



Neutral Citation Number: [2019] EWHC 2204 (QB)

Case No: QB/2019/002102

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/08/2019

Before:

CLIVE SHELDON QC
(Sitting as a Deputy High Court Judge)

Between:

MONEX EUROPE LIMITED

Claimant

- and -

(1) CHARLES POTHECARY

(2) GUY KAUFMAN

Defendants

William McCormick QC (instructed by **Shakespeare Martineau LLP**) for the **Claimant**
Caspar Glyn QC (instructed by **Penningtons Manches**) for the **Defendant**

Hearing dates: 21 June 2019

Approved Judgment

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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CLIVE SHELDON QC

Clive Sheldon QC:

1. Following my refusal of the application by Monex Europe Limited (“Monex”) for an injunction against Charles Pothecary and Guy Kaufman, and following correspondence with Counsel for the parties, I decided that costs against the Monex should be assessed summarily. I directed a timetable for submissions on summary assessment, and these submissions have been provided by the parties.
2. The Defendants, Messrs. Pothecary and Kaufman, seek costs in the sum of £85,446. They have provided me with a Schedule setting out how those costs were incurred. The Claimant has taken issue with the amount of costs sought by the Defendants.
3. The essential argument made by the Claimant is that as compared with its own costs, which amounted to £44,669 (not including VAT), the Defendants’ costs were “unreasonably high”. It is said that the Claimant bore the burden of the application, filing 6 witness statements; whereas the Defendants filed 3 witness statements, 2 of which (those of the Defendants) were in large portions not greatly different. The Claimant also challenges the hourly rate charged by the costs lawyer instructed by the Defendants (saying that a rate of £120 per hour, as opposed to £250 per hour is appropriate). The Claimant takes issue with the number of hours spent on many of the items of work carried out by solicitors for the Defendants, and claims that the hours worked are excessive.
4. The Defendants contend that the comparison approach suggested by the Claimant is inappropriate. The Defendants respond to each of the various allegations made by the Claimant about the different elements of its cost figures, and contend that all of the costs are justified. The Defendants have analysed their costs in accordance with the various elements set out at CPR Part 44.3(5): the sums in issue, the value of any non-monetary relief (noting that the application was “of the first importance to these two young men making their way in the world”), the complexity of the litigation (this was a substantive matter, and legally complex and factually heavy), additional work generated by the paying party, any wider factors such as reputation.
5. This is a summary assessment, and the assessment is carried out on the standard, and not the indemnity, basis. In accordance with CPR Part 44.3(2), the Court will only allow costs which are “proportionate to the matters in issue”. With respect to the various elements at CPR Part 44.3(5), costs incurred are proportionate if “if they bear a reasonable relationship” to those elements.
6. In my judgment, it is not appropriate for the Court simply to compare the two sets of costs and say that the Defendants’ costs were disproportionate because they were greater, or that elements of them were greater, than that of the Claimant. It is necessary to look at the specific items for which costs are claimed.
7. These proceedings were plainly important to each of the Defendants, and they were entitled to be properly represented, putting forward their best defences. However, their defences were essentially the same, and the bulk of their factual evidence was the same, or very similar. As a result, there was bound to have been a fair degree of duplication in the work done, given that two different fee earners

(supervised by a partner) were engaged to work on their respective witness statements. In the circumstances, it is not proportionate for the Defendants to recover all of the costs spent on attending on them by the junior fee earners, and spent by the junior fee earners on working on their witness statements. Doing the best that I can, I reduce the cost associated with junior fee earner (b) by 16 hours (£4,400) for duplication.

8. It also seems to me that the amount of time spent on Mr. Kaufman's statement seems to have been high. I reduce the costs associated with work on this by junior fee earner (c) by 8 hours (£1,680).
9. I also consider that the amount of time spent by the partner personally attending on the parties seems somewhat excessive. I reduce the cost associated with this by 5 hours (£2,250).
10. The amount of time spent on Nick Fullerton's witness statement also seems somewhat high given the length and content of that statement. It is not clear what items specifically relate to this statement (see Defendants' written submissions at paragraph 19). Doing the best that I can, I reduce the cost by £1,500.
11. I do not consider that it was disproportionate to use experienced costs lawyer to work on the schedule, which I found helpful in making this assessment. The costs of Defendants' Counsel post-hearing are allowed, as these were not included in his brief fee, and extra work was required to be done by him to deal with the costs question. I do, however, consider that the amount of time spent by the partner on drafting the order (item 65) and on finalising the terms of the order (item 67) was excessive, and disproportionate to what was in issue. I reduce the overall amount for these items by 3 ½ hours (£1,575).
12. Accordingly, I consider that the Defendants' costs should be reduced by the sum of £11,405.
13. In the circumstances, I order that following summary assessment, the Claimant should pay £74,041.