



Tostevin and Newhouse
Royal Court
6th January, 2014

JUDGMENT 01/2014

Decision on costs.

Approved Text
06.01.2014

IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)

Between:

(1) DAVID DANIEL ALFRED TOSTEVIN
(2) PAMELA NORA TOSTEVIN

Appellants

-and-

(1) CRAIG NEWHOUSE
(2) ANN NEWHOUSE

Respondents

Costs decision taken on papers handed down: 6th January 2014

Before: Richard James McMahon, Esq., Deputy Bailiff

Advocate for the Appellants: Advocate N J Barnes
Advocate for the Respondents: Advocate F J Haskins

Cases, texts & legislation referred to:

The Arbitration (Guernsey) Law, 1982
The Royal Court Civil Rules, 2007

Introduction

1. At paragraph 16 of my judgment refusing to grant the certificate sought by the Appellants pursuant to section 19(7)(b) of the Arbitration (Guernsey) Law, 1982, as amended, I indicated that I would be minded to award the Respondents their costs of that unsuccessful application on the standard recoverable basis, subject to any contrary submissions from the parties. Brief written submissions on behalf of the Appellants were lodged by Advocate Barnes dated 11 November 2013. Comments in response to those submissions were made by Advocate Haskins on behalf of the Respondents dated 29 November 2013. I consider that I have received sufficient information to enable me to resolve the issue of costs without convening the parties to an oral hearing. In my judgment, to do so would only serve to escalate the costs yet further, which is not in the interests of either side or of justice.

The respective submissions

2. The Appellants' position is that there were two issues to resolve at the hearing on 11 October 2013, namely their application for a certificate under the 1982 Law and, if granted, the question of the costs order following their partially successful appeal from the arbitrator's award to this Court. Advocate Barnes estimates that the two issues took a broadly equal amount of time and so cancel each other out, meaning that the correct order in respect of costs would be no order as to costs.
3. As Advocate Haskins notes, there is already a costs award in relation to the costs of the appeal from the arbitrator and any costs incurred by the Appellants in relation to arguing about that costs award at the hearing on 11 October 2013 are already encompassed in that award in favour of the Appellants, but subject to a 25% discount. The costs arising from the unsuccessful application to take the matter to the Court of Appeal are, therefore, a discrete issue. In her submission, there is no reason at all to depart from the general rule that an unsuccessful party will be ordered to pay the costs of the successful party.

Conclusions

4. I fear that Advocate Barnes has confused himself about what is in issue. His submissions are predicated on combining two distinct costs elements. The net result may be what he argues for, but I strongly suspect that the amount of preparatory work on what appeared to be a novel application of seeking a certificate pursuant to section 19 of the 1982 Law, may well result in a larger amount of costs being attributed to that part of the proceedings on 11 October 2013.
5. The Court is given a wide discretion by rule 82 of the Royal Court Civil Rules, 2007 in relation to its costs orders. The approach will usually be to award costs in favour of the party who is successful. There has been no suggestion in relation to the Appellants' unsuccessful application that the basis on which costs should be awarded is anything other than the standard recoverable basis. This reflects the recognition, with which I agree, that the points raised on behalf of the Appellants were reasonably taken.
6. The Appellants' Application dated 3 September 2013 sought to continue these proceedings before the Court of Appeal. The effect of my decision was that they could not and these proceedings are now at an end. In respect of that Application, the Appellants simply lost. Of my own motion, I have considered whether there is any scope to make an award of costs other than on the basis of the Respondents having all of their costs in respect of this Application. I have concluded that there is no basis on which to discount those costs even by a small percentage.
7. In the circumstances, this is a straightforward case where the costs of the Application dated 3 September 2013 will be ordered to follow the event. The Appellants chose to make a further application which was dismissed. The Appellants are, therefore, ordered to pay the Respondents' costs of that Application on the standard recoverable basis, to be taxed if not agreed.