

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN

1/6/09

Cause No: 444/2007

**BETWEEN:**

1. BTU POWER MANAGEMENT COMPANY
2. BTU POWER COMPANY

RESPONDENTS/PLAINTIFFS

**AND:**

1. ABDUL MOHSEN HAYAT

APPLICANT/DEFENDANT

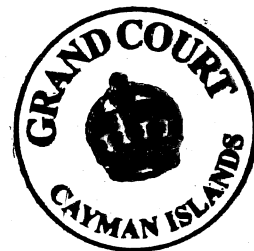
**Appearances:**

Graeme Halkerston and Callum McNeil of Appleby for the Applicant/Defendant

James Eldridge of Maples and Calder for Respondent/Plaintiffs

**Before:** Hon. Justice Quin

**Heard:** 26<sup>th</sup>, 30<sup>th</sup>, 31<sup>st</sup> March 2009



**RULING**

1. On the 30<sup>th</sup> March 2009 this Court rejected the Applicant's/Defendant's Summons, dated the 16<sup>th</sup> January 2009, to vary the directions of Campbell J made on the 12<sup>th</sup> December 2008.
2. In addition this Court acceded to the Plaintiffs' submission to enforce compliance with Campbell J's directions and ordered a similar timetable for directions to that of Campbell J's. This Court also acceded to the Plaintiffs' application for an Unless Order and consequently ordered that unless by 5:00 p.m. on the 1<sup>st</sup> June 2009 the Defendant serves his list of documents, the defence and counterclaim be struck out and judgment entered for the Plaintiffs with costs.

3. On the 31<sup>st</sup> March 2009 I heard further submissions on costs.
  
4. The Defendant by his own conduct fell into contempt of Campbell J's Order for directions, made on the 12<sup>th</sup> December 2008. Furthermore, the Defendant, once he realized that he could not comply with Campbell J's Order for discovery within the timeframe set out, should have applied to the Court for an extension of time in which to comply with the Order as set out by this Court in paragraph 7 of the Ruling dated the 30<sup>th</sup> March 2009.
  
5. The Plaintiffs have applied for costs to be awarded against Defendant on an indemnity basis. At the hearing before Campbell J on the 9<sup>th</sup> December 2008 the Plaintiffs secured essentially everything they requested, and the Defendant's application for a stay was denied.
  
6. In effect, by not complying with Campbell J's Order, the Defendant has, as the Plaintiffs' counsel stated, "managed to engineer in large part precisely what the Court said he could not have, i.e. a temporary stay."
  
7. Accordingly, as the Plaintiffs' counsel has contended, although the Plaintiffs succeeded, at the hearing before Campbell J, their discovery order has been frustrated, and it seems to this Court that the Plaintiffs' costs of that contested hearing were wasted.

8. Grand Court Rule Order 62 Rule 4 (11) sets out the principles on which this Court should act in relation to its discretion to award indemnity costs. It states:

“The court may make an *inter partes* order for costs to be taxed on the indemnity basis only if it is satisfied that the paying party has conducted the proceedings or that part of the proceedings to which the Order relates improperly, unreasonably or negligently.”

9. In *Reid Minty v. Taylor* [2002] 2 All.E.R. 150 (CA) May LJ said:

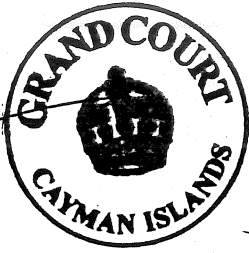
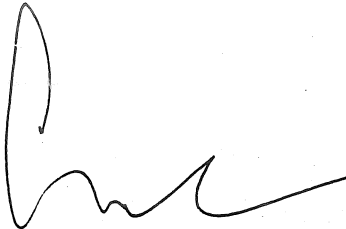
“If costs are awarded on an indemnity basis, in many cases there will be some implicit expression of disapproval of the way in which the litigation is being conducted. But I do not think that this will necessarily be so in every case. What is, however, relevant to the present appeal is that the litigation can be readily conducted in way which is unreasonable and which justifies an award of costs on an indemnity basis, where the conduct that could not properly be regarded as lacking moral probity or deserving moral condemnation.”

10. As counsel for the Defendant candidly conceded, in hindsight the Defendant would have been better to file for an application for an extension of time.

11. It is clear that the Defendant did not comply with Campbell J's Order, and in that regard, this Court finds that he has conducted this part of the Proceedings improperly, unreasonably and also negligently, as set out in Grand Court Rule Order 62 rule 4 (11).

12. Consequently, I order the costs of the hearing before Campbell J on the 9<sup>th</sup> December and the costs of the hearing before me, which led to the Ruling on the 30<sup>th</sup> March 2009, to be taxed on an indemnity basis and paid by the Defendant to the Plaintiffs.

Dated the 1<sup>st</sup> day of June 2009



Quin J

Judge of the Grand Court