

**Judgment 21/2005**

**Department of the Environment v. Barrett and  
Barrett – Royal Court (Civil Action File 735) –  
12 April, 2005**

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**Royal Court (Costs and Fees) Rules, 2000 – Taxation pursuant to Order of the Court of Appeal (See Judgment 54/2003) – recoverable costs limited to judicial review and did not extend to the statutory appeal proceedings which preceded it – circumstances in which ‘researching the law’ can be recoverable cost – date of judgment from which interest recoverable as of right under the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985.**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

The 12<sup>th</sup> day of April, 2005 before Peter Haworth Esquire, Lieutenant Bailiff; sitting alone

In the matter of:

DEPARTMENT OF THE ENVIRONMENT  
(Successor to the Island Development Committee)

(Paying Party)

v.

DAVID ALAN ANDRE BARRETT

and

KAY MARY BARRETT

(Receiving Parties)

On the application by the Paying Party for taxation of the Bill of Costs submitted by the Receiving Parties pursuant to the Order of the Court of Appeal given on 18<sup>th</sup> December, 2003; The LIEUTENANT BAILIFF this day, having heard Advocate R. J. McMahon for the Paying Party and the Receiving Parties in person thereon: -

- (i) ORDERED that the Paying Party shall pay to the Receiving Party by way of costs the sum of £6,920.34 and that interest shall be payable on that sum, at the judicial rate, from 1<sup>st</sup> July, 2003; and
- (ii) MADE NO ORDER as to the costs of this taxation.

K. H. TOUGH  
Her Majesty’s Greffier

**TUESDAY 12<sup>TH</sup> APRIL 2005**

**IN THE ROYAL COURT LIBRARY**

**Before**

**Lieutenant Bailiff Peter Haworth**

**BARRETT v. THE ENVIRONMENTAL DEPARTMENT**

**(Judgment on Taxation)**

**Advocate R.J. McMahon for the Department**

**D.A. Barrett in person**

1. LIEUTENANT BAILIFF: This is a taxation that arises from an order given in the Court of Appeal and that was a review of a decision given by Lieutenant Bailiff Newman on 1<sup>st</sup> July 2003, and was on an application for judicial review. Perhaps simply by way of background all that I will say in relation to this judgment is that on appeal from the Royal Court's decision of 1<sup>st</sup> July, the Lieutenant Bailiff refused Mr. and Mrs. Barrett's application to appeal from, or be granted judicial review of, a decision of the Island Development Committee and the decision of the Island Development Committee, which they sought to challenge was a decision to grant a preliminary declaration on an application by Osprey Investments Limited in relation to a proposed development at Sandpiper Vinery, Route de Plaisance in St. Pierre du Bois.
2. The chronology, which I think is important in relation to this case, is that there was a decision of the Island Development Committee of 13<sup>th</sup> December 2002, which related to planning approval. There followed a summons being issued by Mr. and Mrs. Barrett on or about 31<sup>st</sup> January 2003, which was signed over or adjourned on 4<sup>th</sup> February 2003, and first came before the Court by way of a strike out application on 4<sup>th</sup> April 2003. Subsequent to that application the matter then came before the Court by way of an amended summons on 25<sup>th</sup> April 2003, and within that summons was effectively the application for judicial review. There then followed the hearing which I have already referred to on 1<sup>st</sup> July 2003, in which Lieutenant Bailiff Newman refused Mr. and Mrs. Barrett's application to appeal in those circumstances. The matter then came before the Court of Appeal on 18<sup>th</sup> December 2003.
3. Now the only issues that I have to decide are in relation to the costs that relate to the proceedings in June 2003 that came before the Royal Court, in that my understanding of the position is that the costs of Mr. and Mrs. Barrett in relation to the Court of Appeal proceedings have, in fact, been agreed.
4. Now, so far as the issues that I am asked to determine are concerned, the main issues can be summarised in my judgment as follows:
5. What are proceedings to which the order of the Court of Appeal relate?
6. Secondly, the reasonableness of the costs claimed by Mr. and Mrs. Barrett in that it is being suggested by the paying party that there has been excessive time expended by the Barrett's Advocate in connection with the preparation of this case.

