

IN THE COUNTY COURT AT CLERKENWELL & SHOREDITCH

Case No: CO1YM621

Courtroom No. 5

The Gee Street Courthouse
29-41 Gee Street
London
EC1V 3RE

1.49pm – 2.02pm
Friday, 17th November 2017

Before:
DEPUTY DISTRICT JUDGE OSTROFF

B E T W E E N:

MOHAMMED AKHTAR

and

AHMED AMIN & ESURE SERVICES LTD

MS S ROBSON (instructed by Versus Law) appeared on behalf of the Claimant
Mr Mc Grath (instructed by KEOGHS LLP) appeared on behalf of the Second Defendant

JUDGMENT
(APPROVED)

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DDJ OSTROFF:

1. The matter before me arises from an order made by DJ Swan on 6 April 2017, more specifically in regard to the award of costs he made; I have in mind paragraphs three and four of his order. The parties are represented by counsel; the claimant by Ms Robson and the second defendant by Mr McGrath, both have provided this court with skeleton arguments to which I have regard.
2. By way of background, the parties were involved in a road traffic accident on 21 May 2013 and matters proceeded onto the portal on 3 June 2013 and subsequently the case went to trial on 16 April 2017, when damages were assessed but the issues of costs was adjourned. The issue before me today is whether the order made by DJ Swan can properly reflect legislation applicable at the relevant time.
3. Ms Robson in her skeleton argument points out that as the client notification for this claim was sent before the fixed costs regime came into force the costs regime under CPR 45.29B cannot apply. That means, Ms Robson argues, that the claimant is not restricted to the fixed costs and is entitled to Part 7 hourly rate costs. The order of DJ Swan made on 6 April 2017 does not envisage a situation other than the fixed costs regime applying.
4. For whatever reason, when this matter came before DJ Swan on 6 April, the parties' legal representatives did not draw the District Judge's attention to what the correct governing position should be in regard to costs, nor did DJ Swan apply his mind to this matter specifically. These situations happen from time to time. The question I have to determine, given that it is common ground between counsel today that because of when the client notification letter was sent this was not a case for the fixed costs regime to apply.
5. Ms Robson asks me to adjudicate that given that the law which was applied at the hearing before DJ Swan was patently wrong she is entitled to come back to court to request that the correct costs regime should apply. Mr McGrath in his skeleton argument disagrees, he says, amongst other matters, that the claimant now seeks to undermine that order by seeking costs on a different basis entirely and that the only way for the claimant to legitimately revisit the order made on 6 April 2017 is to appeal.
6. Alternatively, if that order is not deemed a final order, an application is required to vary or set aside the order pursuant to CPR 3.1(7). He says that the claimant has not appealed, nor has the claimant applied to vary or set aside DJ Swan's order. Those are in summary form the competing arguments advanced by counsel today. I of course have regard to all the other matters raised in Mr McGrath's skeleton argument.
7. I reach the following findings:
 - i. In my view, this is a clear cut situation as to what costs regime should have applied; it certainly was not in respect of fixed costs. Clearly, a different regime should apply in effect that costs should be at large.
 - ii. Should the claimant have appealed or sought to vary this order? I take the view, in a case of this nature when the legal position underpinning the costs regime at the time of the hearing and on which the District Judge applied himself, was so clearly and manifestly wrong that it is not incumbent upon the claimant to seek an appeal.
 - iii. That is of course subject to certain provisos, namely whether the claimant has properly and promptly drawn the other side's attention that the wrong law was applied.
8. In my view, that has clearly been demonstrated by the claimant's counsel when, on 27 April 2017, her solicitors submitted her skeleton argument fully setting out the position.

- I have not seen that communication, but I understand that is not in issue. I further understand from Ms Robson that further open correspondence was sent in the course of this year, including 8 June, 9 July and in October about this issue. I make clear that I have not seen these emails, but I understand from Ms Robson, and I have no reason to disbelieve her, that these matters went to the issue that I have to determine today.
9. I take into account other matters in arriving at the decision I have done today. Has there been an estoppel? In a case of this nature, my answer is clearly, no, given the fact that Ms Robson's skeleton argument was submitted promptly on 27 April. The other matter which I raised when I put it to Ms Robson was this, if a judge gets something wrong is it not the correct procedure to seek permission to appeal?
 10. That may well be right in the ordinary course of matters where the question of legal interpretation may be subject to different arguments which a higher court would have to determine. This is not the case here, where it is accepted and agreed by counsel today that the fixed costs regime could not and should not have applied to the hearing in April of this year before DJ Swan.
 11. Additionally, I take into account the parties must proceed proportionately in resolving what clearly was a patent and manifest error in applying the law to the costs regime in this case. Had the claimant's solicitors not proceeded promptly this may well have been a different situation. However, they did and they explained the position by way of a skeleton argument setting out what the correct legal position is which indeed is accepted by the defendant's counsel. For the first time today, the Defendant's Counsel seeks to oppose what is being sought by Ms Robson on procedural grounds.
 12. For all these reasons, I conclude that there was a manifest and plain error as to the legal position at the time of the hearing when the parties' legal representatives and the Judge in question inadvertently did not apply themselves to the correct costs regime. In those circumstances, it is incumbent upon parties to draw such matters to each other's attention and agree the correct costs regime, obviously on the basis that it is done promptly, efficiently and in an attempt to reach a satisfactory resolution. For all these reasons I shall make an order as sought by Ms Robson in terms of her draft order.

End of Judgment

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