



Neutral Citation Number [2024] EWHC 3213 (SCCO)

Case No: SC-2022-BTP-000973

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 10/12/2024

Before :

COSTS JUDGE LEONARD

Between :

Clare Griffin

Claimant

- and -

Kleyman & Co Solicitors Ltd

Defendant

Robin Dunne (instructed by Thomas Legal Costs Limited) for the Claimant
Jerome Silva (instructed by Kleyman & Co Solicitors Ltd) for the Defendant

Hearing date: 10 October 2024

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.

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COSTS JUDGE LEONARD

Costs Judge Leonard:

1. On 13 August 2024 the Claimant made an application for an extension of time for permission to appeal against a judgment I had handed down on 14 May 2024. The extension was sought until, as the application put it, delivery of documents, specifically delivery of a “soft copy” of an email delivering the Defendant’s “August 2020 invoice for the financial proceedings”. The application also sought delivery of a cash account, as previously ordered.
2. The delivery of a cash account is a simple matter and the application in that respect has been disposed of. Before I address the remainder of the application, I should put it into context by reference to the history of these proceedings.

Pre-Judgment

3. The Defendant solicitors advised and represented the Claimant between early March 2020 and June 2021 in connection with proceedings for financial provision in divorce (“ancillary relief”).
4. On 30 July 2021, the Claimant filed an application under part 8 of the Civil Procedure Rules (“CPR”) for the assessment under section 70 of the Solicitors Act 1974 of a series of bills rendered to the Claimant by the Defendant between 30 March 2020 and 28 May 2021. The application was opposed, but the Part 8 proceedings concluded with a consent order sealed 13 May 2022, providing for most of the bills in the series (totalling £181,954.64) to be assessed.
5. The order of 13 May 2022 provided, in standard fashion, for the Defendant to serve a breakdown of costs; for the Claimant, following an inspection of the Defendant’s files, to serve Points of Dispute; and for the Defendant to serve Replies. In due course the Breakdown, Points of Dispute and Replies were served.
6. The inspection of the Defendant’s files was conducted by a Costs Lawyer from Thomas Legal Costs Limited (“TLC”), the Claimant’s Costs Lawyers, between 8 and 15 July 2022.
7. A Detailed Assessment hearing was listed for 4 April 2003 with a time estimate of three days, but due to errors on the part of the court office had to be relisted for 8 August 2023.
8. The parties duly attended on 8 August 2023 for the first day of a three-day detailed assessment hearing, but for reasons that need not be rehearsed here, the hearing did not proceed. Instead I adjourned for the hearing of a preliminary issue over one day on 23 January 2024. The issue in question was whether and to what extent the Defendant’s recoverable costs should be limited by reference to estimates given to the Claimant. I gave directions for the hearing of that issue, including for the exchange of witness statements.
9. The Claimant relied upon a witness statement she had served in the Part 8 proceedings on 14 March 2022, and upon a further witness statement dated 8 November 2023. The Defendant relied upon two witness statements from Ms Stephanie Kleyman, the solicitor who had had conduct of the Claimant’s case for the Defendant. The first,

evidently prepared for the purposes of the Part 8 application, was dated 21 December 2021 and the second 29 November 2023. In December 2023 I made an order for each witness to attend the January 2024 hearing for cross-examination.

10. The volume of evidence produced by the parties for the purposes of the 23 January 2024 hearing is reflected in the length and detail of the judgment I handed down on 14 May 2024. Among the contested factual issues was the date of delivery of a bill from the Defendant to the Claimant dated 24 August 2020 (to which I shall refer as “the delivery date dispute”).
11. The Defendant’s 24 August 2020 bill, which covered work undertaken to 21 August 2020, came to £26,118.40. It brought the Defendant’s total billed costs to £59,765.40, as against the most recent estimate given by the Defendant in July 2020, which (combined with billed costs to that point) anticipated total costs and disbursements of £82,648.80 to 7 September 2020, the anticipated end of the ancillary relief hearing.
12. The Defendant’s next bill, of 8 September 2020, was for £64,522.94 and covered work undertaken up to the conclusion of the ancillary relief hearing. That bill was delivered on 9 September 2020. It brought to the Defendant’s billed costs and disbursements to £124,288.34, well in excess of the July 2020 estimate.
13. In her witness statement of 14 March 2022, the Claimant indicated that she received one bill from the Defendant on about 8 September 2020:

