Neutral Citation Number : [2023] EWHC 2929 (SCCO)
Case No: C29YP942
SCCO reference: SC-2021-BTP-001131

IN THE SENIOR COURTS COSTS OFFICE
FROM THE COUNTY COURT AT
MAYORS & CITY OF LONDON

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

Date: 13/11/2023

Before :

COSTS JUDGE LEONARD

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Between :

Protopapas Solicitors (a firm)	**Claimant**
- and -	
(1) Mr John Michaelides	
(2) Mrs Androulla Michaelides	**Defendants**

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Vrahimis Orphanou for the Claimant
Jamil Ahmud for the Defendants

Hearing date: 23 May 2023

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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 concludes a common law assessment between the Claimant solicitor and the Defendant clients, as ordered on 4 January 2021 by HHJ Hellman on giving judgment for the Claimants for outstanding fees. It addresses the summary assessment of the costs of assessment, as awarded to the Claimant by this court on 23 May 2023, and as addressed by written submissions subsequently filed by the parties.

General Points: Basis of Assessment and the Scope of the Costs Award

2. The Claimant asks for the costs of the assessment process to be assessed on the indemnity basis, on the grounds that the Claimant has achieved an outcome that is comfortably in excess of an offer of settlement made by the Claimant to the Defendants on 29 July 2021.

3. I have already made an order for costs which does not specify the indemnity basis and which, by virtue of CPR 44.3(4), is accordingly an order for assessment on the standard basis. It is too late to ask for costs on the indemnity basis, and I would not in any event make such an order only because a party has beaten their own offer.

4. Contrary to the Claimant's submissions, the usual standard basis principles must apply. The fact that I have been conducting a common-law assessment between solicitor and client does not make any difference. The Defendant is entitled to raise proportionality, and any element of doubt as to reasonableness and proportionality must be resolved in favour of the Defendants as paying parties.

5. That is not to say that the offer of 29 July 2021 is without significance. I will refer back to it when it comes to dealing with proportionality. It also has some bearing on the fact that the Defendants have submitted that the costs of the last hearing before me on 23 May 2023 should turn on the outcome of this summary assessment, because of an offer made by the Defendants as to the cost of the assessment process.

6. Again it seems to be to be too late to raise that, as I have already made an order for the costs of the assessment process to be paid without reservation (other than for previous orders made). If the Defendants wanted me to reserve the costs of the hearing of 23 May, they should have done so at that hearing.

7. That aside, given that the entire assessment process could have been avoided had the Defendants accepted an offer made in July 2021 on the subject matter of the assessment and which would have resulted in a better outcome for them, it does not seem to me to be open to them to rely upon a discrete offer as to the costs of assessment, evidently made towards the end of the process. The Claimant is right in saying that because much of the day was taken up with unsuccessful argument from the Defendants (in particular resisting payment of the Claimants' costs of assessment) we lost the opportunity on 23 May to complete the assessment process, including the summary assessment now addressed by this judgment.

8. For those reasons, the costs of 23 May should in any event be awarded to the Claimant.

9. On circulating this judgment in draft form, I gave the Defendants the opportunity to make further submission on that conclusion, treating it as provisional pending such submissions. None have been received.

10. In fact, the Defendants have not responded at all to the draft judgment, to the court's invitation to offer further submissions, nor to the directions given for letting the court know whether they wished to attend the handing-down (they have not). Only the Claimant has responded, appropriately copying its communications and submissions to the Defendants, but, I am advised, receiving no response.

General Points: Mr Orphanou's Fees

11. The Claimant was represented in the assessment proceedings by Mr Orphanou, who is both a barrister and a costs draftsman. The Defendants take issue with the fact that Mr Orphanou charged for some work at £125 per hour and for other work at £200 per hour. They contend that his hourly rate should be limited to £125.

12. Mr Orphanou rightly contrasts his hourly rates with the £300 per hour claimed by the Defendants for their solicitor, Mr Ahmud. There is no reason for Mr Orphanou's hourly rate to be restricted to £125.

13. According to Mr Orphanou's submissions, he charged a rate for advocacy of £200 per hour (discounted from £300 per hour) and for documentary work such as drawing up bill breakdowns, between £125 and £150 per hour. For some work, such as the drawing up of replies, this appears to have been discounted from £200 per hour.

14. The distinction between advocacy and other costs work is a logical one which I have regularly applied on summary assessment. £200 per hour is a reasonable rate for advocacy by any experienced, qualified costs advocate and £125 to £150 per hour a reasonable rate for documentary work undertaken by an experienced costs professional on behalf of central London solicitors, who would otherwise have had to undertake it themselves.

