



Neutral Citation Number: [2019] EWHC 3583 (QB)

Case No: QB-2019-003810

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2019

Before :

MRS JUSTICE WHIPPLE

Between :

David Joseph
- and -
Deloitte NSE LLP

Claimant

Defendant

Jonathan Cohen QC and Alexander Robson (instructed by **Farrer & Co**) for the **Claimant**
Paul Goulding QC and George Molyneaux (instructed by **Freshfields Bruckhaus Deringer**
LLP) for the **Defendant**

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.

.....
MRS JUSTICE WHIPPLE
ON COSTS

Mrs Justice Whipple :

1. I handed down judgment in this case on 5 December 2019.
2. I have now received submissions on consequential issues. This judgment deals with costs.
3. The Defendant seeks its costs. The Defendant argues that:
 - i) The principle of costs pursuant to CPR 44.2(2)(a) is that as the winner, it is entitled to its costs of the action.
 - ii) In principle, those costs should be subject to summary assessment because in this case there is no good reason not to assess summarily.
 - iii) The Defendant's costs, claimed at £300,724.16, are reasonable and proportionate and should be allowed in full.
 - iv) Alternatively, if I order detailed assessment, I should order payment on account of £180,000.
4. The Claimant does not resist a costs order in principle. The Claimant says that summary assessment is not appropriate given the live dispute about the quantum of the Defendant's costs. The Claimant's own costs came to £138,225.12 (ex VAT). If summary assessment is undertaken, the Claimant attacks various aspects of the Defendant's costs and in reliance on *Vitol Bahrain EC v Nasdec General Trading LLC* 2012 Folio 1474 (approved costs judgment) suggests that I should impose a cap of £70,000, alternatively reduce the quantum to £93,631.66. If detailed assessment is ordered, he suggests that I should order an interim payment of only £63,000.
5. Plainly, the Defendant is entitled to its costs of the action.
6. There is, in my judgment, an issue of substance relating to the quantum of costs claimed by the Defendant. This was a one-day trial of narrow compass with a relatively small number of relevant documents and witness statements. I recognise that a great deal of work was done under time pressure to get ready for trial, but even so, the Defendant's schedule of costs, at over £300,000, seems rather excessive.
7. I am not in a position to determine how much of the claimed sum is reasonable and proportionate. Much as I would have liked to summarily assess, and so bring this litigation (at this stage, anyway, noting that the Claimant seeks permission to appeal) to an end, I conclude that the better course is to order detailed assessment. The dispute on quantum and the arguments advanced by the Claimant in his submissions amount to a good reason to take that course (see CPR 44 PD para 9.1). The costs order will therefore require the Claimant to pay the Defendant's costs of the action on the standard basis, subject to detailed assessment.
8. The issue then arises as to the amount of the payment on account of costs which I should order pursuant to CPR 44.2(8). It is not, in my judgment, realistic for the Claimant to contend for a costs cap in the region of £70,000 and to work backwards from that to arrive at £63,000 as the proposed interim payment. This was the trial of a substantive claim and the situation before me is markedly different from *Vitol*. Bearing in mind the

level of each side's costs, the opposing submissions on quantum, the arguments and issues raised at trial, and my preliminary view of the appropriate quantum of costs in line with proportionality and reasonableness, I award £125,000 by way of interim payment.

9. I hope the parties will be able to agree costs without needing to incur further costs in fighting about costs.