Neutral Citation Number: [2022] EWHC 494 (QB)

Claim No: F3JJ64HT
Appeal No: M21Q417

IN THE HIGH COURT OF JUSTICE
MANCHESTER DISTRICT REGISTRY
QUEEN'S BENCH DIVISION
ON APPEAL FROM: THE COUNTY COURT AT MANCHESTER

Manchester Civil Justice Centre
1, Bridge Street West,
Manchester,
M60 9DJ

Date: 03/03/2022

Before :

THE HON. MR JUSTICE TURNER

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Between :

EMERY PLANNING PARTNERSHIP LIMITED	**Appellant / Claimant**
- and -	
GARIE BEVAN	**Respondent / Defendant**

- -
- -

Douglas Cochran (instructed by **Slater Heelis Solicitors**) for the **Appellant / Claimant**
Graeme Wood for the **Respondent / Defendant**

Hearing date: Tuesday 1st March 2022

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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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THE HON. MR JUSTICE TURNER

The Hon Mr Justice Turner :

INTRODUCTION

1. This is a case about what evidence is required at trial in order to prove the quantum of a debt.
2. In short, the claimant brought proceedings against the defendant claiming the sum of £49,753.66 (as well as interest and costs) in respect of monies alleged to have become due under a contract for the provision of professional services. In his Defence, the defendant, acting as a litigant in person, denied that the monies were owing and alleged, in particular, that the work had fallen below a reasonable standard as a result of which he had, himself, sustained financial loss.
3. During the course of the hearing before HHJ Sephton QC, the defendant was found to have failed to have established negligence on the part of the claimant and a late formulated suggestion that there had been no binding contract between the parties was also rejected.
4. Nevertheless, the Judge concluded, with regret, that the evidence before the Court was insufficient to establish the quantum of the claim and, on this basis, proceeded to dismiss the entirety of the claim.
5. It is against this decision that the claimant brings this appeal with the permission of Fordham J.

THE BACKGROUND

6. The defendant owned property in Tunstead Milton in High Peak which he wished to develop. The claimant company is a town and country planning consultancy. The defendant engaged the claimant to obtain planning consent for the construction of six houses in 2014. The defendant was provided with the claimant's standard terms of appointment and, on 27 June 2014, he signed a pro forma acknowledging that he had read the terms of the appointment. In the event, High Peak Borough Council refused to grant planning permission. The defendant subsequently instructed the claimant to conduct a challenge of the council's refusal of consent. His instructions to this effect were given in about October 2015.
7. In the event, the defendant paid a total of £32,332.58 to the claimant in respect of the claimant’s services together with disbursements in the form of counsel’s fees. He did not, however, pay six outstanding invoices in the sum of a further £49,753.66 together with interest.
8. The claimant sought to recover the fees said to be due and owing by bringing a money claim the succinct particulars of which identified the amounts claimed in the six invoices.

THE DEFENCE

9. The Defence was drafted by the defendant without the benefit of professional legal input. In it, he made complaint about the claimant’s conduct relating, in particular, to costs incurred as a result of an

adjournment of proceedings consequent upon the illness of counsel representing the local authority.

10. The Defence, however, concludes:

> "I consider that no monies are owing."

THE JUDGE'S FINDINGS

11. The Judge found that the defendant had not proved that the claimant had acted in breach of its professional duty to him and had failed, in any event, adequately to quantify the damage alleged to have flowed from any such breach. He also concluded that the defendant's protestations that he was not bound by the claimant's standard terms of contract in respect of the period covered by the disputed invoices were also unfounded.

12. However, the Judge went on, nevertheless, to dismiss the claimant's claim on the ground that it had failed to prove the quantum of its claim for the moneys alleged to have been due under the invoices relied upon.

THE TERMS OF THE AGREEMENT

13. The claimant's terms and conditions set out the mechanism under which sums falling due from the defendant were to be calculated.
Clause 6 provides:

> "Work is charged by EP on a time basis, calculated in units of six minutes' duration or part and based on the hourly charging rate of the fee earner concerned current at the time of doing the work. The hourly rate consists of a basic rate, which may be increased by up to 50 per cent where the work is complex, requires particular expertise, has to be executed very quickly, has to be carried out in an inconvenient location or is of particular importance to the client."

Clause 8 provides:

> "The basic hourly rates currently being charged are set out in the pro forma. We review our rates each year and are subject to change as we may determine from time to time. We will notify you in writing if the rates you are being charged have been increased and the date from which the increase is applied."

14. The applicable hourly rates varied as between individuals of differing status within the claimant's organisation. There were no fewer than ten different levels of seniority ranging from Managing Director whose input was charged at £170 per hour to Junior Professional Support/CAD Operator at £32 per hour.

WAS THE QUANTUM OF THE CLAIM IN ISSUE BETWEEN THE PARTIES?

15. The claimant assumed in the skeleton argument prepared on its behalf for trial that there would be no issue that the sums billed had been correctly calculated pointing out that the defendant had not suggested that there

had been an arithmetical error or other flaw in the method of calculation of the sums presented as being due under the invoices.

