indicate that there would not be appropriate circumstances in which an Order would be made for the adjournment of a taxation hearing. However, the reasons for this would, in my view, have to relate to such matters as the lack of availability of the Greffier, the Deputy Greffier or one of his Substitutes or the double booking of counsel or some such other matter.

Finally, there were two minor points which arose during the case and I believe that it would be helpful to the legal profession if I said something about these. The first relates to the meaning of the words "in any event" in a Jersey Order. In my view, those words have never imported the meaning, as they did at one stage in England, that taxation should be delayed until the conclusion of the cause or matter. In Jersey those words simply indicate, in order to avoid any doubt, that those costs will not fall to be dealt with together with the general costs of the proceedings, but will be dealt with as ordered whatever the eventual result of the proceedings.

In England the term "on usual terms" are sometimes written by a Master on a summons and when they do the Order states that:

"The costs incurred and thrown away by this amendment and the costs of the subsequent amendment to be the plaintiff's or defendant's in any event."

In recent years the Courts in Jersey have adopted the procedure of actually including the wording of "*on the usual terms as to costs*" or some similar wording in its Acts. The use of that wording clearly imports the meaning of "the costs incurred and thrown away by this amendment and the costs of any consequent amendment shall be paid by the party applying for the amendment, in any event". This is the way in which the Judicial Greffier, his Deputy and Substitutes have interpreted those words.

Finally, having found against the Defendant in this matter I also decided that it was appropriate that costs follow the event and that there be an Order for taxed costs against the Defendant of and incidental to its application. However, I delayed the date for the commencement of the time period for an appeal against my decision in order that it commence to run on the date of delivery to the Defendant of this written decision.

Authorities

Royal Court Rules (1982) Rule 8/7.

Rules of the Supreme Court (1933 Ed'n): Order 62/3-9; Order 62/19; Order 59/13.

Allied Collection Agencies -v- Wood & Anor. [1981] 3 All ER 176.

In re Macintosh and Thomas Solicitors [1903] 2 Ch. 394.

Arab Monetary Fund -v- Hashim & Ors. Ch. Div. Unreported 12th May, 1992.

Court of Appeal (Jersey) Law, 1961: Parts I and II.

Court of Appeal (Civil) (Jersey) Rules, 1964, Rule 15 and Practice Direction.

Doyle -v- White City Stadium [1934] All ER r.252; [1935] 1 KB 110.

Bloor -v- Liverpool Derricking Co [1936] 3 All ER 399.

Swyny -v- Harland [1891-1894] All ER r.1270; [1894] 1 QB 707.

Premor Ltd -v- Shaw Bros [1964] 1 WLR 978.