Case No: SC-2020-APP-000080

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Royal Courts of Justice
London, WC2A 2LL

Date: 12/06/2020

Before :

MASTER GORDON-SAKER

- -

Between :

GENEVIEVE UGOCHI IWUANYAWU	**Claimant**
- and -	
RATCLIFFES SOLICITORS	**Defendants**

- -
- -

Mr Asad Maqsood (instructed by **Julia and Rana**) for the **Claimant**
Mr Samuel Davis (instructed by **Ratcliffes**) for the **Defendants**

Hearing date: 2 June 2020 (by Skype)

This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 4 pm on Friday 12 June 2020

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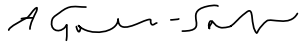
Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.



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MASTER GORDON-SAKER

Master Gordon-Saker :

1. First I must apologise that this is a reserved judgment rather than the ex tempore judgment which everybody would have expected. The hearing was held remotely by Skype and proceeded fairly smoothly until, towards the end, the recording stopped and would not restart. That turned out to be because my computer's hard drive had filled to capacity and would accept no more Skype recordings, for which I apologise. Accordingly I recorded the remainder of the hearing on my mobile telephone and, as by then my computer was struggling to open any documents, I reserved judgment.

2. The Claimant, Mrs Iwuanyawu, seeks an order for the detailed assessment of 13 out of 14 bills delivered to her by the Defendants, a firm of solicitors in Sittingbourne, in respect of her matrimonial proceedings. The only bill not in issue is the second, number 17123, which was only for the court fee for the divorce petition. At a hearing on 16th March 2020 I directed that the last 8 bills should be the subject of detailed assessment. Those bills had been delivered less than 12 months before the issue of these proceedings and there was no reason to refuse a detailed assessment.

3. The detailed assessment of the first 6 bills, including the bill for the court fee not now challenged, was opposed by the Defendants because: (1) the first 2 bills had been paid more than 12 months before the issue of proceedings and so, it was said, the court did not have jurisdiction to order assessment; and (2) the latter 4 bills had been paid before but within 12 months of the commencement of proceedings and so the Claimant would need to show special circumstances.

4. Accordingly I directed that the claim in respect of the first 6 bills should be adjourned for the Claimant to file evidence as to jurisdiction and special circumstances. The Claimant filed a witness statement dated 29th March 2020. The Defendants chose not to file a statement in reply but shortly before the adjourned hearing filed copies of the client care letter and the Defendants' standard terms of business. On behalf of the Claimant, Mr Maqsood objected to the late production of these documents and because they had not been produced as exhibits to a witness statement. However as the Claimant accepted that she had signed the client care letter and as Mr Maqsood had the opportunity to take her instructions on it, I decided that it would be appropriate to admit the letter and the standard terms.

5. The jurisdiction to order the detailed assessment of solicitors' bills on the application of (usually former) clients is contained in section 70 Solicitors Act 1974. The relevant parts are:

> (3) Where an application under subsection (2) is made by the party chargeable with the bill—
>
> (a) after the expiration of 12 months from the delivery of the bill, or
>
> (b) after a judgment has been obtained for the recovery of the costs covered by the bill, or
>
> (c) after the bill has been paid, but before the expiration of 12 months from the payment of the bill,

> no order shall be made except in special circumstances and, if an order is made, it may contain such terms as regards the costs of the assessment as the court may think fit.
>
> (4) The power to order assessment conferred by subsection (2) shall not be exercisable on an application made by the party chargeable with the bill after the expiration of 12 months from the payment of the bill.

6. There was no real issue between the parties as to the law. The issues canvassed in submissions were:

   i) Whether the Defendants' bills contained enough information to be bills.

   ii) If they did, whether the Defendants were entitled to render interim statute bills.

   iii) If the bills were bills which were capable of assessment, whether there were special circumstances such as to justify the assessment of the third to sixth bills.

7. The first two issues are raised by the Claimant to defeat the argument that the court does not have jurisdiction to order the assessment of the first bill. If the first bill was not a bill when it was paid then it was not a bill paid more than 12 months before the issue of proceedings. However, as Mr Davis pointed out, that may pose the Claimant with a problem because all of the bills were in similar form and if the first bill was not a bill, then the others were also not bills which are capable of assessment.

