



Neutral Citation Number: [2020] EWHC 1310 (TCC)

Case No: HT-2020-000038

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**TECHNOLOGY AND CONSTRUCTION COURT (QBD)**

The Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: Wednesday 27<sup>th</sup> May 2020

**Before :**

**MR ROGER TER HAAR QC**

**Sitting as a Deputy High Court Judge**

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**Between:**

**PLATFORM INTERIOR SOLUTIONS  
LIMITED**

**Claimant**

**- and -**

**ISG CONSTRUCTION LIMITED**

**Defendant**

**AND BETWEEN:**

Case No. HT-2020-000070

**ISG CONSTRUCTION LIMITED**

**Part 8 Claimant**

**-and-**

**PLATFORM INTERIOR SOLUTIONS LIMITED**

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**Rupert Choat** (instructed through the **Licensed Access Scheme**) for the **Platform Interior Solutions Limited**

**Patrick Clarke** (instructed by **Brodies LLP**) for the **ISG Construction Limited**

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**APPROVED JUDGMENT**

**Covid-19 Protocol: This judgment will handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30am on Wednesday 27<sup>th</sup> May 2020.**

**Mr Roger ter Haar QC :**

1. In these two actions, I have previously delivered two judgments. In the first judgment, in Claim No. HT-2020-000038, I gave judgment in favour of Platform Interior Solutions Limited (“Platform”) in respect of its claim under Part 7 to enforce an adjudication decision. In the second judgment, in Claim No. HT-2020-000070 brought under Part 8, I refused to grant ISG Construction Limited (“ISG”) declarations challenging the adjudicator’s decision.
2. Thus in both actions Platform has been the winning party. I have made an order in each action that ISG should pay Platform’s costs on the standard basis.
3. I now have to carry out the summary assessment of Platform’s costs in each action, having received written submissions from both parties.
4. In respect of the Part 7 Claim, the amount claimed in the Statement of Costs is £50,661.10, and there is an additional claim for £2,625 for work done after 20 April 2020. In respect of the Part 8 Claim, the amount claimed in the statement of Costs is £17,023, and there is an additional claim for £1,125 for work done after 24 April 2020.
5. There is a certain artificiality in the split between the two actions, since the work done in both actions was very much interrelated. I accept the submission of Mr. Choat for Platform that I should consider not only the component parts but also the amount claimed overall in the two actions.
6. The total amount claimed is £70,974.10, broken down into:  
  
(1) Drafting, Advice and Preparation Costs: £42,995.50;

(2) Brief fees: £22,500;

(3) Disbursements (issue fee, photocopying and BT conference call): £1,728;

(4) Additional costs: £3,750.

7. I have had placed before me not only Platform's Statements of Costs in both actions, but also ISG's. ISG's total costs for the two actions total £63,546. This figure does not include any costs incurred by ISG in the Part 7 claim after 20 April 2020 or in the Part 8 Claim after 23 April 2020. Thus the comparables are Platform at £67,224.10 and ISG at £63,546.

8. The fact that the costs are of the same order suggests that I should approach this assessment on the basis that Platform's costs are not prima facie excessive. In that context I have been referred to the judgment of Christopher Clarke L.J. in *Excalibur Ventures LLC v Texas Keystone Inc* [2015] EWHC 566 at [27] where he said:

"I accept that it is possible that the costs on both sides are unreasonable such that Excalibur's costs are no guide to what is an objective question. But a comparison between the costs of both sides is often informative."

9. What make the costs claimed by Platform somewhat unusual are two features: first that a very large amount of time was spent on the case by Platform's employees; and, second, that there is a claim in respect of the charges of a costs consultant.

10. The statements of costs claim a total of £5,149 in respect of 271 hours of in house time at £19 per hour. The rate is not challenged – it is the prescribed litigant in person rate. However, ISG says that the number of hours is excessive

and proposes 140 hours. In response Platform offers to accept 205.5 hours, being the mid point between the two positions. This seems to me to be a sensible proposal. This results in a reduction of £1,244.50.