“An invoice was sent out immediately after the final hearing. I was in complete disarray with what I read and I was horrified. The costs involved for the final hearing alone were atrocious. The bill I received on 8th September... does not remotely compare to any of the estimates I was given by that stage...”
14. In her witness statement dated 8 November 2023, the Claimant indicated that she received two, rather than one, invoices at that time:

“ On 9 September 2020... I was sent another two invoices for August and September totalling £90,641.34... and was told that I owed £101,097.34... on outstanding invoices. This was outrageous.”
15. The Defendant took issue with the Claimant’s new evidence to the effect that the Defendant’s 24 August 2020 bill was first delivered together with the 8 September bill. The Defendant contended that all of the Defendant’s bills were delivered when raised, and that the 24 August 2020 bill was sent again to the Claimant on 9 September 2020 as part of a set of three outstanding bills (from July, August and September) sent by way of update and in conjunction with a request for the Claimant to draw upon a Novitas loan facility set up for the funding of the litigation.
16. Ms Kleyman’s evidence on the point, in her statement of 29 November 2023, was:

“... the Claimant appears to be suggesting that she was not aware of how the fees were increasing until September 2020. The implication

being that the July and August invoices were not sent to her until 9 September 2020. This is not the case. Invoices were sent to her when they were raised, and regular statements were sent to her as well. The only reason these invoices were sent to her again on 9th September 2020 was because we were about to draw down on the Novitas loan and we wanted to remind her what we were drawing down for...”

17. In fact, it was only the Defendant’s 24 August 2020 bill that the Claimant now alleged was not delivered until 9 September.
18. Ms Kleyman’s witness statement does not actually say anything about how the Defendant’s bills were delivered to the Claimant, but the assumption since adopted by both parties has been that the 24 August 2020 bill, in common with the Defendant’s other bills, would have been delivered by email.
19. At the hearing of 23 January 2024, both the Claimant and Ms Kleyman were cross examined on the point. Here are two extracts from a transcript of the day’s proceedings recording the cross-examination of Ms Kleyman by Mr Dunne, counsel for the Claimant:

“Q 24 August invoice, the evidence of Clare is that it was not sent until 9 September or she did not receive it until 9 September, so I would suggest that is right. There is no evidence to the contrary in any of your witness statements.

A I thought I did deal with that.

COSTS JUDGE LEONARD: Paragraph 23, I think, of Ms Kleyman’s second witness statement.

MR DUNNE: Have you exhibited the email that sends the August 2020 bill or invoice to Clare?

A No, I don’t believe that I have....

Q This morning your counsel made great play of the point that Clare had not objected to the regular invoices as was put until September - 9 September. Would you agree that the reason for that is that until this email on 9 September was sent, the totality of her liability was just over £35,500 which was well within the budget, in fact well within both budgets or estimates?...”

“... Q It is right to say that this is the first time that she-- that Clare understands-- in September, that Clare understands that the estimates have been completely inaccurate. It is the first time she is told that the costs are anything like what they are and she is not able to-- she did not know that because none of the invoices added up to that, so that is the first point. So while the trial is still actually ongoing – you have not even had closing submissions – that is the first time she is told there is £101,000 on the clock?

A Well, my understanding is that the invoice of 31 July was sent to-- sorry, the invoice of 24 August 2020 was sent to her at the time and the

invoice of 8 September was sent to her at the time. I don't know at what point she actually read them and I don't know what her understanding was before, during or after."

The 14 May 2024 Judgment

20. In my judgment of 14 May 2024, I set out in detail my reasons for concluding that the Defendant's costs should not be limited by reference to estimates given to the Claimant.

21. It is not necessary to repeat them all. For present purposes it is sufficient to say that although I found that the estimates provided by the Claimant to have been inadequate in some respects, I also found that the conduct of the Claimant throughout the course of the Defendant's retainer had been unreasonable to a degree that (a) effectively ensured that that costs would exceed any reasonable estimate and (b) made it impossible to identify any figure to which the Claimant's costs and disbursements should, by reference to estimates given, be limited.

