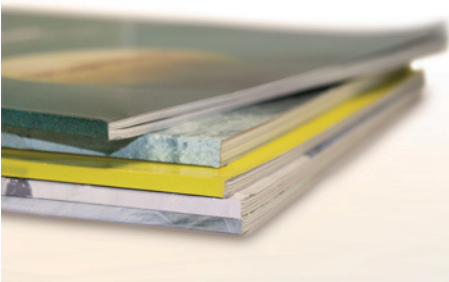


Costs – Interim Payments and Summary Assessments

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Costs orders in a party's favour are, of course, always welcome (by that party). The taxation process, however, can be long and involved; on occasion potentially resulting in a party having to wait many months to recover monies due to it pursuant to a costs order.

In the recent case of **Re Centre Trustees (CI) Limited** [2009] JRC 133, the Royal Court examined whether the time had now come for the courts in Jersey to award interim payments on account of costs.

Express Power

Such a power is expressly provided for in the Civil Procedure Rules in England, but there is no equivalent in Jersey. It was noted by the Royal Court that in addition to the specific English procedural rule, the High Court had an inherent power in any event to make orders for interim payments on account of costs, as part of its inherent jurisdiction to control its own process. The court found that there was no reason to presume that the inherent jurisdiction of the Royal Court was any narrower than that of the English courts and it thus concluded that it had a similar inherent jurisdiction to order interim payments on account of costs.

The court noted that in England following recent authorities this year the general approach of the English courts was to order approximately one half of the untaxed costs of the successful party by way of an interim payment. The court accepted that in Jersey it was not necessary to put forward any special reasons relating to the circumstances, financial or otherwise of the winning party, in support of an interim payment. It was sufficient to apply the general principle that a successful party should not be deprived of the fruits of any judgment in its favour without good reason.

Unjust

The court determined that it would be unjust in circumstances where a plaintiff was bound to recover a minimum sum through taxation for it not to have the benefit of that amount immediately. Whilst it was recognised that the successful party would receive interest on any sums found due following a taxation process it was felt that as a matter of fairness to the successful party there was no good reason to keep it out of monies which it was likely to recover on a conservative basis.

Interim Costs

The court thus in Jersey made an award for interim costs. Given that this was the first occasion, it did so

on a cautious basis and determined that the appropriate proportion of the costs should be less than 50% of the untaxed estimate. It did so also because the proceedings had been (quite properly) brought by way of representation, which does not allege a cause of action but simply raises an arguable basis for the making of the orders sought.

The court may have believed a more restrictive approach should be adopted where it was not as appropriate to term one party the “*successful*” party and the other the “*losing*” party. However, in this case, what the representor (the trustee of a Jersey settlement) was seeking the removal of the protector due to an alleged conflict of interest. Whilst at the hearing the protector eventually consented to that form of relief it can reasonably be stated that the trustee was clearly the successful party in relation to the issues raised by the representation.

Relatively Straightforward

The decision in **Centre Trustees**, whilst a relatively straightforward one, is a very welcome and significant development for all litigants anticipating the benefit of a costs order. Indeed, the decision (handed down in June 2009) has already been used as a precedent for a number of other interim costs payments.

Centre Trustees is a further step towards the acceleration of the determination (and thus payment) of costs orders following the development, earlier in 2009, for the summary assessment of costs at the conclusion of certain hearings before the Master.

This change was brought in by practice direction (RC09/03) which provides that at any interlocutory hearing before the Master which has lasted no more than a day, the Master shall (after making an order for costs) consider whether to tax the costs ordered by him by way of summary assessment at the end of the hearing.

This again is a potentially welcome development and will serve to focus parties’ minds when determining whether to make or indeed resist interlocutory applications. That said, it appears that whilst the Master is bound to consider whether to make a summary assessment, he tends more often than not to decide against a summary assessment.

(Advocate Robertson appeared on behalf of the beneficiaries in **Re Centre Trustees**)

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