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ROYAL COURT

7th September, 1992. 159A.

Before P. Matthews, Esq.
Assistant Judicial Greffier.

Between:	Mrs Ciaran Milner, née McCarthy	Plaintiff
And:	Desmond John Gilmore Pyper	Defendant

Costs Hearing

Advocate P.S. Landick for the Plaintiff (receiving party)
Mr. I.W.S. Strang for the Defendant (paying party)

On the 14th February, 1992, the above action was settled on terms, inter alia, that the Defendant pay the Plaintiff's taxed costs of and incidental to the action up to the 19th September, 1991 (other than the costs of a summons heard on the 30th July, 1991).

The parties were unable to agree the quantum of costs and the matter was argued at a hearing on the 18th August, 1992. Two main issues were raised at the hearing:-

(1) whether the Plaintiff could recover from the Defendant on taxation on a party and party basis (i.e. taxed costs) the costs of instructing English counsel to give advice and to settle pleadings in relation to a defamation action; and

(2) whether the costs incurred in relation to certain matters (detailed later in this judgment) are costs "of and incidental" to the defamation action.

Background

The Plaintiff and Defendant in this action are dental surgeons. Between December, 1988 and July, 1990, the Plaintiff worked at the Defendant's practice at 9 David Place, St. Helier.

In January, 1990, Mr. Chris Warner-Bosman made enquiries of all dentists in Jersey to see if his specialisation in periodontology would be used by them if he brought a practice in Jersey. Mr. Bosman did not possess residential qualifications and it would be necessary for him to acquire a "J" category status under the Housing regulations. Mr Bosman subsequently became a partner in the Defendant's practice (either in March/April, 1990, according to the Defendant's answer or in June, 1990, according to a letter dated the 3rd July, 1990, written by the Defendant's solicitor to the Plaintiff's advocate) having acquired the necessary housing status.

The Plaintiff was still working at the practice in June, 1990. With the arrival of his new partner the Defendant sought to vary working arrangements. Difficulties ensued.

There was a dispute between the parties as to the status of the Plaintiff. The Plaintiff claimed that she worked as a self-employed associate for twenty-nine hours a week (i.e. a full time employee for the purposes of the Undertakings and Development Regulations). The Defendant asserted that the Plaintiff was his part-time employee and at whose request was now engaged for between twenty and twenty-four hours per week. Nothing turns on the status of the Plaintiff for the purpose of the costs hearing but it was important in relation to the obtaining of Housing Committee consent for Mr. Bosman and the Plaintiff believed that the Defendant had, inter alia, misrepresented her position in the practice to the Housing Committee and the Economic Adviser in order to secure a "J" category for Mr. Bosman and in order to obtain the corresponding financial advantage that would flow to the Defendant therefrom) and that she was being pushed aside to accommodate the new partner. These allegations were denied by the Defendant and it would be true to say that there were other areas of difficulty in the working relationship between the parties at this time.

In early June, 1990, unknown to the Plaintiff, the Defendant removed and photocopied documents from a file in the practice office. The photocopied documents were sent to Messrs. Ogier & Le Cornu whom she had consulted in relation to her difficulties at work. The removal of these documents was notified to the Defendant's lawyer in a letter from the Plaintiff's advocate dated 24th July, 1990. In that letter it is stated that the documents had been removed by the Plaintiff when she became concerned as to her position in the practice and that copies had been taken for the sole purpose of preserving her position and for establishing "the veracity of her representation in the present dispute".

The removal of the documents was to form the basis of an action brought by Mr. Pyper against Mr. and Mrs. Milner and the partners of Ogier & Le Cornu almost one year later in May, 1991. The main purpose of that action (the breach of confidentiality

action) was to prevent Mr and Mrs Milner using or communicating the contents of those documents to any third party and, in particular, was used to prevent a meeting of the Jersey Dental Association which had been called for 3rd June, 1991, to discuss how Mr. Pyper had managed to obtain an additional "J" employee category for his practice.