7. Thirdly, the costs that relate to the research of the law should not be included within the bill of costs;
8. and, finally, a small item relating to one or two disbursements that have effectively been claimed by Mr. and Mrs. Barrett.
9. The position really, so far as the case concerns them, is to look firstly, I think, at the order that was made by the Court of Appeal and see precisely the wording of the costs order, because effectively the costs order that was made refers to the fact that the Appellants be awarded their costs on the standard recoverable basis, both in this Court and in the Royal Court, and one has also to look at the judgment effectively of Justice Hodge in the Court of Appeal case, which was referred to by Mr. Barrett at paragraphs 1 and 2 of the judgment, that the first line states that *“This is an appeal from the judgment of the Royal Court dated 1<sup>st</sup> July 2003, in which the Lieutenant Bailiff refused the Appellants’ application to appeal from or be granted judicial review of the decision of the Island Development Committee dated 13<sup>th</sup> December 2002.”*

Now, when one turns to the decision of Lieutenant Bailiff Newman on 30<sup>th</sup> June 2003, her reference in her judgment is effectively as follows, and it commences with the following words *“By a reformed Cause tabled on 25<sup>th</sup> April 2003 the Applicants, David and Kay Barrett seek to appeal from or be granted judicial review of a decision of the Island Development Committee that a grant on 13<sup>th</sup> December 2002 a preliminary declaration on an application by Osprey Investments Limited. In the event the application was argued solely as a judicial review application.”* In my judgment the salient words are, however, the first words of the judgment *“By a reformed Cause tabled 25<sup>th</sup> April 2003”*. Now I am bound by the Royal Court Costs and Fees Rules of 2000 in relation to the assessment or taxation of costs in these proceedings and in particular I refer to paragraph 2.1 *“Where in civil proceedings the maximum Advocates’ fees recoverable shall be ...”* and then it refers to various subsections that the costs of and incidental to the proceedings which have been incurred by the party to whom costs have been awarded and which are reasonable in amount and reasonably incurred. So I highlight *“the costs of and incidental to the proceedings, reasonable in amount and reasonably incurred.”* I also refer to the fact that, of course, in paragraph 2.5 any doubts that I may have with regard to the reasonableness of the costs or whether they had been reasonably incurred, as this is a standard basis taxation, must be resolved in favour of the paying party, and I bear that in mind throughout, and I have borne this in mind throughout this case.

10. When one applies the law and those rules to the facts of this case it transpires, and, certainly in my judgment it is the case, that Lieutenant Bailiff Newman’s decision was based solely on the reformed Cause tabled on 25<sup>th</sup> April 2003. Therefore it seems to me that any costs that flow pursuant to the orders can only be referable to the amended summons and not, effectively, to the earliest summons in this case, that clearly predates the reformed Cause and was lodged, so far as I can understand it, at the end of January 2003.
11. What has happened it would appear from a review of the Court file is that so far as that summons was concerned the statutory appeal that effectively was the first issue to be determined by the Court has effectively been adjourned sine die and, therefore, that matter has not in essence, and any costs that relate to that matter, been finally adjudicated upon one way or the other and is therefore not a matter which is really for me to deal with today. That being so, I incline therefore to the submissions made to me this morning by Mr. McMahon with regard to the costs that flow from what I will refer to as the reformed Cause tabled on 25<sup>th</sup> April 2003, and, therefore, where there is any doubt I incline to the submissions of the paying party. That deals with the first issue that

was in reality the question of what is incidental to the proceedings, which, in essence, is the costs of which I am being asked to tax today.

