



Neutral Citation Number: [2022] EWHC 2802 (Comm)

Case No: CL-2013-000975

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**COMMERCIAL COURT**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 07/11/2022

**Before :**

**CHRISTOPHER HANCOCK KC**

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**Between :**

**AZZAM FAISAL KHOUJ**

**Claimant**

**- and -**

**(1) ACROPOLIS CAPITAL MANAGEMENT  
LIMITED**

**Defendants**

**(2) ACROPOLIS CAPITAL PARTNERS  
LIMITED**

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**JUDGMENT ON COSTS**

**This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:00 on Monday 7 November 2022.**

**Christopher Hancock KC :**

**Introduction and background.**

1. On 25 June 2020, the Claimant applied for an order that Mr Vaghadia be cross examined on his Witness Statement. I heard that application on 23 April 2021. Notwithstanding the Defendants' objection, I ordered that that cross examination should take place.
2. Following my judgment, the parties tendered submissions on consequential matters. One of those matters was the question of the liability for the costs of the application. I dealt with these matters on the basis of written submissions from the parties. Before the time at which I made my order, the parties had agreed issues of costs. As was recorded in the order following my judgment (which I handed down on 11 August 2021), the parties had agreed to resolve the issue of the costs of the application by way of a payment of £75,000 from the Defendants to the Claimant.
3. The hearing of the cross examination of Mr Vaghadia took place before me on 4 March 2022. No further hearing eventuated from that hearing.
4. The Claimant has applied for his costs of that cross examination hearing, which total £42,272.55. It is that application that I now need to deal with in this judgment.

**The parties' respective submissions.**

*The parties' submissions.*

5. The parties' submissions fall into two categories.
  - i) First, the Defendants contend that the parties have compromised any dispute as to the costs of the cross examination in correspondence. The Claimant denies this, contending that the settlement in question only related to the costs of the application to cross examine Mr Vaghadia, not to the costs of the cross examination itself.
  - ii) Second, the Claimant contends that he should be awarded his costs of the cross examination. The Defendants resist such an order, broadly on the footing that the cross examination achieved nothing.

**My conclusions.**

6. I will deal with each of the above contentions in turn.

*Has any claim for costs been settled?*

7. It was the Defendants' primary submission that any claim for the costs of the cross examination hearing had been settled in the correspondence of 6 and 7 July 2021. In the Defendant's letter of 6 July 2021, the following offer was made:

*"In order to dispose of the issue of costs, our clients would be prepared to consent to*

*a costs order requiring our clients to pay your client's costs strictly only on the basis that the assessment of all costs to be paid is fully and finally settled in the sum of £75,000. In the context of such an agreement our clients would be prepared to agree to pay that sum within 14 days of agreement. This would be in full and final settlement of the issue of costs save for the consequences of any appeal which might vary or set aside the costs order.*

*Acceptance of our client's offer will avoid the necessity of spending any further time on this matter in submissions, or incurring any further costs, and reflects a reasonable result for your clients if a summary assessment were to be performed."*

8. In response, the Claimant stated that "we confirm acceptance of your client's offer to settle our client's claim for costs on its application in the sum of £75,000 on the basis set out in your letter."
9. There was no dispute between the parties but that the relevant principles of contractual construction are those set out in cases such as Wood v Capita [2017] UKSC 24 and Arnold v Britton [2015] UKSC 36. I therefore apply those principles to this exchange of correspondence, bearing in mind the contractual background and context.
10. Applying these principles, I have no doubt but that the costs of the cross examination itself are not comprehended within this agreement. The agreement extended to the contested application for an order for cross examination, which the Defendant unsuccessfully resisted, but did not extend to the costs of the cross examination itself, which had yet to take place at this stage.
11. I therefore reject the Defendants first submission.

*What order should I make in the exercise of my discretion?*

12. I turn then to the question of what order I should make in the exercise of my discretion.
  - i) First, I have no doubt but that I do have such a discretion. I did not understand the parties, in the event, to dispute this, but in general costs are entirely in the discretion of the Court: see CPR Part 44.2.
  - ii) Secondly, the general rule is that costs should follow the event: see CPR Part 44.2(a).
  - iii) In this instance, the Defendants argued that the cross examination did not in fact achieve anything and thus that, in the event, the Claimant had not gained anything.
  - iv) Conversely, the Claimant argued that it had been necessary to obtain an order for cross-examination because Mr Vaghadia had not been sufficiently forthcoming voluntarily; that the hearing was achieved by reason of the Court's order; and that any objection based on the suggestion that the cross examination was repetitious was unsound, because the cross examination was by reference to documents disclosed later which should have been disclosed earlier.

13. In my judgment, the just order in relation to costs is that there should be no order. In my view, the cross examination did not in fact achieve anything. Whilst it was necessary for the Claimant to seek and obtain an order for that cross examination (justifying the payment of the costs of that application) the actual cross examination itself was of no utility to the Claimant. The event was thus that the Claimant achieved nothing, and should not recover any costs.
14. I would be grateful if the parties could draw up any order necessary to give effect to this judgment.