Neutral Citation Number : [2023] EWHC 273 (SCCO)
Case No: SC-2022-APP-000189

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Royal Courts of Justice
London, WC2A 2LL

Date: 23/01/2023

Before :

COSTS JUDGE NAGALINGAM

- -

Between :

David Brierley	**Claimant**
- and -	
Frank Otuo (1)	**Defendants**
Ruth Otuo (2)	
Jason Adu-Gyamfi (3)	

- -
- -

Mr Meehan (instructed by **Helix Law Ltd**) for the **Claimant**
Mr Otuo (acting as litigant in person)

Hearing dates: 17/01/2023

- -

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.

.....

COSTS JUDGE NAGALINGAM

Costs Judge Nagalingam:

1. This application seeks an order that "The Claimant redraws the Bill of Costs dated 12 January 2022 in a form that complies with the order of Newey J dated 17 March 2017."

2. Section 10 of the application states "For the reasons identified in the Defendant's Points of Dispute dated 4 February 2022, the Claimant should be ordered to redraw the Bill of Costs to enable the Defendant [to] file and serve complete Points of Dispute".

3. The application attaches a set of the points of dispute Mr Otuo has served to date. These are brief and cover five general points. However, whilst all five points are capable of being addressed in the detailed assessment process, it is only the fourth point (point "d)"), which is directly referrable to the subject matter of this application.

4. Point "d)" sets out, with reference to the served bill, "It fails [to] submit for detailed assessment, 60% only, of the amount of £27,026.40 = £16,368.84 stated on the Costs Schedule dated 15 March 2017 as per the order giving rise to this detailed assessment. The Paying Party is unable to provide any points of dispute to individual costs until such details are provided in an amended BoC after the current bill is struck out."

5. Whilst the points of dispute refers to the current bill being struck out, the application before me today simply seeks the bill be redrawn.

6. This application concerns the bill drawn in the sum of £25,798.50, pursuant to orders dated 17 March 2017 and 10 September 2020.

7. It is the costs claimed pursuant to the order dated 17 March 2017 within the bill with which Mr Otuo takes issue.

8. The 17 March 2017 order recites an application in the main proceedings, brought by the receiving party, which sought to debar Mr Otuo from participating in the detailed assessment proceedings in claim numbers in HC2012-000134 and CHC12D04410.

9. The recital to the 17 March 2017 order proceeds to refer to a statement of costs dated 15 March 2017. That statement of costs included the costs of an application for a civil restraint order, as well as the application to debar.

10. The court dealt with the civil restraint order application on 17 March 2017 but not the application to debar, which instead was adjourned to be re-listed on an expedited basis, with the costs of that application reserved.

11. The civil restraint order made on 17 March 2017 includes a provision for payment of the application costs for the same, on the standard basis, to be assessed if not agreed. It also included provision for the making of a payment of £10,000 on account of costs relating to that application.

12. It is the recital in the order adjourning the application to debar which appears to have caused some confusion. In particular, the recital which states:

"AND UPON the Court apportioning 60 per cent of the total costs as set out in the First Defendant's costs schedule dated 15 March 2017 to the First Defendant's Application, with the remaining 40 per cent being apportioned to the First Defendant's application for a debarring order dated 13 February 2017".

13. Mr Otuo argues this means that the costs order for payment of the costs relating to the application for a civil restraint order operates to limit the receiving party to 60% of the assessed costs relating to that application.

14. Mr Otuo also argues that the bill of costs should not exceed the sum total of the statement of costs referred to in the recital.

15. I consider neither conclusion to be the case.

16. The court was presented with a scenario in which it was asked to deal with two applications. The court only had time to address one of those applications, and thereafter had to consider an appropriate sum to order as a payment on account of costs in relation to the application heard, in circumstances where the only document to base consideration of the amount to order was a statement of costs which covered two different applications.

