



Neutral Citation Number [2023] EWHC 2198 (SCCO)

Case No: 329 of 2014

SCCO Reference: SC-2022-BTP-000969

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 30/08/2023

Before :

COSTS JUDGE LEONARD

Between :

Doctor David William Reeves

Petitioner

- and -

(1) Jennifer Carol Pickton

(2) Forsite Engineering Company Ltd

(3) Charlotte Reeves (By her litigation friend Robert

Bruce John Reeves)

Respondents

Richard Taylor for the Petitioner
The 3rd Respondent not Appearing

Hearing dates: 3 May 2023

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.

.....
COSTS JUDGE LEONARD

Costs Judge Leonard:

1. I have been undertaking the assessment of the costs of the Petitioner, as payable by the first Respondent under paragraph 5 of an order made in the Companies Court on 7 June 2016 by Mr Recorder Brindle KC.

The Section 994 Proceedings

2. The order of 7 June 2016 concluded “Unfair Prejudice” proceedings under section 994 of the Companies Act 2006. The Petitioner was a litigant in person.
3. The events which led to the section 994 proceedings being taken by the Petitioner started with the death of his and the first Respondent’s father, Mr William Reeves, and the administration of the estate of Mr Reeves.
4. This led to an Extraordinary General Meeting (EGM) of the second Respondent on 5 December 2012, at which arrangements were made for the distribution of shares and the appointment of the Petitioner, the first Respondent and Mr Michael Matthews, one of the executors of the estate of Mr Reeves, as directors of the second Respondent.
5. The first Respondent however (according to the evidence filed by the Petitioner) attempted unilaterally to change shareholdings in the second Respondent, to remove the Petitioner as a director and to shut the Petitioner out from the management of the second Respondent. This led to the section 994 petition.
6. The outcome was that the first Respondent was removed as a director and company secretary of the second Respondent; restrained from taking any further steps as a director other than to implement company resolutions recorded in the order; required to deliver up the Second Respondent’s books and records; and ordered to pay the Petitioner’s costs.
7. The order of 7 June 2016 verified resolutions made at the EGM of 5 December 2012, including the appointment as directors of the Second Respondent the Petitioner and Mr Matthews, who had given evidence for the Petitioner.

The Petitioner’s Bill of Costs

8. The detailed assessment of the Petitioner’s bill of costs was listed for 3 May 2023. The Petitioner attended, along with his costs lawyer Mr Taylor. The Third Respondent did not attend, but her points of dispute were considered at the hearing, as were submissions she had made in writing.
9. The Petitioner’s bill of costs is in five parts.
10. Part 1 incorporates the costs of the Petitioner acting as a litigant in person. The period covered by Part 1 is June 2012 to 18 March 2016. It includes, as disbursements, fees charged by solicitors Dutton Gregory for advice in June 2012 and the fees of Mr Robert Travis, Counsel representing the Petitioner on a direct access basis in the section 994 proceedings.
11. Parts 2 to 4 of the Petitioner’s bill of costs comprise the fees and expenses of Berkeley Domecq, as represented by Mr Matthews, charged in the bill as a Grade A Fee Earner

at £200 per hour. The period covered by Parts 2 to 4 extends from 5 December 2012 (the EGM) to 2 June 2016.

12. The fees of Berkeley Domecq have been entered into the bill at Parts 2 to 4 as if they were the fees of solicitors on the record for the Petitioner. In fact, the Petitioner did not have solicitors on the record in the section 994 proceedings and Berkeley Domecq is not a firm of solicitors. Berkeley Domecq is a trading name for Century House (Gloucester) Limited, a business consultancy of which Mr Matthews is a director.
13. In my view the Petitioner's bill of costs has been incorrectly drawn, for the following reasons.
14. The basis upon which a Litigant in Person can claim costs is set out at rule 46.5 of the Civil Procedure Rules ("CPR"), which insofar as pertinent for present purposes, reads:

“(1) This rule applies where the court orders (whether by summary assessment or detailed assessment) that the costs of a litigant in person are to be paid by any other person...

