



Neutral Citation Number: [2023] EWHC 321 (KB)

Claim No: QB-2022-002264

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London WC2A 2LL

Date: 7 December 2023

Before:

HIS HONOUR JUDGE PEARCE
(Sitting as a Judge of the High Court)

Between:

AB

Claimant

-and-

MICHELLE SPICER

Defendant

Approved Judgment

His Honour Judge Pearce:**INTRODUCTION**

1. On 19 October 2023, following the hearing of an application to commit the Defendant to prison for breach of an order of HHJ Simpkins dated 26 July 2022, I made a suspended committal order against the Defendant. I also made an indemnity costs order against her in respect of the Claimant's costs. However, due to some confusion about the amount of costs sought, I directed that an updated composite costs statement be served, that the Defendant have the opportunity to respond with written submission (with a right of reply to the Claimant) and for a determination of such costs without a hearing.
2. The Claimant has duly filed a composite statement dated 17 October 2023. The Defendant has filed written submissions by email. (The submissions should have been filed on CE filing so that the court file has a record of them; in fact they were simply emailed to me.) The Claimant has not filed submissions in response.
3. This is my written judgement on the assessment of those costs.

THE LAW

4. The relevant law is not in dispute. The Claimant's costs of the case are to be assessed on the indemnity basis and accordingly the court will not allow costs which have been unreasonably incurred or are unreasonable in amount, any doubt as to which is to be resolved in favour of the receiving party, the Claimant (CPR44.3). By virtue of CPR44.4, the court should bear in mind "*all the circumstances*" and should have regard to:

“(3)(a) the conduct of all the parties, including in particular –

(i) conduct before, as well as during, the proceedings; and

(ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;

(b) the amount or value of any money or property involved;

(c) the importance of the matter to all the parties;

(d) the particular complexity of the matter or the difficulty or novelty of the questions raised;

(e) the skill, effort, specialised knowledge and responsibility involved;

(f) the time spent on the case;

(g) the place where and the circumstances in which work or any part of it was done; and

(h) the receiving party's last approved or agreed budget."

GENERAL MATTERS

5. The order for indemnity costs was made in this case not because of any particular feature of the way that the litigation was conducted but rather because of the underlying conduct that gave rise to the applicant and the subsequent suspended order of committal.
6. The circumstances of the Defendant being in breach of the order of HHJ Simpkins can be seen in my judgment on the application to commit and need not be repeated here. It was in broad terms a fairly standard such application within the range of such cases in the King's Bench Division. The issues were clearly of importance to both the Claimant and the Defendant, but involved no particular complexity. However I have no doubt that the serious consequences of the Defendant's behaviour on the Claimant, dealt with in my earlier judgment, have led to a situation in which more attendance was required than might have been expected, having regard to the need to take her detailed instructions on the various issues.
7. As to the conduct of this litigation, the only serious criticism that could be made of the conduct of the case by the Defendant was her late admissions - they were not made until the door of court, a factor reflected in the length of the suspended sentence of imprisonment.
8. As regards other factors, the Defendant makes the point that the Claimant is based in Sussex and has used solicitors with Sussex offices where all of the Grade A fee earners are based. The Defendant contends that the Claimant's time costs should be calculated by reference to the "National 1" Guideline Hourly Rates within the Guide to the Summary Assessment of Costs, that is:
 - a. Grade A - £261
 - b. Grade B - 218

- c. Grade C- £178
 - d. Grade D - £126
9. I bear in mind the comments of Males LJ in Samsung Electronics v LG Display [2022] EWCA Civ 466: “*If a rate in excess of the guideline rate is to be charged to the paying party, a clear and compelling justification must be provided.*” No such reasons have been provided here. In my judgment, the use of figures in excess of the National 2 rate is unreasonable and the costs recoverable *inter partes* should be limited to that band. Where, as in the case of some of the Graded D work, the fee claimed is below the Guideline Hourly Rate, the actual amount charged should be used to reflect the proper application of the indemnity principle.

THE DETAILS OF THE CLAIM

10. Turning to the detail of the costs statement, there is appended to this judgement a table containing the amount claimed for various items of work and the amount allowed, all figures being net of VAT.
11. In coming to the figures in the table, I make the following comments:
- a. Personal attendances on Claimant. The Defendant contends that the attendances are excessive. I am not persuaded that this is probably the case and therefore allow the hours claimed.
 - b. Attendances on Defendant. These hours are not disputed. They appear reasonable to me.
 - c. Attendances on others. The Defendant contends that, given the lack of reliance on other witnesses, the amounts claimed are excessive. I agree that, even having regard to how any doubt should be exercised, these figures do appear unreasonable. I have reduced the claim to reflect fewer hours.
 - d. Attendances at hearings. The Defendant contends that the attendance of both a Grade A and a Grade B fee earner at the hearing is unreasonable. I agree and allow only the Grade B fee earner, who it appears from other parts of the Costs Statement prepared for one or both hearings.
 - e. Working on statement, A total of 25.5 hours is claimed. I agree that this is unreasonably high and substitute the lesser total of 18, spread across the fee

earners. However, I do not include in that figure any element for the incident log of the Defendant's behaviour which I allow separately below.