On the 25th June, 1990, Messrs. Ogier & Le Cornu wrote two letters to the Defendant. One of them sets out what Messrs. Ogier & Le Cornu considered were the contractual arrangements between the Plaintiff and the Defendant (there was no written agreement between them), states that the Defendant was in breach of the terms of that agreement and suggests a compromise which would enable the Plaintiff to continue her employment at the Defendant's practice. The other letter deals with the suggestion of new terms of employment.

On 3rd July, 1990, the Defendant's solicitor replied to Messrs. Ogier & Le Cornu and also directly to Mrs. Pyper giving Mrs. Pyper four weeks notice of the termination of her employment (employment to cease on the 1st August, 1990). No mention is made in those letters or any failure on the part of the plaintiff to provide a proper standard of care to her patients (although other matters are). The Defendant in fact left the practice in July, 1990.

In the latter part of 1990, the Defendant wrote in his "Autumn/Winter Newsletter 1990" and published to all the patients of his practice the following words:-

> *"MRS CIARAN MILNER*
> *Mrs Milner has been dismissed from the practice.*
> *I hope with the presence of Mr. Bosman at the practice he and I will be able to undertake all patients who were treated by Mrs. Milner and give them the care and attention that is paramount to build up a good professional relationship.*
> *It is our intention in the mid-term to employ a further dentist on a full-time basis"*

The Plaintiff sought legal advice in January, 1991, and on the 8th April, 1991, her lawyer issued an Order of Justice stating, inter alia, that those words were defamatory and claiming damages for libel.

The action was placed on the Pending List on the 19th April, 1990.

The Defendant filed an answer on the 24th May, 1991, and:-

(a) denied that the words bore, were intended to bear, or were capable of bearing a defamatory meaning;

(b) alternatively, pleaded that the words were true in substance and in fact (particulars were given);
(c) further or alternatively, pleaded that the words were published on an occasion of qualified privilege -
and sought the dismissal of the Plaintiff's action.

Sadly, Mr. Bosman took his own life in August, 1991.

The Plaintiff filed an answer on the 13th September, 1991.

On 23rd September, 1991, the Defendant made a payment into Court.

The action was settled on the 14th February, 1992. Under the terms of the settlement agreement:-

(a) the Plaintiff was to receive the capital and interest accrued on the payment into Court;
(b) the Defendant was required to publish in his next newsletter a statement that the parties had settled their differences and that the Defendant had never intended to call into question the Plaintiff's standard of dental care;
(c) the Plaintiff was at liberty to publish on one occasion in the Jersey Evening Post and also to circulate to members of the Jersey Dental Association, a statement in terms of paragraph (b) above; and
(d) save as provided in (b) and (c) above no other statement was to be made by any party. The terms as to costs are set out at the beginning of this judgment.

The Costs of English Counsel

1. Mr. Strang on behalf of the Defendant submitted that the action was not a complex matter. The only question at issue was whether six or seven lines contained in the "Autumn/Winter Newsletter 1990" were defamatory of the Defendant. The Plaintiff and Defendant are resident in Jersey and the publication took place in the Island. The case raised purely Jersey domestic issues and, following the decision in the Crane case, was one on which English counsel was not competent to advise. A Jersey qualified lawyer would be perfectly competent to advise and deal with the matter and obtaining counsel's advice was a "luxury" item not a necessary item.

Mr. Strang cited the Court of Appeal decision in Official Solicitor -v- Clore (1984) JJ 81 at page 94.

