



Neutral Citation Number: [2023] EWHC 130 (Comm)

Case No: CL-2022-000133

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/01/2023

Before :

Christopher Hancock KC
Sitting as a Judge of the High Court

Between :

- (1) HANGZHOU JIUDANG ASSET
MANAGEMENT CO LIMITED**
- (2) HANGZHOU BIAOBA TRADING CO
LIMITED**

Claimants

- and -

KEI KIN HUNG
(a Protected Party by Zhu Lei his litigation friend)

Defendant

Hugh Miall (instructed by PCB Byrne LLP) for the Claimants
George Hayman KC (instructed by Zhong Lun Law Firm) for the Defendant

Approved Judgment on Costs

This judgment was handed down remotely at 10.30am on 26 January 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg <https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html>).

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Christopher Hancock KC :

Introduction and factual background.

1. In this action, the Claimants initially sought (before an amendment to their Claim Form and Particulars of Claim referred to below):
 - (1) Under the Huangzhou Jiudang Asset Management Judgment (the “**HJAM judgment**”), HJAM claimed:-
 - i. RMB 21,412,450 (£2,552,042.85) by way of principal under the HJAM loan;
 - ii. RMB 17,889,743.81 (£2,132,189.12) contractual interest at 24% per annum to 22 March 2022;
 - iii. RMB 24,150 (£2,878.32) service fee liability; and
 - iv. RMB 27,616,707.39 (£3,291,497.27) default interest to 22 March 2022.
 - (2) Under the Huanzhou Bioaba Trading Judgment (“the **HBT judgment**”), HBT claimed:-
 - i. RMB 39,000,000 (£4,648,215.00) by way of principal;
 - ii. RMB 35,574,301.37 (£4,239,977.11) contractual interest at 24% per annum to 22 March 2022;
 - iii. RMB 200,000 (£23,837.00) legal costs; and
 - iv. RMB 33,510,750 (£3,993,978.74) default interest to 22 March 2022.
2. Since issuing these proceedings and since obtaining a freezing injunction (made on 8 April 2022 by Fraser J), the Claimants have (by the first witness statement of Mr Ractliff dated 31 May 2022), accepted that their claims in respect of default interest were overstated and now claim default interest at the rate of 0.0175% per day rather than 0.175%. Formal amendments to the Claim Form and Particulars of Claim to reflect this concession were proposed shortly before the substantive hearing, and these amendments were not opposed. This reduces the default interest sum from £7,285,476.01 to £721,035.05 overall.
3. Judgment in this matter was handed down on 19 December 2022. In that judgment, I found in favour of the Claimants and gave summary judgment.
4. Following that judgment, the parties have made written submissions as to costs, both of the summary judgment application and the action. In more detail:
 - (1) The Claimants claim costs of the summary judgment application in the amount of £50,780, to be assessed on a summary basis.

- (2) The Claimants ask for the costs of the action, with those costs to be the subject of detailed assessment.
- (3) The Claimants ask for an interim payment on account of the costs of the action, in the amount of £133,000.

Costs of the summary judgment application: Principles.

5. There was no dispute between the parties as to the governing principles. Costs should follow the event, as a matter of general principle. Here, the Claimants submitted that the event of the summary judgment application was clear, since I awarded summary judgment.
6. The Defendants, for their part, did not differentiate in their submissions between the costs of the application and the costs of the action. Instead, they submitted that the Claimants did not succeed on the whole of their claim, because they had been forced to acknowledge that the claim had been significantly overstated, as I note above. Because of this, the Defendants argued, I should make a costs of issues order reflecting the fact that the Defendants had won on a significant point, which had led to wasted costs, since the Defendants had had to obtain Chinese law evidence to deal with the point, in the form of the report of Mr Lei Yang.
7. I have no evidence as to the costs of instructing Mr Yang, but in any event I would regard this as a point which would fall for consideration in due course by a costs judge as part of the taxation of the costs of the action. Since the point was abandoned prior to the hearing, as I noted in the judgment, and an amended pleading was produced to reflect this, meaning that no time at all was spent at the hearing of the application on the point, I do not think that any reduction should be made to the claim for costs of the application. Whether a costs judge feels that a reduction should be made in due course in relation to the detailed assessment is not a matter for me at this stage.
8. Overall, I conclude that the Claimants were wholly successful on the summary judgment application, and that they should recover all their reasonable costs of that application.

Quantum.

9. I turn therefore to the question of quantum. The Defendants raised two points under this heading. The first was that it was not reasonable to have three fee earners at the hearing of the application; the second that it was not reasonable to have a Grade A fee earner review the judgment. I conclude that these are fair points, and would therefore reduce the quantum of the Claimants' costs by £3000.
10. Overall, I conclude that the Defendant should pay a total of £47,780 to the Claimants within 14 days of the making of the order which will follow on this judgment.

Costs of the action: issues of principle.

11. I start again with the fact that there is no dispute of principle as to costs. The Claimants have succeeded in the action and, on the face of things, should obtain their costs.
12. The Defendant's response is that the Claimants' claims were significantly overstated, because of their miscalculation of default interest. This is clearly correct. However, in my judgment, the fact that a claim is overstated and thereafter reduced is not the governing question in relation to issues of costs. The real issue is the extent to which costs were wasted because that issue was raised.
13. I do not have the evidence before me to reach a proper judgment on this, whilst the costs judge will. Accordingly, I take the view that this is not a matter for me at this stage. All I therefore order is that the Defendants are to pay the Claimants' costs of the action, to be the subject of a detailed assessment if not agreed.

Interim payment.

14. This leaves the question of the amount of any interim payment. Under CPR 44.2(8) I should order the payment of a reasonable amount on account of costs.
15. The important point for my purposes is that I should be satisfied that the amount of any interim payment should enable the costs judge to be sure that there has been no overpayment pursuant to my order when costs are being finally assessed. The amount in the costs schedule served by the Claimants is about £221,500.
16. The Defendants argue that any interim payment I award should relate to no more than 70% of this, relying on their argument that the fact that the Claimants did not recover all of the amount initially claimed in support of this argument. I have already indicated that I regard this argument as one for the costs judge, having regard to any evidence of costs wasted by reason of what was clearly a mistake. For my part, I very much doubt that 30% of the costs of the action were due to this mistake.
17. In addition, the Defendants raised a number of specific points, as follows:
 - (1) The costs associated with the amendment of the Particulars of Claim due to the mistake as to default interest should be payable by the Claimants in any event. I accept this point.
 - (2) Certain items of work were of marginal relevance. Again, this is a matter for detailed assessment.
 - (3) Details of work done are insufficient. Once again, this is a matter for detailed assessment.
 - (4) Ms Eason's charge out rate is clearly wrong. This point has been explained, but I regard it as a point for detailed assessment.

18. Doing the best that I can, I have concluded that an appropriate interim payment would be about 50% of the amount claimed, or £110,000. In my judgment, this clearly leaves a margin for error sufficient to enable the costs judge to deal with matters fairly without placing the Defendants at risk.