Case 111
ABS Company Ltd

v

Pantaenius UK Ltd and Others

[2020] Costs LR 2023

Neutral Citation Number: [2020] EWHC 3720 (Comm)
High Court of Justice, Business and Property Courts of England and Wales,
London Circuit Commercial Court (Queen's Bench Division)
1 October 2020

Before:
HHJ Mark Pelling QC, sitting as a judge of the High Court

Keywords:
hourly rates, summary assessment

Headnote

Following a successful claim relating to the reasonable costs of repairing a yacht pursuant to an insurance policy, the court was required to determine the claimant's costs by way of summary assessment, the claimant being the successful party and the case being a shorter trial scheme case. The claimant's costs amounted to £213,239.79, and the damages to approximately €244,000.

In considering the hourly rates, the court noted that the SCCO Guideline rates were significantly out of date, having been fixed in 2010, and that the conventional approach was to uplift the Guideline rates by approximately 25% to

reflect the affect of inflation. In any event, given that the case was conducted by specialist solicitors, the work was of a specialist nature, and the rate charged by the defendant's solicitor was not unadjacent to the rates charged by the claimant's solicitor. The court was satisfied that the rates claimed were appropriate. Instead of taking a very broad-brush approach and applying an overall reduction in respect of proportionality, the court summarily assessed the costs on a phase-by-phase basis, to reflect the fact that there would be different issues that arose in each phase which would have an impact upon what was recoverable.

Only those paragraphs relating to costs have been reproduced here. The transcript was prepared without the aid of documentation.

Cases Cited

Calderbank v *Calderbank* [1975] 3 All ER 333

Judgment

HHJ Pelling:

Introduction

1. This is the trial of a claim by the owner of the Motor yacht Queen B Speed ("Yacht") for the reasonable costs of repairing the Yacht pursuant to an insurance policy underwritten by the second to fourth defendants ("Policy") following a grounding incident in the Bosporus Strait on 7 January 2018. The first defendant marketed the Policy as agent for the second to fourth defendants. The claimant maintains that it is entitled to recover the whole of its actual costs of repairing the Yacht, whereas the defendants maintain that the Yacht could and should have been repaired much more cheaply using facilities and labour located in Turkey and that some of the costs incurred as a result of damage [are] not attributable to the grounding incident relied on by the claimant.

[…]

(Later)

60. The issue that I now have to determine concerns the summary assessment of the claimant's costs, the claimant being the successful party, this being a shorter trial scheme case. The costs which are claimed in the aggregate by the claimant are £213,239.79 in respect of a claim which has quantified out, as I understand the figures, at about €244,000.

61. The first submission which is made, therefore, by the defendants is that the totality of the costs claimed is in excess of what is reasonable and proportionate and that that carries through into the various phases that have to be looked at. Before descending into the detail, I remind myself that an exercise of this sort requires me to arrive at a figure for the claimant's costs which ensure that only reasonable and proportionate work is paid for and only a reasonable and proportionate amount is paid for that work. In a summary assessment of this sort, inevitably the exercise has to be very broad brush because the sort of detail which is made available on a detailed assessment simply is not made available on an assessment of this kind.

62. The first general issue that arose concerns the rates which have been charged. It was submitted on behalf of the defendants that the rates were in excess of the guideline rates applicable. This is to an extent an artificial submission in the sense that the solicitors concerned are a firm established from a City practice where they previously practised together and moved a matter of a very short distance from where their City office had previously been located, as it turns out, into Dalston or Shoreditch. The result of this is that the postal areas that they practise from is now N1 rather than one of the EC postal districts and this has a profound effect on the grade rates that can be charged.

63. There are at least two points which need to be made in relation to grade rates under the guideline rate scheme. First of all, the rates are significant[ly] out of date. They were fixed in 2010 and they, therefore, reflect the position as it was in 2010, not as it was in 2020. Although Mr Watthey submits that it is wrong simply to look at inflation, because solicitors' rates have suffered commercial pressure, particularly in respect of work carried out for big institutional clients such as insurers. Whilst that submission is made, as it seems to me, that is a difficult submission for me to act on without real evidence

upon which to arrive at a judgment. The conventional approach in relation to guideline rates is to uplift them by about 25% in order to reflect the effects of inflation on the figures previously arrived at.