(3) The litigant in person shall be allowed –

(a) costs for the same categories of –

(i) work; and

(ii) disbursements,

which would have been allowed if the work had been done or the disbursements had been made by a legal representative on the litigant in person's behalf;

(b) the payments reasonably made by the litigant in person for legal services relating to the conduct of the proceedings; and

(c) the costs of obtaining expert assistance in assessing the costs claim...”

15. Given that the Petitioner remained a litigant in person throughout the proceedings the whole of his bill of costs, and not just Part 1, should have been drawn on that basis. Berkeley Domecq's fees, insofar as recoverable, should have been claimed as disbursements.

The Berkeley Domecq Contract

16. The papers filed for the assessment include the terms of a contract of services between the Petitioner and Berkeley Domecq. They include these provisions:

“These Terms of Engagement apply to the work we are instructed to deal with on your behalf... Mike Matthews is our Principal Consultant who is a retired solicitor with over 35 years experience but as we are not a firm of solicitors, he may only advise you in his capacity as our Consultant...”

We do not deal with litigation or Court representation but we can engage Counsel under the Direct Access Scheme on your behalf in this respect. In this case, our charges for administration, negotiation and mediation work may not be recoverable from the third party through a costs order made by the Court.”

17. To summarise, Mr Matthews himself was no longer a solicitor (or at least a practising solicitor) and the Petitioner’s contract for services in relation to the section 994 petition was in any event with Berkeley Domecq. The terms of the contract made it clear that Berkeley Domecq was not a firm of solicitors; that Berkeley Domecq could not offer the sort of services that could only be offered by an authorised legal representative; and that the cost of Berkeley Domecq’s work might not be recoverable in the section 994 proceedings.
18. It is clear that Berkeley Domecq offered substantial support to the Petitioner both before and after the issue of the section 994 application. There is no suggestion that at any time Mr Matthews undertook any activity that should be done only by an authorised legal representative, but his work included corresponding with the parties; organising and attending the EGM; attending court with the Petitioner on the issue of the petition; attending conferences with Counsel; and assisting in the preparation of witness statements and pleadings.
19. The question I have to address in this judgment is whether Berkeley Domecq’s fees and expenses are recoverable under the order of 7 June 2016. This is a significant point for the purposes of this assessment: Parts 2 to 4 of the bill come to £55,104.90.
20. In view of the importance of the issue, on 3 May 2023 (having assessed Parts 1 and 5 of the bill, awarded the costs of the assessment to the Petitioner and summarily assessed those costs at £11,661.84) I gave directions for both parties to make submissions as to the recovery of the fees of Berkeley Domecq, to be determined by me on paper.

The Authorities

21. The leading authority on the recovery of the cost of services offered by non-legal consultants such as Berkeley Domecq is *Agassi v Robinson (Inspector of Taxes) (No. 2)* [2005] EWCA Civ 1507.
22. At paragraph 29 of his judgment in *Octoesse LLP v Trak Special Projects Ltd* [2016] 6 Costs L.R. 1187, Jefford J helpfully summarised the principles to be derived from *Agassi* in this way:
 - “(i) Where a litigant-in-person seeks to recover the costs of a consultant's assistance, the relevant question is whether, in the particular instance, the consultant's costs are recoverable as a disbursement.
 - (ii) That question is answered by posing and answering the question whether those costs would have been recoverable as a disbursement if it had been made by a solicitor.

(iii) Costs would be recoverable as a disbursement by solicitors if the work is such as would not normally be done by solicitors.

(iv) But there nonetheless may be specialist assistance the cost of which would be recoverable.”

23. In his submissions on behalf of the Petitioner Mr Taylor has referred to *Octoesse*, but rather than referring to the Jefford J’s own summary of the principles he has instead taken me to a different summary, offered by Edwards-Stuart J in *NAP Anglia Ltd v Sun-Land Development Co Ltd* [2012] EWHC 51 (TCC) and quoted by Jefford J at paragraph 39 of his judgment in *Octoesse*.

