



Neutral Citation Number [2024] EWHC 1153 (SCCO)

Case No: 3PA13350 & 3QT68456

SCCO Reference: SC-2023-APP-000644

**IN THE SENIOR COURTS COSTS OFFICE**  
**FROM THE COUNTY COURT**

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

Date: 14/05/2024

**Before:**

**COSTS JUDGE LEONARD**

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**Between:**

**Mr Nazim Choudhury**

**Claimant**

**- and -**

**Ms Shauna Mukherjee**

**Defendant**

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**Adam Fox (instructed by Dean Wilson LLP) for the Claimant**  
**Jackson Yamba (Lawrence & Associates Solicitors) for the Defendant**

Hearing date: 27 March 2024

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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COSTS JUDGE LEONARD

### **Costs Judge Leonard:**

1. Before turning to the facts of this case, I should mention that the Defendant is referred to on the court record as “Ms Mukherjee”, whereas I understand the appropriate title for the Defendant to be Dr Mukherjee. The heading of this judgment necessarily reflects the court record: no disrespect to Dr Mukherjee is intended by that.
2. This judgment concerns an appeal notice filed by the Defendant in June 2023. The appeal relates to a Final Costs Certificate issued in March 2016, over seven years earlier. I shall address the question of whether the Defendant should have an extension of time to appeal after the passage of so much time. My findings will encompass the merits of the appeal itself, which has a bearing on whether an extension should be given.

### **The Procedural History**

3. Most of the narrative that follows is undisputed. Some of it is based on correspondence the authenticity of which the Defendant has, at the latest possible stage, attempted to challenge. I will explain my reasons for rejecting that challenge.
4. Just over ten years ago, on 24 March 2014, Deputy District Judge Shelton, in the County Court at West London, gave judgment for the Claimant against the Defendant for a sum of money, with costs to be assessed. I understand that the judgment sum has been paid.
5. The Claimant’s claim was originally for possession of a rental property and for arrears of rent. After the Defendant vacated the property, the claim continued as a money claim and concluded with the judgment of 24 March 2014. The Defendant had counterclaimed for disrepair. An application to strike out that counterclaim had been dismissed on 26 September 2013, and the costs of the application awarded to the Defendant. Notwithstanding invitations to do so from the Claimant’s solicitors Dean Wilson LLP (“DW”), the Defendant never quantified those costs. Nor, notwithstanding professional advice encouraging her to do so, did she apply for those costs to be assessed.
6. On 6 October 2014 the court heard the Defendant’s application to set aside the March 2014 judgment. The application was dismissed, and the Defendant ordered to pay costs summarily assessed at £3,094.20.
7. On 27 January 2015, DW sent to the Defendant a Notice of Commencement of detailed assessment proceedings (in standard form N252) along with a bill of the Claimant’s claimed costs, to be assessed pursuant to the order of 24 March 2014.
8. The Notice of Commencement and bill were sent under cover of a letter dated 27 January 2015, addressed to the Defendant by email at lady10001@hotmail.com. That is an email address which the Defendant used then and still uses now (it has been her email address for receiving invitations to remote court hearings).
9. The letter was also addressed to the Defendant by post at 50 Stainer Road, Tonbridge, Kent, TN10 4DX (“the Tonbridge address”). It read:

“We write to enclose the Claimant’s bill of costs. These are being sent to you by email and to your last known address. If you have an alternative postal address please inform us immediately and we will forward the bill of costs to you there.”

