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ROYAL COURT  
5TH NOVEMBER, 1991

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Before the Judicial Greffier

BETWEEN	A.C. Mauger & Son (Sunwin) Limited	PLAINTIFF
AND	Victor Hugo Management Limited	DEFENDANT
AND	Julian Anthony Clyde-Smith & Others	
	exercising the profession of	
	advocates under the name and style of	
	Ogier & Le Cornu	FIRST PARTY CITED
AND	Cater Allen Bank (Jersey)	
	Limited	SECOND PARTY CITED

Hearing in relation to the costs of a hearing for the taxation of costs.

Advocate G.Le V. Fiott for the Plaintiff  
Advocate T.J. Le Cocq for the Defendant

**JUDGMENT**

**JUDICIAL GREFFIER:**

On 21st October, 1991 I delivered a written Judgment in relation to the taxation of the costs resultant from an interlocutory hearing in the Royal Court. At the end of that Judgment I indicated that I would need to be addressed in relation to the costs of the taxation hearing.

The bills of costs submitted on behalf of the Plaintiff were as follows:

- (a) three bills totalling £5,425 in relation to the time of employees of the Plaintiff;

- (b) a bill in the sum of £4,561.34 relating to work done by and disbursements of Messrs. Fiott & Huelin;
- (c) a bill for £612 being work done by English solicitors Masons; and
- (d) a bill for £5,087.45 representing work done by and disbursements of Crills.

These bills together totalled £15,685.79.

It emerged at the hearing in relation to the matter of the costs of the taxation hearing that the Defendants had made an offer in the form of a Calderbank letter in the sum of £5,000, which had not been accepted by the Plaintiffs. However, prior to the taxation hearing the Plaintiffs had not made any concession in relation to their claim in the sum of £15,685.79. Fairly early on during the taxation hearing certain concessions were made by Advocate Fiott in relation to the work done by members of the Plaintiff's staff and these concessions amounted to £3,050 by way of reduction of (a) above.

The outcome of the taxation was as follows:-

- (a) the sum of £300 was allowed in relation to Mr. Alan Booth one of the Plaintiff's employees;
- (b) Fiott & Huelin's fees were taxed at £3,114.25;
- (c) Mason's fees were totally disallowed;
- (d) Crills fees were allowed in the sum of £3,559.70; and
- (e) the bills were taxed at a total of £6,973.95.

If I examine the result of the taxation hearing from the point of view of the number of issues between the parties, rather than from the point of view of the values involved, then I find that approximately half the issues went in favour of the Plaintiff and half in favour of the Defendant.

Both parties accepted that I had the power to make an Order for costs in relation to the taxation hearing although the Royal Court Rules are silent on the subject. I agreed with this view and indeed have expressed the same view in at least one previous written judgment.

Advocate Fiott invited me to apply the principles set out in Order 62, Rule 27 of the Rules of the Supreme Court. In particular he quoted from Order 62, Rule 27 (1), (2), (3) and (4) which reads -

- "(1) Subject to the provisions of any Act and the Order, the party whose bill is being taxed shall be entitled to his costs of the taxation proceedings."
- (2) Where it appears to the taxing officer that in the circumstances of the case some other order should be made as to the whole or any part of the costs, the taxing officer shall have, in relation to the costs of taxation proceedings, the same powers as the Court has in relation to the costs of proceedings.
- (3) Subject to paragraph (5), the party liable to pay the costs of the proceedings which gave rise to the taxation proceedings may make a written offer to pay a specific sum in satisfaction of those costs which is expressed to be "without prejudice save as to the costs of taxation" at any time before the expiration of 14 days after the delivery to him of a copy of the bill of costs under Rule 30(3) and, where such an offer is made, the fact that it has been made shall not be communicated to the taxing officer until the question of the costs of the taxation proceedings falls to be decided.
- (4) The taxing officer may take into account any offer made under paragraph (3) which has been brought to his attention."

