Newsletter

Edition 1 Autumn 2013

Welcome to the first edition of the Costs Lawyer UK Newsletter.

Following the reforms in April this year, we have taken the opportunity to review some of the recent decisions and the impact on legal costs. One of the hot topics at the moment is cost budgeting. This case illustrates the benefits of concluding a case within budget.

Slick Seating Systems & Ors v Adams & Ors (Rev 1) [2013] EWHC B8 (Mercantile)

http://www.bailii.org/ew/cases/EWHC/Mercantile/2013/B8.html

HHJ Simon Brown summarily assessed the Claimant's costs in the sum of £351,267.35 to be paid within 14 days.

HHJ Simon Brown had managed the case throughout and the Claimant's costs had been controlled to a certain extent by the case management of the Court. The budget had been approved in the sum of £359,710.35 for running the case through to Trial. The Judge found the budget was proportionate for the £4.4 million damages awarded. He commented that the Claimant had kept in budget and exercised due control over their activities and expenditure in an exemplary fashion. The statement of costs totalled £351,267.35. In this case, the Judge found where the Defendants failed to engage or co-operate in costs-budgeted litigation, it was appropriate to award indemnity costs to the wholly successful claimant. The Judge awarded the Claimant costs in the sum of £351,267.35 by way of summary assessment and considered detailed assessment had become otiose.

Part 36 Case law – "Near miss" No going back to Carver!

Hammersmatch Properties (Welwyn) Ltd v Saint-Gobain Ceramics and Plastics Ltd & Another [2013] EWHC 2227 (TCC) (24 July 2013).

http://www.bailii.org/ew/cases/EWHC/TCC/2013/2227.html

A costs ruling in proceedings involving a claim for dilapidations by the Claimant, Hammersmatch Properties, against the Defendant, Saint-Gobain Ceramics & Plastics Ltd brought in the Technology and Construction Court.

In an earlier Judgement, the Claimant was awarded £900,000 damages which were limited by s.18(1) of the Landlord and Tenant Act 1927 (''the 1927 Act'') to the value of the diminution of the reversion. In addition the Claimant was awarded the agreed cost of schedules of £20,320.40. Including interest, the total sum awarded was £1,058,768.00.

The Defendant had made a Part 36 offer by letter dated 23 December 2011 in the sum of £1,000,000. When interest was added to the sum of £900,000 and £20,320.40 up to 13 January 2012, the last date of acceptance of the Part 36 offer, the sum awarded to the Claimant exceeded the Defendants Part 36 offer by just £3,637.90, which represents a very small percentage of the sum offered.

In accordance with CPR 36.14, which was amended on 1 October 2011 by the insertion of CPR 36.14(1)(A), the Claimant had not failed to obtain a judgment more advantageous than the Defendants' Part 36 offer and thus Rule 36.14 did not apply.

The provisions of CPR 36.14(1A) state *''(1A) For the purposes of paragraph (1), in relation to any money claim or money element of a claim ''more advantageous'' means better in money terms by any amount, however small and ''at least as advantageous'' shall be construed accordingly.''*

The Defendant argued there should be costs consequences for the 'near miss', however, the Court rejected the suggestion that a 'near miss' offer could result in costs consequences under CPR 44.2(4).

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Part 36 Case law – No going back to Carver! Continued

CPR 44.2(4), in deciding what order to make the court has to have regard to all the circumstances including:

''(a) the conduct of all the parties;

(b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and

(c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.''

Mr Justice Ramsey commented at Paragraph 36 … ''In my judgment the principle in sub-paragraph (vii) of [72] in Multiplex, derived as it was from Carver, is no longer a principle which applies to Part 36 and should not be applied as a special ''near miss'' rule through CPR44.2(4)(c). If there is an unreasonable refusal to negotiate then that is a matter which comes within the circumstances which the court can take into account under CPR44.2(4) and sub-paragraph (a) in particular. I am doubtful that, on analysis, a ''near miss'' offer can generally add anything to what otherwise would be conduct in the form of unreasonable refusal to negotiate. To do so would raise the difficulties in *Johnsey Estates (1990) Limited –v- Secretary of State for the Environment, Transport and the Regions [2001] EWCA Civ 535* and seek to base an exercise in discretion on offers which neither party made at the time but which, with the benefit of hindsight, one party should have made and the other party should have accepted.''

The Civil Proceedings Fees (Amendment No. 2) Order 2013 came into force on 1 July 2013

http://www.legislation.gov.uk/uksi/2013/1410/made

- The Order includes an amendment to fee 2 (General Fees (High Courts and county courts)) to clarify that a fee remains payable on receipt of a directions questionnaire even where the case is not subsequently allocated to a track.
- The Order also merges the fee payable on filing a request for detailed assessment of costs where the party filing the request is legally aided, funded by the Legal Services Commission or by the Lord Chancellor and no other party is ordered to pay the costs of the proceedings with the fee payable on an application for the court's approval of a certificate of costs payable from the Community Legal Service Fund or Lord Chancellor. Where an application for a detailed assessment of costs was made before this Order comes into force, the fee for an application for the court's approval of a certificate of costs will continue to be charged separately.

New Pre-Action Protocols in RTA, EL and PL from 31 July 2013

http://www.legislation.gov.uk/uksi/2013/1695/made

- EL and PL key date is the cause of action
- Industrial disease key date is letter of claim
- RTA New Portal key date Claims Notification Forms lodged post 30/7/2013 = fixed recoverable costs, not predictive costs in cases below £10,000.00
- Extended RTA portal applies to accident dates from 31/7/2013 in cases valued between £10,001.00 and £25,000.00

CPR update, September/October 2013

The 66th amendment to the CPR comes into force on 1st October, however, there are amendments to PD3E Costs Management, PD51I The Second Mediation Service Pilot Scheme, and PD 75 Traffic Enforcement which come into force on 1st, 29th and 2nd September respectively.

The CPR update includes an amended Precedent H form and the rules also provide clarification as to what is included in the provisional assessment costs figure of £1,500.00

Whilst we know this is a time of change for all of us, at Costs Lawyer UK we will endeavour to work with you to help smooth the transition in applying the new regulations. Visit our website and follow us on Twitter for regular news updates!

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LEGAL COSTS EXPERTS

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