24. As Jefford J pointed out, however, Edwards-Stuart J in *NAP Anglia LLP* does not seem to have been referred to *Agassi*, and in consequence has offered an analysis which, as Jefford J put it at paragraph 41 of his judgment, “may be too broadly stated”.

25. Jefford J was, in making that observation, referring to Edwards-Stuart J’s conclusion that it does not matter whether the work done by the consultant (or, as he put it, “third party”) is work of a type that would commonly be done by a solicitor. In fact, in the light of *Agassi*, it is clear that it does matter.

26. The issue in *Agassi* was whether the appellant could claim as a disbursement, in litigation relating to his liability to income tax, the charges of a member of the Chartered Institute of Taxation, Mr Mills of tax experts Tenon Media.

27. As the Court of Appeal put it, at paragraphs 73 and 75 of the court’s judgment:

“If the expenditure is for work which a legal representative would normally have done himself, it is not a disbursement...

... the appellant is not entitled to recover costs as a disbursement in respect of work done by Tenon which would normally have been done by a solicitor who had been instructed to conduct the appeal. This means that the appellant is not entitled to recover for the cost of Tenon providing general assistance to counsel in the conduct of the appeals.”

28. This still leaves scope for claiming the cost of appropriate services provided by a consultant provided that it is not work that would normally have been done by a solicitor or another legal representative. Paragraphs 76 and 77 of the court’s judgment in *Agassi* put it in this way:

“... it does not necessarily follow that the appellant is not entitled to recover costs in respect of the ancillary assistance provided by Tenon in these appeals. Mr Mills is an accountant who has expertise in tax matters, especially in the kind of issues that arose in the present case. It may be appropriate to allow the appellant at least part of Tenon’s fees as a disbursement. It may be possible to argue that the cost of discussing the issues with counsel, assisting with the preparation of the skeleton argument etc is allowable as a disbursement, because the provision of this kind of assistance in a specialist esoteric area is not the kind of work that would

normally be done by the solicitor instructed to conduct the appeals. Another way of making the same point is that it may be possible to characterise these specialist services as those of an expert, and to say for that reason that the fees for these services are in principle recoverable as a disbursement...

It seems to us that the dividing line between legal services and the provision of expert advice in this area is a matter of some difficulty. Specialist accountants such as Mr Mills may well have far greater expertise in esoteric areas of tax law and practice than solicitors..."

Conclusions

29. I would attempt to summarise the relevant principles, for present purposes, in this way. There is scope for recovering the cost of the sort of consultancy work referred to by Jefford J at (ii) and (iv) quoted above, because it is expert or specialist work that would not normally be done by a solicitor or other authorised legal representative. If such work were undertaken by a consultant on the instructions of a solicitor, the cost of that work might be recoverable as a solicitor's disbursement. It would follow that such cost could also, in principle, be recoverable by a litigant in person by virtue of CPR 46.5(3)(ii).
30. I have however been unable to identify anything done by Berkeley Domecq the cost of which would fall into that recoverable category. I am unaware of any basis for concluding that Mr Matthews brought to the proceedings any expertise that would not have been part of the armoury of the many solicitors who deal with section 994 petitions.
31. I understand the Petitioner's desire to recover the cost of the services offered by Mr Matthews, who has evidently done much to assist him. I am, however, bound by the authorities to which I have referred to conclude that Berkeley Domecq's fees are not recoverable by the Petitioner from the Respondent under the order of 7 June 2016.

Costs

32. As mentioned above I have already awarded to the Claimant and summarily assessed the costs of the assessment proceedings. Mr Taylor submits that the Petitioner should recover from the First Respondent the additional cost of dealing, as a discrete point, with the recoverability of Berkeley Domecq's fees.
33. In fact my treatment of the costs of assessment reflected my view that because Berkeley Domecq's fees had not been correctly presented in the Petitioner's bill of costs, it would not be appropriate to expect the first Respondent to bear the additional cost attendant on unravelling the question of whether they were recoverable at all. In any event, the Petitioner having been unsuccessful on the point, I can see no basis for awarding any further costs to him.