> ***"The second ground of attack is that the Crane principal has been violated. I will come to the detail in a moment but broadly it is saying that it is wholly unnecessary and indeed improper, for a party to be charged with expenses that the other side has incurred in getting advice from English***

lawyers on the scope of the law and customs of Jersey. That is a matter on which the local practitioners give advice and it is unnecessary to go across the water".

and again at page 98:-

"Now, before I refer to the way that we believe the Judicial Greffier ought to handle this issue, I should say a word about the Crane ground of objection. In the Crane case, we find (at page 150 of our bundle, and page 191 of the original volume), this formulation:-
"Whereas persons who have not been sworn as "avocats" under the "Loi sur l'admission au Barreau" of 1892 or 1950 or admitted to practice as "écrivains" under the "Loi (1891) sur l'admission des Ecrivains" cannot be regarded by the Court as qualified to advise on such laws and customs;

The Court has held that no order with regard to costs made by the Royal Court in any proceedings relating to the said estate can be deemed to include costs or disbursements incurred by any of the parties to such proceedings in instructing English solicitors and English counsel".

What is said by the Official Solicitor is that when this case came on the 30th September for the removal of the injunctions, that was a pure matter of Jersey procedural law on which the local lawyers were perfectly competent to advise and deal with. What is said in answer and what indeed is reflected in the judgment of the learned Deputy Bailiff is that it has nowadays become quite common for the Court in Jersey to look to other systems of law, and in particular to look at English law, on questions such as domicile and conflict laws and it is taking too narrow a view only to look at the law of Jersey. However, that may be, the point is that on 30th September, no questions about domicile and no issue of conflict of laws as we understand it, ever came before the Court or was canvassed. Therefore the justification which is advanced in the judgment of the learned Deputy Bailiff which may, in some cases, be entirely appropriate for distinguishing Crane (and we are not expressing a final view on that), simply does not apply in this case in the light of what actually took place".

In Strachan and Company -v- Heseltine (4th April, 1989) Jersey Unreported C.of.A. the appellants had appealed to the Court of Appeal against a decision of the Royal Court fixing the amount of security for costs to be provided by the respondents (the plaintiffs in the Court below) in the sum of £4,000.00. The appellants had sought security in the sum of approximately £78,000.00 (disregarding costs included in the counter-claim) of which £27,000 was in respect of anticipated fees of English counsel. The substantive issue involved in that case was a breach

of contract and allegations of negligent advice given in relation to certain currency transactions.

Mr. Strang quoted from pages 7 and 8 of the judgment in the Court of Appeal to support his submission that cases of contract and tort do not call for specialist advise from English counsel:

> ***"It was urged upon us by Mr. Thacker that, notwithstanding the possibility that a Court of Appeal would decide the appeal against him, nevertheless there was a point of sufficient public concern as to merit the attention of the Court of Appeal so that it could pronounce on the law for the benefit of parties seeking security in the future. The question which he identified was this: whether the fees of English counsel and solicitors can be allowable on taxation in Jersey in any case in which they are incurred? He urged upon us that this case provided an opportunity for that question to be decided.***
>
> ***For my part, I am wholly unpersuaded that a Court of Appeal would decide a question formulated in such wide terms. Further, I am wholly satisfied that no Court of Appeal would think it right to decide that question under the circumstances which now exist in the present case. In order to decide whether or not the costs of English counsel or solicitors can be allowable on a taxation, it must be necessary for the Court to identify with some precision those matters upon which their advice and assistance is required. Inevitably it would be easier to do this after a trial has taken place than in advance. In the present case I find it impossible to see what question raised by the pleadings can require the advice of English counsel. The action, as I have said, is essentially one based on breach of contract and negligence. The only trust that is referred to in the action is a Jersey Trust. The defendants are of course fully entitled to have the advice and assistance of English counsel if they think that it assists them, but it does not appear to me that the plaintiffs can be required to pay for what will be a luxury unless the advice and assistance can be linked specifically with issues which arise in the action."***

Mr. Landick agreed broadly with the authorities produced by Mr. Strang. In relation to the decision of the Court of Appeal in Strachan & Company -v- Heseltine, Mr. Landick made the observations firstly, that that decision was *obiter* as the Court of Appeal expressly declined to answer the question posed by Advocate Thacker and, secondly, that whilst the observations of the Court in relation to contract law were valid (as the law of contract in Jersey and England differ markedly in certain respects) he did not agree with the observations made by the Court of Appeal in relation to the law of tort (where English common law is considered as a guide to what the law of Jersey should be).