15. Insofar as Mr Orphanou's claimed fees are consistent with those rates and are otherwise reasonable, they have been allowed. I should add for the avoidance of doubt that that charges rendered on a percentage basis have been allowed only on the basis of reasonable time at a reasonable hourly rate.

Other General Points

16. Mr Orphanou explains that the Claimant partnership is no longer in practice or registered for VAT, in consequence of which it cannot recover VAT. I see no reason to dispute that, and I can allow VAT on the assessed costs.

17. I do not accept that the deployment of various fee earners by the Claimant was generally duplicative or disproportionate. Mr Orphanou explains that almost all the work was undertaken in fairly standard fashion by one grade A fee earner with support from various grade D fee earners (with very limited involvement at grade C, which I have in any case disallowed). There is nothing remarkable about that. Any real element of duplication is addressed in my detailed findings.

18. Nor do I accept that any of the grade A fees claimed by the Claimant should have been undertaken at grade B rates. The day-to-day work for the Defendants was undertaken by an experienced grade A fee earner with costs experience, and the Claimant was entitled to commit similar resources to the case.

19. I take the view that the claimed grade A hourly rates of between £350 and £395 are reasonable for central London solicitors working between 2021 and 2023 but I would allow the grade D time at the £140 per hour proposed by the Defendants.

20. Turning to the detailed comments on the Claimant's two costs schedules, I shall follow the order of the parties' submissions, but this being a summary assessment I do not propose to provide detailed reasoning for every decision.

Schedule Dated 4 November 2022

21. Attendances on opponents: the Claimant's figures do not have to match the Defendants' records, but this does seem high. 4 hours are allowed at grade A, and one hour at grade D.

22. Attendances on others: Mr Orphanou has explained that the wide-ranging points raised by the Defendants justified liaison with a former/rejoining employee. Even so the time is beyond what can be allowed on the Standard Basis and would seem to reflect that the papers were not in good order (this is addressed in more detail below). I have allowed 4 hours at grade A and 30 minutes at grade D.

23. Documents: most of the grade A time is reasonable but as the Defendants say, there was no need for a Notice of Commencement. 5.3 hours are allowed at grade A.

24. I have disallowed the grade C time on the basis that it should not have been necessary, for the purposes of preparing detailed breakdowns, to undertake a separate exercise of collating records which should already have been sufficiently good order to allow the work to be done. Of the grade D time, I have disallowed time for working on the Replies (for which I have already allowed the grade A time in full).

25. I am sorry to say that I found the main e-bundle prepared for the November 2022 hearing to be of no real assistance. My 2,939 page copy has no bookmarks or index and the papers are not organised in any useful way. As I recall Mr Orphanou could not, in the course of the hearing, use it to take me to documents pertinent to the points of dispute under discussion. I am not satisfied that any real fee-earning, useful, analytical work went into the creation of that bundle and I do not believe that the bundle proved to be of any real value. Accordingly I have disallowed the preparation time.

26. I have allowed an hour for preparing a separate indexed bundle of orders, bills etc, which was in good order. I also think that some time by the grade D fee earner on the costs schedule was justified. Total grade D time allowed 1.5 hours.

27. Attendance at hearing: I agree with Mr Ahmud that Mr Orphanou should not have needed anyone with him, nor did the attending fee earner make any contribution to the proceedings. The court's findings on assessment are normally noted on the breakdowns or bills by cost advocates without further assistance from a third party. I

do not regard the transportation of boxes to court as fee-earning work, and in any event we were supposed to be working from electronic papers. Time for grade D attendance at and travel to the November 2022 hearing is disallowed.

28. Mr Orphanou's Fees: Mr Orphanou's pre-brief fees in this schedule total £6,375 which breaks down into £875 for preparing a detailed breakdown of a bill (fee note dated 2 September 2021), £3,000 representing five days' work reviewing files and preparing a brief detailed breakdown (fee note dated 20 June 2022) and £2,500 representing over 20 hours' work reviewing documents and preparing Replies to the Defendants' points of dispute (fee note dated 25 July 2022). There is a further brief fee of £3,000 for preparing for and attending the assessment hearing listed for 7 November 2022.

29. The fee of £875 is not disputed by the Defendants. The fee of £3,000 for preparing a revised schedule, following my judgment of 18 May 2022, is, unsurprisingly, disputed, and it may reflect additional work attendant upon the fact that, as Mr Orphanou had previously informed me himself, the Claimant's papers were not in good order. He says now that only a small part of the papers needed some organisation, but that is not what he told me in 2022. The Defendant has offered £1,875, which seems to me in all the circumstances to be a reasonable offer. I have allowed that figure.

