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FOIL UPDATE 7th November 2022

Enforcing an order for costs in a 'mixed claim' where QOCS applied

Achille v Lawn Tennis Association Services Limited (2022) EWCA Civ 1407

This appeal was about the meaning of the word "proceedings" in CPR 44.15.

The appellate court commented that a disadvantage of the QOCS scheme, if unqualified, is that it promotes access to the courts not only for meritorious claims but also for claims which are frivolous and should never have been brought in the first place. Accordingly, the basic rule was qualified so that, in such cases, an order for costs in favour of the defendant can be enforced to its full extent, sometimes without needing the permission of the court and sometimes only with such permission. The provisions which strike this balance are CPR 44.15 and CPR 44.16.

The claimant in the present case brought a mixed claim. He claimed damages for alleged psychiatric injury, but also for injury to feelings, which is not a claim for personal injury.

His claim for psychiatric injury was struck out under CPR 3.4(2)(a) on the ground that the claimant's statement of case disclosed no reasonable grounds for bringing the claim, but his claim for injury to feelings survived and had yet to be tried.

An order was made that the claimant should pay the defendant's costs of the claim for damages for personal injury, summarily assessed in the sum of £4,250.

The defendant argued that this was a case where CPR 44.15 applied. It said that "the proceedings" in CPR 44.15 referred to a claimant's claim for personal injury and that, as that claim had been

struck out, the order for costs could be enforced to its full extent now. The claimant disputed that interpretation of the rule, saying that "the proceedings" referred to all claims made by a claimant against a defendant in one action and that, although the claim for personal injury had been struck out, the proceedings as a whole had not been. He said that it was, therefore, premature for the costs order to be enforced against him: whether it should be enforced at all, and if so in what amount, should await the final determination of the action and would be a matter for the discretion of the court under CPR 44.16 – or, in the event he was successful in his remaining claim, the order would be enforceable by way of set off against any damages under the usual rule contained in CPR 44.14.

A Circuit Judge agreed with the defendant's interpretation. The claimant appealed.

Allowing the appeal, the Court of Appeal held that the term "proceedings" was not defined in the Civil Procedure Rules. However, the starting point as a matter of ordinary language was that the term "proceedings" was synonymous with "action". Case law had established that the term "proceedings" as used in the QOCS rules did not bear this natural meaning in its full sense. It required some qualification in this context in order to give effect to the purpose of the QOCS regime. The term "proceedings" in CPR 44.13 referred to all of the claims made by a claimant against a single defendant, when one such claim was a claim for personal injury. Thus, in a mixed claim case, QOCS applied pursuant to the basic rule in CPR 44.14, unless one of the exceptions in CPR 44.15 or CPR 44.16 applied.

The issue, therefore, was whether "proceedings" in CPR 44.15 should be given a different meaning from that which it bore elsewhere in the QOCS rules. While the court accepted that it was possible that the term "proceedings" had a different meaning in CPR 44.15 from that which it bore elsewhere in the QOCS rules, it did not accept that this was so unless it was necessary in order to give effect to the purposes of the QOCS rules. In general, the court should proceed on the basis that the term had been used consistently across the QOCS rules unless the contrary was clearly shown. The natural meaning of the term "proceedings" should not be qualified further than the context and purposes of the QOCS regime required.

It was not necessary to interpret "proceedings" in CPR 44.15 as referring to the personal injury claim alone in order to give effect to this deterrent purpose. CPR 44.16 enabled this purpose to be achieved in a mixed claim case where the personal injury claim was struck out. Thus, in a mixed claim case where the personal injury claim was struck out at an early stage but the proceedings continued, CPR 44.16(2)(b) enabled the court to order that a costs order made against the claimant might be enforced to its full extent. That was because such a case is one where "a claim is made for the benefit of the claimant other than a claim to which this Section applies", that was to say, a non-personal injury claim was made.

There was, therefore, no reason why the judge striking out the personal injury claim should not make an order for costs and assess those costs summarily, if it was appropriate to do so. That would often be the convenient course. The question of enforcement of the order could then be deferred to the conclusion of the proceedings, to be dealt with pursuant to CPR 44.16 – or, if the surviving claim succeeded, by being set off against any damages pursuant to CPR 44.14.

It was true that in such a case the permission of the court must be obtained before enforcement under CPR 44.16 could take place, and that permission would only be given to the extent that the court considered it just to do so. Accordingly, it followed that a claimant in a mixed claim case

where the personal injury claim was struck out was not in quite as good a position as a claimant where a personal injury claim was struck out and there was no other claim. However, as the court had power in the mixed claim case to make whatever order it considered would meet the justice of the situation, it was impossible to say that the claimant's interpretation resulted in injustice or defeated the purpose of the QOCS rules.

It was clear from this guidance that, when the court came to consider what order to make under CPR 44.16 at the conclusion of the present proceedings, it would be able to take account of the fact that the personal injury claim was struck out on one of the grounds identified in CPR 44.16 and make whatever order was just in the light of that fact, together with all the other circumstances of the case.

The full judgment may be found at: [Achille v Lawn Tennis Association Services Ltd \[2022\] EWCA Civ 1407 \(27 October 2022\) \(bailii.org\)](#)

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