



Neutral Citation Number : [2022] EWHC 2390 (SCCO)

Case No: SC-2021-BTP-000964

**IN THE HIGH COURT OF JUSTICE**  
**SENIOR COURTS COSTS OFFICE**

Thomas More Building,  
Royal Courts of Justice, Strand,  
London, WC2A 2LL

Date: 7 September 2022

**Before :**

**DEPUTY COSTS JUDGE CAMPBELL**

-----  
**Between :**

**UK SOVEREIGN INVESTMENTS LTD**

**Claimant**

**- and -**

**ELIAS HUSSAIN**

**Defendant**

-----  
-----

**Cartwright, Cunningham & Hazelgrove for the Claimant**  
**Total Legal Solutions 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.

.....

**DEPUTY COSTS JUDGE CAMPBELL**

**Deputy Costs Judge Campbell:**

1. This judgment addresses the parties' rival contentions about the basis upon which the costs of the assessment in this action should be paid. It is the paying Defendant's case that his liability should be limited to the costs payable on a provisional assessment, that is to say £1,500, plus VAT, and the court fee on commencing detailed assessment proceedings - see CPR 47.15. The receiving Claimant, on the other hand, argues that there should be no such limitation and that the costs should be allowed in the sum of £19,755.24 as set out in its Form N260. I should add that this is the only issue which divides the parties. Commendably, in advance of the detailed assessment hearing, terms were agreed so far as the costs of the action were concerned. Moreover, equally commendably, it has been agreed that this issue should be resolved by me "on the papers", to save the expense of a hearing. To that end, I have received skeleton arguments (including Points of Dispute and Replies) on behalf of both the parties, which I have read and for which I am grateful.
2. The background is that in a claim for the return of a deposit and for damages, the Claimant recovered £103,816.82 from the Defendant, plus costs to be assessed if not agreed. In due course, a bill was served seeking £83,425.18. The assessment was listed for 14 April 2022, but unfortunately the Claimant's advocate contracted Covid 19 the day before the hearing and the Defendant sensibly agreed for the matter to be stood out of the list until another day. In the hiatus, as I have said, the parties settled the costs when terms were agreed in a global sum of £59,000 including interest, leaving only the costs of assessment to be resolved.
3. It is the Defendant's case that these costs should be provided for in a way that is different to the default position to be found in CPR 47.20 which says this:-

"Liability for costs of detailed assessment proceedings

47.20

(1) The receiving party is entitled to the costs of the detailed assessment proceedings except where –

(a) the provisions of any Act, any of these Rules or any relevant practice direction provide otherwise; or

(b) the court makes some other order in relation to all or part of the costs of the detailed assessment proceedings ...

(3) In deciding whether to make some other order, the court must have regard to all the circumstances, including –

(a) the conduct of all the parties;

(b) the amount, if any, by which the bill of costs has been reduced; and

(c) whether it was reasonable for a party to claim the costs of a particular item or to dispute that item."

4. In the Defendant's submission, there should be a departure under CPR 47.20(1)(b). The case is put on the following basis.
  - i) Bills up to £75,000 are dealt with as provisional assessments: see CPR 47.15(1) and PD 14.1 to CPR 47.15.
  - ii) In proceedings which do not go beyond provisional assessment, the maximum amount which the court will award to any party as costs of assessment is £1,500 plus VAT and any court fees paid.
  - iii) The Claimant's bill exceeded £75,000 only because it had been "grossly exaggerated" with "unreasonable conduct" which had removed the assessment from the "provisional regime" in CPR 47.15, and into the "detailed regime" in CPR 47.14 (for want of better descriptions). Within the latter, no such costs cap exists, and the receiving party can recover whatever sum it is reasonable, necessary and proportionate for the paying party to pay.
  - iv) The eventual recovery of £59,000 of which £4,023.04 was accrued interest, is indicative that the original claim in the bill was grossly excessive and disproportionate
  - v) Taking all these factors into account under CPR 47.20, it would be unreasonable for detailed assessment costs rather than provisional assessment costs to be visited on the paying party, where, but for the exaggeration and the unreasonable conduct, this would have been a bill for under £75,000. In that eventuality, the bill would have been subject to provisional assessment, thereby limiting the defendant's liability to £1,500, plus VAT, plus the court fee. In these circumstances, the claimant should not be permitted to recover costs in excess of that figure.
  
