

Clive Philip Le Brun Tomes v Piers Ross Coke-Wallis

Jurisdiction:	Jersey
Judge:	Deputy Bailiff
Judgment Date:	09 October 2002
Neutral Citation:	[2002] JRC 184
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Text

[2002] JRC 184

ROYAL COURT

(Samedi Division)

Before:

M.C. St. J. Birt, **Esq.**, Deputy Bailiff, **and** Jurats Quérée, **and** Tibbo.

ACTION NUMBER: 2000/164

ACTION NUMBER: 2001/05

ACTION NUMBER: 2000/161

Between
Clive Philip Le Brun Tomes

First Plaintiff
and
Piers Ross Coke-Wallis
First Defendant

and

Coke-Wallis Jones De Polignac Trustees (Jersey) Limited
Second Defendant

and

Natalie Coke-Wallis (née Jones) his Wife
Third Defendant

Between
Eric Gerard Rombaut
Applicant
and
Clive Philip Le Brun Tomes
First Respondent

and

Piers Ross Coke-Wallis
Second Respondent

and

Anthony John Quinn
Third Respondent

Advocate R.G.S. Fielding **for Clive Philip Le Brun Tomes and for Anthony John Quinn.**

Authorities

Pacific Investments Ltd v Christensen (1996) JLR N 6.

Application to stay existing and any future orders relating to taxation of costs made by the Greffier Substitute, pending trial of the main actions and pending determination of appeals relating to all relevant interlocutory judgments.

Piers Ross Coke-Wallis and Natalie Coke-Wallis (née Jones) on their own behalf and on behalf of Coke-Wallis Jones de Polignac Trustees (Jersey) Limited.

Eric Gerard Rombaut did not appear and was not represented.

Deputy Bailiff

THE

- 1 This is a further instalment in the continuing procedural wrangling in this litigation. For an explanation of the litigation and the defined terms in relation to the three actions in question we refer to the judgment of the Court delivered on 29th April, 2002.
- 2 This summons concerns an application by Mr Coke-Wallis, Mrs Coke-Wallis and Coke-Wallis De Polignac Trustees (Jersey) Limited, formerly known as Coto Trust, to whom collectively we shall refer as the defendants, to stay execution of various sums of taxed costs which the Greffier Substitute, as taxing officer, has made, or is likely to make shortly. The stay is asked for pending trial of the various actions or pending appeals to the Court of Appeal in respect of the relevant interlocutory judgments.
- 3 The summons specifies seven bills of costs, enforcement of which the defendants wish to have stayed. The summons also asks, at paragraph (h), that any other taxation decisions by the Greffier Substitute in respect of these pending actions which may be made prior to the trial of the main actions should also be stayed. We were informed that only two of the specified seven bills of costs have in fact been taxed. The others are in the process of taxation and a final taxation certificate is expected shortly.
- 4 It is not entirely clear to us that we have, technically, jurisdiction to order a stay on enforcement of something which has not yet been taxed and is therefore not yet enforceable. But the defendants and the plaintiff are looking for a decision in principle. The defendants accepted in argument that there was no distinction to be drawn between the various costs orders and bills of taxation. Either all of the costs orders, once taxed, should be stayed or they should all be capable of enforcement immediately upon taxation.
- 5 We are therefore willing to express our decision generally, albeit that as a matter of technicality it may be that any order for a stay of execution would only apply to those two bills which have already been taxed.
- 6 The taxations listed in the summons arise from the following orders of the Court:

It is clear that there are a number of further bill of costs yet to be prepared, arising out of other orders for costs which various Courts have made in these proceedings.

(i) On 25th January, 2001 in the 'injunction action' the Court ordered the defendants

to pay the indemnity costs of the hearing of 19th January, 2001 and standard costs of the hearing of 24th January, 2001.

(ii) On 15th October, 2001 the Master refused to order consolidation of the three actions and ordered the defendants to pay the costs of that summons.

(iii) On 29th April, 2002 this Court dismissed an appeal against the Master's decision of 15th October, 2001 and awarded costs against the defendants on the standard basis.

