Neutral Citation Number: [2023] EWHC 3151 (Ch)

Case No: CR-2022-BRS-000101

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
INSOLVENCY AND CONPANIES LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 8 December 2023

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

IN THE MATTER OF **HLHP ORIENTAL FOOD LIMITED**
HLHP BIRMINGHAM LIMITED
HLHP BAYSWATER LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 2006

BETWEEN :

1. MAGGIE OTTO **Petitioners**
2. TAO XU
3. IC UK HOLDINGS LIMITED
JESSICA PUI MAN KWOK
- and -
1. INNER MONGOLIA HAPPY LAMB CATERING MANAGEMENT COMPANY LIMITED **Respondents**
2. XIABING LIU
3. ZHANHAI ZHANG
4. GANG ZHANG
5. CHANGSONG WANG
6. HLHP ORIENTAL FOOD LIMITED
7. HLHP BIRMINGHAM LIMITED
8. HLHP BAYSWATER LIMITED

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Charlie Newington-Bridges (instructed by **Shakespeare Martineau LLP**) for the **Petitioners**
Simon Davenport KC and Olivia Chaffin-Laird (instructed by **R & H Lawyers LLP**) for **Respondents 1-4 and 6-8**
The Fifth Respondent was not present or represented

Summary assessment on paper

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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 revised version as handed down may be treated as authentic.

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This judgment will be handed down by the Judge remotely by circulation to the parties or representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 am on 8 December 2023.

HHJ Paul Matthews :

Introduction

1. This is my summary assessment of the costs arising out of an application by the petitioners by notice dated 18 October 2023 for an interim injunction. The original application was before me on 2 November 2023, but adjourned for further evidence. It was then listed for 15 November 2023, but after receipt of that further evidence, and before the hearing, the petitioners withdrew their application.

2. On 20 November 2023 I decided that the costs of and occasioned by that application were caused entirely by the represented respondents (whom I shall hereafter for simplicity call "the respondents"), and that accordingly they must pay the petitioners' costs: see [2023] EWHC 2920 (Ch). I invited written submissions on the assessment of those costs, which I have received and considered. There was no application for costs to be awarded on the indemnity basis, and it is accepted that the petitioners should have their costs on the standard basis.

3. The petitioners claim costs of £16,194.20 and £7,050, totalling £23,244.20 (including VAT). These are set out in two costs schedules, dated 1 November 2023 and 13 November 2023 respectively. Each relates to one of the two hearings of this matter, that is, on 2 and 15 November. The petitioners ask me to note that the costs set out in the *respondents'* schedule dated 14 November 2023 are for a total of £74,100 (including VAT). This appears to me at first sight to be a somewhat elevated figure. But, in considering what costs to assess for the *petitioners*, I put them on one side.

Allowable rates

4. The first question to deal with is that of allowable rates. The petitioners claim costs for grade A and grade C fee earners at hourly rates of £350 and £260 respectively. The petitioners' solicitors are based in Bristol. This is within National Band 1 of the costs guidelines contained in the *Guide to the Summary Assessment of Costs*, which was last updated on 1 October 2021. This update followed the final report of the Civil Justice Council on *Guideline Hourly Rates*, in April 2021.

5. The relevant figures in those guidelines for grade A and grade C fee earners' hourly rates are £261 and £178 respectively. As it happens, the hourly rate charged by the respondents' solicitor is also £350. But, in considering what to allow, that is irrelevant. "But they did it too" is not an answer to a charge rate otherwise found to be excessive. For one thing, the solicitor may be in a different band (as indeed the respondents' solicitor is, being based in London). More importantly, I am assessing the petitioners' costs, not the respondents'.

6. The rates claimed by the petitioners are therefore in excess of the guidelines. Of course, as the petitioners rightly say, they are just that, guidelines, and are not set in stone. But. as the Court of Appeal said, in relation to the 2021 guideline rates, in *Samsung Electronics Co Ltd v LG Display Co Ltd* [2022] EWCA Civ

466, "If a rate in excess of the guideline rate for solicitors' fees is to be charged to the paying party, a clear and compelling justification must be provided". This point was reiterated in *Athena Capital Services SICAV v Secretariat of State for the Holy See* [2022] EWCA Civ 1061. It has been applied in many other decisions at first instance since.

