



IN THE FALKLAND ISLANDS COURT OF APPEAL

CIVIL APPEAL NO. 2. OF 2016

London

Date: 21 May 2018

Before:

SIR JOHN SAUNDERS QC, TIMOTHY STRAKER QC, ADRIAN HUGHES QC

BETWEEN:

GEOPHYSICAL SERVICE INCORPORATED

(a company incorporated in Canada)

APPELLANT

and

**HER MAJESTY IN RIGHT OF HER GOVERNMENT OF THE FALKLAND
ISLANDS**

RESPONDENT

Approved Costs Judgment

1. By our judgment dated 10 April 2018, we dismissed the appeal of the Appellants against the decision of the Chief Justice and gave judgment for the Respondents. We sent out our judgment to the parties and gave directions for any ancillary applications including any application for costs.
2. Pursuant to an order of this court, the Appellants had paid £95000 into court as security for the costs of the appeal.
3. The Respondents have applied for their costs of the appeal. In essence they say that:
 - The appeal having been dismissed, they are entitled to their costs of the appeal.
 - We should summarily assess the costs of the appeal in the sum of £68,863.04.
 - We should order the payment out of court to the Respondents of that sum forthwith.
 - The remainder of the money in court should remain there to satisfy any unpaid part of an order for costs arising from the first instance hearing in front of the Chief Justice.
4. The Appellants have responded to the application for costs. While accepting in principle that the Respondents are entitled to the costs of the appeal, the Appellants contend that the amount of the costs claimed is excessive for the following reasons:
 - The Appellants were successful on one aspect of the appeal namely whether the Appellants were estopped from claiming that copyright prevented the Respondents using the data obtained by the Appellants.
 - The rates claimed for work were not appropriate for a Falkland Islands case.
 - The Appellants had to respond to the Respondent's grounds for affirming the decision of the lower court.

- The hours work claimed are excessive.
5. In relation to the money in court in excess of the money required to meet the order for costs, the Appellants argue that the order for security for costs was made to cover the costs for the appeal and not the costs of the first instance hearing. As the amount of money in court is greater than the sum necessary to meet any order for costs, the excess should be paid out to the Appellants. They argue it would be wrong to use money ordered to be paid into court for one purpose to remain in court to be used if necessary for another purpose.
 6. Having considered the arguments of the parties, we direct that there should be an order that the Respondent should recover the costs of the appeal.
 7. As there are disputes as to whether the costs claimed are excessive for the work done, we consider that the correct order is that the costs should be assessed if not agreed.
 8. On the points of principle raised we have decided as follows. If we were to agree with the submissions of the Appellant on the issue of estoppel we could either award them the costs of the issue or discount the amount of costs by a percentage to reflect the costs involved in litigating that issue. While the Appellants did succeed on the issue of estoppel, that issue did not strictly arise on the appeal, as it could only arise if the Appellant had succeeded on its primary argument that the Respondent was not permitted to publish the data collected by the Appellant as it contravened the Appellant's right to copyright. The Appellant failed on that primary submission. Estoppel did not feature prominently in the arguments on appeal and did not significantly increase the costs of the appeal. In our judgment the Appellants are not entitled to any reduction in the costs to reflect their success on that issue. The same applies to the costs involved in responding to the Respondent's grounds for affirming the decision.
 9. The issue in this case was an important one and we do not consider that the rates claimed which reflect the status of the lawyers involved was excessive. Whether the amount of work claimed for was reasonable will have to be decided by the taxing master.

10. Having considered the arguments on both sides we consider that the correct order is that the balance of the money paid into court as security for the costs of the appeal should be paid out to the Appellants as we consider that their arguments on that issue are correct.

11. As the Respondents are bound to succeed in their application for costs and only the amount is in issue, we consider it appropriate that we direct that the sum of £50,000 should be paid out to the Respondent from Court forthwith.

The order of the Court is that the Appellants are to pay the costs of the Respondent to be assessed if not agreed in accordance with the terms of this ruling. The costs are to be taxed on the standard basis. £50,000 of the money paid into Court by the Appellants to be paid to the Respondents forthwith on account of the costs to be assessed if not agreed.