17. In those circumstances, the court was entitled to take a view on how that statement of costs would break down as between the two applications, and the court settled on a 60/40 split. This enabled the court to settle on a discernible figure from which to arrive at a suitable sum when ordering a payment on account of the costs of the civil restraint order application.

18. I am in no way able to otherwise conclude that the recital is intended to limit the costs of the civil restraint order application to 60% of the actual costs incurred in pursuing that application, either as claimed or once assessed. That would reflect some form of punitive element to the order, suggestive of concerns as to the conduct of the otherwise successful applicant.

19. There is no evidence of that before me, and in fairness to Mr Otuo that was not a line of argument he sought to pursue in any event.

20. As to the notion the same recital is designed to limit the recovery of costs to the sum claimed in the statement of costs dated 15 March 2017, the order dated 17 March 2017 and the civil restraint order simply do not support such a conclusion.

21. As Mr Meehan alluded to, it is always open to a paying party to cite the amount of a statement of costs presented to the court when arguing that a subsequent bill is unreasonable in amount or disproportionate. It is entirely a matter for Mr Otuo if that is a line of objection he wishes to pursue in any further written points of dispute.

22. A further argument Mr Otuo advanced, with respect to whether the served bill complies with the order of 17 March 2017, is the inclusion of the costs of the application to debar in the served bill of costs.

23. Mr Meehan set out the argument that where an application is made and then adjourned, with the costs of the same reserved to the re-listed hearing date, then if the

case settles without that application being heard then the costs of that application become costs in the case.

24. That view is supported by the practice direction to rule 44.2, wherein at paragraph 4.2 of the practice direction to rule 44 of the Civil Procedure Rules it sets out that the practical effect of an order for "costs reserved" is "if no later order is made the costs will be costs in the case". It is on this basis that Mr Meehan submits the receiving party is correct to include details of the unresolved application to debar.

25. The problem with this argument is that 11 days after the "costs reserved" order was made, the parties entered into a consent order in the following terms:

> "1. The hearing listed in the window commencing on 28 March 2017 to 4 April 2017 be vacated.
>
> 2. The First Defendant's application be dismissed.
>
> 3. The issue of the costs of the First Defendant's Application be disposed of at the next hearing in Claim 2017-000158.
>
> 4. The First Defendant is to serve a copy of this order on the Claimant."

26. Thus in this matter a "later order" was made, the effect of which was to leave open the issue of which party was liable for the costs of the dismissed application to debar.

27. The fact that any costs relating to the application to debar might be present in any of the served bills would not in my view lead to the conclusion that service of the bill is procedurally defective, or that the bill needs to be redrawn. Further, it is not a good reason to delay the detailed assessment proceedings.

28. It is a matter for the receiving party to consider their own level of risk that the debarral costs might be disallowed on a detailed assessment, and the associated risk of a punitive costs of assessment order which might typically be considered if a party is found to have claimed costs there was no entitlement to.

29. In the event Mr Otuo elects to maintain costs related to the application to debar should be struck from the bill then he can articulate that argument in his written points of dispute. Similarly, if the receiving party wishes to argue that the later order does not impact on the "costs reserved" order they are entitled to make that point in their written replies.

30. Further, pending the ultimate listing and hearing of a detailed assessment, there will be nothing to prevent the parties from resolving the issue of the costs of the application to debar, or alternatively revisit the matter with the originating court in the event either party argues that there is no order for costs relating to the application to debar.

31. Accordingly, on all limbs of this application to redraw the bill, I find in favour of the receiving party and the application is therefore dismissed. There are no procedural irregularities that would otherwise compel or convince me the bill of costs needs to be redrawn and re-served.

32. The costs of this application will be reserved to be addressed at the conclusion of the detailed assessment in this matter. In the event the bill of costs is compromised, a standalone remote hearing may be listed to address the issue of the costs of this application.

33. Upon the handing down of this judgment, the parties will also receive sealed copies of a directions order which is intended to effectively case manage the matter to a detailed assessment hearing.