

Neutral citation [2016] CAT 15

Case No: 1262/5/7/16 (T)

IN THE COMPETITION
APPEAL TRIBUNAL

Victoria House
Bloomsbury Place
London WC1A 2EB

14 September 2016

Before:

THE HONOURABLE MR JUSTICE ROTH
(President)

Sitting as a Tribunal in England and Wales

B E T W E E N:
AGENTS' MUTUAL LIMITED
Claimant

-v-

GASCOIGNE HALMAN LIMITED (T/A GASCOIGNE HALMAN)

Defendant
A N D B E T W E E N:

AGENTS' MUTUAL LIMITED

Claimant

-v-

MOGINIE JAMES LIMITED

Defendant

Heard at Victoria House on 14 September 2016

JUDGMENT (COSTS MANAGEMENT)

APPEARANCES

Mr Alan Maclean QC and Mr Josh Holmes (instructed by Eversheds LLP) appeared for the Claimant.

Mr Paul Harris QC (instructed by Quinn Emanuel Urquhart & Sullivan LLP) appeared for Gascoigne Halman Limited.

Mr James Hall (instructed by Gordan Dadds LLP) appeared for Moginie James Limited.

1. The claimant applies for costs management directions in this case, pointing in particular to the significant escalation in the costs of both defendants from estimates previously given by their solicitors, or in the case of Gascoigne Halman, its previous solicitors, and making also in its skeleton arguments particular criticisms directed at elements of the latest costs schedule served by Gascoigne Halman's solicitors.
2. The claimant proposed in its application that there should be monthly costs schedules filed by all parties. As I indicated in the course of argument, that seems to me excessive and burdensome, and far less appropriate than the costs management regime set out in the Civil Procedure Rules ("CPR"). Mr. Maclean QC, in response, accepted that the costs management regime of the CPR would work as well, if not better, and accordingly does not press for monthly schedules.
3. Mr. Hall, appearing for Moginie James, readily agreed to a full costs management regime, and indeed pointed out that his client had asked for that at the case management conference or hearing held before Sir Kenneth Parker (sitting as Judge of the High Court in the Chancery Division) where this case started.
4. Mr. Harris QC, for Gascoigne Halman, suggested that what he termed a "compromise" approach should be taken. That would involve his client producing a full Precedent H form, but he said there was no need, and indeed it would be inappropriate, to engage in the additional steps set out in the costs management regime of the CPR.
5. Those additional steps are, first, the preparation of a budget discussion report as set out in CPR rule 3.13(2), whereby each party indicates its agreement or disagreement with the elements in the other party's cost budget with very brief reasons; and, secondly, a costs case management conference ("CCMC") leading the court, or in this case the Tribunal, to make costs management orders as set out in CPR rule 3.15, indicating what sums it approves and, if necessary, indicating revised sums that would be approved.

6. Mr. Harris says, first, that there would be difficulty fitting in those steps, given the tight timetable for his clients and their solicitors regarding disclosure, which is due to be made by 23rd September.
7. I think the steps involved essentially concerned the solicitors and not the lay client, and Quinn Emanuel has indicated in Mr. Bronfentrinker's third witness statement that they have established themselves as a leading City litigation law firm. As regards the preparation quickly of Precedent H, that should present no problem, as Mr. Harris indeed accepted, because the raw material for that would be readily available as it was no doubt used to prepare the summary schedule of costs which has been served by Quinn Emanuel. The second stage, the production of a budget discussion report, does not involve a long document and it seems to me that it can readily be done in the few days following disclosure. The solicitors at Quinn Emanuel indeed are in a better position in that regard than the claimant's solicitors because they have already seen a full Precedent H recently served on behalf of the claimant.
8. As regards the third stage, the CCMC, that can, if agreed, be done in writing. But at most it would involve a short hearing of, in my view, two hours, and it seems to me, with the resources of solicitors deployed on this case, there is no obstacle to the early fixing of such a hearing, given that the date for exchange of witness statements is not until 21st October. All the stages can be completed, therefore, in my view, by the end of September.
9. Moreover, given that disclosure will have been completed by then, the budget discussion report and any costs management order is only prospective, and will be looking, therefore, at the costs relating to witness statements and onwards and not costs already incurred for the other heads - disclosure, statements of case, and so forth.
10. Mr. Harris says, secondly, that this litigation is well advanced and so many costs have been incurred and will not benefit from the regime. That is, of course, correct, but it does not, in my view, weaken the merits of applying the regime to the very significant costs that remain for future stages of the litigation

to trial. This is a case where the trial has been listed on the basis of nine court sitting days.

11. Thirdly, Mr. Harris says that this particular case is proceeding on an expedited timetable. The schedule is tight, and this will be a distraction from all the work that has to be carried out. As I have just indicated, I consider that what is involved in the costs management orders can be completed relatively quickly, and the matter is then out of the way.
12. Finally, and perhaps most fundamentally, he submits that it is really not of great benefit in this case, because once Quinn Emanuel have served a Precedent H the claimant will see in detail what the costs of Gascoigne Halman are. It is unlikely, for the most part at least, that those costs would be agreed, but all this will then be sorted out in an assessment of costs on the standard basis should Gascoigne Halman succeed at trial.
13. Those points are, of course, not new. They were advanced extensively in opposing the strict regime of costs budgeting, when it was proposed by Sir Rupert Jackson's Preliminary Report on civil costs, and subsequently in objections to the costs management regime when it was introduced. However, experience has shown that there is great merit in approval or disapproval of particular elements in a costs budget: it serves to concentrate the minds of the solicitors and, indeed, their duty regarding their lay clients, as to how the case proceeds, and it gives some clarity well in advance to the other party of their likely exposure should they fail at the end of the day.
14. I am, therefore, not persuaded by the objections that Mr. Harris has put forward and I will order that a full regime of costs management by analogy to that in Part 3 and Practice Direction 3E of the Civil Procedure Rules will apply. I direct that all parties should serve a schedule in the form of a Precedent H by 4 pm on 18th September, and that a budget discussion report should be served by 4 pm on 27th September - that will be two separate reports, one as regards the claimant and Moginie James, and the second as regards the claimant and Gascoigne Halman; and that there should be a costs case management hearing unless the parties agree that the matter can be dealt with on written submissions.

I will not fix the date of that now, but will indicate that I have in mind 30th September for that hearing. If that is not the date, then it would have to be in the afternoon of 5th October. Those are the two alternatives, but I shall leave it to be fixed by discussion with the parties' representatives subsequently.

MR MACLEAN: I know that you have just said, Sir, that the Precedent H should be served by 18th, which Mr. Holmes points out is next Sunday. Did you mean 16th or 19th, Friday or Monday?

THE PRESIDENT: I am sorry. I am minded to say Friday, but Mr. Harris, would you like Monday?

MR HARRIS: Yes, Sir.

THE PRESIDENT: Very well, I will say Monday, 19th. Thank you.

The Honourable Mr Justice Roth
President of the Competition Appeal Tribunal

Charles Dhanowa O.B.E., Q.C. (*Hon*)
Registrar

Date: 14 September 2016