

FITZPATRICK v. SWAN

1982/5638p

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JAMES FITZPATRICK v SILVER SWAN & ORS

Mr. Arnold Lowe was sworn and said he was the senior partner in J. Connolly Lowe & Sons, Legal Costs Accountants.

Mr. Lowe stated that he had prepared many bills of costs in relation to Stardust cases.

In relation to "party and party" costs the Taxing Master only allows the absolute minimum costs needed to attain justice.

"Solicitor and client" costs are, to use the Taxing Master's definition, basically party and party costs on a more generous basis. He said that the important point in the Stardust cases is that the foregoing two types of costs are costs awarded to a party in an action, this is not the position here.

"Solicitor and own client" costs are those actually "incurred" by a Solicitor for his client. These costs are not costs which are awarded in the ordinary course of events between parties to an action. This is the very point in this matter.

What the Plaintiff, in my view, is entitled to here are "solicitor and own client costs" because the State are not paying as a Defendant. They are paying as an outside body who set up a scheme outside and separate from the action; they undertook to pay "all" the costs "incurred" by the victim (not the plaintiff) up to the 15th November 1985. This undertaking means that both party & party costs and Solicitor and Client costs do not apply because these two types of costs are costs awarded by a Court between parties to an action. The "victim" is not being paid as a Plaintiff under the Action, he is being paid as a victim under the scheme.

Solicitor and own client costs will still be subject to taxation under the Order to be made and it will have to be shown to the Taxing Master that they have been actually incurred.

If such costs are taxed on a party and party basis, by way of example, I can refer to a bill of costs that had been taxed the day before. This bill of costs was relevant in that it related to another Stardust case where costs were in dispute. The costs had been taxed before Master Bell under an Order of Egan J. the costs section of which states "it is ordered that the 6th and 7th Named Defendants do pay to the Plaintiff the costs of these proceedings (including the costs of extracting the said grants as aforesaid) when taxed and ascertained and that thereupon this action be struck out of the list" on this basis and in the absence of a direction to the contrary the Taxing Master taxed the costs on the limited party & party basis between Parties to the Action and not on a "solicitor and client" basis or "solicitor and own client" basis; consequently he reduced the bill by one third. The reason for this was because Mr. Justice Egan had not specifically ordered taxation of the bill in any specific basis, thus the Taxing Master taxed on the limited party and party basis.

Costello J. stated "well if he did, so be it".

"I understand that the State will be opposing the bill of costs when it comes before the Taxing Master".

Cross examined by James O'Reilly, B.L., "What do you think of the letter of the 14th of October 1985 which stated that the State would pay party and party costs?"

Costello, J.: "There is no need to answer that question."

Judgement of Costello, J.:

"On the 25th of September 1985, the Government announced a Scheme of Ex Gratia payment for the victims of the Stardust

fire.

On the same day the Attorney General wrote to the victims of the fire including the Plaintiff himself. This letter gave particulars of what was being proposed. In the letter it stated that if a victim accepted the award of the Tribunal, and agreed to discontinue his proceedings and the State would pay all costs.

The Plaintiff's solicitors wrote on the 27th of September 1985 for further particulars in relation to the Scheme. In paragraph 7(a) of their letter it read:

"Will costs be measured (a) on a party and party basis and a solicitor and client basis, or
(b) on a party and party basis only?
and as such would the victim be entitled to an indemnity in respect of the costs of such other Defendants as he may have named in his High Court proceedings".

On the 14th of October 1985 the Chief State Solicitor replied in their letter, which read that "the costs would be measured on a party and party basis".

Mr. Lysaght then acknowledged this letter.

On the 21st of October 1985 the Chief State Solicitor wrote a further letter but this letter did not affect the very clear statement that had previously been made, that is that the Government was paying costs on the party and party basis.

I cannot agree that there had not been a contract between the parties. The State had authority to pay an award of money to an applicant to the Tribunal. A contract was entered into by the claimant once he accepted the award. The claimant was agreeing to discontinue his proceedings and the State agreed to pay all costs. On the 14th of October 1985 a clear clause was incorporated into the contract which

stated that once the applicant had accepted the award, his costs would be paid on a "party and party basis".

In the letter of the 26th of May of the Plaintiff's Solicitors, costs were asked for by the Plaintiff's Solicitors on an entirely different basis, i.e. on a "solicitor and own client" basis. These types of costs were not awarded on a normal basis, and had never been awarded before against the State.

The present application has been made on the Plaintiff's misapprehension of the contract.

The State had been agreeable to pay up to the 15th of November 1985 all costs on a "party and party basis".

In relation to the costs of the motions of judgement in default of defence, these costs had not yet been determined, and will not be affected by the Order of today's proceedings. In giving the Plaintiff leave to discontinue by today's Order, it will not affect the motion to review the bill of costs on the motions in default of defence.

In relation to the application for costs of today's hearing, this is an exceptional situation, where there was a difference of opinion on correspondence. For this reason there will be no costs awarded to the Defendants on to-day's motion.

*I accept the above as
my order of the witness
& my judgement*

JC

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