IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT
OF ENGLAND & WALES
QUEEN'S BENCH DIVISION
[2022] EWHC 237 (Comm)

No. CL-2021-000217

Rolls Building
Fetter Lane
London, EC4A 1NL

Friday, 14 January 2021

Before:

THE HON. MRS JUSTICE COCKERILL DBE

B E T W E E N :

ADDAX ENERGY SA — Claimant/Respondent

- and -

PETRO TRADE INC. — Defendant/Applicant

MR J. ROBINSON (instructed by Hill Dickinson LLP) appeared on behalf of the Claimant/Respondent.

MR M. WATSON (instructed by Dentons UK & Middle East) appeared on behalf of the Defendant/Applicant.

J U D G M E N T

(Via Microsoft Teams)

MRS JUSTICE COCKERILL:

1 This is a hearing of a jurisdictional challenge brought by the defendant, Petro Trade. The defendant applies under CPR Part 11, challenging the court's jurisdiction. The issue is straightforward; does the claimant have a good arguable case that an English jurisdiction clause was incorporated into an alleged oral contract concluded on 3 January 2018.

2 The claimant's claim was issued on 14 April 2021. It brings two claims; firstly, a claim for $532,506.86 plus interest under a contract allegedly concluded on 25 August 2016 ("the Gas Oil Contract") and, secondly, a claim for $2,228,901.92 plus interest under a contract allegedly concluded on 3 January 2018 ("the Term Agreement").

3 The claimant served the defendant in Liberia without permission, relying on CPR rule 6.33(2B)(b), namely, on the basis that those claims are ones in respect of contracts with an English jurisdiction clause.

4 The defendant takes no issue on jurisdiction in relation to the first of the contracts, the Gas Oil Contract. Its case is that the claimant was not entitled to serve out in relation to the alleged Term Agreement because the claimant has no good arguable case that the alleged Term Agreement contains an English jurisdiction clause. The issue before me this morning relates to the extent to which it is arguable that a hypothetical contract concluded orally on 3 January 2018 contained an English jurisdiction clause, when it is common ground between the parties that there was never any discussion about what court would have jurisdiction. As is so often the case in disputes which appear in this court, neither the parties nor the factual matrix has a connection to England.

5 The claimant is a Swiss petroleum supplier. The defendant is a major Liberian petroleum importer; it owns and operates gas stations across Liberia. The parties' trading relationship began in 2015. They entered into a written, secured distribution agreement ("SDA") dated 1 December 2015. The 2015 SDA is not a contract for the sale of goods between the parties. It does not identify a particular type or quantity of goods to be supplied on any particular date or at any certain prices. What it is is a tri-partite agreement between Addax, Petro Trade and a company called ACE Global Depository DMCC ("ACE"). It anticipates that Addax and Petro Trade will enter into subsequent sale contracts. In substance and effect, the SDA is a storage and release agreement. It provides a regime by which the claimant could deliver petroleum into a third-party's tanks in Monrovia, Liberia from which the defendant could obtain that petroleum. So Addax would deliver petroleum product in storage tanks owned by the state-owned company Liberian Petroleum Refining Company and managed by ACE and from those tanks Petro Trade could then stem product pursuant to separate sales contracts with Addax. The SDA was, I am told, necessary because Addax did not have the requisite infrastructure in Liberia to effect petroleum supplies. It did not have a licence to discharge products in its own name, whereas Petro Trade did. Petro Trade, in turn, did not have the financial resources to pay for or issue letters of credit for whole parcels of products for delivery to Liberia.

6 Petro Trade paid for petroleum by letters of credit payable upon presentation of the release order to the third party to release each individual parcel of petroleum from the tanks to Petro Trade. The SDA provided that Addax retained ownership of the petroleum so long as it was in the tanks. Clause 3.6 of the SDA envisages, therefore, separate sales agreements. Clause 4.4 of the SDA refers to ACE receiving sale and purchase invoices and sale and purchase contracts.

