

Costs – whether unsuccessful appellant acted vexatiously, frivolously or unreasonably in bringing appeal or otherwise in relation to the appeal – tribunal not believing evidence of appellant – whether OFT entitled to costs.

**In the Consumer Credit Appeals Tribunal
Between:**

**VRAJILAL LAXMIDAS SODHA
(trading as)
V L Sodha, M N S Financial and M N S Consultancy**

Appellant

**and
The Office of Fair Trading**

Respondent

DECISION ON COSTS

Date of hearing: 16 March 2009

Venue of hearing: The Finance and Tax Tribunals, 45 Bedford Square, London WC1

**Tribunal: Dr James Behrens (chairman)
Mr John Bridge
Mrs Joan Stone**

Appearances:

For the Appellant: Mr Simon Popplewell, counsel

For the Respondent: Miss Deborah Lawunmi, legal adviser employed by the OFT

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DECISION ON COSTS

- 15 1. This is the unanimous decision of the above-mentioned Tribunal.
2. In our decision dated 30 March 2008 dismissing the appeal by Mr Sodha, we invited the OFT to consider whether it wished to make an application for its costs. The timetable we set for submissions was extended by agreement to take account of the Easter vacation, but we have now received written submissions from both
20 counsel on the point.
3. The first issue we have to decide is whether it is right to make any order for costs in favour of the OFT. Only if the answer to that question is yes is it then necessary
25 to examine the amount claimed by the OFT to see if it is reasonable.
4. The power to award costs is contained in paragraph 15 of Schedule A1 to the Consumer Credit Act 1974:
- 30 Where—
(a) the Tribunal disposes of an appeal or an appeal is withdrawn before the Tribunal disposes of it, and
(b) the Tribunal thinks that a party to the appeal acted vexatiously, frivolously or unreasonably in bringing the appeal or otherwise in relation to the appeal, it may order that party to pay to the other
35 party the whole or a part of the costs incurred by the other party in relation to the appeal.
5. We therefore need to be satisfied that Mr Sodha acted vexatiously, frivolously or unreasonably in bringing the appeal or otherwise in relation to the appeal if we are

to make an order for costs against him. Even if we are so satisfied, we still have a discretion whether or not to do so.

5 6. The OFT relies in particular on our conclusion that Mr Sodha was dishonest in his evidence to the tribunal. The OFT draws attention to various passages in our decision dealing with particular matters where we did not accept his evidence, and in particular the passage at paragraph 31 of our decision

10 “...Our concerns as to his honesty relate primarily to his attitude to these proceedings. We do not believe his change of story regarding taking fees, his supposed distancing of himself from Charterhouse Scott Ltd, or his supposed role acting only as a postbox.”

15 7. The OFT submitted that in light of our findings in respect of the appellant’s credibility and his involvement with Charterhouse Scott this appeal lacked merit. The OFT therefore contends that the appellant acted unreasonably in bringing an appeal which he knew or ought to have known was unmeritorious.

20 8. The mere fact that we did not accept certain parts of Mr Sodha’s evidence – indeed, to express matters bluntly, the fact that we think his evidence to us on certain matters was deliberately untruthful – is not a reason in itself to order him to pay costs. There were other aspects of his appeal which it was entirely proper for him to argue. He produced the results of a properly conducted survey which made it clear that his current clients are entirely satisfied with his work. It was entirely proper for him to argue that the matters which formed the subject of the
25 Financial Services and Markets Tribunal hearing were unlikely to be repeated. The fact that we disagreed with this submission is not a reason for saying it was unreasonable of him to make it. If a party puts forward two grounds of appeal, and one of these is clearly arguable, even though the other may not be, it cannot be said he acted vexatiously, frivolously or unreasonably in bringing the appeal.

30 9. In summary, we do not consider that the OFT is entitled to an order for costs against Mr Sodha, and we therefore make no order as to costs.

10. We close with the following observation. We hope it is not going to be the practice of the OFT to seek its costs in every appeal which it successfully resists. It was not the practice of the OFT to seek its costs under the procedure which preceded the amendments to the Consumer Credit Act 1974. The OFT's application in the present appeal has added considerably to the costs of this appeal, necessitating formal written submissions by both sides and an additional written decision by the tribunal. We trust that such an application will in future only be made in clear cases.

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**DR JAMES BEHRENS
CHAIRMAN**

20 CCA/2008/0005

Name of Appellant: Vrajilal Laxmidas Sodha

KEY WORDS

5 Costs – whether unsuccessful appellant acted vexatiously, frivolously or unreasonably in bringing appeal or otherwise in relation to the appeal – tribunal not believing evidence of appellant – whether OFT entitled to costs.

OUTCOME AND REASONS

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The tribunal refused the OFT's application for costs following an unsuccessful appeal. Although the tribunal found that the appellant gave untruthful evidence in relation to some grounds of his appeal, other grounds of his appeal were brought entirely reasonably, even though in the event the tribunal did not accept them.