There were only two or three local reported cases on defamation actions. There was not sufficient litigation in this area of the law for a local lawyer to build up expertise in this area of the law. Mr. Landick knew of no locally qualified lawyer specialising in libel litigation.

The matter in issue was not as simple as claimed by Mr. Strang. Defamation actions are complex and specialised and contain many pitfalls for the unwary. In such circumstances it was reasonable for the Plaintiff to seek the advice of English counsel.

Decision on the matter of English counsel's costs.

The appropriate test to apply on a taxation on a party and party basis (or taxed costs) is set out in the decision of the Judicial Greffier in the case of Furzer -v- I.D.C. (9th August, 1990), Jersey Unreported namely that ***"there shall be allowed all such costs as were necessary or proper for the obtainment of justice or for enforcing or defending the rights of the party whose costs are being taxed".***

Section 62/28/3 of the Rules of the Supreme Court reads as follows:-

> ***"PRINCIPLES OF PARTY AND PARTY TAXATION***
>
> ***Is is of great importance to litigants who are unsuccessful that they should not be oppressed by having to pay an excessive amount of costs. The costs chargeable under a taxation between party and party are all that are necessary to enable the adverse party to conduct litigation, and no more. Any charge is merely for conducting litigation more conveniently may be called luxuries, and must be paid by the party incurring them".***

[There is then a reference to some english cases and the commentary continues].

> ***"These cases were decided prior to the F.C.R., 1883, O.65R.(29), and may have been modified by decisions such as Société Anonyme Pêcheries Osteneaises -v- Merchants Marine Insurance Co [1928] 1K.B., where Aitken, L.J., at P.762, indicates that "proper" includes costs not strictly "necessary" but reasonably incurred for the purpose of the proceedings: But this decision is hard to reconcile with the wording of the present sub-rule 4".***

Having reviewed the case of Francis -v- Francis and Dickenson 3 All E.R. (1955) 840, the Judicial Greffier in the Furzer case concludes that the correct test to apply in relation to taxed costs is that of taxation on the party and party basis as set out

in Order 62 Rule 28(2): that is to say ***"there shall be allowed all such costs as were necessary or proper for the obtainment of justice or for enforcing or defending the right party whose costs were being taxed"*** and he took the words "necessary or proper" to mean more than simply necessary but less than the test of taxation on the common fund basis of "there shall be allowed a reasonable amount in respect of all costs reasonably incurred".

One of the difficulties facing a party who has been awarded costs and who then subsequently attempts to recover from the paying party disbursements made to English counsel is that the Royal Court in the Crane case laid down a general principle that such costs are not recoverable in relation to what might be termed purely Jersey domestic issues. Costs hearings are conducted before the Judicial Greffier or a Greffier Substitute who are bound by the decision of the Royal Court in the Crane case unless the case before them can properly be distinguished from Crane. The Inferior Number of the Royal Court being a court of co-ordinate jurisdiction could choose not to follow the decision in the Crane case if that court believed the Crane decision to be incorrect or, alternatively, could distinguish that case. The Greffier can only distinguish in appropriate cases. The Royal Court in the Clore case distinguished the decision in the Crane case and introduced an exception where a question of private international law was involved or where there was an "international" element in the proceedings. The Clore exception however is limited in scope (and strictly speaking is *obiter*).

There are similarities between the present case and the Clore case in that there is a paucity of local authority on the subject matters in question and the Royal Court has looked in both these cases to the common law of England as a guide to what the law of Jersey should be.

On the other hand, the present case differs from the Clore case in that in Clore costs were awarded on an indemnity rather than a taxed basis. On an indemnity basis, any doubt as to the reasonableness of the costs incurred is resolved in favour of the receiving party. In addition, the amount at stake in the Clore case was large and there was also an "international element" present and whilst the law of defamation is not without its difficulties the issues raised in the Clore case were of greater complexity.