7 As contemplated by the agreement, Addax and Petro Trade did indeed enter into a series of subsequent supply and spot contracts, including the Gas Oil Contract. Such agreements were agreed informally by telephone, principally between Mr Torre, for the claimant, and Mr Hindawi, for the defendant. They would agree the product, quantity, price and delivery terms. They discussed nothing else. The claimant usually, but not always, recorded the essential terms in a recap email, which was then sent shortly after the call. The recap emails never contained any provision as to jurisdiction; they were often responded to by communication by email accepting those terms. On some occasions, not always, and not as often, a recap was sent. After sending that recap email, the claimant also sent a document that it has referred to as a "spot contract".

8 The sending of the spot contract and the frequency with which this was done is a contentious issue between the parties. Of the 15 transactions in the evidence before the parties, which relates only to the period 2017/2018, the document was received in one-third of the cases, that is 5 out of 15. It was, on that basis, not a more often than not occurrence, and the occasions on which it did occur are patchy; they are more consistent in the early period than in the later period. The spot contract contained more extensive written terms, including an English governing law clause and an English jurisdiction clause. The claimant prepared them by having an employee insert the terms from the recap email into the claimant's template spot contract.

9 It is common ground that on or around 3 January 2018, Mr Hindawi and Mr Torre had a telephone call about the parties concluding a long-term contract for the sale of petroleum. That is a contract to cover multiple rather than single shipments. It is the case of Addax that the Term Agreement provided for the supply of 100,000 metric tonnes plus or minus ten per cent of gas oil and mogas, DOP Monrovia, with monthly deliveries of about 4,000 metric tonnes per month from January 2018 to December 2019 inclusive. The parties disagree about whether a contract was formed at all on that call; Addax says it was, Petro Trade says that it was not and that it merely asked Addax to provide draft terms that could form the basis for negotiation. Mr Hindawi's evidence is that there was no discussion about any English jurisdiction clause and Mr Torre does not say that such term was discussed. His evidence is that the parties discussed commercial terms, as they had done before.

10 Mr Torre's evidence is that the agreement which the claimant contends was concluded on the telephone was referred to at a further meeting on 1 February 2018 and in the email on 27 February 2018. They do not evidence any discussion about a jurisdictional clause, though they may have some relevance to the question of whether there was an agreement at all.

11 The dispute between the parties, in the end, is essentially whether it went without saying at the time of the January conversation that an English jurisdiction clause was incorporated because of a previous course of dealing.

12 As for later events, Mr Torre's evidence is that in late August 2018 he obtained a template spot contract document and inserted the commercial terms he believed had been agreed on the call on 3 January 2018. This document, therefore, contained and English jurisdiction clause, as the earlier spot contracts had. Mr Torre sent a soft copy of that document to Mr Hindawi on 20 November 2018. There was no written response. Mr Hindawi's evidence is that he told Mr Torre a few days afterwards that the draft was being reviewed by the defendant's lawyers. Ultimately, it was not taken forward.

13 After 3 January 2018, parties had continued to transact in business very much as they had done before in terms of the frequency of trades, but there seemed to have been no spot contracts, or very few spot contracts, passing between the parties during that period. There is no evidence that the alleged Term Agreement was referred to until the claimant's lawyers wrote on 22 January 2021, asserting that the defendant was liable under it. The circumstances in which that dispute arose is that in September 2019 the MT Ance discharged just over 7,000 metric tonnes of mogas into third party storage tanks in Monrovia and the defendant subsequently took delivery of just over 5,000 metric tonnes, paying under letters of credit. In October 2019, the MT STI Beryl discharged nearly 6,000 metric tonnes of gas oil into the storage tanks and the defendant subsequently took delivery of just over 4,000 metric tonnes, paying under letters of credit. The claimant alleges those transactions took place pursuant to the Term Agreement; the defendant says they were individual transactions under distinct contracts.

14 The result of the transactions was that there should have been some mogas from the MT Ance and some gas oil from the MT STI Beryl in the tanks in Monrovia. Petro Trade alleged during early 2020 that the products were not in those tanks. Addax obtained weekly stock reports that appeared to confirm products were in the tanks, with the report stamped and countersigned by relevant management operational personnel for LPRC.

15 The defendant's case is that some point prior to February 2020, a third party had broken into the tanks and stolen the petroleum products. As such, there was none for the defendants to take. The parties have fallen out over this missing petroleum and have ceased trading with each other. The central issues on the merits will be whether the products were missing and, if so, who bears that loss. The precise contractual basis on which the parties dealt will be central, but that is not a matter for this hearing. All that I have to determine is whether the dispute relating to the alleged Term Agreement will be heard here or not.