10. On 19 February 2015, the Defendant, acting in person, served upon DW Points of Dispute taking issue with the costs claimed in the bill. DW served replies on 9 March 2015.
11. There followed email correspondence between the parties, most of which comprises negotiation and so is privileged. It was common ground, for the purposes of this decision, that I should see and consider the relevant correspondence on the basis that, if necessary, the case could subsequently be transferred to another judge, but I should not (and do not need to) refer to them in any detail. For present purposes it is only necessary to say that both parties made offers that were not accepted and that, on 15 May 2015, DW notified the Defendant that the Claimant’s bill had been sent to the court to be provisionally assessed.
12. Bills of costs from the County Court in London come to the Senior Courts Costs office (“SCCO”) to be assessed. The provisional assessment of the Claimant’s bill was undertaken by Costs Officer Martin at about the end of 2015 or the beginning of 2016. A Final Costs Certificate for the total sum of £9110.76 was issued by the SCCO on 10 March 2016.
13. On 7 January 2016, DW sent a letter by email to the Defendant at Iady10001@hotmail.com. The letter notified the Defendant that the Claimant’s costs had been assessed at £9,110.76 and that a sealed Final Costs Certificate was expected shortly.
14. On 14 March 2016, DW sent a letter to the Defendant by email to Iady10001@hotmail.com and by post to the Tonbridge address. The letter enclosed the Final Costs Certificate and notified the Defendant that enforcement action would be taken if the certified sum were not paid within the 14-day period specified by the Certificate.
15. Proceedings subsequently taken for the enforcement of the Final Cost Certificate appear to have come to the attention of the Defendant in March 2022. The Defendant then applied again to set aside the court’s order of 24 March 2014 (notwithstanding that an application to set aside had already been dismissed in 2014) and to stay the enforcement proceedings. On 20 June 2022, those applications were dismissed, with costs awarded against the Defendant.
16. Just over a year later, on 27 June 2023, Lawrence & Associates, Solicitors filed in the Appeal Centre of the King’s Bench division an Appellant’s Notice in relation to the Final Costs Certificate of 10 March 2016. On 16 October 2023, Mr Justice Soole transferred the appeal to the SCCO.

### **The Grounds of Appeal**

17. The Defendant’s Appellant’s Notice says that the Final Costs Certificate was obtained unlawfully by the Respondent; that the Appellant was unaware of the final costs

certificate because it was not served upon her; and that the Appellant was a litigant in person and only became aware at a very late stage that the Final Costs Certificate was obtained unlawfully.

18. Amended Grounds of Appeal filed by the Defendant on 8 February 2024 set out those propositions in more detail, as follows.
19. The Final Costs Certificate was unlawfully obtained, and costs have been duplicated. Costs had already been summarily assessed and paid by the Appellant pursuant to the order of 6 October 2014. Some of the costs claimed in the Claimant's bill for costs relate to the counterclaim, and had appeared on a schedule of costs prepared by the Claimant for the unsuccessful application to strike it out, dismissed on 26 September 2013.
20. Service of the Notice of Commencement of detailed assessment proceedings and of the bill of costs was invalid, having been effected by email without satisfying the procedural requirements imposed by the Civil Procedure rules ("CPR") in Practice Direction 6A (at paragraph 4.1).
21. The Bill of Cost is defective, in that it does not name individual fee earners and their hourly rates.
22. Finally, the Claimant's conduct, including failure to respond to a settlement offer from the Defendant and unjustified delay in the service of the bill, has been unreasonable and improper so that an appropriate sanction would be the "dismissal" or strike-out of the final cost certificate under CPR 44.11.

### **Procedural Considerations**

23. The procedure for appealing from decisions of Authorised Costs Officers is set out at part VIII of CPR 47. Permission to appeal is not required. In the SCCO the appeal will be heard by a Costs Judge (which is why Soole J transferred it to this court).
24. CPR 47.23 provides that the appellant must file an appeal notice within 21 days after the date of the decision against which it is sought to appeal. The Defendant's Appeal Notice has been filed over seven years after the expiry of that period.
25. Timing aside, it must be borne in mind that the Defendant seeks to appeal from a provisional assessment, which raises the question of whether it is possible to do that.
26. The provisional assessment procedure is set out at CPR 47.15 and part 14 of Practice Direction 47. CPR 47.15(7) provides that when a provisional assessment has been carried out the court will send a copy of the bill, as provisionally assessed, to each party with a notice stating that any party who wishes to challenge any aspect of the provisional assessment must, within 21 days of the receipt of the notice, file and serve on all other parties a written request for an oral hearing.
27. CPR 47.15(8) provides that the notice must identify the item or items in the court's provisional assessment which are sought to be reviewed at the hearing, and provide a time estimate for the hearing.

28. If no such request is filed and served within that period, the provisional assessment shall be binding upon the parties, save in exceptional circumstances. It is then open to the receiving party (as happened here) to request a Final Costs Certificate, at which point the assessment process is complete.
29. On the hearing of this appeal, we discussed Mr Justice Stewart's judgment in *PME v The Scout Association* [2019] EWHC 3421 (QB). That judgment is authority for the proposition that there is no appeal from a provisional assessment. Any party who wishes to take issue with a provisional assessment must apply for an oral hearing in accordance with CPR 47.15(7) and (8). Any subsequent appeal will be limited to the issues determined at that oral hearing. The judgment of Stewart J in *PME v The Scout Association* is binding upon me.