- 7 The defendants ask first for a stay of execution pending appeal to the Court of Appeal. We must therefore recite briefly the position as to appeals.
- 8 On 25th January, 2001 the Court refused leave to appeal against its decision of that date in the injunction action. No application for leave to appeal has been made to the Court of Appeal, despite over 18 months having passed since then. Appeals have to be brought within one month under the Court of Appeal rules and the defendants are therefore way out of time.
- 9 On 14th January, 2002 the Court refused the defendants leave to appeal merely against the costs order which had been made on 25th January and ordered the defendants to pay the costs of that application for leave.
- 10 On 23rd September, 2002 this Court refused leave for the defendants to appeal against the order of the Court of 29th April, 2002 dismissing the appeal against the Master's decision on consolidation. It also ordered the defendants to pay the costs of that application. No application has yet been made to the Court of Appeal for leave to appeal. It follows that the present position is that there are no existing appeals to the Court of Appeal, nor any outstanding applications for leave to appeal to the Court of Appeal.
- 11 Mr Fielding, on behalf of the defendant, referred us to the case of *Pacific Investments Ltd v Christensen* (1996) JLR N 6, which held that, once the Royal Court has refused leave to appeal there is no appeal in being so that the Royal Court has no power to grant a stay. Only the Court of Appeal has such a power. If that decision is correct that would be the end of the matter so far as the defendants are relying on any appeals for a stay of execution. This Court would have no jurisdiction. However that is not their main ground. Furthermore, we are aware that doubts have been expressed as to the correctness of the decision in *Pacific Investments*. Accordingly, in case that decision is held to be wrong, we consider how we would have exercised our discretion in connection with any possible appeal on the assumption that we would have one to be exercised.

- 12 The general principle is that an appeal does not operate as a stay of execution. In deciding

whether to grant a stay, the Court will have regard to the likelihood of any appeal succeeding and whether a refusal to grant a stay would render any appeal nugatory.

13 As to the former, the Court has already refused leave to appeal against the relevant orders. The defendants are way out of time and we are of the view that there is no realistic possibility of any successful appeal against the various interlocutory orders and the accompanying orders for costs.

14 The next question is whether any appeal would be rendered nugatory in the event of our refusing a stay. This links in with the defendants main submission that the enforcement of the costs awards should be stayed pending the main trial.

15 On this the defendants argue as follows:

(i) They submit that the plaintiffs have no intention of bringing any of the matters to trial because they have achieved their objective. Thus in the Rombaut Action, Mr Rombaut now has the relevant shares in Diamond Trust Limited. In the injunction action, Mr Tomes has achieved the transfer of trusts which he sought and the temporary reconnection of the computer. In the main action Mr Tomes has summary judgment for the major part of the specific sums which he claimed. But, say the defendants, that would be unjust. They say that the various interlocutory orders were wrongly granted on false evidence produced by Mr Tomes and that, far from Mr Coke-Wallis owing Mr Tomes money as a result of the split in their partnership in August, 2000, Mr Tomes owes Mr Coke-Wallis a substantial sum of money. It would therefore be manifestly unjust, say the defendants, to order the defendants to pay money to Mr Tomes at this stage when, at the end of the day, they are likely to be held to be owed money by Mr Tomes. They emphasise that they have not yet had the opportunity of putting their side of the case in these various interlocutory proceedings.

(ii) The defendants asserted in their oral submissions that if Mr Tomes received his costs now he would not necessarily be in a position to repay them in the event of a successful appeal. We were told that the partnership was in financial difficulties before the split in August, 2000 and that Mr Tomes had failed to pay Mr Coke-Wallis for his 50% interest in the partnership as agreed, although we have to say that this allegation has not been pleaded and was merely the subject of an assertion before us. They said that although Mr Tomes had owned Jersey immovable property, jointly with his wife, it was not clear whether that was still the case, in view of matrimonial proceedings. Furthermore, Mr Tomes' new trust company only held a transitional licence from the Jersey Financial Services Commission under the relevant legislation governing trust companies. In summary they asserted that there were reasons to doubt Mr Tomes's ability to repay any costs paid to him.

16 The difficulty with the defendants' argument that it is unfair for them to have to pay Mr Tomes's costs when he may eventually be found to owe them money, is that it ignores the

fact that these are orders of the Court made as a direct result of the way in which the defendants have chosen to conduct this litigation. This case has been bedevilled by interlocutory matters. Every decision against the defendants has been appealed. The Court has ordered the defendants to pay the legal costs incurred as a result of those hearings. These costs have in fact been incurred by Mr Tomes, who is, as a result, out of pocket.

