



Neal v Featherstone
Royal Court – Taxation Hearing
23rd March, 2015

JUDGMENT
14/2015

Taxation on costs arising from an order made on 14th May 2014 in proceedings which originated in Alderney and subsequently on appeal to the Royal Court.

IN THE ROYAL COURT OF GUERNSEY

TAXATION HEARING

Hearing Date: 13th October 2014

Judgment Handed Down: 23rd March, 2015

GRAEME PAUL NEAL

V

ROGER DAVID FEATHERSTONE

Judgment

HAWORTH, P
Lieutenant Bailiff

1. This taxation arises from an order made by the Bailiff on 14th May 2014 in proceedings which originated in Alderney and subsequently on appeal to the Royal Court. In paragraph 45 of the bailiff's Judgment he made the following costs orders in relation to the matter under appeal. His order stated:

“45. As for the costs of the two appeals, Mr. Neal's appeal against the substantive judgment and Mr. Featherstone's appeal against the costs order, my preliminary view is that I can see no reason to depart from the general rule that costs follow the event. I am therefore minded at present to order that Mr. Featherstone shall pay Mr. Neal's costs on the costs appeal and that Mr. Neal shall pay Mr. Featherstone's costs on the substantive appeal.”

2. I am dealing with Mr. Neal's costs in relation to the costs appeal. A bill of costs was lodged by him on 30th July 2014 and an application for taxation was made on 28th August 2014. I was appointed by the Bailiff to deal with this taxation and also a second taxation arising out of the Appeal which will be dealt with later, pursuant to Section 6 of the Royal Court (Cost & Fees) Rules 2012.

3. The Bill of Costs submitted by Mr. Neal is a bill which in summary form simply provides details of a loss of income claim setting out his actual earnings for the period during which he states he was unable to work because of the litigation. He has concluded that his total lost earnings in relation to the costs appeal is £91,446.
4. In paragraph 4 of his bill he estimates what his legal costs would have been had he had been represented by an Advocate. He has explained to me the basis upon which he has arrived at the figures, which are based on the pre-appeal costs he incurred with the Advocates whom he instructed before dealing with the matter as a litigant in person.
5. He arrives at a figure based on 2/3rds of what an Advocate would charge, namely £51,733. Based on the 2/3rds principle which he has used in his calculations those are his costs and his loss of earnings. Consequently 100% of his loss of earnings would amount to £91,446. There is no doubt that he spent a considerable amount of time in dealing with this matter both at first instance and on the appeals and that has caused stress to both himself and to his family.
6. The Law in relation to recoverable costs by both Advocates and litigants in person vary: In England the recovery of costs has taxed Judges for many years. Costs and their recovery go back into the mists of time. Lord Justice Bowen in *London Scottish Benefit Society v. Chorley* (1884) 12 QBD at page 452 set out details of what costs meant in terms of their recovery:

“Costs are a term of art and for many, many years the recovery of costs has been restricted to members of the legal profession.”

In *Buckland v. Watts* C of A [1970] 1QB27 Lord Justice Danckwerts said this:

“This seems to me to be a matter of principle in that respect and it seems to me that the principle is well settled that though a solicitor who acts in person for himself can claim to be remunerated for his professional services insofar as they are not rendered unnecessary or impossible as, for instance, with regard to consultations with himself and that kind of thing, and such costs are recoverable by the solicitor, in the case of a layman who is not a skilled legal person he can only recover his out of pocket expenses.”

He went on to say that:

“Of course, that case was dealing with the position of the solicitor and therefore it might be said not to be directly in point on the problem which we now have to consider, but it appears quite clear from the words used by Bowen, LJ, that in the case of a layman he could not charge for his time and this seems to me to cover the issue in the present case with regard to the disallowance for the claims for time and labour tendered by Mr. Buckland. I am afraid that is the end of that part of his appeal.”