The status of the bills

8. A bill must contain sufficient information to enable the client to obtain advice as to its detailed assessment. In *Ralph Hume Garry v Gwillim* [2003] 1WLR 510, the Court of Appeal considered whether a series of bills submitted by the claimants to the defendant complied with section 69 of the Solicitors Act 1974. Ward LJ summarised the authorities:

> 63 I accept the principle expressed in Lord Campbell CJ's judgment in *Cook v Gillard* 1 E & B 26 , 36–37 that:
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> > the defendant who undertakes to prove that the bill is not a bona fide compliance with the Act cannot found an objection upon want of information in the bill, if it appears that he is already in possession of that information … a client has no ground of objection to a bill who is in possession of all the information that can be reasonably wanted for the consulting on taxation.
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> In *Eversheds v Osman [2000] 1 Costs LR 54* , 61–63 Nourse LJ posed this test in not dissimilar terms, viz: is the client unable to judge as to the justice of the amount of the fees which are charged?
>
> …

> 64 Thus I would accept the proper principle to be that there must be something in the written bill to indicate the ambit of the work but that inadequacies of description of the work done may be redressed by accompanying documents (as in *Eversheds v Osman* where it was doubtful whether the bill on the face of it would have been sufficient) or by other information already in the possession of the client. That, it seems to me, would serve the purpose of the Act to give the client the knowledge he reasonably needs in order to decide whether to insist on taxation. If the solicitor satisfies that then the bill is one bone fide complying with the Act.
>
> …
>
> 70 This review of the legislation and the case law leads me to conclude that the burden on the client under section 69(2) of the Solicitors Act 1974 to establish that a bill for a gross sum in contentious business will not be a bill "bona fide complying with this Act" is satisfied if the client shows: (i) that there is no sufficient narrative in the bill to identify what it is he is being charged for, and (ii) that he does not have sufficient knowledge from other documents in his possession or from what he has been told reasonably to take advice whether or not to apply for that bill to be taxed. The sufficiency of the narrative and the sufficiency of his knowledge will vary from case to case, and the more he knows, the less the bill may need to spell it out for him. The interests of justice require that the balance be struck between protection of the client's right to seek taxation and of the solicitor's right to recover not being defeated by opportunistic resort to technicality.

9. In my judgment the bills in the present case did contain sufficient information to enable the Claimant to know what she was being charged for. Each bill set out the date on which work was done and what work was done. Each communication identified who the communication was with. Mr Maqsood criticised the repeated use of "preparation of documents and perusal" as a description of the work done when in only a few cases what was prepared or perused was identified.

10. However it seems to me that what was being done was sufficiently described to enable the claimant to decide the justice of the amount of the fees which are charged. Her case is that these fees are not justified because no documents were being perused or prepared other than those expressly identified. As Mr Davis submitted, these criticisms are matters for the detailed assessment but they do not prevent the bills from being bills which are capable of assessment.

11. A solicitor's retainer is an entire contract and, save in two circumstances, solicitors are not entitled to payment on account other than for disbursements. The exceptions are, first, where there is a natural break in protracted litigation and, secondly, where there is an agreement that the solicitor can submit interim statute bills: that is a self-contained bill rendered before the conclusion of the case but which is final in respect of the period that it covers.

12. In the present case it is not suggested that the bills were rendered in natural breaks in protracted litigation. They were rendered at the end of each month over the duration of the retainer between October 2018 and October 2019. Accordingly Mr Davis, on behalf of the Defendants, relies on a contractual right to render interim bills.

13. The client care letter dated 18th October 2018 provided on the fourth page:

> You are personally responsible for the legal costs set out in this letter. We will invoice you for our charges and disbursements every month while your case is in progress. All invoices are payable within 30 days.

14. The Defendants' standard terms provided on the fourth page:

> Bills should be paid within 30 days. We may charge interest on overdue bills at 15% per annum. If we have to take proceedings and obtain a judgment against you then interest on the judgment debt will continue to run at 15% per annum.
>
> We may cease acting for you if an interim bill remains unpaid after 30 days or if our reasonable request for a payment on account of costs or disbursements is not met.
>
> You have the right to challenge or complain about our bill. Please see the paragraph Complaints for details of how to complain about our bill.