30. The fee of £2,500 for preparing the Replies is discounted from over 20 hours at £200 per hour. That is a substantial discount, but I would in any case limit the hourly rate for that work to Mr Orphanou's non-advocacy rate of £150 and, as the Defendants say, 20 hours does seem too much. Again it may reflect some disorganisation in the Claimant's papers. Given that Mr Orphanou had already been through the papers to prepare breakdowns, and resolving the element of doubt as I must in favour of the Defendants, I can allow 12 hours at £150, which comes to £1,800.

31. As for the brief fee for 7 November 2022, the Defendant offers nine hours at £125. I have already explained why I consider that an inadequate rate for advocacy. As for time, normally I would be inclined to allow about a day's preparation but the preparation undertaken by Mr Orphanou was, unfortunately, of little assistance at the hearing itself. I have already referred to his inability to locate documents relevant to the points of dispute, and there appeared to be a disjunction between the papers he was working from and those that had been provided to the court. I appreciate that it did not help that the Defendant was working from yet another set of papers, but that is not really to the point. Mr Ahmud is right in saying that the hearing moved too slowly due to Mr Orphanou's difficulties in locating documents. I can allow only the total of nine hours offered by the Defendant, for a total fee of £1,800.

32. Court Fees: The Defendants take issue with a court fee of £1,192 paid by the Claimant. The Defendant say that no court fee should be payable on a common law assessment as between solicitor and client. I am unaware of any such principle. When a request for assessment is filed, a fee is required by the Civil Proceedings Fees Order 2008. I see no reason why this fee should not be recovered and it is, accordingly, allowed.

33. Disbursements: I agree with the Defendants that courier fees and unspecified travel costs, presumably incurred by the fee earner attending the hearing whose fees I have

already disallowed, are not recoverable.

Statement of Costs Dated 23 May 2023

34. Attendances on Opponents: I find it difficult to see how so much time could have been spent at this stage. 2.5 hours allowed at Grade A.

35. Attendances on Others: Again, I am somewhat at a loss to understand how 5.9 hours of time could have been spent at grade A and 1.7 hours at grade D in liaison with Mr Orphanou in relation to Points of Dispute that would surely have been reviewed in detail before. Mr Orphanou says that it was necessary to spend time liaising with fee earners, but the file record should generally have been adequate to answer any questions. Given that at least some work would be necessary, I can allow 2.5 hours at grade A.

36. Documents: Again, I regard most of the grade A time as reasonable but I would have to disallow "case consultations". 3.6 hours allowed. At grade D, again I would have to disallow "case consultations". I find it difficult to understand the volume of time spent at Grade D on the bundle for May 2023 (which I have allowed in full at grade A). I can allow 2.5 hours at grade D for working on the bundle and the costs schedule. I agree with the Defendants that the cost of filing the bundle is irrecoverable.

37. Attendance at Hearing on 23 May: I would have to disallow all time claimed for travel and attendance by a Grade D fee earner for the same reasons as they have been disallowed in relation to the hearing of 7 November 2022. Travel expenses have been disallowed for the same reason.

38. Mr Orphanou's Fees: Mr Orphanou has charged £2,100 for going to the Claimant's offices, going through documents and preparing for a detailed assessment hearing. His fee for the hearing on 23 May, which was listed for ½ day, is £1,500.

39. As before, I have difficulty in understanding quite why Mr Orphanou would have needed to spend so much time at the Claimant's offices. I can understand that there must have an element of additional preparation following the adjournment of the hearing from November, but I cannot allow more than five hours at the advocate's rate of £200 per hour, which comes to £1,000. The brief fee seems to me to be entirely reasonable: the ground had shifted and the arguments on 23 May were all about the costs of assessment, and interest. £1,500 allowed.

Proportionality

40. In accordance with *West v Stockport NHS Foundation Trust* [2019] EWCA Civ 1220, proportionality falls to be considered after costs have been assessed on the basis of reasonableness.

41. The Claimant has kindly corrected my original calculation and supplied a calculation of the total costs as assessed with which I agree, save for the inclusion of VAT on Mr Orphanou's fees. Judging from his fee notes Mr Orphanou is not registered for VAT.

42. Allowing for that adjustment, the total sum awarded is £20,628.40 of which £1,764.40 is VAT (on solicitors' costs only). Bearing in mind CPR 44.3(5), that is not a disproportionate figure. This case was complicated at the assessment stage by the Defendants pursuing detailed and wide-ranging points of dispute which, if the case had not settled when it did, would probably have taken up four days of court time. Some of that might have been attributable to the management of the Claimant's case, but the point stands.

43. I should add that the level at which the Claimant finally settled its claim against the Defendants for unpaid fees has nothing to do with the quantification of the cost of assessment. The Claimant is not to be penalised for achieving a commercial settlement. Nor is the level of the Claimant's outstanding, unpaid fees to the point. The Defendants put the whole of the Claimant's fees to the test.