Legal Principles

16 Addax relied on CPR rule 6.33(2B)(b) to serve without permission. This is a recent change to the rules. Previously, one of the gateways via which the court's permission could be obtained to serve out of the jurisdiction was that the claim was in respect of a contract containing an English court jurisdiction clause, old CPR PD 6B 3.1(6)(d). The change introduced by the new rule reversed the requirement to obtain the court's permission so as not to burden the court with applications for permission to serve out. It provides that:

> "The claimant may serve the claim form on a defendant outside the United Kingdom where, for each claim made against the defendant to be served and included in the claim form…
>
> > (b) a contract contains a term to the effect that the court shall have jurisdiction to determine that claim."

Accordingly, the claimant did not seek permission to serve out. It has not asserted in correspondence or in evidence that there was any other ground on which it was entitled to serve without permission.

17 It is common ground that the claimant must show that there is a good arguable case that the contract being sued upon has in it a term to the effect that the court shall have jurisdiction to determine the claim in respect of the contract (*Marubeni Hong Kong v Mongolian Government* [2002] 2 AE (Comm) 873 at [15] by Aikens J). As to whether there is a "good

arguable case" the Court of Appeal in *Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA* [2019] 1 WLR 3514 at [70] the test was as follows, quoting Lord Sumption JSC in *Goldman Sachs International v Novo Banco* [2018] 1 WLR 3683.

> "For the purpose of determining an issue about jurisdiction, the traditional test has been whether the claimant had "the better of the argument" on the facts going to jurisdiction. In *Brownlie v Four Seasons Holdings Inc* [2018] 1 WLR 192, para 7, this court reformulated the effect of that test as follows:
>
> > "… (i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway;
> >
> > (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so; but
> >
> > (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it."
>
> It is common ground that the test must be satisfied on the evidence relating to the position as at the date when the proceedings were commenced."

18 It follows that the issue between the parties today relates to whether the claimant is able to supply a plausible evidential basis for the application of the relevant jurisdictional gateway and that is the ambit of the argument which has been conducted before me this morning.

The Submissions

19 The defendant points out that the claimant's pleaded case is very simple; it is that on or about 3 January 2018 the parties entered into a contract made and/or evidenced in writing which contained an express term as to the English court's jurisdiction. It points out that there is no plausible evidential basis for the claimant's case that a contract was made in writing on 3 January 2018. It is quite clear, it seems to me, that the evidence does not support such a case. No contract is asserted to have been made by a document. Any contract formed on 3 January 2018 must necessarily have been an oral agreement. That is common ground between the parties.

20 The defendant says that even if the claimant could show a sufficiently arguable case that an oral agreement was concluded on that date it must still show that there is a good arguable case that a jurisdiction agreement was incorporated into that oral agreement and that that plausible evidential basis for the argument that the contract was "evidenced in writing" is lacking, given that (i) the defendant's evidence is that there was no discussion about jurisdiction on the telephone call and there is no evidence from the claimant to the contrary; (ii) the document on which the claimant relies cannot be evidence of what was discussed between the parties and therefore cannot evidence an oral agreement made on 3 January 2018 to any term relating to jurisdiction. The defendant therefore says that consequently the

claimant cannot, on its pleaded case, show a good arguable case that there was a contract concluded on or around January 2018 that incorporated a jurisdiction clause.

21 In reality, however, this is a dispute about a case on course of dealing. As matters have transpired and on the basis of the evidence which has been served in this jurisdiction dispute, it has become clear that Addax's evidence is that the terms in its written spot contract document had, by 2018, "become the standard terms on which Addax and Petro Trade traded".

22 Petro Trade also raised a number of other points in its written evidence; most of those were not pursued orally. Mr Watson instead rightly concentrated on this central point as to course of dealing, that being the one point which really mattered. His argument before me has been that the case is hopeless and there is certainly no good arguable case for the following reasons.

