

Costs in Focus

Issue 55

Welcome to the 55th issue of Costs in Focus. This edition is going to consider a number of recent developments in costs law and the impact they will have on Costs Drafters and Practitioners.

Default costs certificate and relief from sanctions

Costs Lawyer, Mevani Jagodage considers the Court of Appeal's decision to set aside a default costs certificate in *Khandanpour v Chambers* [2019] EWCA Civ 570

This matter concerned a claim for unlawful eviction and breach of covenant. The appellant had failed to pay the damages awarded at trial and further had not considered the costs claim, and a default costs certificate was obtained.

The appellant was required to pay a sum of £10,000 by 4 pm on 15 June 2017 as a specific condition for setting aside the default costs certificate, in addition to filing and serving points of dispute.

Points of dispute were filed and served on time. Two payments were arranged: £4,000 was received

before the 4 pm deadline but the balance of £6,000 arrived at 8:53 the next morning.

The respondent firstly considered there to be non-compliance with the court order and secondly appropriated the £6,000 towards damages rather than costs. The default costs certificate was declared as enforceable.

The Court of Appeal considered the points at issue:

1. The appropriation of the £6,000 towards the outstanding damages rather than costs;

2. Issue of relief from sanctions if the £6,000 was in fact paid towards costs.

The Court of Appeal held that the respondent was aware that the £6,000 payment was intended to be on account of costs and not to satisfy the judgment debt. Relief from sanctions was then considered, as the £6,000 payment had been made late. The Denton principles were applied and the delay in payment was deemed not a serious or significant breach and did not impact on the conduct of litigation.

Comments

Once the respondent knew the second payment was for payment on account of costs, the Court of Appeal held it was correct to extend the time for payment. This satellite litigation would thus have been avoided and the costs assessment proceedings would have already concluded.

Lord Justice Males called for "a sense of perspective" because, ultimately, the delay of a few hours

"made no practical difference [...] it would be disproportionate and unjust to deprive the appellant of an opportunity to challenge the Default Costs Certificate."

Finally, although the appellant landlord had wrongly evicted the respondent tenant and had failed to pay the judgment damages, it was relevant that the appellant was not in breach of any previous order for

costs and, in this matter, no unless order had been made. This decision is to be contrasted with *Oak Cash & Carry v British Gas Trading Limited* [2016] EWCA Civ 153, where the Court of Appeal had refused relief from sanctions following a breach of an unless order.

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VAT and medical invoices

Costs Lawyer, Richard McCarthy considers the Court of Appeal's ruling about VAT charged by a medical reporting organisation in *British Airways v Prosser* [2019] EWCA Civ 547

The Court of Appeal considered whether a receiving party should be able to recover the VAT charged by a medical reporting organisation (MRO) on medical records obtained and provided during litigation, or only on the MRO's administration fee.

The claimant suffered an injury at work and instructed solicitors to bring a claim against his employers, in the course of which they commissioned Absolute Medicals Limited, an MRO, to obtain medical reports and records. The MRO

charged VAT on their administration fee, and also on the reports and records. Damages were agreed by the employers and an interim payment of the fixed costs was made but the paying party denied liability for some of the VAT included on the MRO invoices, because VAT should have been charged only on the element representing the administration fee.

The paying party's contention was rejected at first instance after District Judge Temple found that, while a solicitor must act

reasonably and proportionately, on the facts of the present case the disputed element of VAT was just £189 and on the standard basis the claimant's solicitor are not expected to investigate the MRO and its registration relationship with HMRC.

Permission was granted for the appeal to be transferred to the Court of Appeal, where the first instance decision was upheld and the appeal dismissed.

Comments

On the standard basis, the VAT charged on the full amounts was therefore "reasonably and proportionately incurred". It is furthermore "unreasonable and disproportionate" for a claimant's solicitor to question the VAT status of an invoice presented to them.

The Court of Appeal proceeded to distinguish between instances where the MRO acts as "a mere postbox, obtaining and forwarding documents as asked for an

identifiable fee", in which case the MRO should charge VAT only on its own administration fee, and instances in which the MRO acts as an agent for the ultimate client rather than for the solicitor. The answer would be dictated by the contractual relationship between the client, solicitor and MRO. If the MRO has a more active role, it will have established its own supply of services and VAT will be payable on everything. Where an MRO is not entitled to charge VAT on the

supply, the client may still have to pay VAT to the solicitor, however.

The Court of Appeal's comments on VAT recoverability and more generally on the distinction between acting as a "postbox" and acting "in the name of and on behalf of" the client are potentially significant but the nature of the contractual relationship did not form the grounds for the appeal and the Court of Appeal did not make a formal ruling on this point.

Services we provide

We deal with all aspects of costs including the preparation of Bills of Costs, Schedule of Costs, Points of Dispute, Points in Reply, negotiating settlement, solicitor own client disputes, auditing, providing estimates, costs budgeting and costs advocacy.

Our dedicated costs team is made up of employees based in Bristol and New Malden with a wealth of experience including Costs Lawyers and members of the ACL.

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The purpose of this newsletter is to highlight some of the recent developments and changes in costs law. It should not be taken as legal advice and should not be relied upon as such.