

**Neutral Citation No.: [2008] NIQB 136**

*Ref:* **GIL7338**

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)*

*Delivered:* **01-12-08**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
QUEEN'S BENCH DIVISION**

**BETWEEN:**

—————  
**SEAN FRYERS**

**Plaintiff;**

**and**

**BELFAST HEALTH AND SOCIAL CARE TRUST**

**Defendant.**

—————  
**GILLEN J**

[1] This matter came before me by way of a Civil Bill appeal against a dismissal by Her Honour Judge Loughran sitting at Belfast County Court on 24 April 2008 on a claim in tort brought by the plaintiff against his employer. The plaintiff had sustained a needle stick injury whilst in the course of his employment with the defendant.

[2] Before Her Honour Judge Loughran, the matter was conducted purely on the basis of a tortious claim for negligence on the part of the defendant causing personal injuries, loss and damage to the plaintiff. Having heard the case on that basis, she dismissed the plaintiff's claim relying on the House of Lords authority of Rothwell v Chemical and Insulating Co Ltd & Ors [2007] UKHL 39.

[3] Subsequent to her decision, and before the appeal came before me, by the Order of the Master of the High Court dated 19 September 2008 leave was granted to amend the proceedings to include a claim by the plaintiff for breach of contract against the defendant by reason of the same facts.

[4] When the matter came before me, I upheld the learned County Court Judge's ruling on the question of tort but I found for the plaintiff on the amended claim of breach of contract.

[5] The County Court Judge had made an order of costs against the plaintiff when the matter was before her.

[6] The issue before me now is to determine what order should be made by way of costs on this successful appeal.

[7] Under Article 64(a) of the County Courts (Northern Ireland) 1980 "a High Court judge hearing an appeal from the county court may make such order as to costs incurred in the appeal and in the proceedings in the County Court as the appellate thinks fit. This is a power which the county court does not possess. The High Court must exercise its discretion in accordance with rules of the Supreme Court (Northern Ireland) 1980 Order 62 rule 3.

[8] The conventional approach is that where a plaintiff succeeds in an appeal, he should get costs in both courts. Equally where a defendant succeeds in having the claims dismissed on appeal, he should get costs in both courts.

[9] However I am satisfied that there are circumstances in which successful appellant may be disallowed all or part of his costs of the lower court or both courts. In essence therefore the normal rule is that costs follow the event.

[10] Ballentine on 'Civil Proceedings The County Court' 1999 Edition and Ballentine on 'Civil Proceedings The Supreme Court' 1997 Edition both contained comprehensive illustrations of circumstances in which the Court may and has withheld all or some costs from a successful party or, exceptionally, awarded costs against him where it is just to do so at pages 402 in the former and 356 in the latter.

[11] Instances where a successful appellant has been disallowed included the appellant winning on part only of his appeal, winning on a technicality, wasting time on a barren argument, influencing the lower court against him or if the respondent did not contest the appeal. Two specific instances recorded arrested by attention in the context of this case. First, where the appeal succeeded by reliance on authorities not cited below. In Boyd v Antrim County Council, a claim for compensation for criminal injury damage to property, reversed the finding of the County Court judge but costs were not awarded to the successful appellant because Babington LJ was not satisfied that the County Court judge would have awarded compensation if all the authorities had been cited to him.

[12] In this case, following my ruling, I consider that had the plaintiff mounted his case on contract, then he would have been successful. It was his failure to do so which resulted in costs being awarded against him.

[13] The second, though less convincing illustration made by Ballentine in 'Civil Proceedings The Supreme Court' at page 357 is his submission that the court may withhold costs from a successful party where the claim succeeds

due to a late amendment. Obviously there was a late amendment in this case. The authority for that proposition is City of Glasgow Friendly Society v Gilpin [1970] DEC NIJB. A ruling of that authority however suggests that the successful plaintiff in that case was awarded costs other than those referable to the amendment of the Statement of Claim. This brief reference may well have referred only to the actual pleadings in the case. Nonetheless, although this authority does not bear out the proposition made by Ballentine. Nonetheless I consider that the proposition itself is valid. Where, as in this case, a late amendment has been made after the initial hearing, and it seems to me that that may provide grounds for withholdings earlier incurred notwithstanding the success of the late amendment.

[14] In the instant case, no attempt whatsoever was made to amend the pleadings until after the learned County Court Judge had made her determination either by way of the Civil Bill itself, any notice for further and better particulars, or of the county court hearing itself. The defendant succeeded in the county court proceedings on the basis of the pleadings and the hearing before the court.

[15] I have therefore come to the conclusion that in the exercise of my discretion, the successful plaintiff in this case should be awarded the costs of the appeal, which include two counsel, but that the defendant should continue to be awarded the costs of the county court hearing.