64. In any event, and this is the second point that applies in relation to grade rates, it has always been the case that specialist solicitors in specialist areas of activity should recover an uplifted fee to reflect that specialism. With those factors in mind, I would accept the rates which have been identified as appropriate in all the circumstances. This is specialist work. The solicitors involved are specialist solicitors. The difference between where in fact they now practise and where they previously practised is an artificial distinction which has only very limited impact on the fees which can properly be charged, although I recognise that there will be a marginal difference driven by things like rent and rates, but all of that said, this is specialist work by specialist solicitors and I am satisfied that it is appropriate that they should charge such a rate. I note that, in any event, the rate charged by the solicitor acting for the defendant at £290 an hour as an Associate is not unadjacent to the rates which have been charged in this case.

65. The next question which I have to address is whether I should look at this case on a phase-by-phase basis. Although tempted at one stage to simply take a very broad brush approach and apply a reduction to reflect the necessity to ensure proportionality is arrived at, that would be to do a disservice to the way in which the application has been presented and also because there will be different issues that arise in relation to each phase which will have an impact upon what is recoverable.

66. So far as pre-action costs are concerned, the point which was made is that the sums involved are very substantial. They are, but it is necessary to bear in mind that the claimant is driving the case at this stage. The work that is in fact undertaken is all identified in the schedule, being attendance on client, attendances on documents necessary to move to the next phase, and attendance on others as well in order to get the bare minimum information to hand. Nonetheless, the hours that have been worked are, in my judgment, in excess of what is proportionate having regard to the value of this claim, and therefore a modest adjustment is appropriate, and the modest adjustment that I make is to disallow four hours of Ms Prentice's time in relation to the pre-action costs.

67. The next issue which arises concerns statements of case. So far

as statements of case are concerned, again, the hours that have been worked are substantial. The same test applies as I have already identified. It was submitted that it was at this stage that Mr Mavraganis(?) was dropping out of the case as Ms Prentice became, in effect, solely involved in its day-to-day conduct. As it seems to me, therefore, being reasonable and proportionate in relation to the costs of preparing statements of case, there would be no need for Mr Mavraganis to be involved in this stage of the exercise and I will disallow the sums which have been claimed for him as in excess of what is reasonable and proportionate.

68. So far as the preparation of the statements of case are concerned, I accept the submission made on behalf of the claimant that preparing the underlying material to ensure that the statement of case reflected, for example, very accurately the costs which were being claimed would be of benefit to all parties as the litigation moved forward and, therefore, the process would be a process which would involve more than merely acting, in effect, as a processor for the work product from counsel. Nonetheless, to claim for 24 hours of work in relation to the activities that were required, in my judgment, is in excess of what is reasonable and proportionate and I reduce that to 20 hours for Ms Prentice.

69. So far as counsel's fees are concerned, there is no realistic objection to that, as far as I can see, except that it is said there should be a marginal reduction, I think, to reflect 10 hours of counsel's time for the drafting of the pleading. In my judgment, that goes too far. What is the fee that has been charged for the work involved in preparing a carefully drawn pleading with appropriate annexes is the fee which is being claimed and I allow that as asked.

70. So far as the CMC is concerned, the figure that is being claimed is, again, a high one, but that, in my judgment, reflects the costs which have been incurred in preparing the various documents that had to be prepared ahead of the CMC. The quality of the documents enabled the issues to be resolved without a contested hearing and in those circumstances, it goes too far to suggest that there should be a very substantial reduction to the level of suggesting that the time costs for the solicitors should be the same as counsel's fee. That does not reflect accurately or at all the commerciality of running a solicitors practice, it does not reflect, therefore, the differential between charge-out rates that will exist as a result, and it does not reflect fairly the amount of

work which had to be done by solicitors in order to comply with the obligations that arise in relation to a CMC. Nonetheless, again, there is at the margin perhaps a little too much that takes the figures which have been claimed in excess of what is reasonable and proportionate. It is unclear to me what Mr Hatcher brought to the exercise so far as the CMC is concerned and I disallow his claimed fees in their entirety. That adjustment ought properly to bring matters into line with what is reasonable and proportionate when looked at in the round.

71. So far as disclosure is concerned, the claimant's solicitors seek a total of 53 hours for disclosure. I accept the submission which is made on behalf of the defendants that this is in excess of what is reasonable and proportionate having regard to the nature of this case. This case was not a heavy disclosure case. I fully accept that it was necessary to carry out a review of reports prepared on behalf of the defendants which had not previously been seen. I fully accept that there had to be a review and some collating of invoices in order to make good the various financial claims and I understand that there would have to be a degree of review of material, which in the end never made it to trial bundles, in order to carry out the obligations that arise in relation to disclosure. Nonetheless, it is inappropriate, in my judgment, that is to say, unreasonable and in excess of what is proportionate, for a partner to spend 37.6 hours on disclosure in a case of this nature. There is an adjustment to be made there, it has to be a broad brush exercise and what I propose I should do is to leave Mr Hatcher's sums claimed as claimed and I reduce Ms Prentice's hours relevant to disclosure to 15 hours as well. I fully accept that there will be areas where she will have to become involved and I fully accept that she would have to review quite a lot of the material given the circumstances of this case but, as I have said, to claim 37 hours is in excess of what is proportionate in a case of this sort. So there will be 15.4 hours allowed for Mr Hatcher, 15 hours for Ms Prentice.