- f. Working on application notice. This is not disputed and I allow the hours claimed.
 - g. Working on N260. This is not disputed and I allow the hours claimed.
 - h. Working on instructions to counsel. This is not disputed and I allow the hours claimed.
 - i. Working on contempt application. This is not disputed and I allow the hours claimed.
 - j. Working on incident log. As I have identified above, I allow this as a separate item, having reduced the work on the witness statement to reflect this. I do not consider the hours claimed to be unreasonable and allow them
 - k. Working on preparation for hearing and review of documents. This is not disputed and I allow the hours claimed.
 - l. Working on bundle. The bundle was not of the highest quality. I would allow 3 hours spread between the two fee earners.
 - m. Working on draft orders. This is not disputed and I allow the hours claimed.
 - n. Counsel's' fees. These are not disputed and I allow the amounts claimed.
 - o. Court fees. These are not disputed and I allow the amounts claimed.
 - p. Process server fees. These are not disputed and I allow the amounts claimed.
12. The amount allowed net of VAT is therefore a total of £28,839.80. On the assumption that VAT is chargeable at 20% on everything apart from Court fees, the total costs come to £34,454.56 and I allow this figure.

Work	Grade A				Grade B				Grade C				Grade D				Grade D1				Grade D2				Other		TOTAL ALLOWED	
	Claimed		Allowed		Claimed		Allowed		Claimed		Allowed		Claimed		Allowed		Claimed		Allowed		Claimed		Allowed		Claimed	Allowed		
	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours		
Attendances on Claimant	£399	1.0	£261	1.0	£315	6.0	£0	6.0																				£1,653.00
Letters out/emails to Claimant	£399	0.7	£261	0.7	£315	6.1	£232	6.1	£237	0.1	£178	0.1																£1,616.00
Telephone calls to Claimant	£399	0.6	£261	0.6	£315	3.7	£232	3.7																				£1,015.00
Letters out/emails to Defendant					£315	1.2	£232	1.2					£138	0.4	£129	0.4												£330.00
Telephone calls to Defendant					£315	0.6	£232	0.6					£138	0.1	£129	0.1												£152.00
Attendances on others	£399	1.0	£261	1.0	£315	1.0	£232	1.0																				£493.00
Letters out/emails to others	£399	0.7	£261	0.7	£315	9.0	£232	6.0	£237	1.5	£178	1.0	£138	0.8	£129	0.8	£125	0.5	£125	0.5	£95	0.2	£95	0.2				£1,937.40
Attendance at hearing	£399	5.6	£261	0.0	£315	10.2	£232	10.2																				£2,366.40
Work on witness statement	£399	2.3	£261	2.0	£315	21.3	£232	11.0	£237	1.8	£178	1.0	£138	9.4	£129	6.0												£4,026.00
Working on application notice					£315	2.7	£232	2.7	£237	0.4	£178	0.4																£697.60
Working on N260					£315	1.0	£232	1.0	£237	1.0	£178	1.0	£138	2.0	£129	2.0												£668.00
Instructions to counsel	£399	1.2	£261	1.2	£315	7.3	£232	7.3					£138	2.5	£129	2.5												£2,329.00
Working on contempt application	£399	1.5	£261	1.5	£315	5.9	£232	5.9					£138	0.9	£129	0.9												£1,876.40
Working on incident log					£315	0.4	£232	0.4					£138	2.4	£129	2.4												£402.00
Working on preparation for hearing and review of documents					£315	6.9	£232	6.9					£138	0.3	£129	0.3												£1,639.50

Work	Grade A				Grade B				Grade C				Grade D				Grade D1				Grade D2				Other		TOTAL ALLOWED	
	Claimed		Allowed		Claimed		Allowed		Claimed		Allowed		Claimed		Allowed		Claimed		Allowed		Claimed		Allowed		Claimed	Allowed		
	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours		
Working on bundle for hearing					£315	2.3	£232	1.5					£138	2.3	£129	1.5												£541.50
Working on draft orders	£399	1.0	£261	1.0	£315	1.0	£232	1.0																				£493.00
Counsel's fee - June hearing																										£2,000	£2,000	£2,000.00
Counsel's fee - October hearing																										£3,500	£3,500	£3,500.00
Process server fees																										£338	£338	£338.00
Court fees																										£766	£766	£766.00
TOTAL																												£28,839.80