

ROYAL COURT  
(Samedi Division)

82

29th June, 1993

Before: The Deputy Judicial Greffier

**BETWEEN**

Michael Stevens  
Nina Stevens  
Hemisphere Holdings Limited

**PLAINTIFFS**

**AND**

R.A. Rossboroughs (Insurance Brokers) Limited

**DEFENDANT**

**Taxation of Costs**

Advocate A. R. Binnington for the Plaintiffs  
Advocate P. S. Landick for the Defendant

**JUDGMENT**

**DEPUTY JUDICIAL GREFFIER:** The main points at issue on this taxation hearing were whether the costs of English solicitors and the costs of assistants time in Court should be allowed and whether the plaintiffs disbursements relating to the report of Argen Limited on security arrangements should be allowed and whether their air travel and accommodation expenses were excessive.

The test to be applied on taxation of costs is set out in the Judgment of the Judicial Greffier in Furzer -v- The Island Development Committee (1990) JLR 179, where he says at page 183:-

*"Accordingly, I find that the correct test for me to apply in relation to taxed costs is that of taxation on the party and party basis as set out in O.62, r.28(2), that is to say:*

*".... there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed"*

*I take 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." Although the authorities lead me to this conclusion they do not give clear guidance as to precisely*

**where the line is between those two positions. I can only apply the test of necessary or proper as seems right."**

Having considered the authorities and the submissions made to me I have come to the following conclusions:-  
As to the costs of English solicitors, it appears to me that these costs were incurred not by way of specialist advice on legal points but by way of assistance in managing the action. In the circumstances, I do not find that they were necessary or proper and they are therefore disallowed.

However, following the Judicial Greffier's judgment in A.C. Mauger & Son (Sunwin) Limited -v- Victor Hugo Management Limited, (21st October, 1991), Jersey Unreported, I propose to allow Mr. Binnington's costs in consulting and corresponding with those English solicitors.

As to the assistants' time in Court, it does not appear to me that this action was so unusual or extraordinary that these costs could be considered to come within the above test and accordingly I disallow these costs.

As to the security report of Argen Limited:

The question is: was this report prepared for the purpose of the litigation? The fact that it was used in cross-examination is immaterial. Advocate Binnington has not satisfied me that it was prepared for that purpose and accordingly this item is disallowed.

As regards the Plaintiffs' air travel and accommodation expenses:

Advocate Binnington referred to the Plaintiffs' life-style which he likened to that of a film star; he also referred me to the judgment where the Court said "**The Stevens appear to be extremely wealthy. Mr. Stevens' business interests are diverse. For what are probably sound fiscal reasons they lead a peripatetic global existence. They are rarely in the same place for long.**" He said that their extraordinary life-style included travelling around by private jet and that they were the sort of clients the Defendant would encourage. He said that they were not the type of people to stay in bed & breakfast accommodation but would expect to stay in a hotel similar to the "Longueville Manor". He submitted that their life-style was relevant when looking at their expenses. Advocate Landick submitted that I should not allow these costs on the basis of life style, that they must be reasonable, that they should be "middle of the road" and that to allow them would be allowing indemnity costs by the back door. He also said that the Plaintiffs had known for some six months of the trial date and that they had ample time to plan and schedule their commitments. If the Plaintiffs had problems with scheduling their commitments, that was of their own making and the Defendant should not have to pay for the luxury of travelling by private jet.

Butterworths Costs Service at paragraph B 2340 sets out what costs may be allowed to a witness and for the purposes of this case that includes the Plaintiffs. It states "**the ordinary witness will be allowed, first of all, a fee**" (I omit the first two allowances) "**for board (if necessary) and sustenance**" and this is the relevant part "**the amount of the last allowance will depend upon the social standing of the witness**". So there is authority for taking life-style into account when assessing witness expenses, but that must be qualified by the overriding principle that litigants who are unsuccessful should not be oppressed by having to pay an excessive amount of costs. In the exercise of my discretion I therefore propose to allow the Plaintiffs' hotel accommodation expenses. However, I find much force in Advocate Landick's submissions with regard to air travel, and I propose to allow only a sum sufficient to cover the Plaintiffs' travel from Nice to London to Jersey by scheduled flights.

As regards the costs of the taxation hearing, Advocate Landick urged me to follow the English one fifth rule which states that if the Taxing Officer makes an order against the paying party for four fifths or less of the amount claimed in the receiving party's bill as drawn, the receiving party is then liable to pay the paying party's costs of and incidental to the taxation hearing. There is no such rule in this jurisdiction. Costs are in the discretion of the Court or the Tribunal determining the matter before it. In the circumstances of this case, I make no order as to the costs of the taxation hearing.

**Authorities**

Furzer -v- I.D.C. (1990) JLR 179 @ 183

A.C. Mauger & Son (Sunwin) Ltd. -v- Victor Hugo Management, Ltd.  
(21st January, 1991) Jersey Unreported.

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

Preston -v- Preston (1982) 1 All ER 41.

Jones -v- Jones (1985-86) J.L.R. 40

Rahman -v- Chase Bank (1990) J.L.R. 136.

R.S.C. (1993 Ed'n): 63/A4/146

Butterworths Costs Service: paragraph B.2340.