72. So far as counsel's fees are concerned, those were not seriously objected to and those were allowed as asked.

73. So far as witness statements are concerned, again the hours which have been claimed are challenged. They are challenged on the basis that the total time costs for solicitors are in excess of 58 hours. There were two witness statements of fact that had to be prepared. One related to the individual who managed the private affairs of the ultimate beneficial owner of the yacht and the other concerned the

preparation of the Master's statement. I fully accept that Mr Hatcher's task in preparing, or principally preparing, the statement of the Master would have been rather longer by reference to language difficulties than might otherwise have been the case. In my judgment, the fees that he has claimed are reasonable and proportionate for that exercise. I fully accept that Ms Prentice would wish to review the statements that are prepared but the statement from the assets manager of the claimant was not a task which ought to have proved at all difficult. In my judgment, again, the appropriate hours to be allowed for the preparation of witness statements by Ms Prentice would be 15 hours.

74. The next issue that I have to address concerns expert evidence. There was a fairly root and branch challenge to the fees charged by the claimant's expert in the circumstances of this case because it is very substantially in excess of what the expert retained by the defendant has charged. In my judgment, that is a failure to compare like with like. The expert retained by the defendants was based in Turkey and had different qualifications to Mr Chattleborough, who was retained by the claimant and who was both a chartered engineer and naval architect and of some years' experience and based in the UK with all the implications that carries for charge-out rates. There is nothing that has been drawn to my attention which suggests that what he charged was in excess of what is reasonable and proportionate, other than by reference to the false comparison I have identified, and therefore I permit the expert fee element of this as asked.

75. The next question which arises in relation to expert fees concerns the fees charged by the solicitors. The total hours charged for are 75 hours. In my judgment, this is in excess of what is reasonable and proportionate having regard to the nature of this case and having regard to the sums at issue in it. I fully accept that the issues that arose in relation to the experts would engage the particular skills that Mr Hatcher has to offer because of the nature of the issues that arose, in particular in relation to the grounding and engineering issues that followed. I am prepared to accept, therefore, that he should be permitted to charge 40 hours for that exercise in order to provide the support necessary for the expert concerned. What I do not accept as reasonable and proportionate is the hours which Ms Prentice has claimed in relation to the same exercise. In my judgment, there will be significant duplication of costs which are unjustified on reasonableness and proportionality grounds. I fully accept that she would wish to

review the expert reviews as the partner having conduct of this case, but that is not an exercise which should have taken longer than 10 hours of chargeable time. In those circumstances, I reduce the hours for which she can charge to 10 hours.

76. The next issue concerns the PTR and linked with it the application which was heard, in effect, to require the defendants' expert to provide certain information concerning the degree to which he and his firm had been previously instructed by the defendants. I reserved the costs of that application over until trial because I wished to see whether the point had substance or not. In the result, I concluded that there was no substance in the point and that Captain Areeke gave his evidence fairly and objectively within the confines of the qualifications and experience that he had. There was no basis on which to challenge his independence by reference to previous instructions received. In my judgment, therefore, it will be appropriate to apply a deductible in relation to the costs of that application. In my judgment, those are costs which both the claimant should not be allowed to recover and the appropriate course to adopt in those circumstances is to deduct from the costs otherwise recoverable by the claimant of the sum of, I judge, £2,900, which, in my judgment, adequately reflects a sum that would eliminate that cost element from the sums that the defendants have to pay.

77. More generally, so far as the PTR is concerned, I do not accept that 31 hours by Ms Prentice reflects what is reasonable and proportionate for the task that had to be undertaken. A pre-trial review, shorn of the application itself, ought to have been a straightforward issue concerning a discussion which ought not to have taken any longer than 15 minutes, in my experience, concerning how the remote trial was to be conducted and how the bundles were to be prepared. In those circumstances, I would allow Ms Prentice only 10 hours for the preparation for the PTR, reflecting the fact that there will be additional costs for a claimant in respect of the PTR that a defendant will not have to have, but, as I say, 31 hours is in excess of what is reasonable and proportionate and I judge 10 hours to be the reasonable and proportionate figure.

