

Judgment 22/2005

**IFS Investments Limited v. Manor Park
(Guernsey) Limited et al – Royal Court (Civil
Action File 817) – 19 April, 2005**

Royal Court (Costs and Fees) Rules, 2000 – taxation – practice of Advocate being attended by legally qualified assistant in same firm not to be encouraged – general rule that fees of English counsel are not recoverable from the other party – Advocate’s time spent on researching straightforward matters of Guernsey law not recoverable.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 19th day of April, 2005 before Andrew Christopher King Day, Esquire, C.B.E.,
Lieutenant Bailiff; sitting alone.

Between:

(1) IFS INVESTMENTS LIMITED
and
 (“the Applicant”)

(1) MANOR PARK (GUERNSEY) LIMITED
(2) MANOR PARK GUARANTEED
INVESTMENTS FUNDS LIMITED
 (“the Respondents”)

The Lieutenant Bailiff having considered the
submissions of Advocate R.I.C.E. Harris and J.E. Roland this day handed down his judgment
in respect of the taxation of the costs of the injunctive proceedings in January and February,
2004 and;

1. AWARDED to the Respondents £10,700 as the amount of taxable costs payable by
the Applicant to the Respondents.
2. ORDERED that unless application to the contrary is received by 4.00 p.m. on
Thursday 21st April next, each party will bear their own costs of the said taxation
application, the costs to be paid forthwith.

S. M. D. ROSS
Her Majesty’s Deputy Greffier

**IN THE ROYAL COURT OF GUERNSEY
ORDINARY DIVISION**

Between: (1) **IFS INVESTMENTS LIMITED** (“the Applicant”)

and

(1) **MANOR PARK (GUERNSEY) LIMITED**
(2) **MANOR PARK GUARANTEED INVESTMENT
FUNDS LIMITED** (“the Respondents”)

**Decision of Day L.B.
19th April, 2005**

TAXATION OF COSTS

(In respect of the injunctive proceedings in January and February 2004).

1. On the 11th June, 2004, I awarded costs to the Respondents in respect of the aborted injunctive proceedings which have been instituted against them at the end of January, 2004, by the Applicant (“the June Order”). The parties have been unable to agree the appropriate payments to be made and thus the Applicant, through Miss Roland, has applied for those costs to be taxed.
2. The June order awarded costs on the standard recoverable basis. The applicable legislation is the Royal Court Costs and Fees Rules, 2000 (“the Rules”). The governing principle is that all the costs which have been incurred by the Respondents are payable, which are reasonable in amount and reasonably incurred. Any doubts which I have in that regard I resolve in favour of the Applicant, the paying party. Costs must also be proportionate to the matters in issue bearing in mind all these circumstances.
3. The Respondents’ bill of costs is divided into three parts. I refer to each part briefly in turn, adopting the descriptions used by Mr. Harris on behalf of the Respondents.

The hearing of the applications

4. The essential matters in issue in this regard are whether the number of lawyers appearing for the Respondents at the various Court hearings could be justified, and whether the hourly rate applied to Mr. Davis is also reasonable.

5. The Applicant was seeking urgent injunctive relief. The advocates (Carey Olsen) who had acted for some time for the Respondents, and who had been crucially involved in the litigation between, effectively, the same parties in 2003, and some of whom had been personally involved in the events complained of in early 2004, found that they were not in a position to continue to act. In those urgent circumstances it was necessary for the Respondents to brief a different advocate. Mr. Harris filled that unenviable position, but naturally he, at least at the very first appearance, was wholly ignorant of the arguments, issues and background to them. Thus, on that and the three subsequent Court hearings, he was assisted in Court by lawyers from Carey Olsen. The question arises as to whether the other party, the Applicant, should suffer financially because of those arrangements.

6. In my view, in the particular circumstances and the perceived urgency of the proceedings, it was reasonable that at those four Court hearings Mr. Harris should be properly assisted by a lawyer from Carey Olsen (the barrister/solicitor scenario). On the other hand, the increasing practice in some quarters on some occasions for an advocate to be attended on in Court by a legally qualified assistant in the same firm is not to be encouraged. Accordingly, I do not consider that it was reasonable for Mr. Davis as well as Miss Tee (a legal assistant and advocate, respectively, at Carey Olsen) to be in Court on the afternoon of the 28th January, 2004, together with Mr. Harris (though I accept that their joint presence at the first hearing that morning was). The presence of Miss Tee on her own behalf and to assist Mr. Harris was all that was reasonable on the later occasion. Thus £75 is to be deducted. Moreover, I consider the rate of £150 per hour applicable to Mr. Davis at the remaining hearings to be too high, bearing in mind that the relevant hourly rate prescribed by the Rules for an advocate is £173. Therefore, I set that figure at £120. Accordingly, the bill is further reduced by $4.5 \times 30 = £135$. This leaves an amount payable under this item of $£1701.50 - £210 = £1491.50$

Costs of preparation in respect of the hearings

7. The major item to consider under this heading is the amount attributable to English counsels' fees. Whilst there may be extraordinary circumstances in which these might be allowable on a standard recoverable basis, and could well be allowable in such as Beddoes applications, the general rule must be that English counsels' fees are not claimable from the other party. If a party considers that it needs the comfort of advice from English counsel, then so be it. But it cannot in normal course be right to be able to claim back that sum from the other party, bearing in mind that the rate of advocates' fees generally in Guernsey must reflect a great competence on their part. This part of the bill is therefore disallowed.

8. As far as the other costs are concerned under this item, I take a broad-brush approach. I consider the charges in respect of legal assistants too high by some £2,000 (Mr. Harris' hours remaining unaffected). In addition, whilst I recognise that much of the photocopying was required for the Court's purposes, I am not satisfied that the whole amount of that activity, and certainly not the faxes and sundries as they are so described, is claimable.
9. In the round, therefore, I reduce the overall costs under this item to £21,000, one-third of which is payable now by the Applicant (£7,000).

Costs of the Respondents' costs application dated 13th May, 2004

10. The amount claimed under this heading is undoubtedly excessive. Basically the knowledge required to inform the application – which was on an indemnity basis – related to straightforward matters of Guernsey law on which there were recent authorities. The acquisition of such knowledge is part of the advocate's stock in trade, and is not of such an exceptional or genuinely specialist nature, requiring particular work in any given case, as to justify the costs of it being paid by the opposing party. As far as Mr. Harris is concerned, in addition to the four hours I allow for the time he spent in Court, I allow only a further six hours for preparation and refining arguments (a generous allowance in my view). I disallow in their entirety the costs attributable to Mr. Davis. Including the Court and Greffe's fees, the amount claimable under this item is £2,230.

Conclusion

11. Rounding the final figure very slightly down, the amount of taxable costs payable by the Applicant in this case to the Respondents is £10,700.
12. Unless application to the contrary is received by 4.00 p.m. on Thursday 21st April next, my further orders are that each party will bear their own costs of this taxation application, and the costs awarded are paid forthwith.