7. The petitioners put forward two points of justification for a rate in excess of the guideline rate. The first is that they say that, according to a Bank of England website, UK inflation between 2021 October 2023 has been 20.14%. If the rate of £261 were increased by 20.14%, it would amount to £313.57. They further suggest that inflation in the legal services industry has been higher than in the broader economy, thereby warranting an even higher rate, such as the £350 sought by the petitioners in this case.

8. I do not know on what basis the guideline rates for solicitors' fees are arrived at. I certainly was not aware that it was calculated by taking any of the measures of inflation (and of course there is more than one) in the general economy and applying it to an earlier figure. I know from the Civil Justice Council Final Report that different charge rates were increased by different percentages, and not by a single across the board rate. But for present purposes let me assume for the sake of the argument that it were right to take the particular Bank of England inflation measure put forward as an appropriate measure for deciding how an increase in the guideline rates might be calculated, if that were otherwise appropriate.

9. I am quite sure that, when the Court of Appeal in *Samsung Electronics* and *Athena Capital* referred to "a clear and compelling justification", they did not have general cost and price inflation in mind. But, more than that, I do not think it would be right for me sitting here in effect to create a new guideline rate based on what I am told inflation has amounted to since the last guideline was issued. The issue of new guidelines is not a matter for me.

10. Even if it were, and even if the measure put forward were a sound basis to increase it, because inflation is different every month (and there are figures available to show what it is) it would mean having to recalculate inflation immediately before *every* assessment of costs in *every* case. For all these reasons, therefore, I decline to increase charge out rates mathematically on the basis of inflation.

11. Secondly, the petitioners say that "the increased use of remote working [means that] the geographical location of the solicitors is less relevant to costs than it once was". I accept the premise, but not the conclusion. The regulations governing solicitors' practice require certain things, including employment of qualified staff to carry out certain functions. A sole practitioner plainly requires less in addition to his or her own input compared to a firm of a hundred or a thousand practitioners.

12. Whatever the position may be for barristers, so far as I am aware, there are no solicitors' firms in this country of any size that carry on a "virtual practice", with each of many fee earners working solely from home (or a rented "hot desk" nearby) and with no central base. As and when such firms become established,

no doubt there will be evidence adduced to show what the overheads are and how the chargeable costs are made up. In the present case there is no such evidence.

13. The impact of home working on solicitors' costs was raised in the consultations conducted by the Civil Justice Council on *Guideline Hourly Rates*. But the Council's Final Report said that:

> "2.6 … A number [of respondents] submitted that location of fee earner should be irrelevant and geographical areas abolished. These suggestions could not at this point in time be properly assessed and taken into account by the working group … "

Nevertheless, the working group had considered the possibility that Form N260 could be amended to require the location of individual fee-earners to be stated: see at [9.1]-[9.17].

14. So far as I can see, The 2021 edition of the *Guide to the Summary Assessment of Costs* does not deal with this matter at all, though it says:

> "31. Where all or part of the work on a case is done in a different location from that of the solicitor's office on the court record, the appropriate hourly rate for that part should reflect the rates allowed for work in that location, whether that rate is lower or higher (provided that, if a higher rate is claimed, a decision to instruct solicitors in that location would have been reasonable). The location of a fee earner doing the work is determined by reference to the office to which s/he is, or is predominantly, attached."

15. In the present case, wherever their fee-earners actually work, the petitioners' solicitors *do* have a base, in Bristol, and there will be overheads arising out of that base which are built into their costs. Even if individual solicitors work from home on one or more days of the week, those fee earners also have a desk at the office, and make use of the services provided there, even when they are working remotely.

16. Moreover, even if I accepted the conclusion that "the geographical location of the solicitor is less relevant to costs than it once was", that would not mean that the chargeable rates allowable for costs would necessarily be greater than the guideline rates. Given that the guideline rates are higher for urban areas, and in particular London, but solicitors (especially outside London) like to live in rural areas, I would expect that, if the overheads were to be taken into account in that way, the allowable rates would actually be *lower*, not higher. But others may disagree, and anyway I do not have to decide that.

