

18th December, 1990

200

File No. PL/457

Before Paul Matthews, Esq.

Greffier Substitute

BETWEEN	Ruby Patricia Skinner, née Ball (widow)	PLAINTIFF
	AND	
	John Grame Boulton Myles	FIRST DEFENDANT
	AND	
	The Public Health Committee of the States of Jersey	SECOND DEFENDANT
	AND	
	Bois Labesse	PARTY CITED

Application by plaintiff for an adjournment of a costs hearing
pending clarification of an Order of the Royal Court
dated the 25th April, 1990.

Advocate J.G.White for the plaintiff

Advocate G.R.Boxall for the first defendant

Counsel for the second defendant was unable to attend due to illness.

The party cited was not convened.

Greffier Substitute: "This is an application by the plaintiff seeking an adjournment of the costs hearing scheduled for this morning pending clarification of an order made by the Royal Court on the 25th April, 1990.

The Act of the Royal Court of the 25th April, 1990, is in the following terms:-

"Whereas on the 15th February, 1990, as appears by Act of Court of that day, in the action between Ruby Patricia Ball, widow of Leslie Eric Skinner (plaintiff) and John Graeme Boulton Myles and the Public Health Committee of the States of Jersey (defendants), the Court struck out the plaintiff's action and adjourned the matter of costs until another day;

And whereas on the 27th March, 1990, upon hearing the parties advocates on the matter of costs, the Court adjourned the matter until the 25th April, 1990;

Now this day, upon hearing the parties' advocates, the Court condemned the plaintiff to pay the defendants' taxed costs of action.

Whereupon the plaintiff applied for an order that the costs awarded against her should be paid by her former advocate, Advocate R.A.Falle, personally and upon hearing the plaintiff and her former advocate through the intermediary of their advocates, the Court -

- (1) held that it had jurisdiction to entertain the application, but that the application should be determined by the Court as originally constituted;
- (2) adjourned the application until another day; and
- (3) granted the former advocate leave to appeal."

Advocate White who appeared for the plaintiff submitted that the Act of Court is erroneous in that what the Court in fact ordered was that as a

matter of principle the each of the defendants should receive costs on a taxed (rather than on the indemnity) basis, but that the question of whether those costs be paid by the plaintiff or the party cited had yet to be decided. Advocate White then referred me to the sentence on page 2 of the judgment of the Royal Court (25th April, 1990 Jersey Unreported) where the learned Bailiff said "in the circumstances of this case I do not think I should depart from that rule, and therefore I award costs to both defendants" and remarked that there is no mention made in that sentence or elsewhere in the judgment of who is to pay such costs. In addition Advocate White stated that all the authorities cited before the Court in relation to the second application (which he described as whether the Court had jurisdiction to entertain an application that costs should be paid by a parties' advocate or solicitor directly) were cases in which the solicitor was ordered to pay the clients costs directly to the successful party and were not in the form of the solicitor providing an indemnity for the party condemned to pay the costs as is set out in the Act of Court of the 25th April, 1990. As the Court had not made any final order for costs the application for taxation was premature and the Taxing Officer had no jurisdiction to deal with the matter.

Advocate White also indicated that the first defendant had refused to agree not to enforce any award made following the taxation hearing against the plaintiff unless the plaintiff gave an undertaking -

(i) to submit to the wisdom of the Court regarding the quantification of costs; and

(ii) to pay interest at the rate of 12% per annum from the date of such quantification to the date of payment.

The plaintiff could not give the second undertaking without the express consent of Messrs. Mourant du Feu & Jeune acting for the party cited and this had not yet been forthcoming.

Advocate White advised me that he had spoken to Advocate Binnington who had also believed that the Court had not made any final order. As two of the parties who were present at the hearing on the 25th April, 1990 (the plaintiff and the party cited) agreed that the Act of Court was erroneous and as the party cited had not been convened before the hearing today (and any hearing should take place inter partes) it would, he said, be wholly inappropriate for the Taxing Officer to continue with the hearing this morning particularly as any award would give the first defendant a right to instruct the Viscount to enforce the award of costs directly against the plaintiff and the party cited would have had no opportunity of being heard at the taxation hearing. Advocate White advised me that the hearing of whether the plaintiff or the party cited is to pay the defendants' costs has been fixed for the 25th February, 1991, and any delay would not prejudice the defendants unduly as any delay would be minimal.