Interest

44. On 4 January 2021 HHJ Hellman gave judgment for the Claimant in these terms: "The Claimants shall be entitled to Judgment upon the outstanding fees due… plus interest at the rate of 8% per annum, subject to a common law assessment by a Costs Judge…"

45. The Defendants take the position that interest runs from the date of that judgment in accordance with *Simcoe v Jacuzzi UK Group plc* [2012] EWCA Civ 137, but argues that I have a discretion to disallow post-judgment interest, and that I should do so on the basis of delay, first of 8 months in serving breakdowns, and second in (for the reasons explained in my judgment of 18 May 2022) preparing them wrongly, engendering a further delay of 10 months.

46. The Defendants further rely upon *Involnert Management Inc v Aprilgrange Ltd* [2015] EWHC 2834 (Comm) in arguing that interest should not in any event run until the point that the Defendants were able to quantify the amount claimed. The Defendant says that the breakdowns prepared by the Claimant in support of its bills justify substantially larger figure than the bills themselves, so that they were not in a position to do so until (in respect of one matter) 18 October 2021, and (in respect of the other) 12 July 2022.

47. The Claimant says that it is entitled to pre-judgment interest at the rate pleaded in the original debt recovery proceedings, but that it is for HHJ Hellman to determine questions of interest, not for a Costs Judge.

48. I agree with the Claimant on the second proposition. HHJ Hellman's order of 4 January 2021 referred one issue, and one issue only, to the SCCO. That was the assessment of the Claimant's bills as delivered to the Defendants.

49. HHJ Hellman's order also made specific provision for interest. It is not for me either to alter that interest provision or to purport to interpret it. A Costs Judge has limited jurisdiction under CPR 47 to disallow interest between opposing parties for delay in serving a Notice of Commencement or in filing a request for a detailed assessment hearing, but those provisions have no application to costs payable between a solicitor and a client, nor does HHJ Hellman's order purport to confer any such jurisdiction upon me.

50. *Involnert*, incidentally, has no application to this case. That is not just because it refers to costs between opposing parties and not to solicitor/client costs. I have already pointed out in my judgment of 18 May 2022 that a solicitor is perfectly entitled to produce, in support of a bill, a breakdown of costs that comes to a larger amount than the bill itself. It is the bill that is being assessed, and the breakdown is only a tool to assist the assessment. The amount being claimed remains the amount billed. The Defendants have always known exactly how much the Claimant was claiming. It was the pleaded outstanding balance of the Claimant's fees, plus interest.

51. I note that HHJ Hellman's order gives permission to apply in relation to a Part 36 offer made by the Claimant in the course of the substantive proceedings. It is a matter for the parties whether they wish to refer issues of interest back to HHJ Hellman. As I have said, they are not for me.

Further Accruing Costs

52. Directions for written submissions were given on 23 May 2023, with a view to saving the cost and expense of a further hearing.

53. I have received over 11 pages of submissions from the Defendants and over 17 pages of submissions in response from the Claimant, with a further claim by the Claimant for costs of £4,460 in preparing the submissions.

54. That is indicative of how costs have tended to accumulate in this case.

55. The Defendants have succeeded in reducing the Claimant's claimed costs of assessment by about 44%, from £36,281.47 to £20,628.40. That is a substantial reduction. On the other side of the equation, the offers made by the Defendants in their submissions on costs were inadequate and the Defendants' submissions on interest were to my mind entirely misconceived.

56. My provisional conclusion, as circulated with the draft version of this judgment, was that I should make no order as to the costs of preparing written submissions on costs, but to award a sum to the Claimant in respect of its submissions on interest.

57. Again, I gave the parties an opportunity to make submissions on that provisional conclusion and again, only the Claimant has responded. The Claimant reminds me that the Defendants gave no notice either to the court or to the Defendants that they would on 23 May be raising arguments about interest, and expressly invited the court to list with a time estimate appropriate to entertaining arguments about the incidence of costs. As it was, we ran out of time due to the Defendants taking a position on the incidence of costs that did (and in my view could) not succeed, and on interest that can reasonably be described as insupportable.

58. The cost of further written submissions could have been avoided altogether if the Defendants had provided a reliable time estimate and taken a more measured, informed approach to both costs and interest.

59. For that reason, I am persuaded that the Claimant ought to receive a reasonable sum to reflect the additional costs incurred as a result of the Defendants' approach. Based on the figures submitted by the Claimant, I assess that sum at £2,800 inclusive of VAT.

This brings the total costs of assessment, payable to the Claimant by the Defendants, to £23,428.40. I will make an order to that effect.