Whilst I accept that most Jersey lawyers faced with a libel litigation would seek advice from English counsel, such advice would normally be sought on the grounds of caution, convenience and for saving time of the local practitioner researching an area of law with which he might not be wholly familiar. There can be no question of a Jersey lawyer not being competent to deal with such actions or that justice would be denied to a party if a Jersey lawyer did not receive advice from English counsel.

This particular dispute was, as far as defamation actions can be, a straight forward case.

On the 17th January, 1991, Advocate J.G. White signed a nine page letter addressed to the Plaintiff setting out in detail the legal framework of defamation actions generally, applying the legal principles to the facts in the present dispute and advising the Plaintiff of the risks and costs of libel actions. That letter went through three drafts and was included among the documents sent to English Counsel. At the end of that letter Advocate White states that *"there is absolutely no doubt in my mind that in a case of this nature I would need to take the advice of a specialist London counsel in order that he could consider the merits of your case, draft the necessary pleadings and indicate whether the damages that you would receive would be worth the time and money spent in pursuing an action"*. I would have no hesitation in endorsing Advocate White's views were the taxation being conducted on a solicitor/client (or indemnity) basis.

Counsel was subsequently instructed to give general advice and to settle pleadings.

On examining Counsel's opinion dated 18th February, 1991, one finds that counsel is "very much in agreement with" Advocate White's views (and in particular with his analysis at the application of the facts to the principles of law involved) and is also in "substantial agreement" with his comments on the defence of qualified privilege. Counsel then indicates that it might be possible to argue that qualified privilege did not extend to (a) informing <u>all</u> patients of the Plaintiff's dismissal regardless of whether or not they had been patients of the Plaintiffs or (b) informing them of the <u>reasons</u> for the Plaintiff's departure from the practice. He does not hold out great hopes however for such arguments. He then analyses the evidence of malice, assesses the prospect of success on this issue, looks briefly at the defence of justification and states that that defence would suceed even if the Defendant was activated by malice. Counsel then concludes by endorsing the cautious advice given by Advocate White and advises that the client would be wise to give careful consideration before commencing proceedings in view of the risk and expense of libel litigation . This section of advice covers some four pages. In giving advice Counsel states that he did not find the Defendant's conduct and motives easy to analyse with any confidence on the material available partly because he believed the correspondence was incomplete and partly <u>because he was not familiar with "the regulatory framework to which frequent reference is made"</u>. (emphasis added).

Nothing really new emerges from Counsel's opinion; it is more of a development or refinement of the views already expressed in Advocate White's letter of 17th January, 1991. What the opinion does provide however is the comfort of independent expert advice

which endorses the Plaintiff's views on the matter and also gives an indication of the chances of success in the case.

On taxation on a party and party basis any doubt is resolved in favour of the paying party. For the reasons given above there is doubt in my mind as to whether the disbursements of English counsel should be recoverable in this case and that doubt must be resolved in favour of the paying party, in this case the defendant.

THE COSTS "OF AND INCIDENTAL TO" THE ACTION

Mr. Strang cited passage commencing at the top of page 96 continuing to the end of the last full paragraph on page 98 of the judgment of the Court of Appeal in the Clore case (Supra) There is no need to set out the extract in full here. The important point he wished to draw from that passage was the need to identify with precision the nature of the proceedings for which costs have been awarded and to distinguish them from any other costs not related thereto.

In this case he said that complications had arisen in the taxation as other matters had been included in the Plaintiff's bill of costs which are not relevant to the defamation action, namely:-

(a) the dismissal of the Plaintiff as a employee of the Defendant.
(b) removal by the Plaintiff of the Defendant's practice papers.
(c) the new partnership agreement between the Defendant and Mr. Bosman.
(d) the allegations of defamation made by the Defendant and Mrs. Milner.
(e) how the 'J' category housing status of Mr. Bosman was achieved (this resulted in correspondence being sent to the Economic Adviser, Housing Committee, Jersey Dental Association).
(f) correspondence sent to the Medical Defence Union and the General Dental Council.