78. It is now necessary for me to consider trial preparation. So far as trial preparation is concerned, the brief fee is agreed and that is allowed as asked. So far as the solicitors' time is concerned, in excess of 75 hours has been claimed for the costs of preparing for trial. The

breakdown of that, as set out, includes attendances on witnesses and expert of in excess of 15 hours, attendances on the client of a further 9 hours, attendances on documents, for a further 32 hours, attendance on the defendant for two-and-a-half hours and on others, counsel, etc, a further 18 hours. This figure is in excess of what is reasonable and proportionate and requires to be adjusted. The preparation of the trial bundle is presumably what is reflected in the hours, or part of the hours, that Ms Prentice spent on this exercise, but there is no breakdown as between her and Mr Hatcher as to who did what and, therefore, I have to come at this in a very broad brush way. The attendances on witnesses and on the client are both well in excess of what is reasonable and proportionate in the circumstances and doing the best I can with the limited information available, I would allow Ms Prentice's pre-trial preparation at 30 hours and Mr Hatcher's as asked.

79. The next phase I have to consider concerns trial. The counsel's fees are not in dispute and I need say no more about them. So far as time costs are concerned, the solicitors claim 44.2 hours for a trial which lasted two-and-a-half days. I fully accept that it will be appropriate in a trial of this sort for counsel to be attended throughout by a solicitor with knowledge of the case. It was suggested by Mr Watthey on behalf of the defendants that that ought to be 8 hours, plus 8 hours, plus 4 hours. I would accept that as a correct assessment. That comes to 20 hours. Effectively, Mr Hatcher has claimed 20.4 hours. I am prepared to accept that figure as reasonable and proportionate having regard to the way in which trial attendances can vary slightly depending on what needs to be done at the end of any particular day. So I allow Mr Hatcher at 20.4.

80. Again, however, for Ms Prentice to claim, in effect, the same again is in excess of what is reasonable and proportionate. It will be appropriate for the partner in charge of a case such as this to attend at the start of the trial, and perhaps the first hour, to deal with any unexpected developments, and it would be appropriate also for the partner in charge to attend at the end of the trial for the purpose, again, of providing any last-minute input required for counsel. Doing the best I can with that, I would allow, in respect of those two elements, a total of 5 hours for Ms Prentice, to which I would add another 3 hours to cater for out of court advice being given in relation to things as they developed. That comes, as I calculate it, to 8 hours

for Ms Prentice on top of the 20.4 hours for Mr Hatcher. There is no dispute about counsel's fees.

81. The next issue, and final issue, I think, concerns settlement and ADR, and again, a point which is made is that the solicitors' time charges are in excess of what is reasonable and proportionate. The point which is made on behalf of the claimant is that this encompasses a number of different points: it encompasses consideration of the preparation for a mediation that in the end did not take place; it concerns the consideration of two Part 36 offers, which in the end contributed not a lot to the costs issues that arise but, nonetheless, had to be considered and advice obtained; and there was the preparation of a *Calderbank* offer as well, which in the end did not impact on the issues that I have to resolve today. I am prepared to accept that counsel's time involved in that exercise is correctly, reasonably and proportionately claimed. What I am less sure about, however, is how Ms Prentice could have accumulated 15 hours, in addition to Mr Hatcher's 5.7 hours, to create a grand total of 22 hours for the two tasks I have identified. Again, doing the best I can with Ms Prentice's hours and reminding myself that it must be what is reasonable and proportionate, I would allow her at 10 hours for this exercise in addition to Mr Hatcher's fees for the same phase.

82. The final issue which arises concerns the post-hearing costs. I do not understand what the estimated fees are about. The post-hearing costs as set out are in excess of what is reasonable and proportionate. I accept counsel's fee as asked as being reasonable and proportionate but, again, I struggle to see how Ms Prentice could have spent 11.9 hours reasonably and proportionately in relation to this phase. The schedule relevant to the quantification of the claim was prepared before ever the trial started and it was only necessary to have that handy for the purposes of dealing with any quantification issues of detail that arose. So far as costs are concerned, the issue really involved the consideration of the two Part 36 offers and the *Calderbank* letter, which cannot sensibly have taken, on a proportionate basis, 11.9 hours. I fully accept that there will be incidental work that would have to be done, including the preparation of this costs schedule and attendance at the hearing. However, the hearing started at 10.30 am, it is now 2.10 pm. There has been no break for lunch. That comes to just short of 4 hours, and the preparation of the schedule will have taken, as it seems to me, another 3 hours, so if one allows Ms

Prentice's costs at 7.5 hours to allow for a modest amount of leeway, in respect of the work that had to be done, then that reflects what is reasonable and proportionate for the attendance today.

Mr E Jones appeared on behalf of the claimant.

Mr J Watthey appeared on behalf of the defendants.