



Neutral citation [2009] CAT 3

IN THE COMPETITION
APPEAL TRIBUNAL

Case Number: 1078/7/9/07

Victoria House
Bloomsbury Place
London WC1A 2EB

30 January 2009

Before:

LORD CARLILE OF BERRIEW QC
(Chairman)
Sitting alone

Sitting as a Tribunal in England and Wales

BETWEEN:

THE CONSUMERS' ASSOCIATION

Claimant

-v-

JJB SPORTS PLC

Defendant

Appearances

Mr Nicholas Bacon (instructed by Clyde & Co LLP) appeared on behalf of the Claimant.

Mr Paul Lasok QC and Mr Benjamin Williams (instructed by DLA Piper UK LLP) appeared on behalf of the Defendant.

Heard at Victoria House on 30 January 2009

JUDGMENT ON INTERIM PAYMENT & COSTS

THE CHAIRMAN:

1. The question now arises as to what, if any, interim sum should be paid by way of costs pending the determination of the Supreme Court Costs Office. It is agreed that some interim sum should be paid. I agree with that. There is a substantial dispute as to what that interim sum should be.
2. I will call the total claim C, C being the sum of the costs claims made by the first solicitors on behalf of the Claimant and the second solicitors on behalf of the Claimant, as set out in the two documents to which I have been referred.
3. Counsel for the Claimant, Mr. Bacon, says, and it is broadly agreed, that the conventional starting point for interim awards is 50 percent of the total sum claimed by way of costs. Mr. Williams, on behalf of the Defendant points to the special features in this case and submits that the appropriate interim payment is far lower, namely, 15 percent of C. If anything, the argument that has taken place in the last few minutes has shown what a complex costs matter this is, and reinforces me in my view that I have rightly directed that it should be sent to a costs judge.
4. There are unusual issues of dispute in this case that go to the root of the way in which the case was presented by the Claimant. In my judgment - and I may be proved wrong, as this is now a matter for the costs judge - there is a considerable risk area in the costs of this case, or at least a considerable area over which argument can be presented.
5. I shall use an old phrase which counsel will well understand. Doing the best I can in this case my judgment is that the interim payment should be in the sum of 30 percent of C, rounded up to the nearest figure ending only in noughts. I think counsel will fully understand what I mean by that. I so order.

L A T E R

THE CHAIRMAN: In relation to the costs of the application heard today, I am going to divide them into two parts. In my judgment the Defendant should certainly be entitled to their costs up to and including the completion of the skeleton arguments and other paperwork (if I can generically call it that) in relation to this application. My view is that a hearing was not absolutely necessary and that the matter could just as easily have been dealt with on paper. I shall make no order as to costs in respect of today's hearing. So, up to the hearing the Defendant will have their costs. Of the hearing there will be no order as to costs.

MR. LASOK: Sir, for that I am grateful. Can I just add one thing? There is, of course, an order for costs in our favour from the Settlement Agreement and the Tribunal's order. Perhaps they should be set off against each other.

THE CHAIRMAN: That can be incorporated into the order if you will give the referendaire the appropriate form of words, if he needs them.
Thank you all very much.