7. Sir Gordon Wilmer sitting with Lord Justice Danckwerts said this:

“One heading covers his disbursements. That is to say, money which he has actually had to pay out to other people, such as witnesses, counsel, professional advisors and so forth. The other heading is described as ‘costs’. This is intended to cover remuneration for the exercise of professional legal skill. This, I think, is in accordance with the views expressed by Bowen, LJ, in the judgment which my Lord has already read. It is because there has been an exercise of professional legal skill that a solicitor conducting his own case successfully is treated differently from any other successful litigant in person conducting his own case.”

8. The law in England changed in 1975 and allowed litigants in person to recover costs by virtue of the Litigants in Person (Costs and Expenses) Act 1975. The Act allowed litigants in person to recover costs at a rate of £9.25 per hour subsequently increased to £18.50. In addition, if the

litigant in person was able to prove financial loss he could also recover up to 2/3rds what a lawyer would charge.

9. Looking at the situation in Guernsey, the matter is very different; I was referred in submissions to Guernsey International Trustees Limited & Tim Bennett v. Virani 70/2004, a decision of Lieutenant Bailiff Talbot sitting on 16th April 2004. In a detailed judgment in relation to an issue not dissimilar to the one before me today, namely a litigant in person acting on his own behalf incurring a substantial sum of money in relation to costs.

At paragraph 28 he said:

“In my judgment the position in Guernsey relating to a claim by a litigant in person for the recovery of a time based sum to represent a charge for his labours is the same as the position in England and Wales before the passing of the Litigants in Person (Costs and Expenses) Act 1975.”

He then referred specifically to the cases of London Scottish Benefit Society v. Chorley and Buckland v. Watts. He went on at paragraph 29 to say:

“I have been unable to discover any assistance in Guernsey case law but the position appears to be that under established practice of the Royal Court a litigant in person is not entitled to recover an allowance for time spent in preparing and presenting his case. It is, I regret, not therefore possible for me to award the Viranis’ a sum to compensate them for Mr. Virani’s successful efforts on their part. In the absence of a law upon the lines of the English statute of 1975 it is not possible for me to grant such an allowance. I doubt whether it would represent costs properly so called.”

10. I invited Mr. Neal to tell me if he had lost any expenses as a result of his appeal as opposed to his claim for costs. Absent some small items he was not able to say that he had.
11. Mr. Neal’s secondary submission is that as a witness, the Royal Court (Costs & Fees) Rules, 2012 entitle him to recover costs in those circumstances.

“Rule 10; Interpretation” refers to the definition of “witness” in proceedings to include a party to the proceedings in the following terms:

“witness” in relation to civil proceedings includes a party to the proceedings

Rule 3 relates to witness allowances in respect of civil and criminal proceedings and states:

“The allowance is recoverable on account of and payable to

(a) a witness attending to give evidence in civil or criminal proceedings, (whether or not he gives evidence) and

(b) a witness examined in proceedings preliminary to such proceedings

12. Subparagraph (b) does not apply as this was an appeal. So far as paragraph (a) is concerned this was an appeal dealt with on the papers. There was no requirement for attendance by any witness, neither was permission granted by the Court for witnesses to be called at the costs appeal.
13. In my judgment it is stretching matters too far to say that in those circumstances simply by defining “witness” as a party to the proceedings entitles a party to recover costs in those circumstances.

14. Accordingly, I agree with the judgment of Lieutenant Bailiff Talbot in *Virani* at paragraph 27 where he says:

“If I were otherwise able to do so I would be extremely keen to allow the Viranis’ most, if not perhaps all, of the large sum claimed by them for Mr. Virani’s devoted and unselfish attention to their cause in the proceedings.

Generally speaking in my judgment, certainly on the mainland, and in my experience on the mainland perhaps it may not be the same in Guernsey but there are more and more litigants in person dealing with their own cases and in the main litigants in person often make a good job of those proceedings. It is right and it happens on the mainland in the circumstances litigants in person may recover their costs or some of their costs including lost income based on the rules that are now enshrined in the Civil Procedure Rules on the mainland at Rule 46.5.”

15. That is not the position in Guernsey and in relation to this matter I concur with the judgment of Lieutenant Bailiff Talbot that there is no provision in Guernsey law for a litigant in person to recover lost income. Whilst I have every sympathy for Mr. Neal in these circumstances for the reasons given I dismiss his Bill of Costs.