

Neutral Citation Number: [2021] EWHC 227 (Ch)

Case No: BL-2019-MAN-000085

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS IN MANCHESTER

BUSINESS LIST (ChD)

Date: 8 February 2021

Before :

HIS HONOUR JUDGE PEARCE

BETWEEN

MR AAMIR WALAYAT & OTHERS

Claimants

-and-

BERKELEY SOLICITORS LIMITED

(Trading as "HST Solicitors" and/or
"Truman Law Solicitors")

Defendant

-and-

MOHAMMED RAFAQAT LAL

Third Party

-and-

FORSETI LAW LIMITED

Fourth Party

-and-

MR SHAMIKH MOHAMMED
MUSTASUM

Fifth Party

Hearing: 2 February 2021

The **Claimant** did not appear but maintained a watching brief

DUNCAN HEATH (instructed by **the Defendant**) for the **Defendant**

GILES MAYNARD CONNOR (instructed by **Aticus Law**) for the **Third Party**

DAVID UFF (instructed by **OZON SOLICITORS LIMITED**) for the **Fourth and Fifth Parties**

APPROVED JUDGMENT

This judgment was handed down in private at 2pm on 8 February 2021. I direct that no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

His Honour Judge Pearce:

Introduction

1. The Defendant and the Fourth Party are both solicitors' firms. This litigation arises following the Claimants, who were at one time clients of the Defendant, transferring their business to the Fourth Party. The Defendant's case is that those transfers involved breaches of the Claimants' contracts with the Defendant; that the Defendant is entitled to recover outstanding fees out of damages recovered by the Fourth Defendant on behalf of the Claimants; and that it has suffered loss as a result of the unlawful acts of the Third Party, a former director of the Defendant who also operated a Claims Management Company, and the Fifth Party, a director of the Fourth Party, in diverting the business of the Claimants from the Defendant to the Fourth Party. I am unclear as to the extent to which the Claimants truly have a financial interest in the outcome of this litigation. I suspect that, as claimants for damages for personal injuries who approached solicitors through a claims management company, they are at best bemused and at worst horrified by the fact that they have become embroiled in this dispute between solicitors.

2. The litigation has been conducted with extreme ill temper, poor attention to procedural requirements and an apparent desire to complicate rather than simplify the issues. I have previously criticised the parties for this.
3. During the course of the hearing of the Fourth and Fifth Parties' application for an order setting aside the Defendant's Additional Claims against the Fourth and/or Fifth Parties (the "Relevant Additional Claims") heard on 2 February 2021 an issue arose as to court fee payable on bringing such claims. The Fourth and Fifth Parties disputed the court's jurisdiction in respect of the Relevant Additional Claims on service grounds and also sought an order setting aside such claims (although it might have been better worded as an order to strike out those claims) on the basis that they amounted to an abuse of the court's process. Part of the abuse of process argument turned on whether the fee paid by the Defendant on issuing the Relevant Additional Claims, £55, was in fact the correct fee.
4. Both the arguments based upon jurisdiction and those based upon abuse of process were unsuccessful for reasons that I gave in an oral judgment delivered on 2 February 2021. It is not necessary to repeat that judgment here, nor is this judgment intended in any way to be a gloss upon that judgment.
5. The Defendant's case was that it had paid the correct fee and, at paragraph 25 of her statement dated 18 January 2021, Ms Tamina Akram, a Director of the Defendant stated, "... *the Defendant was of the genuine belief that the correct court fee was Fee 1.5 of Schedule 1 of the Civil Proceedings Fees Order 2008. The court confirmed that this was not the correct fee but the fee should be £55 in line with Fee 1.6 of the aforesaid Fees Order.*" An investigation of the Court File showed evidence that the Defendant had indeed communicated with the court about the correct fee. Further communication with the Court Office during the hearing revealed that court staff believe £55 to be the correct fee, thereby not only corroborating Ms Akram's account of what she was told but also suggesting that £55 may indeed be the correct fee.
6. Having rejected the argument that, if the wrong fee was paid, the Defendant was guilty of an abuse of process, I reserved judgment on the narrow issue as to what was in fact the correct fee. This point had not been fully explored in skeleton arguments and more material came to light during the hearing as to

communications between the Defendant and the Court Office as set out above. I wanted to give the parties the opportunity to make further representations and myself the opportunity to consider the issue more closely.

7. The Defendant and Fourth and Fifth Parties have not chosen to make further representations and the other parties to this litigation have not made representations on this issue. Accordingly I decide the issue upon the basis of the oral and written representations made thus far. I am conscious that this has become a dispute that only directly affects the Defendant and Her Majesty's Courts and Tribunal Service ("HMCTS"). HMCTS has not been represented in this dispute but, as part of seeking to make good his argument as to abuse of process, Mr Uff on behalf of the Fourth and Fifth Parties has sought to advance all relevant arguments in support of the argument that, at least on the grounds of maximising revenue, HMCTS might have wished to advance.

