



[2023] EWHC 2173 (Ch)

IN THE HIGH COURT OF JUSTICE

Claim No. BL-2022-001711

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

B E T W E E N :

Date: 30 August 2023

Before :

**James Pickering KC
(sitting as a Deputy High Court Judge)**

Between :

(1) DANIEL CARLOS SCENNA

(2) HOST GROWTH INC (a company registered in Ontario)

Claimants

And

(1) PERSONS UNKNOWN USING THE IDENTITY “NANCY CHEN”

(2) PERSONS UNKNOWN USING THE IDENTITY “VERA”

(3) PION MARKET LTD (a company incorporated in England)

(4) QS TRADING LTD (a company incorporated in Hong Kong)

(5) WIN FY PTY LTD (a company incorporated in Australia)

(6) TECO INDUSTRIAL PTY LTD (a company incorporated in Australia)

(7) AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD

(a company incorporated in Australia)

(8) WESTPAC BANKING CORPORATION (a company incorporated in Australia)

(9) DAH SING BANK LTD (a company incorporated in Hong Kong)

Defendants

Celso De Azevedo (instructed by **Giambrone & Partners LLP**) for the **Claimants**
Edward Harrison (instructed by **Farrer & Co LLP**) for the **Seventh Defendant**
Edward Levey KC (instructed by **Herbert Smith Freehills LLP**) for the **Eighth Defendant**

Hearing date: 9 June 2023

APPROVED JUDGMENT

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James Pickering KC (sitting as a Deputy High Court Judge):

Introduction

1. On 5 April 2023, I delivered my substantive judgment in the above matter. That judgment was essentially in favour of the Seventh and Eighth Defendant Banks (“**the Banks**”).
2. On 9 June 2023, the consequential hearing took place. At that consequential hearing, amongst other things, I decided that the Claimants should pay the Banks’ costs of the Disclosure Applications on the indemnity basis and of all other matters, including the Jurisdiction Applications, on the standard basis.
3. I further decided that, rather than make an order for detailed assessment together with a payment on account, the above costs should be summarily assessed. Unfortunately, however, there was insufficient time for that summary assessment to take place there and then as a result of which I gave directions for brief written submissions. In due course, I received those written submissions for which I am grateful.

The relevant principles

4. A number of principles were outlined to me in argument. None was controversial but they are worth briefly re-stating here.

(a) The difference between assessment on the standard and indemnity bases

5. Whether the costs are to be assessed on the standard basis or an indemnity basis, the court will not allow costs which have been unreasonably incurred or are unreasonable in amount: CPR 44.3(1).
6. When such assessment is to take place on the standard basis, the court will (a) only allow costs which are proportionate to the matters in issue; and (b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party: CPR 44.3(2).
7. By contrast, when assessing costs on the indemnity basis, (a) any doubt as to whether any costs were reasonably incurred or were reasonable in amount is to be decided in the receiving party's favour, and (b) proportionality is not a relevant consideration: CPR r. 44.3(3)¹.

(b) The difference between summary assessment and detailed assessment

8. A detailed assessment will generally involve a line by line billing exercise.
9. By contrast, where a summary assessment is to take place, a broad brush approach is to be adopted: *Brake v Guy* [2022] EWHC 2907 (Ch) at [26-27]; *Football Association Premier League v The Lord Chancellor* [2021] EWHC 1001 (QB) at [20].

(c) The relevance of the paying party's costs

¹ See also *Guide to the Summary Assessment of Costs* (2021 edition) at paragraph 13.

10. I also take on board that when summarily assessing the costs that a receiving party is to receive, the costs incurred by the paying party may be relevant (albeit not determinative) when considering the reasonableness and proportionality of the receiving party's costs: *Malmsten v Bohinc* [2019] EWHC 1386 (Ch) at [69(3)].

The amount of costs sought

11. The starting point when summarily assessing costs is to consider the amount of costs being claimed by the receiving party as set out in the relevant costs schedules (and as verified by the relevant solicitors in each case).
12. In the present case, the costs claimed by the (receiving) Banks can be summarised as follows:

The Seventh Defendant:

Application	Amount Claimed
Disclosure Order Application	£160,835.78
Jurisdiction Application	£58,647.53
Costs Application	£7,371.75
Post-hearing Costs	£15,826.00
Total	£242,681.06

The Eighth Defendant:

Application	Amount Claimed
Disclosure Order Application	£103,929.06
Jurisdiction Application	£35,803.09
Costs Application	£3,946.08
Post-hearing Costs	£16,710.01
Total	£160,388.24

13. Given their potential relevance, I note here that the costs incurred by the (paying) Claimants can be summarised (with similar but not identical categorisation) as follows:

Application	Amount Claimed
Disclosure Order Application	£28,025.00
Jurisdiction + Injunction Applications	£23,225.00
Total	£51,250

The Claimants' complaints

14. The Claimants' challenge the above level of costs sought on a number of broad bases. In short, so the Claimants say:

(1) The **hourly rates** charged by the solicitors in each case are too high. In particular, the Banks should be restricted to claiming solicitors' costs on the London Band 2 rate (as opposed to at a figure in excess of the London Band 1).

(2) There has been unnecessary **duplication** of work between Grade A and Grade B fee earners for the same tasks.

(3) The **length of time** spent on each task was unnecessary.