12. The second issue that was put before me was the question of research. Now in terms of research the argument of the paying party was that knowledge of the law, to put it bluntly, are the tools of the trade of the Advocate and, therefore, research and having to review the law is effectively something with which an Advocate should be familiar and is certainly something which a paying party should not have to pay for. I take all that on board and in an ordinary proceedings I would readily strike down any costs that relate to what can be loosely described as “researching the law.” I have, however, some sympathy in this case with the views expressed by Mr. and Mrs Barrett in their submissions to me this morning and also in their submissions in writing as well, and I say that for this reason; these were undoubtedly specialist proceedings. These were not ordinary proceedings that take place every day in this Court, although they may do now, but certainly at the time they came before the Court they were not. I have been told, and have no reason to dispute the fact, that this was probably the second set of judicial review proceedings that had been heard on this island, and so far as Mr. Barrett was concerned, they were in his view a test case and effectively, to use the sailing analogy, the Court was in uncharted waters. I have some sympathy and accept that point of view.
13. The problem is, of course, is that lawyers on this island do not appear in some respects to be remunerated for their speciality as they would be, for example, on the mainland where, were I taxing this as a bill for judicial review the rates for solicitors allowed would be substantially more than effectively the rates normally allowed for what I would call “run of the mill” proceedings. Now, there is provision within the rules for me to take into account the specialist knowledge and experience of an Advocate and that is referred to in Rule 7.1 where a person conducting the taxation shall make such decision in respect of the taxation as he thinks just, and in making his decision he may, without limitation, take into account the seniority and experience of the Advocate whose costs are to be taxed. Now here, effectively, there was a straight across the board charge of the standard Advocates’ rate of £160 or thereabout, the relevant rate at the relevant point in time. Taking all those factors into account in my judgment I have allowed an element for “research” on a broad brush basis, so I have given some credit to the fact that Mr. Loveridge had to, as it were, look up to research some issues that related to this application.
14. Well that really leaves one issue and I suppose it is the largest issue of the case in one sense, having got the points of principle out of the way, and that is effectively what I consider, in my judgment, to be reasonable costs reasonably incurred in connection with these proceedings. Now, the bill as presented to me is in effect just a bill in a simple form setting out the work done and the time spent. You will recall this morning we identified each item by number and I propose in this judgment to review the bill on the basis of that numbering. I have had the opportunity of reading both the Court file and I have also, thanks to Mr. and Mrs. Barrett, been able to read the whole of Mr. Loveridge’s file. I have called upon my general experience as a solicitor in dealing with issues, and the way in which I intend to approach the item-by-item assessment of this bill of costs is on the basis of what can loosely be described as a broad brush approach. That leads me to the following conclusions:
15. That when one takes into account the items from 1 through to 43 on the bill, these items in my judgment, are in essence items that relate principally to the first summons, the earlier summons, and that was clearly the point made by Mr. McMahon this morning. Nevertheless, he conceded that there was clearly an element of time spent in interviewing Mr. and Mrs. Barrett and obtaining documents which would have to have been spent in any event in dealing with what can loosely be described as the reformed

summons. I agree with him and I have looked through the file of papers, I have heard what Mr. Barrett has had to say, and it is clear that there was some front loading, as it were, of the later costs of this case. In other words, the later costs that relate to the reformed summons were in essence reduced by the work that went on before, and therefore a lot of the work, or perhaps “a lot” are the wrong words to use, but quite a considerable amount of the work that had been done was used in relation to the reformed proceedings. So, in relation to items 1 to 43 I am proposing to allow in total 12 hours.

16. Now the way in which I anticipate that this bill will be dealt with is that the parties will tot up the time that has been claimed and the costs claimed down to items 1 to 43 and then set off effectively what I have allowed and I would hope at the end of the day that the parties will be able to reach an agreement as to the figure, the precise figure, that that will bring us to because that is not a figure that I have reached at this stage.
17. Insofar as items 44 to 57 are concerned I allow in full.
18. In relation to items 58, 59 and 60 I disallow.
19. I then allow items 61, 62 and 63 all the way through, in fact, to item 76, again in full.
20. Now there follows what can loosely be described as the “preparing for hearing” item. It is a little bit difficult to follow because there are other items included within it, so here I will depart slightly from the chronological numbering to say that what I then disallow are items 78 and 79.
21. I allow items 80, 82 and 84, which, if I have got my chronology correct, leaves me with the preparing for hearing items, which are items 77, 81, 83, 85, 86, 87, 88 and 89. By my calculation they total some 10 hours and relate to the preparation for the judicial review hearing.
22. In the main they refer to the preparation of a skeleton argument. There is some attendance on Mr. Barrett with regard to preparing for the hearing; in fact, there are two attendances on Mr. Barrett in connection with also a third affidavit and a final preparing for the hearing on 30<sup>th</sup> June. Again, having looked at the file and considering in some detail the work that was done in connection with the preparation of this case from the 10 hours that are within those items I am prepared to allow 6 hours, again, on a broad brush basis.
23. That leaves us then with one issue, and that issue is the question of disbursements. There were only two minor points taken by Mr. McMahon with regard to the disbursements; the first was in connection with the issue of the summons and it follows from my judgment that one of these fees will have to be disallowed and it will be item 1 of the disbursements, the £18 fee which was the first sum referred to, and also so far as number 9 is concerned, whilst I have given in my judgment some credit for the research in relation to the issues raised by this case which were, in my view, novel, considerably novel, points, certainly for this jurisdiction. In my judgment it is not appropriate for the paying party to have to pay for authorities, whether they have to be paid for by the receiving party, nevertheless I have factored into, effectively, the judgment I have just given, costs for preparation and I am not minded in those circumstances to allow item 9, which is the fee of £30.74.
24. So unless I have got matters wrong or missed out any of the items in the bill of costs, it should be possible for the parties now to agree a final figure for costs; and what I am directing is that the parties attempt to agree a figure, a final figure, as to costs which is to be communicated to the Greffier within 7 days. If the parties cannot agree a final

