



Neutral Citation Number [2023] EWHC 2188 (SCCO)

Case No: G10CL358

SCCO reference: SC-2022-BTP-000281

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE
FROM THE COUNTY COURT AT CENTRAL LONDON

Thomas More Building
Royal Courts of Justice
Strand, London WC2A 2LL

Date: 24/08/2023

Before :

COSTS JUDGE LEONARD

Between :

Hughes Fowler Carruthers Ltd

- and -

Ms Jacky Gubbay

Claimant

Defendant

Hearing date: 4 May 2023

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.

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COSTS JUDGE LEONARD

Costs Judge Leonard:

1. This short judgment deals with the summary assessment of the costs payable by the Defendant to the Claimant under paragraph 1 of the Court's order of 4 May 2023, as represented by a schedule in the standard form N260 filed and served by the Claimant's solicitors, Gibson & Co.
2. The summary assessment of costs is a broad-brush exercise but the parties should understand, if necessarily in broad terms, the reasons for the decisions that have been made. That is the purpose of this judgment.
3. Unlike the assessment of the Claimant's fees and disbursements as between solicitor and client, which has been completed on the indemnity basis in accordance with CPR 46.9(1), this is a summary assessment of the cost recoverable by the Claimant from the Defendant on the standard basis under CPR 44.3. There are three essential differences between those two exercises.
4. The first is that on a summary assessment, the court does not make findings only on objections raised by the paying party, as was the case on the solicitor/client assessment. In accordance with CPR 44.3, the court must undertake its own critical assessment.
5. On the solicitor/client assessment the Defendant made extensive submissions, but I could find no substance in any of them and the Claimant's costs were assessed as claimed. For the purposes of this summary assessment the Defendant has been given the opportunity to make submissions on the Claimant's schedule of costs, but has chosen not to do so. Because it is a summary assessment, however, reductions to the Claimant's costs have been made by me in accordance with the court's duty under CPR 44.3. The reasons for those reductions are set out below.
6. The second difference is that that on the standard basis, any element of doubt as to whether the costs claimed are proportionate and reasonable, must be exercised in favour of the Defendant as the paying party.
7. It follows that, on a standard basis assessment, substantial reductions may be made to claimed costs without any implied criticism of the party seeking to recover those costs, or of their legal representatives. Such has been the case here. I do not doubt that Gibson & Co have undertaken and recorded their work conscientiously, but much of the attendant cost seems to me to be irrecoverable on the standard basis.
8. The third difference is that on billing the Defendant as a client, the Claimant is obliged to render a VAT invoice and VAT must be added to the costs and disbursements recoverable by the Claimant from the Defendant as a client.
9. Where, as under the order of 4 May 2023, costs are recoverable between opposing parties in litigation, that is not the case. The paying party is indemnifying the receiving party for costs incurred. For that reason, VAT should not be included in a claim for costs if the receiving party is able to recover the VAT as input tax (Practice Direction 44, paragraph 2.3) because VAT will not, in those circumstances, represent a real cost to the receiving party.

10. As a substantial firm of solicitors, the Claimant will be registered for VAT and will be able to recover the VAT element of the costs and disbursements incurred by the Claimant in the course of the litigation. VAT is, accordingly, not a real cost to the Claimant. The inclusion of VAT in schedules of costs in cases such as this is a common error and I intend no criticism, but all VAT claimed must be disallowed. That in itself substantially reduces the sum claimed by the Claimant.
11. As to other reductions, I start with hourly rates. In accordance with the guidance of the Court of Appeal in *Samsung Electronics Co Ltd v LG Display Co Ltd* [2022] EWCA Civ 466, on a summary assessment I should allow the recovery of solicitors' hourly rates in excess of the 2021 guideline rates only where there is a clear and compelling justification for doing so.
12. Gibson & Co are located in central Newcastle. The National 1 guideline hourly rates apply. There are three solicitors on the N260: Mr Gibson, Ms Shickle and Ms Brinkworth. The hourly rates of Ms Shickle and Ms Brinkworth are well below the guidelines, but at £325 Mr Gibson's hourly rate is well above it. I have allowed for Mr Gibson an hourly rate of £280, to make some allowance for inflation, but I cannot go beyond that.
13. There are some elements of duplication in the work claimed, as where two solicitors have attended the same hearing. That is not unusual and may be perfectly appropriate as between solicitor and client, but on a standard basis assessment (absent, for example, some particular justification for dual attendance) duplicated time is generally disallowed.
14. I have also had some difficulty with a very substantial amount of time claimed for "attendance on others". Some allowance must be made for matters such as attendance on the court, but on the available information I have been obliged to disallow most of the time claimed under that heading.
15. With regard to document time, again there are elements of duplication and some of the time claimed seems to me to go beyond what can be recoverable on a standard basis assessment. I have also been obliged to disallow all of the time claimed at rows 19-24 of the document schedule. Only the attendance of one solicitor at the hearing, and the preparation by one solicitor of the statement of costs, seems to me to be recoverable. The cost of work such as research and file reviews is not.
16. With regard to disbursements, the N260 mentions (but does not seem to include within the total) the Claimant's own fees for producing the Scott Schedule upon which my decisions on the solicitor/client assessment were based. The Claimant has instructed external solicitors, and in consequence is Gibson & Co's client for the purposes of this assessment. Gibson & Co's costs and disbursements are recoverable in the usual way, but the additional cost of the Claimant's own work, undertaken in the capacity of a client, is not.
17. Finally, I am unable to understand the need for office copy entries, the cost of which has been disallowed. This leaves only court fees recoverable as disbursements.
18. This judgment was circulated in the form of a draft incorporating my calculation of the recoverable costs, so that the parties could offer any arithmetical corrections

before it was handed down. No errors have been identified, so I can confirm that the costs payable by the Defendant to the Claimant under paragraph 1 of the Court's order of 4 May 2023 have been summarily assessed at £19,563.49.