

**Judgment 30/2009**

**Public Services Department v Miller and Baird (CI)  
Ltd – Royal Court (Civil Action File 1340) – 26 June  
2009**

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**Companies (Guernsey) Law, 2008 (s.406) – application by the States for compulsory winding up order had been dismissed – Company’s application for full indemnity costs – costs awarded on the recoverable basis only (See Judgments 51, 57, 59 and 68 of 2005 and 22 of 2009)**

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

Civil 1340

The 26<sup>th</sup> day of June 2009 before Richard John Collas, Esquire

THE MINISTER OF THE  
PUBLIC SERVICES DEPARTMENT  
OF THE STATES OF GUERNSEY

Plaintiff

and

MILLER & BAIRD (C.I.) LIMITED

Defendant

Whereas on 6<sup>th</sup> May the Court considered an application for the compulsory winding up of the Defendant Company and heard thereon Advocates K E Walder and J P Greenfield counsel for the Plaintiff and Defendant respectively and unanimously DISMISSED the said application and whereas the Court handed down its written reasons for the said decision on 15<sup>th</sup> May and whereas the Defendant applied for costs on an indemnity basis the Court this day handed down a supplemental judgment in the terms attached hereto and awarded costs on the standard recoverable basis.

S M D ROSS  
Her Majesty’s Deputy Greffier

**IN THE ROYAL COURT OF GUERNSEY**

**Between**

**THE MINISTER OF THE PUBLIC SERVICES DEPARTMENT  
OF THE STATES OF GUERNSEY**

**Plaintiff**

**-V-**

**MILLER & BAIRD (CI) LIMITED**

**Defendant**

**Judgment handed down: 26<sup>th</sup> June 2009**

**Before: Richard John Collas Esq., Deputy-Bailiff**

**Advocate for Plaintiff: K E Walder  
Advocate for Defendant: J P Greenfield**

**Addendum re Costs**

1. Further to the decision of the Royal Court on 6<sup>th</sup> May 2009 and its reasoned decision handed down on 15 May dismissing the Sates' application to place the Company in compulsory liquidation, Advocate Greenfield has applied on behalf of the Company for an Order that the Sates pay its costs on a full indemnity basis.
2. Advocate Greenfield reminded me that the Court's discretion to award full indemnity costs under Rule 82(1)(a) of the Royal Court Civil Rules 2007 is unfettered although it must be exercised judicially and he drew my attention to the principles identified by the Royal Court in *Thompson and Le Noury v Masterton and Bourne* Royal Court 1 December 200,3, including that:

*“Unreasonableness does not have to amount to an abuse of process, nor is it to be qualified in any way, such as “totally” or “wholly” etc.” and “The inadequacy of recoverable costs is not essentially a ‘special circumstance’ for the purpose of [the Rule].”*

3. Advocate Greenfield argued that the sole motivation for the States in pursuing the petition was to stifle and extinguish the Company's arbitration claim. In that regard, I note that the States commenced the liquidation procedures when it issued a Statutory Demand on 22 December 2008. As at that date, the Arbitration proceedings had not been commenced by the Company although the contractual disputes between the parties had been ongoing for some time and there had undoubtedly been delays. The

States held the Company responsible for most of the delays but the Jurats stopped short of criticising either party for the delays and merely observed that the delays were indicative of the complexity of the issues.

4. In my view, when the States issued the Statutory Demand, they were probably very keen to progress all the contractual disputes in order to bring matters to a conclusion but I do not believe I can properly conclude that, at that time, the States' motive was to stifle an arbitration process that had not yet commenced.
5. Once the Arbitration was commenced, could it be said that the States then decided to press on with the liquidation application with the intention of stifling the arbitration? Or, was it simply that having commenced the procedure, they continued with it. I do not think that I have any evidence before me to choose between those two possibilities and therefore conclude that I should give the States the benefit of the doubt.
6. Regarding the inadequacy of recoverable costs, Advocate Greenfield argues that the States were well aware that the Company had limited funds and hence that any funds it spent on defending the liquidation application would divert the available funds away from progressing the arbitration. That may be so, but I do not believe that it would justify a full indemnity costs order.
7. I have re-read the Court's judgment of 15 May in order to remind myself as to how the Jurats expressed their findings on the merits of the application. I agree that there is scope for criticising the States' approach to the liquidation, especially as to how they would have approached the arbitration if a liquidator was appointed and the inadequacy of the funding they would have made available to him to investigate the merits of the Company's claim but, in my view, the circumstances do not justify a full indemnity costs order.
8. I therefore order that the States shall pay the Company's costs on a recoverable basis.