



## Litigation

SECURITY FOR COSTS: THE END OF DISCRIMINATION AGAINST  
NON RESIDENT PLAINTIFFS: ARTICLE 14 OF THE ECHR IN JERSEY

## Leeds United Association Football Club Limited & Another v The Phone-In Trading Post t/a AdMatch, [2009] JCA097

In this appeal by Leeds United Football Club Limited ("**Leeds**") the Court of Appeal considered the issue of security for costs in the context of Article 14 of the European Convention of Human Rights ("**ECHR**").

### The Facts

Leeds, a company incorporated in England, sued The Phone-In Trading Post t/a AdMatch ("AdMatch") in the Royal Court of Jersey. The Court awarded security in the amount of £263,500.

### The Law

Jersey does not belong to the European Community ("**EC**") and therefore the prohibition against discrimination as contained in the EC treaties has no application in Jersey. Jersey is not a signatory to the Lugano or Brussels Conventions either. However, the ECHR was incorporated into Jersey law by virtue of the Human Rights (Jersey) Law 2000.

In opposing AdMatch's initial application for security for costs, Leeds raised the application of Article 14 of the ECHR. The Royal Court declined to apply the principles as set out in the English Court of Appeal judgment of *Nasser v United Bank of Kuwait [2002] 1 WLR 1868*. It ruled that the practice of making orders for security for costs against Plaintiffs resident outside the jurisdiction was not contrary to Article 14 and that there was no discrimination on the ground of national origin when it came to these applications.

### The Decision

The Court of Appeal found that:

- the Royal Court had erred in its approach to Article 14 of the ECHR;
- that there was discrimination on the grounds of "status" (a catch-all term used in Article 14);
- the domicile of a company depended on its place of incorporation and registration and that this formed part of the status of a company;
- the residence of an individual or the incorporation of a company in Jersey confers a status different from that of an individual resident, or company incorporated in the United Kingdom; and
- Article 14 extends to discrimination between a Jersey and United Kingdom litigant.

### Comment

This momentous decision, at long last, brings the position with respect to security for costs in Jersey into line with the current position in England. The effect of this judgment will be that, unless a defendant can show objective reasons why this should not be the case, security for costs awards will be limited to the costs of enforcing a costs order in the Plaintiff's country of residence. Accordingly, many litigants who currently have security lodged with the Court in Jersey should be asking for the return of their money.

Nic Journeaux of Carey Olsen presented the appeal.

## Contact us

For further information or professional advice please contact our lawyers below.

47 Esplanade St Helier Jersey JE1 0BD

Tel: +44 (0)1534 888900 Fax: +44 (0)1534 887744



Nicolas Journeaux, Partner

[nicolas.journeaux@careyolsen.com](mailto:nicolas.journeaux@careyolsen.com)

Telephone: +44 (0)1534 822477



Judy Marais, Legal Assistant

[judy.marais@careyolsen.com](mailto:judy.marais@careyolsen.com)

Telephone: +44 (0)1534 822241

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