16. The Judge, however, held that the defendant was entitled to rely upon the provisions of CPR 16.5(3) as putting the claimant to proof of the amounts alleged to be due and owing. Although he made no specific reference to the other paragraphs of the Rule, it is useful to set out the context in which that paragraph appears.

17. CPR 16.5 provides, insofar as is relevant:

> "(1) In his defence, the defendant must state –
>
> > (a) which of the allegations in the particulars of claim he denies;
> >
> > (b) which allegations he is unable to admit or deny, but which he requires the claimant to prove; and
> >
> > (c) which allegations he admits.
>
> (2) Where the defendant denies an allegation –
>
> > (a) he must state his reasons for doing so; and
> >
> > (b) if he intends to put forward a different version of events from that given by the claimant, he must state his own version.
>
> (3) A defendant who –
>
> > (a) fails to deal with an allegation; but
> >
> > (b) has set out in his defence the nature of his case in relation to the issue to which that allegation is relevant,
> >
> > shall be taken to require that allegation to be proved.
>
> (4) Where the claim includes a money claim, a defendant shall be taken to require that any allegation relating to the amount of money claimed be proved unless he expressly admits the allegation.
>
> (5) Subject to paragraphs (3) and (4), a defendant who fails to deal with an allegation shall be taken to admit that allegation.
>
> (6) If the defendant disputes the claimant's statement of value under rule 16.3 he must –
>
> > (a) state why he disputes it; and

> (b) if he is able, give his own statement of the value of the claim."

18. In my view, it is paragraph 4 rather than paragraph 3 of the Rule which is most apposite to the circumstances of this case. This was a money claim and, however else the contents of the Defence are to be construed, they do not expressly admit the allegation that the amounts set out in the invoice were due.
19. It must follow that the claimant remained obliged to discharge the burden of proof which lay upon its shoulders to the civil standard despite the absence of any particularised challenge in the Defence as pleaded.

DISCHARGING THE BURDEN

20. The central question on this appeal is whether or not the Judge was entitled to find on the evidence before him that the burden had not been discharged.
21. He dealt with the matter in his judgment in the following way:

> "28. The claimant's entitlement to the amount which it claims depends upon proving who did what work and when, whether or not there has been uplift and the circumstances which justify the claim (if any) to such uplift. As I have already indicated, it seems to me that providing adequate detail of these matters is especially important where there has been such a very significant increase in costs.
>
> 29. The claimant apparently has a record of who did what work and when but it has not disclosed it. I derive that finding from the evidence of Mr Gascoigne. It is clear from the terms of the defence itself that Mr Bevan required a proper breakdown of the fees but none was ever provided.
>
> 30. In my judgment, the proof required to demonstrate that the claimant is entitled to the sums which it claims in this case is sadly lacking. I am not persuaded on the balance of probabilities that the amounts claimed are due because I simply have no real idea as to how these figures are calculated and made up."

22. The very significant increase in the sums claimed to be due to which the judge was referring relates to the contrast between the original estimate of £16,500 and the final bill in the region of £80,000. Although it was argued by the claimants that there was a very considerable increase in the amount of work which had become necessary as the planning issue became more and more complex and there was provision in the wording of the estimate that it was subject to revision upwards and well as downwards, the Judge was sufficiently concerned by the contrast to conclude that, in order to discharge the burden of proof, the claimants

ought to have provided evidence of: who did the work; how long it lasted; and what was involved. He rejected the submission that the very broad explanations as to what work had been undertaken which had been set out on the face of each invoice was, in itself, sufficient.

23. The claimant was unable to persuade the judge that, bearing in mind the defendant's failure to articulate and give particulars of what level of further proof he required and his failure either to plead or argue at trial more specifically the issues he took regarding the quantification of the claim, the defendant ought not to have been required to descend into any further evidential detail.

24. I find that the Judge, with one exception, was entitled to take the view he did as to the steps which the claimant ought to have taken in order to prove the quantum of its claim. The exception relates to a fee note from counsel in the sum of £1,650 dated 22 November 2016. The Judge wrongly observed in paragraph 33 of his judgment that "none of the fee notes relevant to counsel's fees appears in the bundle before me." However, that particular fee note was in the bundle and the Judge's attention had been drawn to it in counsel's closing submissions. Since no issue had been taken by the defendant as to the quality of counsel's work and the Judge had found against the defendant on all other challenges to his liability to pay such of counsel's fees as had been proved, I consider that the claimant was entitled to judgment in respect of this fee note together with interest thereon.

25. I do not, however, consider that the judge was wrong to find that the remainder of the claims in respect of counsel's fees had not been proved. No fee notes relating to such disbursements had found their way into the trial bundle. These would have been expected to have provided a break down of the work to which the claimed fees related and how they had been calculated.

26. In granting permission, Fordham J found it "a little odd that no commentary or authority has been identified which is said to assist the Court on what proof is, in principle, needed in an invoices case based on contract terms involving hours and rates and levels, given CPR 16.5(4). If there is any such assistance available, whether in support of or adverse to the defendant. I would expect this to be addressed for the appeal hearing."

