

Appropriate costs order following unsuccessful committal application for contempt (*Barclay v Tuck (calling himself Lord De Chanson)*)

15/08/2018

Dispute Resolution analysis: Spencer J considered the appropriate costs order to make where a committal application failed. Applications for costs on an indemnity basis were refused as nothing took the case out of the 'norm'. Terence Wong, barrister at 33 Bedford Row Chambers in London (who acted for the successful defendant) comments on what lessons can be learned from *Barclay v Tuck* and considers the implications for dispute resolution practitioners.

Sir David Rowat Barclay v Craig Leslie Tuck (calling himself Lord De Chanson) [\[2018\] EWHC 1852 \(QB\)](#)

What are the practical implications of this case?

A claimant's entitlement to costs in committal proceedings will, foremost, be dependent on whether the claimant successfully establishes that the defendant is in breach of a court order at the time of the substantive hearing. A claimant may ultimately succeed in his objective of securing a defendant's compliance with a court order, and yet not be awarded their costs at the conclusion of the committal proceedings if the defendant has achieved compliance in the period between the commencement of the committal proceedings and trial.

The judgment reinforces the need for claimants to continually assess their prospects of success, specifically, on their allegations of breach. If a change in circumstances results in a defendant no longer being in breach of a court order, a claimant should consider discontinuing their application to commit to create a more favourable position on costs.

What was the background?

The claimant commenced committal proceedings against the defendant in relation to two court orders. The first order required the defendant to withdraw the webpages accessible at seven different URLs. The defendant subsequently indicated that he was no longer able to access the webpages at two of the URLs as he had lost his login credentials. A second order was made to give the defendant the opportunity to comply with the first order, which among other directions, required the defendant to employ 'best efforts' to remove the two inaccessible URLs.

In the time between the initial adjourned committal hearing on 28 March 2017 and the final consolidated committal hearing on 16 April 2018, the defendant was able to achieve full compliance with both orders. The defendant had complied with most of the required actions at an early stage, shortly after 28 March 2018. The only outstanding matters were in relation to the two webpages that the defendant could no longer access. The defendant had undertaken significant efforts to have these removed but ultimately was unable to gain administrative access the webpages.

On 19 March 2018, as a gesture of goodwill, the company that hosted the defendant's webpages set the two outstanding webpages to 'private-mode'. This rendered the webpages inaccessible to the general public. The defendant's position was that as of 19 March 2018, he was no longer in breach of either the first or second court order. The judgment of Mr Justice Spencer confirmed this position and the claimant's consolidated application to commit was dismissed.

The defendant was a litigant in person until 8 March 2018 when he became legally aided. The defendant applied for indemnity costs. Specifically, his litigant in person costs until 8 March 2018, and thereafter, costs calculated at the standard hourly rate. The claimant disputed the defendant's entitlement to costs and applied for his own indemnity costs up to 4 April 2018.

What did the court decide?

In the period up to 8 March 2018, no order for costs was made between the parties. This reflected the fact that the claimant had ultimately failed completely in his application to commit and that the defendant was responsible for the situation that originally gave rise to the claimant needing to commence committal proceedings.

For the period of 8 March 2018 onwards, the claimant was ordered to pay the defendant's costs on the standard basis to be subject to detailed assessment. The court found that there was nothing that took the case outside of the norm so as to justify ordering indemnity costs. The claimant was undoubtedly the unsuccessful party and the defendant was the successful party. The court saw no reason to depart from the general rule set out in the Civil Procedure Rules at [CPR 44.2\(2\)](#) that the unsuccessful party should pay the costs of the successful party.

Terence Wong is a barrister at 33 Bedford Row Chambers in London. His areas of expertise include contractual disputes, economic torts, personal injury, planning, debt recovery, shipping, shareholder disputes, breach of covenant and international arbitration. Mr Wong is experienced in drafting and advising on domestic or international commercial disputes and he has considerable advocacy experience in commercial property, road traffic accidents, personal injury, criminal and regulatory proceedings.

Interviewed by David Bowden of David Bowden Law.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.