The Issue

8. The issue is as to the amount of the fee is payable on bringing an additional claim against a person who is not already a party to proceedings, pursuant to CPR 20.2(1)(c). The relevant fees are set out in the Civil Proceedings Fees Order 2008 ("the 2008 Order"), as amended. Schedule 1 to the 2008 Order (which in fact was entirely substituted by amendment by virtue of the Civil Proceedings Fees (Amendment) Order 2014, and is hereafter called "the Schedule") provides:

"1.1 On starting proceedings (including proceedings issued after permission to issue is granted but excluding CCBC cases brought by Centre users or cases brought by Money Claim OnLine users) to recover a sum of money where the sum claimed...(i) exceeds £200,000 or is not limited" the fee is £10,000;

"1.5 On starting proceedings for any other remedy (including proceedings issued after permission to issue is granted): in the High Court" the fee is £528; and

"1.6 On the filing of proceedings against a party or parties not named in the proceedings" the fee is £55. The Schedule goes on to state, "Fee 1.6 is payable by a defendant who adds or substitutes a party or parties to the proceedings or by a claimant who adds or substitutes a defendant or defendants."

"1.7 On the filing of a counterclaim" the fee is "The same fee as if the remedy sought were the subject of separate proceedings."

9. CPR 20.2 provides:

“(1) This Part applies to –

(a) a counterclaim by a defendant against the claimant or against the claimant and some other person;

(b) an additional claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and

(c) where an additional claim has been made against a person who is not already a party, any additional claim made by that person against any other person (whether or not already a party).

(2) In these Rules –

(a) ‘additional claim’ means any claim other than the claim by the claimant against the defendant; and

(b) unless the context requires otherwise, references to a claimant or defendant include a party bringing or defending an additional claim.”

10. CPR 20.3 provides:

“(1) An additional claim shall be treated as if it were a claim for the purposes of these Rules, except as provided by this Part.

(2) The following rules do not apply to additional claims –

(a) rules 7.5 and 7.6 (time within which a claim form may be served);

(b) rule 16.3(5) (statement of value where claim to be issued in the High Court); and

(c) Part 26 (case management – preliminary stage).

(3) Part 12 (default judgment) applies to a counterclaim but not to other additional claims.

(4) Part 14 (admissions) applies to a counterclaim, but only –

(a) rules 14.1(1) and 14.1(2) (which provide that a party may admit the truth of another party's case in writing); and

(b) rule 14.3 (admission by notice in writing – application for judgment),

apply to other additional claims.”

11. The Relevant Additional Claims are claims against people who were not already parties to the action for remedies other than contributions or indemnity. It follows
 - (a) that they are additional claims to which Part 20 applies (see CPR 20.2(1)(b)); and
 - (b) that they are to be treated as a claim for the purposes of the CPR (save as provided in Part 20) (see CPR 20.3(1)).
12. The Relevant Additional Claims were issued without the Defendant stating a limit to their value. The Fourth and Fifth Defendants contend that the making of the Relevant Additional Claims falls within paragraph 1.1 of the Schedule, such that the fee payable is £10,000, there being no suggestion that any of the exceptions in paragraph 1.1 apply. The Defendant contends that bringing the Relevant Additional Claims falls within paragraph 1.6 such that the relevant fee is £55.
13. No one has sought to argue that paragraph 1.5 of the Schedule applies, even though that was the Defendant's original belief. In my judgment it clearly does not. If bringing the Relevant Additional Claims amounts to "starting proceedings" then those proceedings involve a claim to recover the sum of money and hence fall within paragraph 1.1 rather than 1.5. If they do not, paragraph 1.5 would not apply in any event. The real question is whether the Defendant's action amounted to "*starting proceedings*" or "*filing proceedings against the party or parties not named in the proceedings*".

The Competing Arguments

14. The Claimant relies upon the following:
 - (a) The belief of staff in the Court Office that £55 is the correct fee.
 - (b) The terms of Paragraph 1.5 of the Schedule. The Defendant contends that filing an additional claim against a non-party is properly described as, and indeed exactly meets the description of, "*filing proceedings against a party or parties not named in the proceedings.*"
 - (c) The terms of CPR20.3(2)(b), which disapplies the requirement in CPR16.3(5) to provide a statement of value where an additional claim is brought in the High Court, an obligation which otherwise would arise by virtue of CPR20.3(1).

15. The Defendant relies upon:
- (a) The documents EX50, entitled “Fees in the Civil and Family Courts – Main Fees” produced by HMCTS, which states on page 7:
“Counterclaims and additional claims
Money claims - the court fee payable (set out on page 5) is based on the value of the counterclaim or additional claims. If the original claim was issued in a court, the court issue fee applies.” This is clearly a reference back to the table that appears in Paragraph 1.1 of the Schedule.
 - (b) The terms of CPR 20.3(1) that *“an additional claim shall be treated as if it were a claim for the purposes of these Rules, except as provided by this Part.”* Since no exception is provided for the payable fees, the result of CPR 20.3(1) is that the additional claim should be treated as a “a claim” both for the purpose of the CPR itself and of the 2008 Order which is clearly intended to work in conjunction with the CPR.