22. At paragraph 71-73 of my judgment of 14 May 2020, I expressed my conclusions on the delivery of the Defendant's 24 August 2020 bill. I will repeat them here for ease of reference:

"I appreciate that the question has some bearing upon the Claimant's awareness of and response to accruing costs, but it is clear from correspondence to which I have already referred and from correspondence to which I shall come, that the Claimant was always concerned about accruing costs, and it is equally clear that the size of the 8 September bill came as a shock to her. There was only a two-week gap between the August and September invoices in any case. I also bear in mind that the delivery of regular bills after work is done is not an adequate substitute for an appropriate estimate before the work is done.

As, however, the point is in issue, I will say that it seems to me more likely than not that like the July invoice, the 24 August invoice was delivered when it was raised. That is not just because that is what one would expect, as a matter of course. As I have observed, the Claimant's evidence in that respect is not consistent.

Further, for reasons I shall explain, where there is a conflict of evidence I prefer that of Ms Kleyman to that of the Claimant. It seems to me more likely than not that the Defendant's bills, in accordance with normal practice, were delivered when prepared; that the July and August bills were, accordingly, both sent when they were prepared; and that they were re-sent to the Claimant when the Novitas facility finally became available, in order to draw her attention to what was outstanding."

23. Again, this conclusion needs context. Apart from the 24 August 2020 bill, it is not disputed that the Defendant rendered regular bills throughout the retainer. The Defendant had advanced a case to the effect that the Defendant had, in that way, been kept informed of costs as they accrued. It will be tolerably clear from the passage quoted above that for the purposes of the preliminary issue I did not find that contention to

have any real force, because regular billing is not an adequate substitute for accurate advance estimates.

24. Nor did I find the delivery date dispute to be of material importance. I accepted that the Claimant was, on 9 September 2023, shocked by the extent to which costs and disbursements had accrued.
25. I made a finding on the delivery date dispute purely because it was in issue. Had I declined to do so (as, it being immaterial, I might have done) or had I decided the dispute in favour of the Claimant, it would have made no difference to my conclusion on the decision I was asked to make: whether the Defendant's recoverable costs should be limited by reference to estimates.

The Evidence Available Before the Estimates Hearing

26. It will be apparent from the summary of events I have set out above that the allegation that the Defendant's 24 August 2020 bill not been delivered until 9 September 2020 was first made by the Claimant on 8 November 2023. Ms Kleyman's evidence to the contrary was served two months before the hearing of the estimates issue on 23 January 2024.
27. Mr Strickland of TLC has given two statements in support of the Claimant's application. He confirms that on inspecting the Defendant's files in July 2022, TLC saw a number of emails from the Defendant delivering bills to the Claimant, but not any email delivering the 24 August 2020 bill. No such email was among the Defendant's case papers, as delivered to the Claimant before the original assessment date of 8 August 2023. Nor (as Mr Dunne pointed out in cross examination on 23 January 2024) was any such email exhibited to Ms Kleyman's witness statement of 23 November 2023.
28. It was, accordingly, open to the Claimant and her legal team, in the two months between service of Ms Kleyman's November 2023 statement and the January 2024 hearing, to raise with the Defendant the absence of any such email from its files; to challenge the Defendant to produce a copy or to admit that none existed; to put to Ms Kleyman on cross-examination any apparent inability on the Defendant's part to produce a copy of any such email; to cross-examine Ms Kleyman on the grounds upon which she claimed to know when the 24 August 2020 bill had been delivered; and to rely upon such matters in order to persuade me to accept the Claimant's 8 November 2023 witness statement, rather than her own 14 March 2022 witness statement or Ms Kleyman's witness evidence.

Post Judgment

29. On handing down judgment on 14 May 2024, I adjourned the handing-down hearing to a date to be fixed and made an order extending time for all consequent applications to the adjourned hearing. The hearing was listed for 30 July. At that hearing, the Claimant did not make any application for permission to appeal, but did indicate (through counsel) that she sought from the Defendant a copy of any email delivering the Defendant's 24 August 2020 bill.

