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IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
OF ENGLAND AND WALES  
CHANCERY APPEALS (ChD)  
[2022] EWHC 1835 (Ch)



No. CH-2021-000046

Rolls Building  
Fetter Lane  
London, EC4A 1NL

Wednesday 8 June 2022

Before:

MR JUSTICE MILES

B E T W E E N :

HAYAT

Appellant

- and -

SARDAR & ANOR

Respondents

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THE APPELLANT appeared in Person.

MS L. WANNAGAT appeared on behalf of the Respondents.

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J U D G M E N T

MR JUSTICE MILES:

- 1 I now come to consider the costs of the appeal. The respondents seek the costs on an indemnity basis. They say that the appellant failed to supply them with an appeal bundle on time, that they only managed to obtain this from CE-File, and that his refusal to pay their costs until today was unreasonable.
- 2 I am not going to assess the costs on an indemnity basis. I have to take into account the fact that the appellant is representing himself in these proceedings. Whilst the same rules apply to all litigants, including litigants in person, some allowance may be appropriate where the question arises whether conduct is outside the norm so as to justify indemnity costs. In the present case I do not think that the matters raised by the respondents make this a case justifying an assessment on an indemnity basis.
- 3 The respondents seek a total of £3,828 including VAT of £638. The respondents submit that it is a year since permission to appeal was granted and that they had to take steps in relation to the appeal. The first suggestion that the appeal would be withdrawn was made on 9 May 2022 and the application to withdraw was made on 25 May. The respondents say that the instructing solicitors had to carry out work.
- 4 They have produced a costs schedule which shows a certain amount of work being carried out by Mr Kelly, a grade A fee earner, and a relatively small amount of work being carried out by Ms Clements, a grade D fee earner. The total for solicitors' costs is some £1,619. Counsel's brief fee for today is £1,500.
- 5 The appellant has made a number of submissions about these amounts. He says first that he told the court that he wished to withdraw the appeal some time ago and that had the appeal been withdrawn at that time successfully, much of the respondents' costs would have been avoided. He says that he did all that he could to withdraw the appeal. He says that he is in difficult circumstances financially, that he has lost his job, his father has died, that he is not in good health, and that he is living on benefits. He says that he took all necessary steps to avoid the costs of this hearing. He also says that he regards the costs schedule submitted by the respondents as exorbitant and does not understand how costs totalling £3,190 plus VAT have come to be incurred. He again emphasises that his personal circumstances are very difficult.
- 6 It is a shame that this matter was not resolved at an earlier stage when the appellant explained that he wished to withdraw. Having reviewed the email correspondence, however, it seems that the respondents' solicitors did make clear that the respondents were prepared to agree on the footing that the appellant pay their costs. He did not agree to that. While he did not positively say that he was seeking to withdraw without paying their costs, he did not agree to bear the costs. It was therefore inevitable that there would have to be some hearing - if only to deal with the question of costs. I do not therefore think that the court can properly reach a conclusion that only a minimal amount of costs should be paid.
- 7 On the other hand, it does seem to me that it might have been possible for the respondents through their solicitors to spell out the position more clearly in the course of that correspondence; and it does seem to me that, to some extent, costs have been unnecessarily incurred.

- 8 It also seems to me that the work done by the respondents' solicitors has been top-heavy in the sense that most has been carried out by a grade A fee earner and very little by any other fee earner, including the grade D fee earner. It also seems to me that in the end this was always going to be a debate principally about costs and a relatively short one and, although I found Ms Wannagat's skeleton argument to be well-written and well-structured, I think that the brief fee of £1,500 is somewhat on the high side of what is, in essence, a debate about costs.
- 9 I am required to make an overall assessment of the amount that I think is fair and proper, having regard to the need for the respondent to show that the costs are reasonable and proportionate. I have decided, taking everything into account, including the entire history, that the amount I should order is £2,000 to include VAT.
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**CERTIFICATE**

Opus 2 International Ltd. Hereby certifies that the above is an accurate and complete record of the judgment or part thereof.

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This transcript has been approved by the Judge