figure as to recoverable costs, then in those circumstances the matter is to be referred to me for further directions, or, I suspect, further calculations.

25. There then remains one issue and it is the issue raised by Mr. Barrett as to interest. He raised an interesting point as to interest and he referred me to the relevant Act, which I cannot now find-

ADVOCATE McMAHON: It's a page 135 in that bundle, sir.

LIEUTENANT BAILIFF: Here we are, yes. Which is Section 2, which is "*Every judgment debt of the Court shall carry interest at the rate of 10% per annum*" which I understand is now 8% per annum "*or such other rate as the Royal Court of Guernsey may, from time to time, by rules of Court prescribe from the date of the judgment til the same shall be satisfied and such interest shall recovered by the judgment creditors part of such judgment.*"

26. Clearly, in my judgment, from the reference in Section 4 to the Court, that must mean a judgment debt of the Royal Court in which I am now sitting to tax the bill of Mr. and Mrs. Barrett, and clearly the order of the Court of Appeal referred to the question of costs and awarded costs, that in essence must be a debt, as it were, a judgment debt, so I am satisfied that effectively Mr. and Mrs. Barrett have an entitlement to costs. Really it is not something I need trouble myself with in the sense that interest is automatic pursuant to Section 2. The only matter that arose I think from Mr. Barrett's submissions was when the interest should run from.

27. Having looked at the orders, and in particular, the order of the Court of Appeal, what this order, in my judgment does, is to award costs both in this Court and in the Royal Court, and what the order of the Court of Appeal did was to substitute its own order, quashing effectively, the earlier order of Lieutenant Bailiff Newman and making their own order, which obviously, quashed the earlier decision of the Island Development Committee of 13<sup>th</sup> December 2002. That being so, it was in essence, confirming that the earlier order of Lieutenant Bailiff Newman was wrong and in my judgment therefore interest should run from the date of her judgment, which is 1<sup>st</sup> July 2003. So if any direction is necessary from me as to interest then it would be a direction that interest pursuant to Section 2 of the relevant order runs from that date.

28. Now that being so, that is my judgment.

Are there any other issues you want me to decide today?

MR. BARRETT: Sir, could I just clarify, I'm a little hard of hearing.

LIEUTENANT BAILIFF: I am sorry, you should have mentioned that earlier.

MR. BARRETT: I caught most of it but in relation to 1 to 43 sir, I think I heard you say that you were going to allow 12 hours, am I correct?

LIEUTENANT BAILIFF: Yes, yes.

MR. BARRETT: Thank you for that. Everything else I've heard, sir.

LIEUTENANT BAILIFF: Okay.

MR. BARRETT: I think the matter of costs for these proceedings are a matter to be considered.

LIEUTENANT BAILIFF: Okay. So who wants to talk to me about the costs of these proceedings?

MR. BARRETT: Well sir, given that we made a proposal to reduce costs ourselves rather than come into Court I feel that this wasn't responded to and in fact Island Development Committee- the Environment Committee- has brought this unnecessarily to Court sir, so I would ask for costs. If not sir, if you don't feel disposed to do that I would ask as a fallback position that the parties bear their own costs, but I do feel that I've had to wait a long time for this to come to Court and it could have been dealt with by negotiation a lot sooner than it has.