23 Firstly, that there is no plea that the terms were incorporated by a course of dealing and such a plea would need to identify precisely what events were said to give rise to the course of dealing and so it is not open to the claimant to allege any case based on course of dealing. Second, he says the course of dealing can only arise from consistent and unequivocal conduct. He points to *Transformers & Rectifiers Ltd v Needs Ltd* [2015] 159 ConLR 33 at [42] per Edwards Stuart J. In that case, a party had failed consistently to enclose its written terms with purchase orders and the judge found that there was no course of dealing that resulted in the incorporation of those terms. Mr Watson says that this case is like that, a case which is not sufficiently consistent, in particular, where there has been no reference to terms in the recap email and he says there was no consistent course of dealing in that there was no prior course of dealing at all in terms of long-term contracts. All the parties' prior dealings had been in respect of individual shipments. The proposal that there was a long-term agreement was entirely novel and qualitatively different. He says there is no logical inference that the parties would intend to contract on the same basis for a long-term contract because the risks of a long-term contract are different to the risks of a short-term contract. The only long-term contract between the parties, the SDA, did not have a jurisdiction clause but an arbitration clause.

24 He says also there was no consistent practice of sending the spot contract to the defendants, either before or after 3 January 2018. In the very helpful schedule prepared summarising the contracts which have been disclosed thus far, which cover 2017 and 2018, he points out that there are four in a row at the beginning of that schedule in which terms were sent and then six without. After January 2018, there are two instances where terms are sent and three where they are not. He points out that the terms were, in any event, only sent considerably after the oral contracts and so there is a difficulty, he says, for Addax showing contracting on terms of the spot contract. Ultimately, Mr Watson submits that standing back and looking at the requirement for a consistent course of dealing on which the parties have always dealt this is, even looking at it as a matter of plausible evidential basis, on the wrong side of the line.

Discussion

25 Despite the very great clarity and skill with which this case was put by Mr Watson for Petro Trade, I consider that this jurisdictional challenge must fail.

26 Dealing first with the pleading point, Mr Watson rightly accepted that this was a reparable point, though it may well have ramifications in costs. What does have to be set out is the

allegation that there is a course of dealing. It would not be necessary to set out the evidential factors of exactly what the course of dealing was, contract by contract. All that needs to be pleaded is enough that the parties can understand the case which is being made. So, the pleading point effectively goes nowhere.

27 As for the argument as to consistent and unequivocal conduct, all such cases must turn on their facts. Here, ultimately, I do consider that there is a sufficiently plausible evidential basis for that case. As to the law on the course of dealing, I was taken by Mr Watson to **Chitty** at para.15-015, which says:

> "Conditions will not necessarily be incorporated into a contract by reason of the fact that the parties have, on previous occasions, dealt with each other subjective as conditions, but they may be incorporated by a course of dealing between the parties where each party has led the other reasonably to believe that they intended that their rights and liabilities should be ascertained by reference to the terms of a document which had been consistently used by them in previous transactions."

28 I was also referred to *Transformers & Rectifiers Ltd v Needs Ltd* [2015] 159 ConLR 33 and, in particular, to that quote from the judgment of Edwards Stuart J at [42], where he sets out some principles, saying this:

> "From my rather brief review of some of the relevant authorities, I consider that in cases of this sort the following principles apply:
>
> i) Where A makes an offer on its conditions and B accepts that offer on its conditions and, without more, performance follows, the correct analysis, assuming that each party's conditions have been reasonably drawn to the attention of the other, is that there is a contract on B's conditions:
>
> ii) Where there is reliance on a previous course of dealing it does not have to be extensive. Three or four occasions over a relatively short period may suffice: see *Balmoral* at [356] and Capes (Hatherden).
>
> iii) The course of dealing by the party contending that its terms and conditions are incorporated has to be consistent and unequivocal: see *Sterling Hydraulics*. iv) Where trade or industry standard terms exist for the type of transaction in question, it will usually be easier for a party contending for those conditions to persuade the court that they should be incorporated, provided that reasonable notice of the application of the terms has been given: see *Circle Freight*.
>
> v) A party's standard terms and conditions will not be incorporated unless that party has given the other party reasonable notice of those terms and conditions: see *Circle Freight*.
>
> vi) It is not always necessary for a party's terms and conditions to be included or referred to in the documents forming the contract; it may be sufficient if they are clearly

> contained in or referred to in invoices sent subsequently: see *Balmoral* at [352], [356].
>
> vii) By contrast, an invoice following a concluded contract effected by a clear offer on standard terms which are accepted, even if only by delivery, will or may be too late: see *Balmoral* at [356]."