Discussion

16. I can quickly dispose of the first point made by the competing sides. The fact that different parts of HMCTS have competing views on the correct fee payable is hardly a ringing endorsement of either side’s position. The statement in the EX50 that the fee payable is that provided by paragraph 1.1 of the Schedule, which has presumably been considered with some care before being published, is perhaps likely to represent a more considered position, though it has been suggested to me by the Court Office that their belief that the fees is that stated in paragraph 1.6 arises from the fact that this is the fee generated when one tries to issue Part 20 proceedings on CE-filing, which itself presumably is the result of some careful inputting. In any event, the two positions are contradictory, and neither is any more than an opinion on the relevant fee. Neither binds me and I do not consider it appropriate to be influenced by opinions the genesis of which I do not know.
17. The proper task for the court in this case is to apply principles of statutory interpretation to the 2008 Order, in particular that I should seek to arrive at the legal meaning of the enactment, that is to say the meaning that conveys the legislative intention.

18. The Defendant's argument that its interpretation should be preferred because no statement of value is required for the bringing of an additional claim is misconceived. The purpose of the statement of CPR 16.3(5) relating to including statements of value in a claim form issued in the High Court is not for the purpose of determining the correct fee payable under Paragraph 1.1 of the Schedule. If it were, the rule would require a more precise statement of value to reflect the determination of the relevant fee under Rule 1.1. Rather the rule is there to ensure that proceedings are not wrongly issued in the High Court. This can be deduced from:
- (a) The fact that the statements as to value required in a claim form issued in the High Court under CPR 16.3(5) exactly mirror the restrictions on issuing proceedings in the High Court set out in Paragraphs 2.1 and 2.2 of CPR PD 7B.
 - (b) The fact that one way to discharge the obligation to state a value under CPR 16.3(2), namely by way of statement as to what the Claimant expects to receive as set out in CPR 16.3(2) (which applies in County Court cases but is unnecessary in High Court cases because superseded by the obligation as to statement of value in CPR 16.3(5)), bears no close relation to the fees payable under the 2008 Order. For example, the statement that a Claimant expects to receive "*not more than £25,000*" which might be made to comply with CPR 16.3(2) would leave the person making the statement and the court little the wiser as to what fee was payable, since it straddles the first seven of the fees in Rule 1.1 of the Schedule.
19. The crux of the interpretation exercise here lies in looking at the wording of paragraphs 1.1, 1.6 and 1.7 of the Schedule in the light of CPR 20.2 and CPR 20.3. As I have indicated, the Relevant Additional Claims are "*additional claims*" within Part 20, therefore they are to be treated as a claim for the purposes of the CPR. The same is true of every counterclaim by a Defendant and every claim by a person joined as an additional party to the claim against any existing or any further party, by virtue of the terms of CPR 20.2(1). In so far as the person against whom the additional claim is by way of counterclaim against an existing party, the fee is expressly provided by Paragraph 1.7 of the Schedule and is the same as on issue of a claim for like amount. It would be indeed be strange if the fee

payable on issuing an additional claim against a new party was any different to this.

20. What seems more probable is that the terms of Paragraph 1.6 of the Schedule are aimed at a different situation altogether, that is to say the position where a new party is joined without new causes of action and/or claims being introduced (save in so far as they technically be new because of the change of the identity of the parties), the position typically covered by an application under CPR 19.4. This would be consistent with the statement in the Schedule that such fee is “*payable by a defendant who adds or substitutes a party or parties to the proceedings or by a claimant who adds or substitutes a defendant or defendants.*” So for example, the substitution of Personal Representatives on the death of a party, the addition of a party who is argued to be liable in the same way as an existing party or the substitution of a different party because a mistake had been made as to the identity of the party originally sued would fall within this rule. It is easy to understand why a lesser fee is charged in such circumstances. The issues that arise as a result of such addition or substitution are narrow in scope and merely seek to correct an error or a technical problem with the claim as originally framed. In comparison, an additional claim almost by definition requires the court to look at new issues, just as a new counterclaim does.

Conclusion

21. The wide wording of paragraph 1.6 of the Schedule might give the impression that it is intended to cover additional claims. However, the qualification to the fee couple with the express wording of paragraph 1.7 of the First Schedule to the 2008 Order (in respect of counterclaims) together with the general statement in CPR 20.3(1) that additional claims are treated as claims make it far more probable that the legislative intention was to deal with the different circumstances contemplated in paragraph 20 above.
22. For these reasons, I conclude that the correct fee payable is that set out in paragraph 1.1 of the Schedule, which in the context of an additional claim which is unlimited generates a fee of £10,000. I shall make a declaration to that effect and, require the Defendant to pay the the outstanding balance of that sum as a condition of continuing to pursue the Relevant Additional Claims.

23. No other consequential matters arise from this judgment. All issues as to costs and other consequential matters were dealt with on 2 February 2021 and in the order to be made following that hearing.