Advocate White concluded by saying that the appropriate course would be for me to adjourn the costs hearing pending the clarification of the learned Bailiff's order.

Advocate Boxall for the first defendant argued that the hearing should continue and that what was at fault was the memories of Advocates White and Mourant rather than the Act of Court recording the decision of the 25th April, 1990. The proper interpretation of the learned Bailiff's judgment was that the plaintiff had been condemned to pay the taxed costs of each of the defendants and that the question of whether the plaintiff's former advocate (the party cited) should pay such costs as had been awarded was a matter to be argued between the plaintiff and the party cited. Advocate

Boxall referred me to the first sentence of the penultimate paragraph on page 2 of the judgment which appears after the heading "judgment on the second application" namely "The first matter I have to decide in today's hearing is whether the Royal Court has jurisdiction at all to entertain an application that the costs awarded against one of the party in an action should be paid by that parties advocate or solicitor." Advocate Boxall emphasised the words "the costs awarded against one of the parties in an action should be paid by that parties advocate or solicitor."

Advocate Boxall also commented on the lateness of the plaintiff's application for an adjournment of which he had first received notification by facsimile transmitted at 5.18 p.m. on the evening before the hearing and which was brought to his attention at 5.50 p.m. Advocate Boxall also questioned the bona fides of the application stating that it was without substance and merit.

If there was any ambiguity in the learned Bailiff's order or in the Act of Court the remedy was for the plaintiff to apply to the Court in good time and not to apply to the Taxing Officer for an adjournment at the eleventh hour. If the plaintiff was dissatisfied with the decision of the Royal Court then she had been given leave to appeal and should have done so.

The Taxing Officer should, he said, concern himself only with the matter of the quantification of costs and that matters relating to the stay of execution should be dealt with by the Court which made the original costs order and that any other course of action the Taxing Officer might take could be "ultra vires".

The date for the hearing of whether the party cited should pay the costs which the plaintiff has been condemned to pay to the defendants has been eventually been fixed for 25th February, 1991, almost one year after

the award for costs had been made by the Royal Court and Advocate Boxall stated that the plaintiff appeared to find herself surrounded by dilatory advisers. The first defendant would be prejudiced by any further delay, furthermore the first defendant has no say in the conduct of the hearing scheduled for the 25th February, 1991, and, if Advocate White's construction of the order of the Royal Court was correct, it would be open for the plaintiff and the party cited to delay payment of the first defendant's costs simply by continuing to delay the hearing of the action between themselves.

In all the circumstances Advocate Boxall submitted that the application for an adjournment should be refused.

Having considered the arguments of both counsel I refuse the application for an adjournment for the following reasons.

1. Unless there are special circumstances such as a patent ambiguity in the Act of Court or the Act of Court has been drafted in terms which are non-sensical - and none of these circumstances apply in this case - then it would not be proper for the Taxing Officer to act other than in accordance with the clear terms of an order of the Royal Court expressed in the formal Act of Court.
2. Even if I were entitled to look behind what appears on the face of the Act of Court I would have found that the act of the 25th April, 1990, accurately recorded the decision of the Royal Court.
3. Had there been special circumstances then I may have granted an adjournment for such ambiguity etc., to be resolved by reference to the Court which made the original order, particularly in this case where it is suggested that the Court had in fact made no final order as regards costs and that the costs hearing should not take place.

4. The order of the Royal Court of the 25th April, 1990, is for the plaintiff to pay the defendants' taxed costs and the question of whether the costs which the plaintiff has been condemned to pay should be borne by the party cited is yet to be decided. There is therefore no requirement for the party cited to have been convened for this costs hearing and if I am wrong on this point I am satisfied that the fact that the primary liability for costs (and possibly the ultimate liability - the matter has yet to be determined) rests with the plaintiff is sufficient to ensure that the plaintiff will put forward all arguments necessary to ensure that the quantum claimed by each of the defendants is reasonable and proper.

5. The question of the stay of execution of the enforcement of the costs once assessed is a matter for the Royal Court which made the order.

6. I was persuaded by the other submissions advanced by Advocate Boxall (without however making any finding on the bona fides of the application for a stay).

As a result of this finding the plaintiff agreed to leave the question of quantum to the discretion of the Taxing Officer. The first defendant applied for the costs of the application for an adjournment on a full indemnity basis. After hearing argument the first defendant was awarded costs on a taxed basis.

Authorities cited

No authorities were cited.