29 It is certainly the case that in the *Transformers* case the answer to which the learned judge came was that there was no course for dealing. However, that was a rather different case. It was a battle of the forms case on rather particular facts, including issues as to transmission by fax, where what was on the reverse of the documents which were sometimes sent by post was therefore not visible when what was sent was sent by fax. All in all, there was a rather complicated situation from which I do not feel it is possible to draw any clear parallel.

30 Mr Robinson tried to persuade me that *Circle Freight International (T/A Mogul Air) v Medeast Gulf Exports Limited (T/A Gulf Export)* [1988] 2 Lloyd's Rep 427 was a greater parallel. He said that it was analogous, although there were two differences in that case. There were invoices which followed which referred to terms but did not send them. But here the documents sent contained standard terms. Secondly, he said there was no lull in *Circle Freight*, whereas there was a period of lull here. I tend to agree with Mr Watson in his reply submissions that *Circle Freight* is not an analogous case, it is another case on different facts. It does not help Mr Robinson, particularly in the light of the fact of the absence of lull.

31 What do I take away from those limited authorities? It is clear from the authorities that the course of dealing does not need to be extensive. It does not, either, need to be entirely consistent. What matters is whether there is sufficient consistency for that test set out in **Chitty** to be satisfied. That will be a question on the facts of the case.

32 This is the kind of case where it is important to step back and review the facts against both the type of relationship and the type of transaction which is occurring. This is, as Mr Robinson notes, an alleged contract which occurs in the context of a series of contracts occurring withing the petroleum industry where, as anyone familiar with the work of this court will be aware, parties often agree supply contracts informally. Here, it is common ground that we see exactly that. It is common ground that throughout these parties traded informally, substantially over the telephone, talking about the commercial essentials only, with confirmations of agreed trades following in the form of written recaps sometimes accompanied by spot contracts.

33 Against this background and the agreement that there was a conversation, looking firstly at the question of the term agreement, it seems to be perfectly plausible that a term agreement was reached. I express no view, of course, as to the right answer, which will depend on witness evidence on that point. However, plausibility as to the agreement of the term agreement, was rightly not seriously disputed. It seems to me that it would be particularly hard to do so when one can see exchanges between the parties early in 2018, which both suggest a rationale for the long-term contract and also demonstrate Petro Trade chasing Addax for a copy of a written confirmation for its own records. That chasing took place not on the basis that an agreement was outstanding or because it wanted to negotiate, but because "we did not receive the sales contract as we need this contract to include it in our financial documents". So we have a background of trading over some time. We have a

background where I proceed on the basis that it is perfectly plausible that a term agreement was reached. The question is as to the course of dealing.

34 As I have already indicated, I do not consider that absolute consistency is always necessary to establish a course of dealing; all will depend on the facts. It is clear that in this case there were numerous contracts on terms which contained an English jurisdiction clause before the posited Term Agreement. It is also clear that, to the extent that spot contracts were produced, they were produced on very substantially identical forms, though it appears there were two iterations as to the passing of risk. In the past, there was no issue about the terms on which the parties were dealing in any respect. Addax only invited Petro Trade to acknowledge or confirm receipt of written recaps or spot contracts; and Petro Trade only ever acknowledged or confirmed receipt of the same, as opposed to treating the written documents as a basis on which to commence negotiations. The correspondence is replete with phrases like "kindly confirm safe receipt" and "noted with thanks" or "acknowledged with thanks".

35 The terms of the spot contract, which are key in the sense that they contained the jurisdiction clause, are terms which were effectively contemplated between the parties when they did negotiate their one definite long-term contract, the SDA, in 2015. That agreement contemplates the first trade on these terms and the first trade we do have includes the relevant terms. There is limited evidence that we have, in that most of the evidence for 2016 appears to be missing. There is, on the evidence we have, consistent delivery in the early days against terms, though that comes with a powerful rider that there is no evidence for more than the December 2015 agreement and the Gasoil Agreement across 2015 and 2016. There is, however, evidence that when the parties sent spot contracts they seem to have treated them as containing the full terms. There is no suggestion of another competing set of terms, though it may be fair to say that no further terms would be necessary. It appears that the Gasoil Agreement was concluded in the same way. While it is not common ground how it was concluded, jurisdiction has not been denied in relation to the Gasoil Contract where the relevant terms, including the jurisdiction clause, were sent.