17. My conclusion on rates is that there is no sufficient justification shown for allowing more than the guideline rates.

The first costs schedule

18. I turn to the question of assessment itself. On the petitioners' costs schedule dated 2 November 2023, the respondents challenge the figures of 1.10 and 0.4

hours for attendance on opponents as excessive, covering "extremely limited correspondence to the respondents". The petitioners point out that the respondents on their schedule claim more in respect of the same item. Again, that is irrelevant. I am assessing *these* costs, and not those of the respondents.

19. However, the petitioners explain that the time concerned includes correspondence dealing with the respondents' adjournment request, serving the application paperwork and drafting and serving the costs schedule. I will allow it as reasonable and proportionate.

20. The respondents then challenge the figures of 3.5 hours for attendance on others as excessive. They say this can only refer to the court. Since there was only one letter to the court it should only have taken 0.5 or 1 hour. The petitioners say that it includes attendance on counsel as well as on the court. In relation to the former, it includes discussing matters relating to the application formally instructing counsel. In relation to the latter, it includes issuing the application, liaising with the court over the hearing, and correspondence with the court. My assessment is that it is at the high end of what I would have expected, but I conclude that it is nonetheless reasonable and proportionate.

21. The respondents criticise the attendance of both grade A and grade C fee earners at the hearing. They accept that the importance to the petitioners would justify the attendance of the grade A fee earner, but not both. I agree with the respondents, and would allow only the grade A solicitor's attendance. But the costs schedule in fact claims only for the grade A solicitor anyway, so no adjustment is necessary.

The second costs schedule

22. I move on to the second schedule, dated 13 November 2023. The first point is a complaint that the petitioners failed to provide a bundle for the second hearing. In fact, there was no such failure. The petitioners had intended that the bundle prepared for the previous hearing should be retained by the court. As a result of a misunderstanding, the court did not do this, and there was a delay before a further bundle could be provided. As it happens, the delay was used also by the respondents to file statements which ought to have been filed but which had not been. In the circumstances, I do not think that the complaint has any sufficient substance to render the costs sought unreasonable or disproportionate.

23. The respondents challenge the costs of the second hearing as high, on the basis that the petitioners by then had already decided that they would withdraw their application, and that therefore the only matter in dispute would be costs. The respondents complain that they were unaware that correspondence had been sent to the court until the afternoon of 13 November. Strictly speaking, this is so, but the letter from the petitioners' solicitor to the respondents on 9 November 2023 enclosed a copy of the letter to the court in draft, and explained that it would be sent the next day. As a result, in substance there is nothing in this point.

24. The respondents say their submissions on the issue of costs, including those on the question of discontinuance were "valid arguments arising from the conduct

of the Petitioners and the relationship between the parties". I accept that they were perfectly respectable arguments, but in the event the respondents lost on that issue. In any event, the costs order I made was not issue-based, for the reasons already given. There is nothing in this.

25. Next, the respondents challenge the claim for 2.6 hours for letters in attendances on others. They submit that this can only refer to a letter to the court advising them of the intention to withdraw the claim, and that this is excessive. The petitioners say that in fact the 2.6 hours includes not only attendance on the court from the date of the first hearing onwards, but also with counsel, providing comments to the solicitors "on the evolving position". I do not consider this unreasonable or disproportionate.

Time to pay

26. Lastly, the respondents ask for 28 days for payment of the costs order, on the basis that all of the (represented) respondents are based outside the jurisdiction. The petitioners oppose this on the basis that the respondents have previously complied with a costs order for them to pay within 14 days, and on another occasion in about 21 days. Given that the sums involved in this case are modest, and the respondents are several, I see no reason to depart from the usual rule.

Conclusion

27. Summary assessment is a broad brush, not a line by line, procedure. In accordance with the views expressed above, I make allowance for the excessive charge rates applied. I therefore assess the costs to be paid in 14 days as £6,200 solicitors' costs, plus counsel's fees (unchallenged) of £10,900, making £17,100, on which there is VAT at 20% of £3,420, and court fees of £275. If my arithmetic is right, that makes a grand total of £20,795, including the applicable VAT. I should be grateful for a minute of order for approval.