27. Neither side was able to assist me further on this point.

28. There are, perhaps, a number of reasons for this dearth of authority. Not least of these is that in cases where the claimant perceives no substantive challenge to quantum and the defendant merely defaults to putting the claimant to proof by the operation of CPR 16.5(4) or otherwise then the issue is often raised at an early stage by way of an application for summary judgment and not at trial. In these circumstances, if the

claimant's evidence falls short of proving quantum then the issue can, if appropriate, be postponed to a determination on a later date.

29. An example can be found in the case of ***Devonshires Solicitors LLP v Khaled Elbishlawi, Lam Developments Ltd*** [2021] EWHC 173 (Comm). In that case, a summary judgment application had been made relation to a number of invoices. Some had been fully particularised and broken down whereas other had not. The Court held:

> "27. In the present case, it is apparent on the material before the court that detailed breakdowns, including of time spent, have been provided in relation to invoices Nos. 263739 and 253173. No specific points have been taken in relation to particular items on those bills being excessive. In the circumstances, I consider that there should be summary judgment for the amounts claimed in those invoices…
>
> 28. In relation to the other invoices, it is not clear on this application as to exactly how much detail has been supplied. I have not been shown details of time spent in relation to those invoices. In the circumstances, I consider that the position as to those invoices is effectively the same as that for the bill considered in Turner v Palomo, and that the order should be substantially the same as was made in that case, namely that there should be summary judgment for a sum to be determined on a detailed assessment to be carried out by a costs judge. Therefore there is such judgment against LAM in respect of invoices 249442, 251328 and 252592, and against Mr Elbishlawi in respect of invoice 267076."

30. It is in this context that I deal with a further ground of appeal before me to the effect that the Judge ought to have entered judgment in this case for a sum to be determined. This solution would have been similar to that adopted in ***Devonshires Solicitors*** although neither side relied upon this authority before me.
31. The defendant argued that such an approach would not have been available to the Court as a matter of law. I reject this proposition. The Court's case management powers were sufficiently flexible to allow for this course to have been taken providing, of course, that it was otherwise considered to be appropriate.
32. Nevertheless, I am not satisfied that this ground of appeal is made out.
33. The transcript reveals that it became entirely obvious that the Judge was very concerned about the apparent absence of documentary or other proof of the quantum of the claim as the claimant's counsel's submissions to the court were developed.
34. He intervened to say:

> "Well, it's a matter for you but, at the moment, I've looked through the disclosure list and I'll tell you what's concerning me. There are two components of your claim. One is Mr Hunter's fees and I've explained to you what my concerns are about that. The second is your client's own fees, which, as I understand it, depend on a sliding scale. The contract provides that the fees should be subject to the sliding scale depending on who's doing the work and there may be additional fees if work is done urgently. So, I have absolutely no idea how the figure which you claim is made up. We don't know how many hours each person spent. We don't know when it was done, whether additional fees were claimed for urgency, any of that, do we? Again, those aren't in the disclosure list as far as I can see."

35. After this judicial intervention, counsel was given the opportunity to take further instructions on the matter over a period of half an hour before the hearing resumed. Accordingly, the claimant had the chance then to argue before the Judge that if he were not satisfied that the case on quantum had been made out then he should postpone the determination of the issue until a later date with whatever costs consequences might flow from taking such a course. However, no such application was made and counsel's further submissions continued to be limited to contending that the burden of proof had been discharged on the evidential material already before the Court.

36. Of course, the Court's case management powers enable it to act upon its own initiative but a party seeking to argue on appeal that the Judge below ought to have taken a course which had not been advanced by that party will often face an uphill struggle. Indeed, tactical considerations may have militated against providing the Judge with an alternative approach which may have been seen to have weakened the claimant's central point on the adequacy of the evidence already provided and expose him to the risk of additional delay and costs.

37. Had any such argument been raised, it is likely that the defendant would have opposed the suggestion and the issue could have been determined there and then taking into account all of the competing factors rather than, for the first time, on appeal.

38. Furthermore, the decision as to whether or not to postpone the assessment of damages would have been one of case management involving the exercise of a broad discretion. It is not, therefore, for the appellate court to substitute its own view for that which may have been reached by the Judge below but to assess whether the exercise of that discretion would have fallen outside the broad parameters of what a reasonable court could have decided. I am not satisfied that in the circumstances of this case that the Judge, if requested so to do, would have been obliged to give the claimant a second bite of the cherry particularly bearing in mind that the

overriding objective requires the court to take into account the desirability of proceeding expeditiously, saving expense and allotting to the proceedings a proportionate share of the court's resources. In this context, a court may be more likely to be attracted to taking the course of postponing the assessment of damages at the stage of a summary judgment application than where the matter had come to trial.

39. I ought to point out that the nature and extent of the evidence which may be sufficient to discharge the burden of proof in any given debt claim will vary depending on the circumstances of the case and my observations in this judgment should not be taken as seeking to establish any principle of more general application. Each case will depend upon its own facts.

CONCLUSION

40. It follows that, save for the sum of £1,650 evidenced in counsel's fee note to be found in the trial bundle in respect of which I give judgment together with interest, this appeal is dismissed. The parties are invited to draft an order reflecting my findings and have liberty to make any applications for ancillary orders on paper.