The correspondence referred to in Sections (e) and (f) can be summarised as follows:-

(i) letter to Economic Adviser's office
This letter is first found in draft form - drafted presumably by Mr. Milner - and is re-drafted by Messrs Ogier & Le Cornu after discussions with Mr. Milner. The finalised draft is sent to Mr. Milner on the 23rd January, 1991 (the draft is to be signed by Mrs. Milner). In that letter Mrs. Milner states that she believes "that Mr. Pyper has removed me from the practice in order that he could bring in Mr. Bosman on a "J" category basis". Mrs.

Milner's grounds of objections to the granting of the "J" category status to Mr. Bosman are then set out and the letter concludes with the words "I am therefore of the view that you should review Mr. Bosman's 'J' category having investigated the full circumstances of his appointment."

(ii) letter to the Housing Department
This letter exists only in draft form and I believe was never sent to the Housing Committee. It is written on behalf of the Jersey Dental Association. The main purpose of the letter is to seek an explanation from the Housing Committee as to why 'J' category Housing status was granted to Mr. Bosman.

(iii) letter to the Jersey Dental Association
This letter only appears in draft form in the file although it is obviously sent out at a later date. The letter alleges that the Defendant had been acting in the manner unbecoming a professional Dental Surgeon in that (a) he misused his position on the Housing Committee Dental Sub-Committee by failing to declare financial and professional interests and by failing to disclose certain information concerning the status of the Plaintiff in his practice; (b) acted unprofessionally and irresponsibly in making and circulating the Newsletter concerning the defamatory remarks about the Plaintiff and further that this letter was sent out with the heading "Jersey Dental Association"; (c) failed to adhere to an Agreement in relation to the policy of "one in one out" of 'J' category dentists; and (d) acted in a disgraceful and unprofessional manner with regards of a Mr. Day's patients causing him much distress and worries. On the basis of the above the writer believed that the Defendant was no longer fit to remain a member of the Jersey Dental Association.

(iv) letter to the Medical Defence Union
This is a letter written by Mr. Milner on behalf of his wife (whose mother had a serious operation that day). It is not clear whether this letter was sent out in final form or not but it refers to the alleged defamatory newsletter and seeks the advice of the Medical Defence Union thereon. There is also reference to the alleged unprofessional conduct referred in the letter to the Jersey Dental Association.

(v) letter to the General Dental Council
This is the letter in draft form written by Mrs Milner concerning the alleged defamatory remarks contained in the Autumn/Winter Newsletter stating that she believes that the letter has done her professional reputation harm and seeking the comments of the General Dental Council thereon.

In addition, in relation to the General Dental Council there are items in the bill of costs where regulatory materials from the General Dental Council are obtained by Messrs Ogier & Le Cornu presumably with the view to advising in relation to proceedings before that tribunal.

Mr. Landick on behalf on the Plaintiff disagreed that the above letters were wholly irrelevant - he stated that they went to a large extent to mitigation. Mrs Milner was a working dentist and she needed to protect her reputation in the face of published allegations. She needed therefore to inform the various local parties in case they should become aware that of the background to the case especially as Jersey is a small island. The letters were also relevant to Mrs. Milner's need to continue to work with other Dental Practitioners in the Island.

In addition, Mr. Landick's submitted that evidence was needed in order to establish that Mr. Pyper was activated by malice in publishing the defamatory newsletter (malice would negate any possible defence of qualified privilege that Mr. Pyper might claim in relation to the publication).

Decision

I have no doubt that the correspondence sent to the General Dental Council, the Medical Defence Union and the Jersey Dental Association are not relevant to the defamation action. The letters to the General Dental Council and the Medical Defence Union seek advice in relation to the defamation action on which, of course, the Plaintiff was receiving legal advice from her advocate. The letter to the Jersey Dental Council seeks to initiate proceedings before that body to expel the Defendant as a member.

