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IN THE HIGH COURT OF JUSTICE

No. HQ18X00935

QUEEN'S BENCH DIVISION

[2019] EWHC 2600 (QB)

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 16 August 2019

Before:

MR JUSTICE MARTIN SPENCER

B E T W E E N :

ARSHAD RASHID — Claimant

- and -

OIL COMPANIES INTERNATIONAL MARINE FORUM — Defendant

MR M. PARKER (instructed by Signature Litigation LLP) appeared on behalf of the Claimant.

MR R. LEIPER QC and MISS N. CONNOR (instructed by Oil Companies International Marine Forum) appeared on behalf of the Defendant.

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

1 In this matter in which I have handed down judgment for the claimant, making an award of damages in the sum of £126,841, I am now asked to deal with ancillary matters arising out of the judgment, in particular in relation to costs orders, but also application is made for permission to appeal.

2 So far as costs are concerned, generally, of course, costs follow the event and the claimant is entitled to his costs of the action. However, I am asked, in my discretion, to disallow a proportion of the claimant's costs on the basis that the claim for damages was in a sum exceeding £1.5 million, together with a claim for damages for loss of reputation, and the sum in fact secured was less than a tenth of that at £126,841. It is suggested that this was an exaggerated claim, that it was rejected in the judgment on grounds that it was not supported by the sort of evidence which would have been expected and was unsustainable.

3 Mr Leiper, for the defendant, draws my attention to the authority of *Widlake v BAA* [2009] EWCA Civ 1256 and the clear indication by the Court of Appeal that, where a claim is exaggerated, it is within the court's discretion to reflect that by making an order other than the usual order.

4 For the claimant, Mr Parker draws my attention to *Fox v Piling Limited* [2011] CP Rep 41 and submits that the starting point in a case such as this (that the claimant recovers his costs) should, in this particular case, be the end point. He contests that it is possible to identify any significant costs which have been rendered unnecessary by the unsuccessful damages claim and he endorses and submits that I should endorse the dictum of Jackson LJ in the *Fox* case that the courts have been plagued, in effect, with such applications in relation to costs, which are to be avoided if possible.

5 I start from this point, that this is a case in which the claimant, Captain Rashid, felt very strongly that his integrity had been impugned by the defendant and that this was a case which he needed to bring to restore his reputation and his ability as an inspector which had been impugned by the removal of his accreditation by the defendant. I have no doubt that he genuinely believed himself to be entitled to the damages which were claimed in this matter. As it turned out, his ability to prove such damages fell far below the level at which I could have made any such award, as my judgment has indicated. But this was not, in fact it was far from, a case of deliberate exaggeration because I have no doubt that Captain Rashid believed that his accreditation was removed wrongly at a time when he hoped, and his wife hoped, that the business through SeaShore would take off and result in the kind of rewards which were reflected in the schedule of loss.

6 I do not know whether the award of damages in fact eventually made was disappointing to Captain Rashid, and, if so, then that is as it is, but I do not take the view in a case such as this that it would be appropriate to make any order other than the usual order for costs on account of the fact that the damages recovered were significantly less than those that had been claimed. Indeed, I do not consider that it would be appropriate even to disallow the costs of Mrs Arshad's witness statement. As Mr Parker submitted, that, in part at least, formed the basis for the award of damages which I did make and I made a ruling on the first day of the trial that it was appropriate that Mrs Arshad's witness statement should be admitted into evidence, as is reflected in the ruling which is appended to the judgment which I have handed down.

7 I remind myself that these matters are a question of discretion and, having considered the argument on both sides, I do not consider that any reduction which I am asked to make would be so reflective of any costs wasted or thrown away that I could properly make such a reduction. Although some additional time may have been spent, I am not at all of the view that I can quantify that in terms of costs and certainly it is not a case where I would be prepared to make an overall percentage reduction, as I am invited to do by the defendant, from the costs of the whole action simply in relation to that discrete point.

8 The next point which I am asked to consider concerns the costs of certain subsidiary matters: firstly, the costs of the defendant's application for security for costs; secondly, the costs of the claimant's application to amend the claim form; and, thirdly, the costs of the claimant's application to clarify the scope of the trial. To a certain extent, the first two of those are related and it is clear that when the claim form was issued it was issued citing an address of the claimant which was not actually his then current address but was a previous address. In my judgment, the defendant was right to raise this as an important issue when the claimant was a foreign national resident abroad where there might be problems arising in relation to the enforcement of any costs orders made against him. Furthermore, I am of the view that the correspondence which then ensued between the parties did not clearly indicate that the address in the original claim form was simply put in as an error, putting in the claimant's old address rather than his new address. Thus, for example, it was suggested that this was the ongoing business address of the company, as if that in some way justified the putting of the old address on the claim form when in fact, in my judgment, it was no such justification.

9 The defendant was provided with evidence to show that the address in Ontario was the correct address by way of a yearly mortgage statement and a utility bill. But the defendant, through Mr Pascoe, was not satisfied with that evidence and required the full mortgage deed and two utility bills, which were eventually provided, whereupon the defendant consented to the amendment. What is suggested is that the amendment should have been consented to immediately, or at least at an earlier stage, and that costs were unnecessarily incurred whilst this matter was sorted out.

10 In my judgment, the approach taken by the defendant was generally understandable and reasonable, given the importance of such a matter as the correct address in the claim form, and the appropriate costs order seems to me to be to leave the costs to fall where they lie in relation to that application.

11 I take a different view in relation to the application for security for costs. In my judgment, the defendant persisted in an application for security for the whole of the costs on grounds which were not sustainable and they should have been content at an earlier stage than they were with the position, in particular, in relation to the after-the-event insurance. In my judgment, the claimant should have the costs of defending that application. However, the sum claimed seems to me to be too high. The sum claimed is £7,994.50 and I allow approximately half that sum in the sum of £4,000.

12 Finally, there is the application that was made to clarify the scope of the trial. In my judgment, the claimant was right to issue that application, given Mr Pascoe's refusal in the correspondence to provide the assurance which he was asked to provide by Signature Litigation in the clear terms in which he was asked to provide them. He, instead, resorted to

reliance upon the defence and, somewhat obscurely, Captain Ashby's witness evidence. In those circumstances, it seems to me that the claimant was right, out of an abundance of caution, to issue an application so that this matter was cleared up beyond peradventure at the pretrial review. As Mr Parker submitted, had they not done so, then they may well have been met with the argument that the matter not been sufficiently flagged up for the pretrial review and that there was insufficient time. The sum claimed, though, again seems to me to be too high, at £5,563, and the sum which I assess is £2,500.

13 The result is that I allow the claimant's costs in relation to the two matters I have referred in the total sum of £6,500.

14 In relation to the defendant's application for specific disclosure, it has been conceded that the claimant should pay the costs of that in the sum of £10,400. That is my assessment. It follows that there is a small surplus in favour of the defendant in relation to the ancillary matters and that surplus is to be set off against the general costs order.

15 So far as the general costs order, that will be an order that the defendant pay the claimant's costs, to be subject to detailed assessment if not agreed.

Later

16 I, of course, take no offence at all at the suggestion that I might have erred in law, and it may be that the Court of Appeal will agree with you that I have, but I am afraid I am not prepared at this stage to concede this. So, I am going to refuse permission to appeal.

CERTIFICATE

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