5. The Claimant disagrees. Its case is that the settlement reflected the following:
  - i) The wish to achieve finality through a result which was not susceptible to appeal.
  - ii) To avoid the expense and inconvenience of attending a hearing since the Claimant's costs lawyer was based in Manchester.
  - iii) To reflect the risk that a point (or points) of principle might go against it at the hearing, for example, that the Defendant's argument that the costs associated with interim applications were not recoverable: an adverse finding on that point would have significantly reduced the recoverable costs.
  - iv) That the provisional assessment scheme is self-contained. The Rules governing the scheme interact with and complement each other. The costs cap reflects that the provisional assessment process includes no oral hearing, and that only limited papers need to be filed in advance of the unattended hearing.
  - v) Without assessing the bill, the court was not and cannot have been in a position to make any ruling about exaggeration.

## Decision

6. I do not accept the defendant's submissions for the following reasons:

- i) Without having carried out a detailed assessment of the bill, after hearing full argument, I am not in a position to make a finding that the figure advanced in the bill was one that was exaggerated, and that the Claimant's conduct had been "unreasonable conduct".
- ii) In this context, I do not regard the fact that the bill was claimed £83,000 odd, but the matter settled for £59,000 leads to an irrebuttable inference that the costs claimed must, accordingly, have been exaggerated. There may have been many reasons why the Claimant was willing to discount the bill about which the court does not know and will never be told. However, it is reasonable to surmise that this would be for one or more of the following reasons:
  - a) to reflect a discount for risk, since a receiving party rarely, if ever, recovers every pound claimed;
  - b) that the Claimant wanted accelerated receipt of the money to be able to use it now, for example, to pay down a debt or loan;
  - c) that the Claimant merely wanted finality;
  - d) or simply, that the solicitors had advised that the points of dispute were arguable and if things went the Defendant's way on the day, an offer of £42,500 inclusive of interest and costs of assessment made on 27 July 2021, might not be beaten, thereby putting the claimant at risk as to costs.

Taking these factors into account, I am not persuaded that the Claimant's costs should be limited to £1,500, plus VAT, based upon an allegation of exaggeration and misconduct about which the court can make no finding because the matter settled.

- iii) I regard it as a factor in favour of the Claimant and against the Defendant that the former accepted in settlement, a figure much closer to its own Part 36 offer of £60,000 made on 25 July 2022, than the sum of £42,500 inclusive of interest and costs advanced by the Defendant. Put another way, it was within the Defendant's gift to make a realistic Part 36 offer at an early stage which would have put the Claimant at risk as to costs going forward, were the sum allowed at detailed assessment to be less the offer. As it seems to me, what the Defendant is trying to do now is to have a second bite of the cherry, having failed to make an offer under Part 36 which could have achieved exactly what he is asking the court to do now, namely to make a different order to the default order to be found in CPR 47.20.
- iv) I agree with the Claimant that rule 47.15 is self-contained in the sense it does not say what the Defendant wants it to say, namely that if a bill is brought in for assessment at over £75,000 but is allowed at less than that figure, it means that it was obviously exaggerated, so provisional assessment costs must apply. On the contrary, the rule says no such thing, in circumstances where it would have

been open to the rule makers to provide that where a bill was reduced under £75,000, the receiving party would only be entitled to provisional assessment costs rather than, as here, to detailed assessment costs.

7. For all these reasons, I prefer the Claimant's submissions, so that its costs are not limited or capped in the manner contended for by the defendant.

**Form N260 costs**

8. At over £19,000, including VAT, I have no hesitation in stating that these are strikingly high. The court fee, of course, in the sum of £1,656 is unavoidable, but I consider that £270 per hour for the costs lawyer is far too high having regard to the 2021 GHR and I allow £225 which is the sum, by coincidence, claimed in the Defendant's N260. It is also my view that excessive time has been spent in the documents section. (see, eg, the replies and preparation for the hearing that had to be aborted). In addition, time spent on "others" is questionably high: I can only think of the court but several hours spent which is not reflected on the court file at that level.
9. Doing the best that I can, adjusting the rates and the hours, I allow £9,000, plus VAT, of £1,800, plus the court fee of £1,656: Total £12,456. Interest is to run on that figure from 14 April 2022. I consider that the Defendant ought reasonably to have known that the was the day (absent the Covid 19 adjournment) that he would have had to put his hand in his pocket, so it is just that interest is to run from that date, rather than from the day that this judgment is handed down.