



IN THE COURT OF APPEAL, CIVIL DIVISION

(500:GS:JH:02.11.09)

REF: C3/2011/3355



(1) QUARMBY CONSTRUCTION COMPANY LIMITED and (2) ST JAMES SECURITIES HILDINGS LIMITED

-v- OFFICE OF FAIR TRADING

ORDER made by the Rt. Hon. Lord Justice Rimer

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision: granted, refused, adjourned. An order granting permission may limit the issues to be heard or be made subject to conditions.

- (1) Permission to appeal is granted on grounds 4(a) and (b) in the Applicants' Skeleton Argument
 (2) Permission to appeal is refused on grounds 4(c) and (d)

Reasons

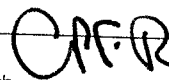
1. It is trite that decisions as to costs are pre-eminently matters for the discretion of a court or tribunal and that challenges to such decisions by way of appeal are difficult. Such challenges will ordinarily only have any prospect of success if it can be shown that the tribunal or court has, in the course of its ruling, misdirected itself. I consider that the tribunal was correct to ask itself who was the "winner" but I regard it as arguable that it was wrong to conclude that neither side was a winner. The applicants' appeal was directed at challenging the penalty of £881,749 in all or in material part. The outcome was that it succeeded in reducing it by over 75% to £213,750. That can fairly be argued as having amounted to a win. The tribunal's unwillingness so to regard it was based on its (no doubt accurate) assessment that the applicants had failed in a high proportion of the issues they argued. That, however, is not informative as to who the winner was. It tells us merely that the win (if that is what it was) was bought at high cost. I consider it to be properly arguable that the tribunal ought to have held the applicants to have been the winners and that its failure to do so was an error. That would in principle entitle them to their costs. There would, however, then also arise the question of how fairly to reflect that they had lost so much of the argument. That would ordinarily be met by disallowing an appropriate percentage of their costs. The tribunal did not go through that exercise.
2. If the applicants can show on an appeal that there is substance in this, it would be open to the Court of Appeal to exercise the discretion afresh itself, alternatively (bearing in mind the size of the sums) to remit the matter to the tribunal. If the applicants cannot achieve success on this basis, I regard their alternative arguments as having no real prospect of success. If the tribunal was entitled to conclude that the extent of the applicants' failed arguments meant that it was not the winner, I can see no principled basis upon which the exercise of the tribunal's discretion can be challenged.

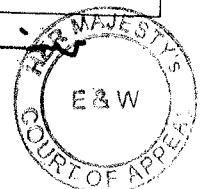
Information for or directions to the parties

By the Court

Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment): half a day
 b) any expedition: no

Signed: 
 Date: 9th March 2012



Notes

- (1) Rule 52.3(6) provides that permission to appeal may be given only where –
 a) the Court considers that the appeal would have a real prospect of success; or
 b) there is some other compelling reason why the appeal should be heard.