



Neutral Citation Number: [2023] EWHC 729 (SCCO)

Case No: CL 1605782
SC-2020-BTP- 000969

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 30/03/2023

Before :

Costs Judge Leonard

Between :

Naim Lone
- and -
Michael Petrou

Claimant

Defendant

The Claimant in Person

V.A. Orphanou (instructed by **Rose Samuel Odele LLP**) for the **Defendant**

Approved Judgment
On Written Submissions

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. The long history of these detailed assessment proceedings is set out in my judgment of 22 December 2022. In brief, this court has fully addressed two substantive matters. The first was the detailed assessment, as between solicitor and client, of a bill of costs delivered by the Claimant to the Defendant on 5 July 2016. The second was the detailed assessment of the Defendant's costs, as awarded against the Claimant by Mr Justice Williams on 17 February 2020, when Williams J refused the Claimant's application for permission to appeal against the outcome of a detailed assessment hearing before me on 29 and 30 June 2017.
2. All of the outstanding issues on both assessments were addressed in a hearing on 19 May 2022, at the conclusion of which I made an order recording a mixture of court decisions and agreed outcomes, and which provided for the release to the Defendant of £78,528.03 (plus accrued interest) then held by Lester Aldridge on behalf of the SRA.
3. Events since then are set out in some detail at paragraphs 51 to 77 of my judgment of 22 December 2022, but the key events can be summarised briefly as follows.
4. The Claimant, on Friday 24 June 2022, filed a "without notice" application for a stay of my order of 19 May pending the hearing of an appeal against that order or the conclusion of proceedings brought by him against the Defendant in the County Court at Bromley, whichever should be the later.
5. On Monday 27 June I dismissed that application without a hearing. My order incorporated my reasons for dismissal and a provision to the effect that either party could apply by letter or email, within 7 days of service upon them, to set the order aside or vary it.
6. In accordance with that provision the Claimant applied by email to set the 27 June order aside, and also intimated by email that he sought my recusal. A hearing was listed for Monday 1 August 2022 to address both applications.
7. On Thursday 28 July 2022, one clear working day before the hearing, the Claimant notified the court by email that he would not be pursuing either of the applications listed for 1 August. This was the second occasion upon which the Claimant withdrew an application for me to recuse myself (paragraphs 30-38 of my judgment of 22 December 2022 refer to the first application, made in 2020).
8. On 1 August 2022 I made an order recording the withdrawal of the Claimant's applications and giving directions for the parties to file and serve any submissions they wished to make in relation to the award and quantification of the matters listed for hearing on 1 August, to be determined without a hearing. Submissions were to be filed and served by 22 August and responses by 5 September.
9. The order of 1 August also incorporated a provision to the effect that either party could apply, within 7 days of service upon them, to set it aside or vary it. No such application was made within the seven-day period.
10. The parties filed submissions on 22 and 23 August, but the Claimant then renewed his demands that I recuse myself. On 5 September he filed a formal application for me to

recuse, and for a stay/variation of my order of 1 August to extend time for replies to the parties' filed submissions until the later of my recusal, or the conclusion of an investigation by the Ministry of Justice "into the Master's dealings since June 2017".

11. On 22 December 2022 I handed down judgment on both applications and made an order dismissing both as totally without merit.
12. My order incorporated a revised timetable providing for the parties to file and serve any replies to the costs submissions filed and served in August 2022, and for the filing and service of further submissions and replies in relation to costs of the applications dismissed on 22 December 2022, with the court then to determine those issues.
13. This judgment represents that determination.

The Hearing of 1 August 2022

14. In relation to the hearing of 1 August 2022, neither party has added anything of substance to the submissions filed on 22 and 23 August 2022. The Defendant claims his costs of the abortive hearing. This breaks down into £2,750 plus VAT (totalling £3,300) for solicitors and £2,375 for counsel, on which no VAT is claimed. The work for which these costs are claimed includes a 3.5 hour conference on 4 July and a brief fee for the hearing itself, agreed at £1,500 but reduced to £750 (presumably in the light of the cancellation of the hearing).
15. The Claimant's submissions mostly address the recusal application which has already been fully addressed in my judgment of 22 December 2022. I have however been able to extract from his submissions four lines of argument about the costs of the hearing listed for 1 August 2022.
16. The first is that the stay application of 24 June 2022 had first been made to the appellant court, pending the Claimant's appeal against my order of 19 May and the hearing of a claim by the Claimant against the Defendant in the County Court at Bromley. The point was to prevent the dissipation of the £78,528.03 and interest which was to be released to the Defendant under the terms of my order of 19 May. The application was only brought back by him to this court because the appellate court had not processed it promptly or properly.
17. The appellate court responded to the application on 28 July 2022, when Mr Justice Eyre refused a stay, with provision for the Claimant to make a further application. At that point the Claimant immediately notified the SCCO and the Defendant that he would no longer pursue any applications in this court. None of this was the Claimant's fault.
18. The second is that as the Defendant had not made any formal application for his costs of the Claimant's withdrawn applications or filed any evidence in support of his claim for costs, he should not be awarded costs.
19. The third is that, the Defendant's solicitors having indicated to the court by email timed at 11.41 on 29 July 2022 that they would await the court's "confirmation and/order", the Defendant should be taken to have agreed to the hearing of 1 August being vacated with no order as to costs, and should be held to that agreement.