### **The Delay in Appealing**

30. The Defendant accepts that in considering whether to permit the Defendant to pursue an appeal over seven years after the 21-day period for filing an appellant's notice has expired, I must apply the test formulated in *Denton v TH White Ltd* [2014] EWCA Civ 906.
31. First, I must consider whether the failure to comply with the relevant time limit was serious and significant. Second, I must consider the reason for the default, in particular whether there was good reason for it. Third, I must evaluate all the circumstances of the case, in particular the matters referred to at CPR 3.9(1)(a) and (b). Those matters are the need for litigation to be conducted efficiently and at proportionate cost, and to enforce compliance with rules, practice directions and orders.
32. It is accepted by the Defendant that the breach is serious. That is undeniable.
33. As for good reason, in essence the Defendant's position is that, although she was told, on 15 May 2015, that the Claimant's bill of costs had been sent to the court for assessment, it was entirely the Claimant's responsibility to inform her of the outcome of that assessment. If the Claimant did not, then she should not bear any responsibility for delaying for over seven years before attempting to challenge it.
34. That is not a sustainable position. The Defendant was aware that the assessment process had started. It was open to her to keep herself informed. Even as a litigant in person, the proposition that she would have been surprised, seven years later, to find out that that the assessment process had had an outcome, is insupportable.
35. I am in any event unable to accept that the Defendant was not informed of the outcome of the assessment.
36. Her written evidence in this respect is ambiguous. She says:  

“Although the final costs certificate was emailed by the Respondent's solicitors on 14 March 2016, I was completely unaware of this as it was not properly served on me.”

37. As worded, this means that she should not be taken to have been aware of the existence of the Final Costs Certificate if it was sent to her by email instead of by post.
38. If the Defendant's evidence is, rather, that she did not actually receive the Final Costs Certificate in 2016, I do not find that credible, for these reasons.
39. The Defendant denies receiving the Claimant's bill of costs by post (which, for reasons I shall give, I do not accept), but she does not deny receiving it by email. Nor could she, because she served points of dispute in response. One then has to ask why documents subsequently sent by DW to the same email address, one which she uses to this day, would not have come to the attention of the Defendant.
40. The Defendant herself exhibits to her witness evidence a copy of DW's letter to her of 14 March 2016, enclosing the Final Costs Certificate. As I have said, it is addressed to the same postal and email addresses used for the service of the Claimant's Notice of Commencement and bill of costs. The Defendant does not explain why a letter sent in March 2016 to the same email address at which the Defendant received the Notice of Commencement in January 2015, and which she still uses, would not have been seen by her.
41. Gabrielle Moffatt, a solicitor and a partner in DW, has given evidence on behalf of the Claimant. Ms Moffatt has exhibited to her witness statements a number of documents including copies of DW's letter of 27 January 2015 enclosing the Claimant's Notice of Commencement and bill of costs. Ms Moffatt confirms that the Notice of Commencement and bill of costs were sent not only by email but by post to the Tonbridge address which DW also used for postal service of the Final Costs Certificate; and that the Tonbridge address was the address used by the Defendant in the proceedings. In other words, it was her address for service.
42. Ms Moffatt also confirms that lady10001@hotmail.com, to which those documents were also sent, was the email address at which they had been communicating with the Defendant throughout the litigation.
43. Further, Ms Moffatt confirms that on 18 March 2016 DW sent another copy of the letter of 14 March 2016 by post to the Defendant at Flat 6, St Marys Court, 108-112 Blythe Road, London W14 0HE. That property was owned by the Defendant and a tracing search subsequently obtained by the Claimant suggests that it may have been her residence at the relevant time. DW also sent the letter of 18 March to an alternative email address they had for the Defendant at the time.
44. On the hearing of this appeal, Mr Yamba for the Defendant told me that the Defendant wished Ms Moffatt to attend the hearing for the purposes of cross-examination. As I understood it, the intent behind that was to challenge the authenticity of some of the documentation exhibited to her witness statements.
45. To the same end the Defendant applied, in the course of the hearing, to introduce new documentary evidence. Mr Yamba hoped, by reference to that new evidence, to identify superficial differences between different copies of documents (for example, the fact that some copy letters carried DW's firm heading, whereas others did not) in

support of the proposition that some of the exhibits to Ms Moffat's evidence are not authentic.

