

Neutral Citation Number: [2016] ECC Lon 3

IN THE CONSISTORY COURT OF THE DIOCESE OF LONDON

IN THE MATTER OF ST GEORGE, HANWORTH

**AND IN THE MATTER OF AN APPLICATION FOR AN INJUNCTION
AGAINST THE LONDON BOROUGH OF HOUNSLOW**

Judgment upon the Issue of Costs

1. The background to this somewhat unusual matter is to be found in the Judgment of His Honour Judge Seed QC, Chancellor of the Diocese of London, dated 2 February 2016 [2016 ECC Lon 1].
2. There has been no appeal against the Judgment.
3. The Registrar has, at the request of the Chancellor, invited me as deputy Chancellor of the Diocese to determine a remaining contested issue of costs arising from the proceedings, which had been adjourned by the Chancellor at the conclusion of the hearing [Judgment paragraph 30].
4. The applicants, who were unsuccessful before the Chancellor, were the Parochial Church Council of St George, Hanworth ('the PCC'). The respondents were the London Borough of Hounslow ('the Borough').
5. I believe Part 18 of the Faculty Jurisdiction Rules 2013 to be applicable (Part 19 of the 2015 Rules being, for present purposes, of like effect).
6. I have well in mind the principles in the Ecclesiastical Judges Association *Guidance on the Award of Costs in Faculty proceedings in The Consistory Court* (reissued January 2011), **Re Abbey Church of St Mary the Virgin, Sherborne** [1996] Fam 63 at p.70 and the costs provisions and practice of the Civil Procedure Rules.
7. The Court has a wide discretion to order that one party should pay the whole or part of the legal costs of another party. In the judicial exercise of such a discretion the Court has to have regard to all the circumstances, including the conduct of the parties, the reasonableness or otherwise of the claim, the manner in which the claim was pursued and questions of success or failure in the outcome of the matter.
8. The Borough applies for costs against the PCC in the sum of £11083. I have been provided with Statements of Costs and a Schedule in support.
9. The PCC invites the Court, in all the circumstances and in the exercise of its discretion, to refuse such an order. Alternatively, a number of representations are made on the PCC's behalf as to quantum.

10. I am grateful for the helpful written representations and submissions made by counsel and the solicitors acting for the Borough and by Mr Lee Coley of Stone King, solicitors, on behalf of the PCC. I have considered all these carefully.
11. The essential points made on behalf of the PCC in opposition to a costs order may be summarised as follows:
- The decision to proceed was made by the PCC in good faith, after anxious consideration and following extensive investigation;
 - The necessity of litigation and the complexity of the proceedings were contributed to by a lack of proper engagement by the Borough;
 - The PCC, as a charitable body, was obliged proactively to 'maximise' assets and to take appropriate steps to that end;
 - The decision not to seek legal advice was in part connected to a (proper) desire responsibly to steward limited parochial financial resources.
 - Lack of success in an application, even a flawed application, ought not, in this particular jurisdiction, to result in an adverse costs order.
12. The Borough's response may be summarised thus:
- Proper engagement by the Borough (from June 2014) is readily demonstrable in correspondence;
 - Suggestions, such as that the Land Registry be contacted directly, appeared not to have been pursued by the PCC;
 - The PCC did not take any, or adequate, steps fully and properly to investigate the matter prior to issue of the application for an injunction;
 - It was not in the circumstances a reasonable exercise of discretion by the PCC not to take proper legal advice prior to the commencement of proceedings;
 - It should have been clear to the PCC, on sight of the reasons given by Mrs Justice Patterson in the High Court for refusing permission to Fr Williamson to proceed with the application in his name, that there were no reasonable grounds for proceeding, and certainly not before taking proper legal advice [see the Chancellor's Judgment, paragraph 9].
 - In the circumstances, the PCC's conduct in both bringing and pursuing the application can properly be characterised as 'unreasonable'.
 - The matter was one of importance to the Borough and had obvious implications for significant redevelopment of a site. The application had thus to be fully and properly resisted.
 - It would be wrong in principle to expect council tax payers in the Borough to meet the costs of the PCC's imprudent action.
13. Unsurprisingly, and for the reasons he gave, the Chancellor robustly dismissed the PCC's application, observing that it 'appeared to be an opportunistic and unjustified attempt to extract money from the Borough' [Judgment, paragraph 29].
14. I unhesitatingly prefer the reasoning of the Borough on the principle of a costs order to that of the PCC. I accept the arguments advanced and find accordingly.

15. As the Borough had argued in paragraph 23 of its Statement of Case: 'Mr Williamson is not a stranger to litigation and the PCC must have been warned (or should be deemed to have been warned) of the possibility of an adverse order for costs in the event that their application is dismissed'. I agree.
16. By any reasonable standard of interpretation, this application by the PCC was ill-judged, ill-conceived, ill-advised and ill-prepared. In short, it was properly characterised as unreasonable. Arguments by analogy with more conventional Faculty petitions where, following examination of the issues, a petition 'fails' and objectors 'succeed', with the Court expecting both parties thereafter to meet their own legal expenses, do not assist in the particularities of this case.
17. It would in my judgement quite simply be unjust to the Borough not to order the PCC to pay its costs in this case, subject to an assessment of reasonableness as to the amount claimed.
18. Further and in the usual way, it is, I judge, beyond argument that the PCC must pay the Court costs of and incidental to the application, to include a correspondence fee for the Registrar in a sum to be agreed, or in default of agreement, as I shall determine upon further written representations. I so order.
19. I have considered whether I should now direct assessment of the costs by the Registrar (Rule 18.2) or whether I am in a position myself to specify an appropriate figure in the order.
20. I am most reluctant to add further to the costs of any party in this matter, or in any way to delay swift resolution of outstanding issues.
21. I have the advantage of information relating to time and billing and the helpful comments of the parties on some aspects of quantum. I have considered in particular the representations in Mr Coley's email of 4 March 2016 and the response from Ms Roberts of Sharpe Prichard LLP of 10 March 2016.
22. With certain minor adjustments, one at least of which has been conceded on behalf of the Borough, I consider the overall time spent and the rate charged to be reasonable and proportionate. Further, I reject the suggestion that counsel's fees are excessive or disproportionate.
23. I assess costs in the sum of £10734 and order that those be paid by the PCC to the Borough.

David Turner

His Honour Judge David Turner QC
Deputy Chancellor of the Diocese.

21 April 2016