The note on page 155 of the first volume of the 1991 White Book in relation to Order 62, Rule 27 reads as follows:-

**"Para. (2) - gives the taxing officer the same discretion with regard to the costs of taxation proceedings, which now include the taxing fee (para. 6) as the Court has in relation to the costs of proceedings.**

**Paras. (3) and (4) - extend the rule as to Calderbank letters (see para. 62/9/1, to taxation proceedings and the procedure is explained in Note 21 of the Masters' Practice Notes 1986, para. 62/A2/31)."**

Advocate Fiott also referred me to Order 62 Rule 9 of the Rules of the Supreme Court and to a passage commencing at the start of paragraph 62/9/5 of the notes on page 1033 of the 1991 White Book which reads as follows:-

**"Offer - where one side makes an offer which the Court considers to have been proper for acceptance and it is refused, the Court in general relieves the offerer from payment of costs incurred after the date of the offer, but an offer of compromise, which the Court considers insufficient, is no bar to plaintiff's rights to costs. Such an offer made after litigation commenced must, if it is to have any effect to avoid payment of costs by an unsuccessful party, amount in substance to an offer of everything to which the Court eventually holds the successful party entitled and this without such a condition as that the order shall not be advertised."**

From these passages Advocate Fiott invited me to deduce that as the Order on taxation which I have made exceeded the amount set out in the Calderbank letter by almost £2,000, his client ought to obtain an Order for taxed costs. His reasoning was that following the section quoted in paragraph 62/9/5, the defendant could only be protected from an Order for payment of these costs if the Calderbank offer was equal to or exceeded the taxed costs which were ordered.

Advocate Le Cocq, on the other hand, argued that, as the gap between the costs ordered and the amount sought was over £8,500 whereas the gap between the amount sought and the Calderbank letter was less than £2,000, his client ought to be granted an Order for taxed costs. I note in passing that if I allow for the concession of just over £3,000 made early during the hearing then the gap between the amount sought by the Plaintiff and the amount ordered remains over £5,500.

The principles set out in Order 62 Rule 27 and Order 62 Rule 9 are not set out in the Royal Court Rules 1982 and I am therefore not strictly bound by them. However, as with all of the Rules of the Supreme Court they are based on sound principles and, where there is no specific Rule of Court or established Rule of practice, they have persuasive value. It is right, in Jersey, that parties who are

ordered to pay taxed costs ought to have some proper incentive to induce them to make a reasonable offer in settlement of those costs. In my view, for too long and on too many occasions, paying parties have sat back and required the party who has the benefit of the Order for costs to go through the taxation procedure without there being any appropriate incentive for them to seek to settle. There is always an incentive for the paying party to delay a taxation procedure as this delays the date upon which his client will have to pay and as interest is never ordered upon taxed costs for the period prior to the taxation Order. I therefore believe that there ought to be an incentive for the paying party to make a Calderbank offer and that where the amount of taxed costs is less than the Calderbank offer that should be taken into account on determining the costs of the taxation. Such a Calderbank offer ought not to come to the attention of the taxing officer until the taxation is completed.

However, it appears to me that the matter of the award of costs is always discretionary. Even where guidelines have been set as in England it remains discretionary and Order 62, Rule 27 (2) gives the taxing officer the same discretion with regard to the costs of taxation proceedings as the Court has in relation to the costs of proceedings.

It would be manifestly unjust if the party who had obtained the Order for costs could put in a bill for any unreasonable amount without that being taken into account. For instance, what if the present bill being taxed had been for 1 million pounds. On Advocate Fiott's argument the figure would make no difference, if the Calderbank offer were exceeded then he would be entitled to his costs. In my view, each case must be looked at on its own facts. In

this case, I have found that approximately half the issues were won by each party. Although, the gap between Advocate Fiott's client's sum and the sum ordered is greater than the gap between Advocate Le Cocq's client's Calderbank offer and the amount ordered in this particular case, it appears to me that the appropriate order is that no order be made in relation to the costs of the taxation proceedings. I say that as distinct from the costs of the preparation of the bills of costs which have already been dealt with during the taxation procedure and which were granted to the Plaintiff.



Authorities

R.S.C. (1991 Ed.): O.62 r. 27(1) (2) (3) (4).

R.S.C. (1991 Ed.): Vol. 1: p.155.

R.S.C. (1991 Ed.): O.62 r. 9/5.