



Neutral Citation Number: [2020] EWHC 789 (Ch)

Case No: CH-2019-000295

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
Appeals (Ch D)
On appeal from Deputy Master Nurse
Order of Deputy Master Nurse dated 7 October 2019
Case number: BL-2018-000628

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 26/05/2020

Before :

HIS HONOUR JUDGE JARMAN QC

Between :

TMO RENEWABLES LTD

**Appellant/
Claimant**

- and -

(1) DESMOND GEORGE REEVES
(2) MAXWELL CHARLES AUDLEY

**Respondents/
Defendants (3)
and (5)**

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and released to Bailii. The date and time for hand-down is deemed to be 10.30 am Tuesday 26 May 2020.

Mr Andrew Sutcliffe QC and Mr George McPherson (instructed by Hewlett Swanson Ltd)
for the appellant

Mr Matthew Collings QC (instructed by Blake Morgan LLP) for the respondents

Hearing date: 31 March 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

HIS HONOUR JUDGE JARMAN QC

HH JUDGE JARMAN QC :

1. I handed down written judgment allowing this appeal on the 8 April 2020. The parties have filed written submissions on consequential matters as requested, which essentially relate to the costs of the two applications before the deputy master, and the costs of the appeal. In particular the appellant submits that the costs should be summarily assessed, and the respondents submit that there should be a detailed assessment. If I decide upon the latter course, the appellant asks for a payment on account.
2. CPR 44PD.9.1 requires the court to consider whether to make a summary assessment of costs in such circumstances. Paragraph 9.2 sets out the general rule that where, as here, the hearing lasted no more than one day, unless there is good reason not to do so, for example where there are substantial reasons for disputing the sum claimed that cannot be dealt with summarily.
3. The claimant's costs of the applications for inspection and split trial amount to £12,129.46 and £17,545.06 respectively. The deputy master ordered that the appellant should pay to costs of the former application, but that respondents should pay the costs of the latter. These were ordered to be the subject of detailed assessment, on the basis that they would in whole or in part be offset by the inspection application costs, which as a result of the appeal are no longer to be paid by the appellant. Accordingly, it is submitted on its behalf that the order for detailed assessment made by the deputy master should be varied. The appellant's costs of the appeal amount to £46,341.81, about £28,000 of which relate to the fees of leading and junior counsel. Leading counsel and his instructing solicitors acted on a conditional fee agreement (CFA). Those solicitors have stated that the costs presently claimed relate to base costs only without any element of uplift.
4. On behalf of the respondents it is questioned whether any costs liability has been triggered under the CFA as it remains to be seen whether the appellant will ultimately be successful in the claim. The respondents submit in any event there are five points which make detailed assessment appropriate. First, the highest hourly charge out rate for the appellant's solicitors is £480, but the Manchester guideline rate is £217. Second, counsels' fees for the appeal are more than double that of the respondents' counsel, although the appellant makes the point that the total respondents' costs of the appeal at £32,079.60 are broadly comparable to those of the appellant. Third, the appellant served a supplemental statement of costs in the high sum of £4,610.20 shortly after the draft judgment was handed down. Fourth, it is not clear why VAT is included as the appellant is VAT registered. Fifth, the appellant seeks a summary assessment of 100% of its costs.
5. I have come to the conclusion that the respondents' points taken together amount to good reason not to assess the appellant's costs summarily, and that these should be the subject of detailed assessment if the parties cannot come to an agreement about them.
6. It is not in dispute that there should be a payment on account pending such assessment. The appellant submits that the sum of £60,000 is a reasonable sum on account of the appellant's total costs of £76,016.33. The respondents submit that a "safe" sum would be £20,000 and ask for 28 days to pay in these difficult times.

7. In my judgment a reasonable sum is £45,000 and this should be paid within 28 days.