30. As I recall, I could not see that the issue had any real significance, but as there was in place an order for inspection of the Defendant's files, I indicated that as long as the detailed assessment proceedings continued (as they do, the remaining issues being listed for hearing on 10 and 11 December 2024) it was open to the Claimant to follow up any perceived omission in that respect by the Defendant. I suggested that the parties seek to deal with the issue by agreement. Agreement was not reached, hence the Claimant's application.
31. In his first statement, dated 13 August 2024, Mr Strickland complains of the Defendant's response to correspondence from late July 2024, which (as exhibited to his statement) starts with a request for a copy of any email delivering the Defendant's 24 August 2020 bill and (in the face of the Defendant's admitted inability to find it) evolves into what I can only describe as an attempt to reopen in correspondence the cross-examination of Ms Kleyman that had been completed on 23 January.
32. Ms Kleyman responds in a witness statement dated 3 October 2024, in which she refers to the Claimant's "Leap" case management system, indicating that a misplaced email within that system may be very difficult to locate, to the extent of a comprehensive search would become disproportionate. She offers some detail of the Defendant's billing procedures and appends some internal correspondence in support of the proposition that the 24 August 2020 bill, which was approved by her on 26 August, would have been delivered at about that time, whether or not a delivery email can now be found.
33. Mr Strickland responded with a further witness statement dated 7 October 2024 in which, based upon his personal knowledge of the Leap system, he indicates that emails in the system are difficult to misplace and even if misplaced, are relatively easy to find.

The Application Hearing

34. By the time it was heard, the Claimant's application had changed. The day before the hearing of the application, Mr Dunne filed a skeleton argument which sought an order to the effect that the Defendant produce within 14 days a copy of the email delivering the 24 August 2020 bill, failing which this court would declare that, contrary to my findings in my judgment of 9 May 2024, the Claimant did not receive a copy of that bill until 9 September 2020; and that time for an appeal from my 9 May 2024 judgment be extended in the meantime.
35. At the hearing itself, Mr Dunne very properly conceded that my jurisdiction to entertain either an application for permission to appeal or an application for an extension of time to appeal (subject to the possible application of CPR 47.14(7) to a solicitor/client assessment, in which case no extension would be needed at this time) ended on 30 July 2024. I refer in that respect to CPR 52.3(2)(a), CPR 52.12(2)(a) and *Chedington Events Limited v Brake* [2023] EWHC 3094 (Ch).
36. With regard to the remainder of the application, I trust that I do not do injustice to Mr Dunn's detailed submissions if I summarise them in this way.
37. Ms Kleyman's November 2023 witness statement is prefaced in the usual way by confirmation that, unless otherwise stated, the facts and matters set out in it are within her own knowledge, and that where she is relying upon information provided by others,

the source of the information is identified. Her assertion in that statement to the effect that the Defendant's bills were delivered to the Claimant when raised, is not qualified in any way.

38. Mr Dunne argues that Ms Kleyman's written and oral evidence can, accordingly, only be taken as an unequivocal assertion that she had personal knowledge of a specific email being delivered but had simply not exhibited the document to her November 2023 witness statement. In fact, as the post-judgment correspondence and evidence exchanged between the parties demonstrates, she had very limited personal involvement in the delivery of bills and no personal knowledge of any email delivering the Defendant's August 2024 bill. Ms Kleyman, nonetheless, did not correct or clarify her evidence either under cross-examination or on the circulation of a draft of my 14 May 2024 judgment. Her evidence was misleading: the court had relied on a solicitor, an officer of the court, stating clearly that the email had been sent.
39. This, says Mr Dunne, is important first because it can help the Claimant establish that her case had gone to the Ancillary Relief hearing with the Defendant breaching its estimates and failing to tell her so. It is important not only for the purposes of the assessment of the Defendant's costs but would be highly relevant to any complaint the Claimant might wish to make to the Legal Ombudsman or the Solicitors Regulation Authority. The matter is also pertinent to the preparation of an application by the Claimant against the Defendant under CPR 44.11, in the context of the issues remain to be determined in this detailed assessment.