The dismissal of the Plaintiff as an employee of the Defendant (item (a) above) has largely been conceeded by the Plaintiff in that various items marked "A" (being costs incurred before the date of publication of the Newsletter) have been withdrawn from the bill of costs. However, the circumstances surrounding the dismissal of the Plaintiff are relevant in relation to the matter of malice as the Defendant has pleaded qualified privilege in his answer and the Plaintiff therefore requires to establish an improper or ulterior motive on the part of the Defendant in order to negate this defence. These comments are also applicable to Item (c) (the new partnership agreement between Mr. Pyper and Mr. Warner Bosman).

In relation to the removal of the Defendant's practice papers by the Plaintiff. This forms the subject of the breach of confidentiality action instituted in the Royal Court. This clearly a separate action and costs relating to that matter belong to that separate action.

In relation to the allegations of defamation made by Mr. Pyper against Mr & Mrs Milner. These allegations are not related in any way to the defamation instituted by Mrs. Milner against Mr. Pyper. The cause of Mr. Pyper's complaint appears to have arisen following discussion and rumour among the Jersey dental community in relation to the granting of a "J" category status to Mr. Bosman. Mr. Pyper feared that use was being made of his practice papers.

The letter sent to the Economic Adviser causes more problems. It is clear that the main thrust of the letter is to ascertain the basis upon which Mr. Bosman was granted a "J" category licence and to seek to influence the authorities to review their decisions. On the other hand it was the Plaintiff's belief that the Defendant had misrepresented matters to the Housing Committee and to the Economic Adviser. Clearly if she were able to prove the same this would assist her in two main areas - firstly, in attacking the veracity of Mr. Pyper and, secondly, in establishing the presence of malice on the part of the Defendant. On the other hand the Plaintiff had already removed certain document from the Defendant's practice and there would, of course, be discovery prior to trial of the action. In taxing the bill of costs it is important not to judge matters with the benefit of hindsight and to put oneself into the situation of the advocate if the time work was undertaken. I note that an attendance note dated 17th January, 1991, under the heading *"Possible courses of action that Mrs. Milner may take"* is listed *"Jersey housing authorities"* where the following passage appears - *"writing to the Housing authorities complaining that Mr. Pyper had been allocated more "J" categories than he should have been may not result in any positive benefit for us"* and my impression from reading the file during this period is that the dominant purpose of his letter was to obtain information on the "J" category question. Accordingly resolving the question of doubt in favour of the paying party the costs of this item have also been disallowed.

Other matters were raised at the costs hearing. It is not necessary to give full details of those matters here other than to note that the time spent on drafting the detailed letter of advice which was sent out on the 17th January, has been allowed in full although there has been a reduction in the amount allowed as a result of applying the appropriate hourly taxed scale rate for the fee earner and work in question. The time taken to peruse counsel's opinion (insofar as it is related to the defamation action) has been allowed in full. In addition the bulk of the time claimed by Messrs. Ogier & Le Cornu for drafting and amending the Order of Justice has been allowed. Had English counsel's fees been allowed then I would have disallowed the time claimed by the plaintiff's advocate as the Order of Justice had been drafted by English counsel and the only substantive amendment the I could discover related to the addition of a prayer seeking an injunction after trial.

There are also notes written on the bill of costs as taxed indicating briefly why certain items have been reduced or disallowed. Those marked "B" have been disallowed on the grounds that they were not "of and incidental" to the action; those marked "C" relate to English counsel; those marked "T" (of which there are only a couple of items) have been reduced on the grounds that the time spent appeared to me to be excessive.

Authorities

Furzer -v- Island Development Committee (9th August, 1990) Jersey Unreported.

Official Solicitor -v- Clore (1984) JJ 81 C.of.A.

RSC (1991 Ed'n) O.62 r.12 s.62/12/1.

Strachan & Company -v- Heseltine (4th April, 1989) Jersey Unreported.