20. The fourth is that the Defendant's solicitors are being dishonest in claiming costs in relation to the hearing listed for 1 August. If they had incurred such costs, he says, they would not have sent the email timed at 11.41 on 29 August. They must be lying about having held a conference with Counsel. They should be ordered to pay costs.
21. I have, in the course of preparing this decision, noticed that in emails sent to the court on 28 And 29 July 2022 the Claimant also appears to have been asserting that he had not made any "formal" application either for recusal or stay, so that there were no applications before the court at all.
22. None of these points seem to me to stand up to examination, for these reasons.
23. Taking the last point first, my order of 27 June 2022 specifically provided for the parties to apply to set it aside by letter or email, and that is what the Claimant did. That is why a hearing was listed, and why the usual costs consequences must follow.
24. As for the recusal application, established authority provides that such an application should be made under CPR 23 but may be made informally. The Claimant was advised on my direction on 30 June 2022 that his recusal application should be made under CPR 23, but (at that time) he chose not to do so. It does not follow that no application had been made, or that it can have no costs consequences.
25. Returning to his submissions, the Claimant is responsible for the applications he makes, and for the consequences. My primary reason for dismissing the stay application on 27 June was that the same application had already been made to the appeal court. It was not appropriate to make a parallel application to this court. If the application was urgent, it was for the Claimant to persuade the appeal court to deal with it urgently. He chose instead to make a without notice application to this court and then refused to accept its dismissal, with the result that his application had to be listed to be heard on notice to the Defendant. He is responsible for the consequences.
26. That aside, if any party makes an application and withdraws it that party can expect, in the normal course, to be responsible for the reasonable costs of an opponent responding to that application. I cannot say whether there is any merit in the Claimant's criticisms of the appellate court, but even if there is it does not follow that his opponent should be deprived of any costs incurred in responding to his application before its late withdrawal. Nor is there any requirement for the opponent to make a separate application for costs or to file evidence in support of the costs claimed.
27. In my judgment of 22 December 2022 I set out the sequence of events on 29 July 2022. I initially took the Defendant's solicitors' first email at 11.41 on 29 July to mean that they were not going to claim any costs of the abortive hearing, but they made it clear by a further email (sent at 1.56 pm) that that was not what they had meant. Their first email should have stated clearly that they would not agree to the hearing being vacated without consideration being given to their costs. They had nonetheless every right on behalf of the Defendant to claim any costs reasonably incurred as a result of the Claimant's withdrawn applications, and the misunderstanding was quickly corrected. If the Defendant or his solicitors on his behalf had expressly waived any such right that would be a different matter, but they did not.

28. As for the allegations of dishonesty made by the Claimant against the Defendant's solicitors, these are without any foundation in evidence or for that matter in basic logic. The proposition that the Defendant must be lying about consulting counsel (who had represented the Defendant throughout these proceedings) in relation to an attempt by the Claimant to prevent the release to the Defendant of a sum in excess of £78,000, is patently insupportable.
29. For those reasons, it is in my view right to award to the Defendant his reasonable costs of the abortive applications listed for 1 August 2022.
30. Those costs fall to be assessed summarily in accordance with CPR 44.6. Whilst the Claimant has made no further submissions in relation to the quantum of the Defendant's costs, as this is a summary assessment I must take my own view, and allow only what is reasonable and proportionate.
31. The Defendant has filed with his submissions and served upon the Claimant a schedule of costs summarising time in much the same way as does standard form N260. It comes in total to £2,750 plus VAT (£3,300) for the Defendant's solicitors and £2,375 for counsel.
32. I will offer some brief observations upon that schedule, and my conclusions.
33. The Claimant's set-aside application and recusal application together were listed on 1 August 2022 for only one hour. Bearing that in mind, the costs claimed do seem high.
34. I understand that the Claimant's conduct, as recorded in my judgment of 22 December, will necessarily, have added to the time needed to deal with the matter. There is also the fact that the original stay application and exhibits run to some 82 pages.
35. I do, nonetheless, find the Defendant's solicitors' total claim for document time (5 hours) to be too high to be recoverable in full. Similarly, the 3.5 hours claimed for a conference on 4 July (2 hours with the client and another hour and 30 minutes with solicitor and counsel) seems very high for what was in issue. It seems likely that the time claimed must have incorporated a review of some wider issues, falling outside the strict scope of the applications in respect of which I have awarded costs to the Defendant. Of the £2,750 plus VAT claimed for solicitors' fees, I can allow £1,900 plus VAT: a total of £2,280.
36. Counsel claims his time working on papers at £250 per hour, with no claim for VAT. This includes 3 hours 30 minutes for the conference on 4 July (£875) with 3 hours' travel time (£750). I can accept the travel time, because counsel appears to have travelled to the Defendant's solicitors' office for a telephone conference with the client, whom I understand be based in Cyprus, and his claimed travel time is consistent with the likely travel time from his premises to theirs. As I have said, I find the conference time itself too high to be fully recoverable. I can allow £500 for counsel's fees for the conference and £750 for travel time.
37. Counsel's brief fee of £1500 for a one-hour hearing on 1 August 2022 (albeit halved to £750 on the cancellation of the hearing) again, seems rather high. I would allow an abated fee of £500.