36 There is, so far as one can see, a period of time at the beginning of 2017 where there was a degree of consistency in sending the spot contract terms; there was then a lull. By the time the lull had occurred, the parties had been trading for over 18 months. There is no suggestion that when terms were not sent anybody argued that there was no contract. Obviously, there was no dispute as to a jurisdiction clause because there were no disputes. There seems to have been no dispute that the other terms which were included within the spot contract would apply, though it is fair to say there is no evidence of any dispute in relation to any of those either. No written supply or spot contracts were issued after November 2018, when the wording for the Term Agreement was circulated. The parties continued to trade after 2018, without any such documents being sent. That does, on its face, appear to suggest that they were trading with the wording of the Term Agreement in mind.

37 There was also a change in relation to practice in relation to recaps; only one recap was sent by Addax to Petro Trade after November 2018 - that was on 16 April 2019 - but that was for a different type of fuel which was not captured by any hypothetical Term Agreement. It is fair to say that Petro Trade never questioned why recaps stopped being sent after November 2018. That appears to be suggestive that they knew that it was unnecessary because there was a Term Agreement. The absence of such recaps also leaves the question, unless the parties were proceeding on the basis of these terms, including the terms in the spot contract, on what terms were the parties contracting?

38 As for the question as to this being a long-term contract, it was, on any analysis, a long term contract which was effectively designed to replace the individual contracts, so I do not regard that as a roadblock in the way of establishing a plausible evidential basis. The contract posited, the Term Agreement is therefore not fundamentally different to an individual supply contact. It is not a different sort of contract like the SDA. It is, one might say, effectively a "lumping together" of a number of individual trades.

39 Taking matters all together, whether there is a course of dealing depends on the facts. It depends upon looking at all of the facts against the relevant background. This is not a full trial. However, looking at all of these facts against the relevant background I conclude that an argument that there is a course of dealing does have a plausible evidential basis in the light of all these matters.

40 Further, and one might say adding somewhat to this background, it certainly looks that Addax at least subjectively thought that papering up any Term Agreement amounted to adopting the spot contract terms and that it did so not because those terms were discussed orally, but because those were the terms the parties used, i.e., there was a course of dealing. Thus, the cover email under which the written Term Agreement was sent read: "Please find on this message the agreement between Ayesa and Petro Trade." The subject of that email read: "Petro Trade - Term Contract 2018 to 2019 Gasoil Mogas". Addax was not suggesting the document, which was on essentially the same terms as the individual spot contracts, was a draft. It was purporting to send an agreed document. Addax also makes the point that this communication did not provoke howls of outrage, or even any statement of disagreement, either as to the conclusion of the contract or as to the terms contained within it. Nor was there any attempt to negotiate terms or to suggest that it contained terms which were not expected. One argument which will inevitably be deployed is that had they had such an issue Petro Trade would have challenged it immediately and that they did not do so because they knew it to be accurate.

41 As I say, these later matters only add somewhat to a conclusion which I would already reach on the basis of the other facts which I have outlined. However, taking all these matters together, I conclude that there is a plausible evidential basis both for the conclusion of a Term Agreement and for the inclusion in that agreement of a jurisdiction clause. Indeed, to the extent that I need to, I would conclude that Addax's case is the more plausible.

42 I therefore conclude that despite all the excellent points which have been made on behalf of Petro Trade, the defendant's application fails.

LATER

43 I am going to give you £20,000 in costs, Mr Robinson. That reflects a very considerable reduction for the fact that the case was not properly pleaded and focused. There was one point that mattered. If this had been an application to serve out somebody would have had to focus on it in order to justify why you were going to be given permission to serve out. It is an example of a possible downside to not having to serve out, things not having been analysed properly.

44 That lack of focussed pleading has certainly increased the costs of this dispute and it might well have had an impact on whether the dispute was taken at all. Then in addition I do think that despite the fact that your solicitors have kept their rates below the guidance rates, the points which Mr Watson makes on the number of hours and the use of consistently a Grade

A fee earner means that you are a bit too high. So, taking those two points together, I take it down to £20,000.

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