



Neutral Citation Number: [2021] EWHC 389 (QB)

Case No: QB-2019-000130

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 February 2021

Before :

GAVIN MANSFIELD QC
(sitting as a Deputy Judge of the High Court)

Between :

JUŠTE PUHARIĆ
- and -
SILVERBOND ENTERPRISES LIMITED

Claimant

Defendant

Mr Christopher Bamford (instructed by **Karam, Missick & Traube LLP**) for the **Claimant**
Mr Guy Olliff-Cooper (instructed by **CANDEY**) for the **Defendant**

Hearing dates: 22 February 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be on 22nd February 2021.

Gavin Mansfield QC:

INTRODUCTION

1. I gave judgment for the Defendant in this claim in a reserved judgment dated 19 February 2021. When I circulated the judgment in draft I gave directions for the parties to make submissions in writing, on receipt of which I would determine consequential matters on paper. On 17 February 2020, the day I had fixed for filing and exchange of submissions, Mr Bamford asked for more time to be able to respond to Mr Olliff-Cooper's submissions. I adjusted the directions, to allow Mr Bamford further time to file submissions in response to Mr Olliff-Cooper, and then for Mr Olliff-Cooper to file a short reply, if so advised.
2. I have received the following:
 - a) Written sub submissions of Mr Olliff-Cooper dated 17 February 2021, accompanied by a bundle of correspondence and an authorities bundle.
 - b) Written submissions of Mr Bamford dated 18 February 2021.
 - c) Further written submissions of Mr Olliff-Cooper, dated 19 February 2021 accompanied by a further authority.
3. The parties agree that the Claimant should pay the Defendant's costs, assessed by detailed assessment. They also agree that the court should make an order for a payment on account of those costs. There are three issues that I need to determine:
 - a) Whether costs should be awarded on the standard or indemnity basis.
 - b) Pre-judgment interest on costs incurred.
 - c) The amount of the payment on account.

INDEMNITY COSTS

4. The Defendant seeks its costs on an indemnity basis. Indemnity costs may be appropriate where there is something in the conduct of the action or the circumstances of the case that take it outside of the norm, in the sense of something outside the ordinary and reasonable conduct of proceedings.
5. I have considered the parties' submissions carefully and in particular the points made at paragraphs 9.1 to 9.5 of the Defendant's first submissions and paragraphs 3-12 of its reply submissions. In my judgment this is not a case where indemnity costs would be appropriate. The Claimant's case has failed, but I do not regard the claim or the conduct of it as outside the norm, in the sense used in the authorities. I will make an order for the Claimant to pay the Defendant's costs on the standard basis.

PRE-JUDGMENT INTEREST ON COSTS

6. Pursuant to CPR 44.2(6)(g). The court has the discretion to award interest on costs incurred by a successful party for periods prior to the date of judgment. Such awards are common in modern litigation, and I see no reason in principle not to award such interest in this case. I reject the Claimant's submission (paragraph 15 of the written submissions) that it would be unjust to do so.
7. The Defendant seeks interest from the date which its costs were paid. I accept that is the appropriate period. The Defendant claims interest at 2% over the applicable base rate from time to time, in the total sum of £2,057.75. The Claimant has made no submissions about the applicable rate, and has not challenged the figures. In my judgment the rate claimed is reasonable, and I will make an order for pre-judgment interest in the sum of £2,057.75.

PAYMENT ON ACCOUNT

8. CPR 44.2(8) provides that where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so.
9. The Claimant accepts that there should be an order pursuant to CPR 44.2(8). The question is what amounts to a reasonable sum.
10. The Claimant offers 50% of the Defendant's budgeted costs, and argues that this is a reasonable amount.
11. In my judgment, the Claimant's proposal fails to have regard to the developing body of law as to the relationship between costs management and detailed assessment. I accept the Defendant's submissions on this point. The court should have regard to the fact that on detailed assessment the costs judge, pursuant to CPR 3.18, will not depart from the approved or agreed budget unless satisfied that there is good reason to do so (**MacInnes v Gross** [2017] 4 WLR 49 at paragraphs 25-28). In **MacInnes**, Coulson J (as he then was) regarded 10% as the maximum deduction appropriate in a case where there is an approved costs budget. The same point is made in the notes to the **2020 White Book** at 44.2.12 p.1384, where reference is made to **Thomas Pink Ltd. v Victoria's Secret UK Ltd.** [2014] EWHC 3258 (Ch), another case where 90% of the approved budgeted costs was awarded.
12. No submissions have been made to suggest that there will be good reason to depart from the approved budget on detailed assessment. Accordingly, I adopt the approach referred to in the authorities I mention above, and will include in a payment on account 90% of the approved budgeted costs.
13. The same point does not apply to costs incurred by the time of the CCMC, which were not subject to the court's approval. In respect of those costs, I will award a reasonable sum in accordance with the guidance in **Excalibur Ventures LLC v Texas Keystone Inc** [2015] EWHC 566 (Comm) per Christopher Clarke LJ at paras 22-24, referred to in the 2020 White Book at 44.2.12 p.1384. The incurred costs relate to the pre-action, issue/statement of case and CCMC phases. I have reviewed the Defendant's Precedent H in respect of those phases. In the Costs Management Order

Master McCloud recorded the comment that the court would expect costs of £10,000 for each party for the CCMC phase. The Defendant's incurred costs for the CCMC phase were £11,010, suggesting the Defendant's costs were a little high for that phase, but not significantly so. No comments were recorded in respect of the pre-action or issues/statements of case phases. No specific submission is made by the Claimant as to the level of the incurred costs. In the circumstances 70% of the incurred costs, as sought by the Defendant, is a reasonable sum for the purposes of an interim payment, even where costs are being assessed on a standard basis, and I will make an order on that basis.

14. The Defendant seeks 50% of its budgeted costs of the PTR phase, on the basis that work was done, but the hearing was vacated. That is reasonable. The Defendant also seeks payment on account in respect of its budgeting costs, which is reasonable.
15. Accordingly, I will order a payment on account in the sum sought by the Claimant,
16. I am told, and have no reason to doubt, that the Defendant is unable to reclaim VAT on its legal costs. VAT falls to be added at 20%, bringing the total payment on account, inclusive of VAT to £187,121.13.

CONCLUSION

17. Accordingly:
 - a) The Claimant shall pay the Defendant's costs on the standard basis, to be subject to detailed assessment if not agreed.
 - b) The Claimant shall make a payment on account of £187,121.13
 - c) The Claimant shall pay pre-judgment interest in the sum of £2,057.75.
18. I invite the parties to submit an agreed draft order for the court's approval. The only revision that is necessary from the draft submitted by Mr Olliff-Cooper is in relation to the basis of assessment of costs.