15. The paragraph headed "complaints" set out the Defendants' internal complaints procedure and the possibility of complaining to the Legal Ombudsman. It did not refer to the right to seek assessment by the court.

16. It seems to me that these terms do not enable the Defendants to submit interim statute bills. The client care letter entitled the Defendants to invoice monthly but it was not provided expressly that such invoices would be final bills for the periods that they covered.

17. In *Vlamaki v Sookias & Sookias* [2015] 6 Costs LR 827 the solicitors' retainer provided:

> To help you budget, we will send you a bill for our charges and expenses at the end of each month while the work is in progress. We will send you a final bill after completion of the work.
>
> If not paid from monies on account, payment is due to us on delivery of a bill. We reserve the right to charge you interest on the bill at 4% over the base rate prevailing from time to time from the date of the bill if you do not pay our bill within this time …

18. Walker J. decided that the solicitors were not entitled to render interim statute bills:

> 23. Absent from those clauses in particular and the retainer in general is any express statement that each interim bill would be a final bill for the period that it covered. I do not underestimate the force of the argument that they must be statute bills because of what is said in the retainer as to payment being due and as to interest. That argument, however, assumes knowledge of the 1974 Act and procedures under it: but this does not sit happily with concession (2)[1]. In the ordinary course a lay client cannot be assumed to have such knowledge.
>
> 24. To an objective reader without special knowledge of the 1974 Act the only indication that any bill is to be final is what is said in the second sentence of clause 6.1. I agree with the master that there is a substantial ambiguity here. The ambiguity is not removed by the provisions cited by Mr Mallalieu. Those provisions do not tell the client that the bill "at the end of each month" will be final as to work and expenses during the period covered by the bill. From the solicitor's point of view, they are all consistent with Sookias & Sookias wanting to minimise risks in relation to their cash position …

19. In the present case the Defendants were entitled to deliver monthly invoices "for our charges and disbursements" but there was nothing agreed to the effect that such invoices should be self-contained bills which were final for the periods that they covered and that any challenge would therefore be subject to the technical rules and time limits of section 70.

20. As did the defendants' counsel in *Vlamaki v Sookias & Sookias*, Mr Davis sought to rely on the standard terms as to payment and interest as being an indication that the monthly invoices were interim statute bills. However there is no evidence that Mrs Iwuanyawu had any better knowledge of the law concerning solicitors' bills than did Dr Vlamaki. The confusion is not helped by the client care letter referring to monthly invoices, but the Defendants' standard terms referring to bills. The provisions as to the entitlement to interest and the possibility of proceedings is raised in relation to "bills" in the standard terms which then go on to refer in the next paragraph to "interim bills" and "requests for a payment on account" without reference to interest or the possibility of proceedings. Rather, the terms provided that failure to pay an interim bill or request for payment on account may entitle the Defendants to cease to act.

21. It seems to me, following *Vlamaki v Sookias & Sookias*, that if a solicitor wishes to reserve a right to deliver interim statute bills which are intended to be final for the periods that they cover, as opposed to requests for payment on account, that right must be spelled out clearly in the contract with the client. In this case it was not.

22. Mr Davis submitted that such a finding would pose the Claimant with the same difficulty as Dr Vlamaki. If the bills are not interim statute bills, the Claimant can have no right to assessment.

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[1] Concession (2) was that the defendant was a firm of solicitors while the claimant was not a lawyer.

23. However in *Vlamaki v Sookias & Sookias* the issue was whether a letter written by the solicitors after the final bill indicating that they did not intend to submit further bills crystallised the sums due and converted the series of bills into a final bill. The difficulty with that was that the solicitors' terms had expressly provided that they would "send … a final bill".

24. The present case is more similar to *Chamberlain v Boodle & King* [1982] 1 WLR 1443. In that case the terms of the defendants' retainer did not allow for self-contained interim bills, but did allow for regular "statements". The retainer lasted for 6 months over the course of which they delivered 4 bills to the claimant. The court concluded that there had been no natural breaks, but that the bills "should be regarded as one bill in respect of one complete piece of work, although divided into parts". As the claimant had demanded taxation of the last within one month, he was entitled to have the whole of it taxed.