LIEUTENANT BAILIFF: What do you want to say about that?

ADVOCATE McMAHON: Sir, in relation to the judgment you've just given, although I haven't done the calculations I would not be surprised if it was a bigger discount than the discount we've been offered by the receiving party in negotiations, those negotiations were brief to say the least. In relation to the costs that can be awarded under the 2000 Rules you'll see from Rule 10 you are empowered as the person conducting this taxation to make an award for your own costs, fees and expenses or may order any party to give security for costs in such amount or such terms as might be governed by the Royal Court Civil Rules. Therefore I imagine that costs between the parties fall to your discretion sir, so I would suggest that as there has been some discount in this and there have been some matters of principle that you have clarified quite helpfully, that this is a proper case where both parties should bear their own costs, and I would ask that there be no order for costs in the entirety, including the costs of conducting the taxation.

LIEUTENANT BAILIFF: The problem I've got of course is that you are acting in person, aren't you?

MR. BARRETT: Yes sir, I believe I could act for my- We had a directions hearing in which Advocate Loveridge was with me but I do believe under the Orders of the Royal Court 2000 there is a matter under Section 2 of witness fees- Section 3, and if we look at the description of a witness in that Law sir, if I can find it-

ADVOCATE McMAHON: It's on page 11.

MR. BARRETT: Page 11, thank you. In relation to civil proceedings, includes a party to those proceedings sir, so I would suggest to you that I consider myself a party to those proceedings and as such a witness.

LIEUTENANT BAILIFF: The only problem is we don't really know, do we, at this stage, whether- obviously there has been an offer made- whether effectively the offer has been beaten or not beaten, that's the point, I suppose, isn't it really?

MR. BARRETT: No counter offer was made, sir. We did offer it, even at the last time at the directions hearing I did say to the Advocate as we were leaving "*Are you sure we can't settle this?*" and his response to me was "*It's a matter of public money*" and that's how it was left, no counter offer was made. If I think they'd come back and said "*Well fair enough, take £2,000 off*" I think we would have been in a position to say "*Well let's not waste everybody's time, let's get it finished.*" That's a layman's view sir, and I'm asking you to take, maybe not the legal words, but the sentiment behind it. I'm just now pleased that it's decided.

LIEUTENANT BAILIFF: Right, so what you're saying is that you're not really pushing the application for me to make a costs order in your favour?

MR. BARRETT: Well I'd like you to, sir! I don't think we're talking about a lot of costs here, we're talking about my witness fees for today and the Advocate at the directions hearing which, I don't know, lasted about half an hour.

LIEUTENANT BAILIFF: But we don't know what- that was on an earlier hearing, wasn't it?

MR. BARRETT: That was the directions hearing with Mr. Pollard, sir.

LIEUTENANT BAILIFF: Right. And your costs for today would be what?

MR. BARRETT: Whatever I'm allowed for the witness fees for however many hours we've been here, sir.

ADVOCATE McMAHON: Sir, if you were minded to make an order for Mr. Barrett's costs today because he's a witness, I would oppose that.

LIEUTENANT BAILIFF: As a matter of law or?

ADVOCATE McMAHON: As a matter of law, yes. He is not a witness today. A witness must be given its ordinary meaning, the statutory definition on page 11 of the Rules is simply to make it clear that a party can, of course, give evidence in his own right and be a witness. There hasn't been any witness evidence in this matter sir, these are submissions on a matter of law, effectively.

MR. BARRETT: I'm not in a position to counter that sir, but that is not the way I read the law as a layman.

LIEUTENANT BAILIFF: Well I think having heard you both what I'm minded to do is on the basis that no one party has come- Well, you obviously won't have been able to look at the figures and see whether an offer has been beaten or not, but as things stand what I'm minded to do is make an order that effectively is no order as to the costs of the taxation. So in essence both parties pay their own costs. Alright.

Thank you both very much for your submissions gentlemen. It took me longer to decide than I thought.

ADVOCATE McMAHON: Thank you, sir.

MR. BARRETT: Thank you, sir.

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I, Suzanne Margaret O'Neill, hereby certify the foregoing to be a correct and complete extract, prepared to the best of my skill and ability from the tape-recording of the proceedings in this case.

..... Suzanne M. O'Neill  
Friday 27<sup>th</sup> May 2005