38. Counsel's fees as allowed, accordingly, total £1,750 and the Defendant is awarded the costs of the abortive hearing of 1 August 2022 in the total sum of £4,030.

The Formal Recusal and Further Stay Applications of 5 September 2022

39. As noted above, these applications were heard on 20 October 2022, and on my handing down a reserved judgment on 22 December 2022, dismissed as totally without merit.
40. The Defendant has filed a costs schedule in form N260, asking for the costs of the applications to be awarded to the Defendant and assessed on the indemnity basis.
41. The Claimant has not filed any further costs submissions in response to my order of 22 December. He has instead sent to the court what is described as a response to my order of 22 December 2022 (inaccurately described as an order of 29 December 2022). The response document reprises the allegations of bias addressed in my judgment of 22 December 2022 and his threats to sue the Ministry of Justice, and announces his intention to appeal.
42. The Claimant has also sent to the court a copy of an email dated 25 January 2023 addressed to the Defendant's solicitors and attaching an order of Sir Stephen Stewart dated 8 December 2022. That order stays my order of 29 May 2022 until the determination of the Claimant's appeal (for which, it would appear, permission has yet to be given).
43. The Claimant appears to assert (at least to the Defendant) that it follows that I should now recuse myself. He does not say how Sir Stephen Stewart's order of 8 December might have any bearing upon the issues I considered and the conclusions I reached in my judgment of 22 December, and to my mind it has none.
44. The Defendant is applied for the Claimant to pay the costs of the 5 September 2022 application on the indemnity basis. The test for awarding costs in the indemnity basis is whether the conduct of a party is such as to take the situation "out of the norm" in a way which justifies an order for indemnity costs (*Excelsior Commercial and Industrial Holdings Ltd* [2002] EWCA Civ 879).
45. It will be evident from the facts set out in my judgment of 22 December 2022 that the Claimant's conduct has taken this case are well out of the norm. By way of example, in that judgment I recorded his repeated attempts to dictate the court's listing process and his repeated refusal, over a period of years, to comply with CPR 39.8, both of which wasted a great deal of court time; his deliberate discourtesy to the court and to the Defendant's legal representatives; and his practice of making groundless allegations of dishonesty against those legal representatives.
46. Particularly pertinent for present purposes is the fact that the Claimant, having withdrawn his first two applications for me to recuse myself and accepted directions for the resolution of the costs issues arising from the abortive hearing of 1 August 2022, abruptly reversed his position to make yet another application for stay and recusal which I found to be totally without merit, engendering unnecessary delay, wasted court time and wasted costs.

47. For those reasons, I have no doubt that it is appropriate to award the costs of the 5 September 2022 application to the Defendant, to be assessed summarily on the indemnity basis. It does not follow that the Defendant receives all his claimed costs by default. Even on the indemnity basis, they must have been reasonably incurred and must be reasonable in amount. On the indemnity basis there is however no consideration of proportionality (which, on the figures I am about to mention, would not in any case be an issue) and any doubt as to whether costs were reasonably incurred or reasonable amount must be resolved in favour of the receiving party.
48. The costs schedule filed by the Defendant's solicitors comes to £3,168. Of that, £750 is Counsel's fee for appearing on the application. The remainder represents the Defendant's solicitor's costs of £2,015 plus VAT, totalling £2,418.
49. Counsel's fee seems self-evidently to be reasonable and I can allow it in full. The solicitor's document time at 4.6 hours seems to me however to be too high to be recoverable in full. Attendances on the client and the opponent seem reasonable, but "attendance on others" is also very high at 2.2 hours. I can allow a total of 6 hours, which comes to £1500 plus VAT, totalling £1800.
50. The total awarded to the Defendant in relation to the cost of the application of 5 September 2022 is, accordingly, assessed at £2,550.