46. All of this overlooked the significance of actual receipt by the Defendant of documents which she cannot and does not and cannot deny receiving; in particular the Claimant's bill of costs, in respect of which she served points of dispute, and DW's letter dated 15 May 2015, notifying her that the papers had been sent to court for assessment (both of which documents are exhibited to her own written evidence).
47. That aside, the bulk of Ms Moffatt's evidence was served in January 2024, two months before the hearing. In accordance with the court's directions, she did provide a short supplementary statement on 21 March, six days before the hearing, but that statement did no more than exhibit and confirm postal service of the letter of 27 January 2015 and address some arguments about the Claimant's bill.
48. It would be unusual for a witness to attend for cross-examination in a hearing of this nature. I do not mean that it is out of the question, but the Defendant left it far too late to seek Ms Moffatt's attendance. Nothing was said to the Claimant's representatives in that respect until three hours before the hearing, which had not been listed with the attendance of witnesses in mind and which would have had to be adjourned if the application were granted.
49. Nor was I prepared to allow the Defendant, as a substitute for cross-examination, to introduce new evidence in support of this last-minute attempt to accuse her of fraud. Ms Moffatt is a solicitor and an officer of the court, and her witness statements are verified by a statement of truth. It is not acceptable to raise serious allegations against her on such flimsy grounds, much less on an ad hoc basis in the course of a hearing. I accept Ms Moffatt's evidence.
50. In summary, I do not find it credible that the Defendant was in 2016 unaware of the existence of the Final Costs Certificate, to which DW made every proper effort to draw her attention. Even if she had been unaware of it, that would still not have excused a 7-year delay in challenging the outcome of an assessment which, in 2015, she already knew was under way.
51. I have reached the obvious conclusion, which is that when her negotiations with DW failed to bear fruit, the Defendant simply ceased to engage with the assessment. It was only when faced with enforcement proceedings, many years later, that she belatedly attempted to set everything aside and to restart the entire process.
52. The Defendant also relies upon physical and mental health difficulties, which she says prevented her acting promptly, to explain her delay not only over the 12-month period between her second failed attempt to set aside the March 2014 judgment and her filing of an appeal notice against the Final Costs Certificate, but over the entire period since 2014. This is unsupported by any medical evidence and does not furnish a credible explanation for many years of delay.
53. My conclusion, accordingly, is that there was no good reason for the Defendant's seven-year delay in filing an Appeal Notice. The Defendant chose not to act until she felt forced to do so.

### **The Fundamental Merits of the Appeal**

54. Turning to the third test and considering all the circumstances of the case, it is difficult, in the light of the findings I have made, to see how it could be in accordance with the criteria set out at CPR 3.9(1)(a) and (b) to allow the Defendant to proceed with an appeal now.
55. The Defendant submits however, and I accept, that it is also appropriate to consider the merits of the appeal. The difficulty here for the Defendant is that the appeal is bound to fail.
56. I refer again to *PME v The Scout Association*. There is no right of appeal from a provisional assessment, so the Defendant's appeal can have no prospect of success.
57. That being the case, it is not strictly necessary to consider why the Defendant did not request a hearing under CPR 47.15(7) following the provisional assessment of the bill at the beginning of 2016. I would however make the following observations.
58. The provisional assessment of the Claimant's bill was undertaken so long ago that the court's own file is no longer available to me. In the normal course, however, a copy of the provisionally assessed bill would have been posted to the Defendant at the Tonbridge address, with notice of her right to apply for an oral hearing. Evidently no such application was made.
59. When I put this to Mr Yamba, he suggested that the Defendant did not actually reside at the Tonbridge address at the time, and so did not receive the provisionally assessed bill. In fact, the Defendant has given no evidence in support of either proposition, but the question is not whether the Tonbridge address was the Defendant's residential address. It is whether it was her address for service. On the evidence, (a) it was and (b) the Defendant had on 27 January 2015 been invited to give the Claimant an alternative address for postal service and did not do so.
60. All that aside, I come back to the fact that the Defendant uncontestedly knew, 9 years ago, that the papers had been sent to the court for assessment. If this were an application for a hearing under CPR 47.15(7) rather than a misguided attempt at appeal, I would have refused it on the basis that there is no prospect, after such a long delay, of the Defendant establishing any right to an oral hearing.

### **The Merits of the Stated Grounds of Appeal**

61. *PME v The Scout Association* entirely aside, the merits of the stated grounds of appeal vary between weak and non-existent.
62. As I have accepted the evidence of Ms Moffatt, I accept that the Claimant's Notice of Commencement and bill of costs were validly served upon the Defendant by post and email on 27 January 2015. Even if the bill had only been served by email, the Defendant accepted it and served points of dispute. If she could raise any valid technical point about service, it would be entirely inappropriate to permit her to rely upon it now. The proper approach would be to apply CPR 3.10 to dispense with any such technical issue.