25. As Lord Denning MR explained:

> The next point in the case is whether the bills were four separate bills or whether they were one. If they were four separate bills, the client would have to demand taxation of each within a month of receipt. If they were one bill, divided into separate parts, as long as he demands taxation within a month of the final account, then he has a right to taxation.
>
> We were referred to one or two cases on this point. First In re Romer & Haslam [1893] 2 Q.B. 286 : and the latest was a case in this court on March 6, 1980, of Davidsons v. Jones-Fenleigh, The Times, March 11, 1980 . Putting it quite shortly, as Bowen L.J. said [1893] 2 Q.B. 286, 298, it is a question of fact whether there are natural breaks in the work done by a solicitor so that each portion of it can and should be treated as a separate and distinct part in itself, capable of and rightly being charged separately and taxed separately. Applying that simple test, it seems to me that over this short time — the end of November 1978 to the beginning of May 1979 — this was one continuous dealing and work done by a solicitor, not dividing itself naturally or otherwise into any breaks at all. When the bills were delivered, they were delivered each time as part of the running account — "account rendered" being carried on in each to the next. I agree with the judge on this point too that this should be regarded as one bill in respect of one complete piece of work, although divided into parts. As this is one bill, and the client demanded taxation within the month, he is entitled to have the whole of it taxed.

26. This reflects reality. A client receiving monthly invoices may well have no idea whether she will wish to challenge them until either she has received sufficient to be caused concern or has reached the end of the matter and can consider the total, perhaps against any estimate that may have been given. In most cases it will be unrealistic to expect a client to be able to challenge her own solicitors' bills in the middle of matrimonial proceedings.

27. Accordingly, in my judgment, the 14 bills delivered by the Defendants were not interim statute bills, but were part of a running account which should be regarded as one bill delivered on the date of the last, namely 18th October 2019 when the Defendants' retainer was determined. That bill has not been paid and is dated within 12 months of the issue of proceedings. There is therefore no need for the Claimant to show special circumstances.

28. Accordingly the profit costs claimed in the bill, comprising the 14 invoices rendered by the Defendants, should be the subject of detailed assessment.

Special circumstances

29. If I am wrong on the status of the Defendants' invoices I would have concluded that there were special circumstances such as to justify an order for assessment of the third to sixth bills.

30. In *Stone Rowe Brewer LLP v Just Costs Ltd* [2015] EWCA CIv 1168 the Court of Appeal approved the conclusion of Lewison J. (as he then was) in *Falmouth House Freehold Co. Ltd v Morgan Walker LLP* [2010] EWHC 3092 (Ch); [2011] 2 Costs LR 292, at [13]:

> Whether special circumstances exist is essentially a value judgment. It depends on comparing the particular case with the run of the mill case in order to decide whether a detailed assessment in the particular case is justified, despite the restrictions in section 70(3). In Re Cheeseman [1891] 2 Ch 289 the Court of Appeal held that it would not interfere with the decision of the first instance judge on whether special circumstances existed except in a strong case. All the more so, in my judgment, where the value judgment has been made by a specialist costs judge. …

31. It seems to me that the Defendants' bills call for an explanation. The divorce petition was not defended and effectively the bills appear to cover the work done up to the preparation of the Form E. The estimate given by the Defendants to the Claimant in their letter dated 18th October 2018 for "initial discussions with the other side, voluntary exchange of Form Es, analysis of Form Es, raising questions as to that document and negotiating a settlement" was £8,940. That included counsel's fees of £900 which were not incurred and work done on and following exchange of the Form Es and settlement was not done. The total of the bills, just over £13,000 excluding value added tax, does therefore seem to require explanation.

32. Mr Davis sought to explain the fees on the basis that the Claimant was a demanding client. Unfortunately, with no witness statement from the Defendants, all he could point to was the level of communication with the Claimant recorded in the bills. Without knowing what those communications were I have no way of knowing whether they were caused by a demanding client or not.

33. A second potential special circumstance is that the bills, at least as presented in the hearing bundle, did not contain the usual information about the client's right to seek an assessment by the court under the Solicitors Act. In my experience it is the

invariable practice of solicitors still to provide that information. Yet here it was not apparently included on the bills nor was it mentioned in the client care letter.