Conclusions

40. Grateful as I am to both parties' counsel for their submissions, I do not find it necessary to set out here in any detail the case advanced on behalf of the Defendant by Mr Silva, much of which is accepted in the observations I have already made and the conclusions I am about to set out.
41. It is, as I understand it, common ground that there are very limited circumstances in which a court may be asked to reopen a finalised, perfected judgment, none of which would apply here. Mr Dunne however suggested that, as this solicitor/client assessment is not complete, it should be possible to revisit and reopen findings set out in my judgment of 14 May 2024.
42. I can see that the position might be considered as analogous to that where a judgment has been delivered, but the relevant order has not yet been sealed, as considered for example in *AIC Ltd v Federal Airports Authority of Nigeria* [2022] UKSC 16.
43. Even assuming however that this line of thinking is correct, I do not think that it helps the Claimant. The task of a court faced with an application to reconsider a judgment in such circumstances is to do justice in accordance with the overriding objective in CPR 1.1, which implicitly affirms and is underwritten by the long-standing principle of finality of litigation (*AIC Ltd v Federal Airports Authority of Nigeria*, at paragraph 29). It seems to me that the Claimant's application falls foul of that fundamental principle, for the following reasons.
44. The Claimant is putting nothing to the Defendant and Ms Kleyman now that could not have been put to them before and at the January 2024 hearing of the preliminary issue.

I am not suggesting that she should have done so then: for reasons I am about to summarise, the delivery date dispute has never been of any real importance for the purposes of the preliminary issue. The point is that it is much too late for the Claimant to attempt to do so now.

45. I have already explained why the delivery date dispute has no bearing upon the key conclusions I reached in my May 2024 judgment. Mr Dunne argues that the issue has some bearing upon the question of whether the Defendant allowed the Claimant's case to proceed to the September 2020 Ancillary Relief hearing without telling her that the Defendant's estimates had been exceeded, but the August 2020 bill did not in itself take the Defendant's billing outside the parameters of the July 2020 estimate. It was the 8 September 2020 bill that did so.
46. I have already made a finding to the effect that by the end of August 2020, the Defendant should have, but did not, notify the Claimant that the July 2020 estimate was going to be substantially exceeded (paragraph 205 of my 14 May 2024 judgment refers). I would have thought that to be much more to the point.
47. I regard it as unfair to characterise Ms Kleyman's written and oral evidence as misleading. I am satisfied that Ms Kleyman was simply stating (and continues to state) what she believes to be the case. Nor was the court misled by Ms Kleyman.
48. In her November 2023 statement Ms Kleyman made a broad assertion to the effect that all of the Defendant's bills were delivered when raised. Whilst she should have been more precise about her grounds for that assertion, I understood her evidence in that respect to be based upon her familiarity, as a senior member of the Defendant firm, with its billing practices. It did not cross my mind that Ms Kleyman intended to suggest that she had any substantial personal involvement in the delivery of any of the Defendant's bills, or could personally attest to the date of delivery of every bill.
49. Apart from anything else, it was perfectly evident from the core bundle of documents produced for the January 2024 hearing that the preparation and delivery (as opposed to approval) of bills was routinely delegated to junior members of the Defendant firm. Consistently with that, Mr Kleyman, in oral evidence, referred to her "understanding" as to the timing of delivery of the Defendant's 24 August and 8 September 2020 bills, not to personal knowledge.
50. Further, as I have observed, Ms Kleyman did not mention an email until invited, under cross-examination, to share Mr Dunne's assumption that the August 2024 bill had been delivered by email, and then she simply confirmed Mr Dunne's observation that she had not appended a copy of such an email to her November 2023 statement. None of that is misleading.
51. I would add that even if it would be right for me to allow the Claimant to reopen the delivery date dispute, the mixture of factual and quasi-expert evidence produced for the purposes of this application adds nothing of any real value to what was already before the court in January 2024. It is not remotely conclusive.
52. I can find no substance in the proposition that a change in my conclusions on the delivery date dispute might assist the Claimant in making an application against the

Defendant under CPR 44.11. CPR 44.11 has no application on an assessment between solicitor and client: *John Poyser & Co Ltd -v- Spencer* [2022] EWHC 1678 (QB).

53. As for potential complaints to the Legal Ombudsman or the Solicitors Regulation Authority, those are not matters for me.
54. For all those reasons, this application must be dismissed.