63. The Notice of Commencement was late, but in accordance with CPR 47.8 that does not invalidate the bill or justify the disallowance of any costs absent an application by the Defendant to require the Claimant to serve the bill. No such application was ever made. The Defendant could still have argued for a disallowance of interest on the Claimant's costs over the period of delay, but again the opportunity to do so has long since passed.
64. The validity of the court's final costs certificate does not turn upon whether it was received by the Defendant in 2016. That is relevant only to the issue of delay, which I have addressed above. I have in any event found that the Defendant did receive it.
65. As for the other stated grounds of appeal, the Defendant is attempting to base an appeal upon criticisms of the Claimant's bill that were not raised in her original 2015 Points of Dispute. It is far too late for that.
66. In any case, most if not all of those criticisms do not bear examination. The proposition that the costs payable to the Claimant had already been assessed and paid pursuant to the order of 6 October 2014 is patently wrong. The costs awarded on that occasion were the costs of the failed application to set aside the court's order of 24 March 2014. The costs awarded in the 24 March order still fell to be assessed and paid. The Claimant had every right to have them assessed, and to seek enforcement of the Final Costs Certificate when that assessment was complete.
67. As for the inclusion in the bill of items relating to the Defendant's counterclaim, it simply does not follow that any costs included in the schedule produced by the Claimant for his failed strike-out application in September 2015, are not recoverable as part of the general costs of the counterclaim. Such costs could be recovered either on strike-out or on the counterclaim ultimately failing.
68. The Claimant says that the order of 24 March 2014 disposed of both the Claimant's claim and the Defendant's counterclaim. If that is right, then the costs of the counterclaim generally would be recoverable: if wrong, they would not.
69. Either way, the extent to which given items relating to the counterclaim would be recoverable is a matter for assessment, and assessment took place seven years ago. The Defendant now argues that some items allowed in the assessment, not objected to in 2015, were in fact irrecoverable. It is, with due respect, nonsensical to argue that in consequence the Final Costs Certificate was "unlawfully obtained".
70. As regards the naming of fee earners and their hourly rates, the Claimant's bill identifies fee earners by category and assigns to each category of fee earner and hourly rate. Definitive guidance upon the fee earner information to be provided in bills was not available until the judgment of the Court of Appeal in *AKC v Barking, Havering & Redbridge University Hospitals NHS Trust* [2021] EWHC 2607 (QB), given many years after service of the Claimant's bill.
71. It has now been established that individual fee earners must be named in an electronic spreadsheet bill, but not in a paper bill, and the Claimant's bill is a paper bill. I think that it must be right to say that the bill should have identified the specific experience of the fee earners referred to, but the Defendant did not take that point in 2015, and does not take it as a ground of appeal. If she had, I would have said that in 2015, it

was common practice to prepare bills in the form used by the Claimant. Had the Defendant at the time requested specific information as to fee earners' experience, it could easily have been supplied, but she did not.

### **The Claimant's Conduct**

72. The Defendant says that it was unreasonable for the Claimant to proceed to an assessment. This proposition is based upon authority to the effect that refusal to engage with an offer of settlement may be an abuse of process. That, in given circumstances, may be the case, but it does not follow that it is always an abuse of process to proceed to an assessment after refusing an offer of settlement. That is another nonsensical proposition. Most costs claims that proceed to detailed assessment do so precisely because offers have not been accepted. In this case, both parties made offers which the other declined to accept. They were both entitled to do that, and the Claimant, having declined to accept the Defendant's offer, was equally entitled to proceed instead to assessment.
73. There is nothing about the conduct of DW on behalf of the Claimant that could give rise to any proper allocation of misconduct, or which could engage CPR 44.11. The Defendant says that DW took advantage of her as a litigant in person: on the evidence, they did not. They made every effort to contact the Defendant and to keep her informed. It was the Defendant who declined the Claimant's invitation to establish a service address of her choice; who ceased to engage with the assessment process; and who now denies knowledge of information which, on the evidence, she must have received, in an attempt to excuse inexcusable delay.

### **Conclusion**

74. For all the above reasons, an extension of time to appeal over seven years after the expiry of the time limit set by CPR 47.23 is refused and the appeal is dismissed.
75. If this were an application under CPR 23 or an appeal governed by CPR 52, I would be obliged to record in an order my conclusion that the appeal is totally without merit. I do not believe, however, that the "totally without merit" provisions of the CPR apply to an appeal under CPR 47.23.