- 17 The general rule is that costs, once taxed, are payable. This has the salutary effect of bringing home to litigants that there is a price to be paid if applications are made or opposed unsuccessfully in circumstances where the Court thinks it right to visit the unsuccessful party with costs. We see no reason for departing from the general rule in this case. On the contrary, we see every reason for following it.
- 18 Mr Coke-Wallis, in his submission, seemed to think that if the defendants were successful in the main trial and therefore obtained an order for costs against Mr Tomes in relation to the main trial, the existing orders for costs would disappear and the sums due thereunder would no longer be payable. Accordingly, he submitted it would be unfair to make the defendants pay them now because of the difficulties in reclaiming money from Mr Tomes in the event of ultimate success.
- 19 But that is to misunderstand the position. Absent a successful appeal against the existing costs orders, those costs will stand whatever the result of the main action. Any question of repayment by Mr Tomes will therefore not arise, unless the Court of Appeal were to uphold an appeal against any of the orders for costs which we have made.
- 20 On that aspect, we do not think that any appeal would be rendered nugatory by denying a stay. There is no evidence before us which leads us to believe that Mr Tomes would not be able to repay the taxed costs in the event of a successful appeal. He is a chartered accountant running a trust company in Jersey. We were assured by Mr Fielding that he still jointly owns immovable property in Jersey with his wife.
- 21 As to the defendants' point that these actions may never be brought on for trial, the remedy lies in their hands. First, they should bring a properly formulated counterclaim in the main action, not Mr Rombaut's action, which makes it clear exactly what they claim against Mr Tomes and on what grounds. Once that is done it will then be open to either party to progress the matter and ultimately obtain a hearing date for the trial.
- 22 In summary the Court has awarded costs against the defendants in respect of a number of different interlocutory matters. These costs orders have arisen because of the way in which the defendants have chosen to conduct those applications. The normal rule is that costs orders, once taxed, are payable. Far from seeing any reason for departing from the general rule in this case, we see every reason for following it in order to bring home to the defendants the consequences of this interlocutory skirmishing. We emphasise that the same principle would apply to Mr Tomes. If he loses an interlocutory matter and costs are

awarded against him, he will have to pay immediately following taxation.

- 23 Thus, in so far as the defendants ask for a stay pending any possible appeal, we hold that on the authority of *Pacific Investments* we have no jurisdiction to order a stay. If that is wrong, we would, in our discretion, not order a stay because we think that there is no realistic prospect of successful appeals being brought and in any event any successful appeal would not be rendered nugatory by payment of the costs at this stage.
- 24 In so far as the defendants ask for a stay pending trial of the actions, the outcome of the trials will not affect the costs orders. As we have already said, they will remain payable whatever the outcome of the main actions. The fact that it is possible that Mr Tomes will eventually be found to owe Mr Coke-Wallis money as a result of those actions is not sufficient reason to depart from the normal rule which is that, once taxed, costs payable in respect of interlocutory matters are payable forthwith.
- 25 We therefore refuse to order a stay of execution of the two bills of costs which have been taxed. We also refuse to order a stay of all future taxed costs, as requested in paragraph (h) of the summons.
- 26 As to the remaining bills of costs listed in the summons, which have not yet been taxed, we again raise the question as to whether, technically, we can order a stay. However, as requested by the parties, we make it absolutely clear that, in the absence of some completely new and very compelling matter, we would refuse a stay of those bills of costs and any future taxed bill of costs. All such taxed costs should become payable forthwith upon taxation.
- 27 The Court, having decided against the applicants, I see no reason why the normal rules should not apply of costs following the event. I, therefore, order the defendants to pay the costs of today's hearing. The Plaintiff has asked for costs on an indemnity basis, but I do not consider that the circumstances were exceptional so as to justify that.
- 28 However, this is now the second occasion on which the Court has refused a stay on the basis that an appeal would not be rendered nugatory. The Court presided over by the Bailiff on 25th September refused a stay on the basis that there was no evidence that Mr Tomes would not be able to comply with any judgments against him.
- 29 We, today, have come to the same conclusion. I think it follows that if the defendants were to try and raise this for a third time without bringing any new matter to bear, then there would be a question as to whether costs should not be awarded on an indemnity basis. But I do not consider that that position has been reached today and therefore costs will be on the standard basis.

30 The Court refuses leave to appeal. We consider that there is no realistic prospect of success. If the defendants wish to pursue the matter they should apply for leave from the Court of Appeal itself.