11. That reduction must come from one or other of the budgets. As the bulk of the costs have been attributed by Platform to the Part 7 claim, it will be deducted from the times claimed in that action.
12. However, there is a second point: in addition to the time spent by Platform's in house team, Platform claims £37,870 in respect of the involvement of counsel in drafting, advising and preparation. ISG says that given the enormous amount of time put in by the in house team, these fees for counsel are excessive, particularly when taken together with the amount of £22,500 claimed for brief fees.
13. For my involvement in the two cases, I can see that extensive involvement of counsel was fully justified. The time claimed is substantial, but in my view is not disproportionate or unreasonable. I allow it in full.
14. The other item calling for comment are the fees of Longworth Consulting Worldwide Limited. These were claimed in a total sum of £15,240, but this has been reduced to £14,780 because Mr. Longworth of that company did not attend the hearing on 24 April as had been expected.
15. There is an argument of principle as to whether these Claim Consultant fees are recoverable.

16. Both parties have referred me to the decision of Jefford J. in *Octoesse LLP v Trak Special Projects Ltd* [2017] 82. For ISG, Mr. Clarke referred to paragraph [29]:

“(i) Where a litigant-in-person seeks to recover the costs of a consultant’s assistance, the relevant question is whether, in the particular instance, the consultant’s costs are recoverable as a disbursement.

“(ii) That question is answered by posing and answering the question whether those costs would have been recoverable as a disbursement if it had been made by a solicitor.

“(iii) Costs would be recoverable as a disbursement by solicitors if the work is such as would not normally be done by solicitors.

“(iv) But there nonetheless may be specialist assistance the cost of which would be recoverable.”

17. Both counsel referred to paragraphs [45] and [46]:

“45. In my judgment, costs incurred by claims consultants assisting a litigant in person will usually be recoverable on adjudication enforcement proceedings, assuming that the same consultants have represented the party in the adjudication. Given the particular aspects of adjudication to which I have referred and to which Edwards-Stuart J referred in *NAP Anglia*, such costs will usually fall within the meaning of disbursements in CPR Part 46.5(3)(a). The apparent acceptance of this recoverability in principle in proceedings in the Technology and Construction Court relating at least to proceedings arising out of adjudication reflects the knowledge and experience of those involved as to the scope of work normally carried out by solicitors and consultants in this scenario.

“46. In this particular case, the costs were incurred initially in defending Part 8 proceedings which went to the substance of the dispute in adjudication but it would, in my view, be unrealistic to treat these proceedings differently from enforcement proceedings brought by way of a summary judgment application. Had solicitors been instructed to conduct the litigation, it would have been both practical and normal for them to seek the assistance of those who had acted below and were familiar with the factual background, the conduct of the adjudication and the arguments that Octoesse had advanced. Those disbursements would, subject to assessment, have been recoverable following the decision in *NAP Anglia*.”

18. In my judgment, applying that guidance, the fees of the claim consultant in this case are recoverable: the procedures followed before the Adjudicator were somewhat unusual (not in any way the responsibility of the Adjudicator) and I do not think it would have been possible for Platform to put forward its case satisfactorily without the assistance of the person responsible for handling the adjudication.
19. Objection is taken to the amount of the charges claimed. Whilst on the high side, this does not surprise me since explaining what had happened and assisting Platform's lawyers was likely have been time consuming.
20. Accordingly I allow this claim in full (subject to the reduction mentioned above).
21. As to brief fees: these were almost the same for both counsel, and are allowed in full.
22. The result is that in the Part 7 claim I allow the amount claimed of £50,661.10 plus £2,625 (£53,286.10) less the reduction of £1,244.50 in respect of in-house time, giving a total of £52,041.60. In the Part 8 claim, I allow the costs claimed in full (£17,023 plus £1,125 = £18,148), less the sum of £460 in respect of claims consultant's costs giving a total of £17,688.