



Neutral Citation Number: [2021] EWHC 2606 (TCC)

Case No: HT-2020-000433

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (QBD)

Royal Courts of Justice
Rolls Building
London, EC4A 1NL

Date: 30/09/2021

Before :

MR ROGER TER HAAR QC
Sitting as a Deputy High Court Judge

Between:

CRODA EUROPE LIMITED

Claimant

- and -

OPTIMUS SERVICES LIMITED

Defendant

Decision following written submissions

Approved Judgment
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Covid-19 Protocol: This judgment will handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30am on Thursday 30th September 2021.

Mr Roger ter Haar QC :

1. On 19 February 2021 I gave judgment by a judgment handed down under the Covid-19 Protocol in respect of an application on the part of the Claimant (“Croda”) to enforce an Adjudication Decision issued in corrected form by Mr Allan Wood on 28 July 2020 in which he ordered the Defendant (“OSL”) to pay Croda £343,513.20 plus VAT. I held that Croda was entitled to judgment enforcing that Decision. I left it to the parties to agree the form of order: they have been unable to do so, and after a substantial delay the matter has come back before me on written submissions.
2. The first question is whether Croda is entitled an order for judgment to be entered in the sum of £343,513.20 plus interest.
3. OSL resists any such order upon the basis that a sum as much as that amount has already been paid or credited to Croda.
4. This is a hopeless submission: the judgment is based upon the evidence before me at the time that I handed down judgment. The matters now raised by OSL were not raised before me by way of defence to the claim for enforcement.
5. Croda is entitled to an order in the terms of paragraph 1 of the draft order placed before me.
6. If OSL wishes some form of relief such as a stay of the judgment or time to pay, then this will have to be a formal application supported by evidence rather than mere assertion in correspondence. At the moment it is totally unclear as to how or when OSL discharged its liability, if it did.
7. The other major issue is as to Croda’s application for its costs of the action. Croda having succeeded, I can see no grounds for refusing Croda the natural order which follows
8. The next questions are whether there should be a summary assessment of those costs, and, if so, in what sum.
9. It is the usual practice of this Court to make a summary assessment of costs and to do so in the indemnity basis.
10. Croda seeks costs of the action and the substantive hearing in the sum of £ £45,078, and further costs since judgment of £11.862.50.
11. OSL contends that the costs are excessive, citing the decision of Akenhead J. in *Allied P&L Limited v Paradigm Housing Group Ltd* [2009] EWHC 2890 (TCC). That decision was delivered some 11 years ago, and I find it to be of limited assistance in the present case.
12. The amounts claimed by way of costs are not out of line with the costs commonly incurred for adjudication enforcement actions in this Court. I have considered with care the various points raised by OSL and generally find them to be unconvincing given that I regard the appropriate basis for assessment to be the indemnity basis.

13. The only point raised in Gosschalks' letter of 16 September 2021 which I regard as having real substance is as to the amount of solicitor time involved. To reflect my concern in that regards, the amount of costs in the principal schedule will be reduced from £45,078 to £42,578.
14. Subject to that reduction, Croda is entitled to the orders it seeks.