

**NERONIA TRADING LIMITED and FOUR OTHERS v.
DEURUNEFT LIMITED and DEURUNEFT DEUTSCHE-
RUSSISCHE MINERALÖLHANDELS GmbH**

COURT OF APPEAL (Neill, P., Russell and Waite, JJ.A): September
16th, 1998

*Civil Procedure—costs—review of taxation—imposition of conditions—
court may order payment of undisputed costs as condition of leave to seek
review of taxation out of time*

The appellants brought an action for damages for breach of contract and breach of trust against the respondents in the Supreme Court.

Service of the writ on the respondents outside the jurisdiction was ultimately set aside by the Court of Appeal and the respondents awarded their taxed costs. The taxation placed them at well in excess of £200,000. The appellants, who did not dispute that costs of at least £200,000 were owing, were refused leave by the Registrar to seek a review of the taxation of costs outside the time permitted for such a challenge.

On the appellants' appeal against this refusal, the Chief Justice agreed that there had been no legitimate excuse for the delay, but gave the appellants leave to pursue the review on condition that they paid £200,000 to the respondents as a sign of good faith.

On further appeal the appellants submitted that the Chief Justice had no power under O.3, r.5 of the Rules of the Supreme Court to order the payment of a lump sum as security when granting an extension of time. The respondents submitted in reply that the Chief Justice had a wide discretion under both O.3 and O.62 to impose conditions in relation to time orders and the taxation of costs.

Held, dismissing the appeal:

Since OO. 3 and 62 gave the court a wide discretion to impose any conditions it thought just, it was open to the Supreme Court to require the appellants to make payment as a sign of good faith in respect of that part of the costs which was not in dispute. The payment was reasonable in view of the Chief Justice's belief that the appellants were employing delaying tactics to avoid paying costs. Accordingly the appeal would be dismissed (page 381, lines 6–29).

Legislation construed:

Rules of the Supreme Court, O.3, r.5:

“(1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or

authorised by these rules, or by any judgment, order or direction, to do any act in any proceedings.

(2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.

....

(4) In this rule references to the Court shall be construed as including references to the Court of Appeal, a single judge of that Court and the registrar of civil appeals.”

A. Christodoulides for the appellants;
L.E.C. Baglietto and *G. Licudi* for the respondents.

NEILL, P.: The appellants in this appeal were the plaintiffs in an action brought against the respondent-defendants. The litigation involved was long, complicated and involved substantial sums of money. Ultimately, judgment was entered against the plaintiffs with costs to be taxed. The costs were taxed by the appropriate officer of the court in a sum substantially in excess of £200,000. 15

The plaintiffs sought a review of the taxation but they allowed the time in which such a review had to be sought to expire. When the matter came back before the learned Registrar she found, as was the fact, that there was no legitimate excuse or explanation for the delay and accordingly she refused leave to pursue the matter out of time. 20

The plaintiffs sought to challenge that ruling of the taxing officer and the matter came before the Chief Justice by way of appeal on May 18th, 1998. It is important to remember that the order which was challenged before the Chief Justice was not any refusal or neglect to review but was the order that the Registrar made refusing leave to pursue the review on the ground that the application was out of time. The Chief Justice heard submissions from both sides. He too found that there was no legitimate excuse for the delay, but he varied the order that had been made by the Registrar to this extent: he ruled that the plaintiffs were at liberty to pursue the review if, but only if, as a pre-condition they paid to the respondent-defendants a sum of £200,000. That was not any sum reached with precision relating to the costs that had been taxed. It was simply the sum that the Chief Justice regarded as appropriate to show the good faith of the appellants, particularly having regard to the fact that they did not dispute that a sum in excess of £200,000 was in fact owing on the bill and had not been satisfied. 25 30 35 40

The appellants come to this court contending that the Chief Justice should not have imposed that condition, although it is acknowledged that he might have put the appellants on terms in some other way, for example by requiring security for costs in the event of the review proceeding. Mr. Christodoulides, who has submitted everything that could properly be 45

submitted on behalf of his clients, recognizes some of the difficulties that stand in his way. He recognizes that by O.3, r.5, the court in any proceedings of an interlocutory nature has very wide powers indeed to impose terms, and in particular in relation to the taxation of costs, he
5 recognizes that by the appropriate rule the court, when considering an application for a review out of time, is at liberty to impose such terms as the Registrar or the judge “thinks just,” to use the words of the order.

In my view the two orders to which reference has been made—OO. 3 and 62—do give whoever is dealing with the matter a very wide
10 discretion indeed and in my judgment it was certainly open to the Chief Justice if he chose not simply to confirm the order of the taxing officer to impose the condition that he did in order to demonstrate the good faith of those who sought the indulgence of the court. The Chief Justice said in the course of his ruling:

15 “A party who seeks to use the process of this court to challenge an order of the court should be prepared to show good faith and honour orders which are indisputably valid. It does not come reasonably from the lips of the plaintiffs that they can put the defendants to having to chase them to Canada for costs not in
20 dispute and yet should use the power of the court to challenge what is in dispute. I am not satisfied that this appeal is not a device to delaying payments of the costs awarded. I shall become satisfied if they pay to the defendants the amount not in dispute. The plaintiffs will have their extension of time provided they pay to the defendants
25 the sum of £200,000 within 28 days.”

From what can be gleaned from the papers before this court, I have no hesitation in observing that I entirely agree with the sentiments expressed by the Chief Justice. He was, in my view, plainly entitled on the rules to
30 impose the condition that he did, most particularly so as there was no dispute that the money was owing and remained unpaid. Accordingly, for my part I would dismiss this appeal.

RUSSELL and WAITE, JJ. A. concurred.

Appeal dismissed.