(4) **Counsel's fees** are "exceedingly high".

15. I will consider each of these complaints in turn.

Discussion

(a) Hourly rates

16. The *Guide to the Summary Assessment of Costs (2021 Edition)* provides guideline hourly rates which are described as being "broad approximations"² and "a starting point

² Paragraph 27

for those faced with summary assessment”³. For Grade A solicitors, the hourly rate given is £373 for London 2 rising to £512 for London 1. For Grade B solicitors, it is £289 for London 2 rising to £348 for London 1. In this context, London 2 relates to certain central London postcodes, while London 1 relates to “very heavy commercial and corporate work by centrally based London firms”⁴.

17. In the present case, the Seventh Defendant Bank’s most senior fee earners have been charged out at £550 (Grade A) and £395 (Grade B) per hour, while the Eighth Defendant Bank’s most senior fee earners have charged out at £668 (Grade A) and £550 (Grade B) per hour. In short, therefore, the hourly rates for the above senior fee earners are in each case higher than London 1 rated cases and quite significantly higher than London 2 rated cases.
18. The present case undoubtedly involved a degree of complexity, a degree of urgency and, of course, an international element. Having said that, the various applications were all dealt with within a single day. Overall, while I fully understand why the Banks’ solicitors charged (and the Banks were prepared to pay) at the above charge out rates, I am not persuaded that the present matter is the sort of matter which should be considered to be London 1. It seems to me that the appropriate starting point (for that is all the guideline rates are) are the London 2 rates and that the fees claimed by the Banks are accordingly significantly higher than that starting point.

(b) Duplication/Length of time

19. The next two complaints raised by the Claimants relate to what is suggested to be duplication as a result of different fee earners carrying out the same tasks and the length of time spent on each task. It seems to me that they can be conveniently considered together.
20. It is right to say (as the Banks have done) that the above complaints have not been particularised let alone targeted in respect of any particular item but instead are made

³ Paragraph 28

⁴ Appendix 2

as against all items contained in the costs schedules as a whole. Nothing turns on this, however, as I have of course been provided with the costs schedules and have been able to consider the relevant breakdowns in each case.

21. Again, while I can fully understand why work was carried out by various senior fee earners – and why that work was carried out thoroughly and extensively - it does seem to me that there is something in the Claimants' points and that, adopting a broad brush approach, some of the costs incurred by the Banks cannot be said – for the purposes of the current exercise - to have been reasonably incurred.

(c) Counsel's fees

22. The final complaint by the Claimants is directed at counsel's fees. The Banks' respective counsel were outstanding throughout and no doubt – as between themselves and the Banks – were worth every penny. I do have to bear in mind, however, that there was overlap between the various applications and while therefore individually each brief fee may seem reasonable, when considered together for the purposes of a single one day hearing, again I agree with the Claimants that the same were on the high side.

(d) The relevance of the Claimants' own costs schedules

23. As observed above, the Claimants' own costs schedules total was significantly less than those of the Banks (some £242,681.06 and £160,388.24 for the Banks compared to £51,250 for the Claimants). While the above comparison is of some use, ultimately the relevance of the Claimants' own costs schedules is somewhat limited since it is not comparing like with like: the Claimants' costs schedules quite properly excluded the not insubstantial work undertaken prior to the ex parte hearing; by contrast, the Banks each had somewhat of a standing start.

Determination

24. Overall, therefore, adopting a broad brush approach, it seems to me that the fair assessment of costs taking into account all of the above matters is as follows:

The Seventh Defendant:

Application	Amount Claimed	Basis	Determination
Disclosure Order Application	£160,835.78	Indemnity	£110,000
Jurisdiction Application	£58,647.53	Standard	£30,000
Costs Application	£7,371.75	Standard	£5,000
Post-hearing Costs	£15,826.00	Standard	£12,000
Total	£242,681.06		£157,000

The Eighth Defendant:

Application	Amount Claimed	Basis	Determination
Disclosure Order Application	£103,929.06	Indemnity	£74,000
Jurisdiction Application	£35,803.09	Standard	£21,000
Costs Application	£3,946.08	Standard	£3,000
Post-hearing Costs	£16,710.01	Standard	£12,000
Total	£160,388.24		£110,000

Timing

26. By CPR 44.7, summarily assessed costs are to be paid within 14 days unless the court orders otherwise. Where a party wishes the court to make an order for such costs to be paid other than within the above 14 day period (either longer or shorter), it is of course for that party to persuade the court why it should depart from the above general rule.
27. In the present case, the Claimants invite me to allow them 35 days to pay the above costs – a departure from the general rule which the Banks both resist.
28. If it had been possible to deal with costs at the consequential hearing, I would no doubt have explored with the Claimants why the above additional time was required. As stated above, however, it was not possible to so deal with costs and, as a result, more than 35 days have passed since that hearing. In those circumstances, the Claimants have already

had (more than) the time requested to make the necessary payment (the order of which, if not the precise sums, has been known to the Claimants for some time).

29. In the above circumstances, I decline to depart from the general rule and order the costs which I have just summarily assessed to be paid within 14 days of the making of this order.

Conclusion

30. In conclusion, therefore, I order the Claimants to pay the Seventh Defendant Bank the sum of £157,000 and the Eighth Defendant Bank the sum of £110,000, in each case within 14 days of the making of this order.

JPKC

August 2023