

TRANSCRIPT OF PROCEEDINGS

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Ref. E72MA151

**IN THE COUNTY COURT AT MANCHESTER**

1 Bridge Street  
Manchester

**Before DEPUTY DISTRICT JUDGE HARRIS**  
**Sitting as Regional Costs Judge**

**IN THE MATTER OF**

**LEE TUDOR** **Claimant**

**-v-**

**MR DEAN** **First Respondent**  
**GENERAL COMMERCIAL OBJECTS LIMITED**

**MR NICHOLAS LEE appeared on behalf of the Petitioner**  
**MR RICHARD WILCOCK, instructed by Christopher Jones, appeared on behalf of**  
**the First Respondent**

**JUDGMENT**  
**29<sup>th</sup> JANUARY 2021**  
**(AS APPROVED)**

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JUDGE HARRIS:

1. I am going to keep this judgment relatively short. The issues are set out in depth by Mr Lee in his skeleton argument, and I do not therefore intend to rehearse them any more, save that I have read the background information as set out in paragraphs 1 to 11 of his skeleton. They are issues of a commercial and corporate nature between the two directors of the company, and the issues that come before me today and which are reserved relate to two particular issues. The first is the Claimant's application to seek the striking out of points 6, 7 and 8 in points of dispute and secondly, the issue relating to the Claimant's attempt and desire to exceed figures given in the original costs budget.

2. Taking the first issue, that the Claimant seeks to dismiss points 6, 7 and 8 in the points of dispute, these being basically the incurred and unbudgeted costs. These costs are inter partes and be paid by the Respondent on a standard basis, although actually they will be met by his insurers. I accept that they are not solicitor/own client costs.

3. The starting point remains, as Mr Lee refers me, in PD 47.8.2 That identifies that points of dispute must set out the general points of principle which require a decision before individual items in bills are addressed, and identified specific points stating concisely the nature and grounds of the dispute.

4. The sections in question are marked Pre-action Phase Part 6, Issue Statement of Case Part 7 and a CMC Phase Part 8. The Respondents' points admit that the cost claims are disproportionate to the matters in issue, and the work reasonably required to take the matter forward, taking into account that the incurred costs figure for the period for a specific sum are disproportionate and unreasonable. The Respondent proposes what he considers to be a reasonable figure.

5. In reply the receiving parties have pointed out that the Respondent has made no attempt to identify the specific items in or outline the nature of the grounds of dispute, only making general admissions. This approach is repeated throughout the three objections, and the Claimant puts the Respondent on notice within the objections that he will seek to have the points of dispute struck out.

6. In submissions Mr Wilcock contends, and to use his own words, "The Claimant protested too much and that the replies are refreshing." He said it is important to make a decision on each point. However, I am satisfied the same basic point of principle applies, and the question is are the points of dispute, as raised, sufficient?

7. Albeit that these issues have been considered on a solicitor/own client bill, by the Court of Appeal in *Ainsworth and Stewarts Law* the point has actually, to all intents and purpose, been considered on three occasions; firstly, by the Chief Master, secondly, by the Circuit Judge and thirdly, by the Court of Appeal, and they all came to the same finding.

8. As is helpfully referred to in Mr Lee's skeleton, the Chief Master dismissed the objections on the basis that it had not been properly pleaded. The approach of the Chief Master is set out in considerable detail at paragraph 31 of the skeleton, and in paragraphs 8, 9 and 10 of the Chief Master's decision. The only one I would read out specifically here is paragraph 9, which states,

“The difficulty with that it seems to me is that the Claimant has not set out in his points of dispute which items he wishes to challenge and why, and that does cause, as the defendant has indicated in its reply, a difficulty in so far as in respect of items which have not yet been identified. I would need to look at the attendance note to see what work was done and why, and the content in which it was done to seek to explain why the time frame is reasonable, if indeed that is the objection, or why a particular fee earner was engaged in doing it and why possibly more than one fee earner was engaged in doing it.”

9. The purpose of points of dispute is really to prevent that work being done on the hoof in the course of a hearing. Those words seem to me to have considerable relevance to this particular bill.

10. Eventually, however, *Ainsworth* reached the Court of Appeal and the matter was then put in even more succinct terms by Asplin LJ. “Common sense dictates that the points of dispute must be drafted in a way which enables the parties and the court to determine precisely what is in dispute and why. That is the very purpose of such a document. It is necessary in order to enable the receiving party to be able to reply to the complaint. It is also necessary in order to enable the Court to deal with the issues raised in a manner which is fair, just and proportionate.”

11. The question is, have the Respondents done enough in their points of dispute? I am satisfied that they have not. They were even put on notice as to the shortcomings of the points of dispute and the replies. Still they did nothing. A party has the right to know the case they have to answer. That has only been addressed by broad-brush replies. Such responses are completely unhelpful, particularly in a case where the amounts involved are of such importance to the Claimant.

12. As the Court of Appeal states, “It is the CPR that a Court will look for assistance into the form which points of dispute should take.” Therefore, even though this is not a solicitor/own client assessment, 47 PD 8.2 is directly relevant. That paragraph makes it absolutely clear that points of dispute should be focussed and leave no doubt about the way in which the draftsman should proceed.

13. General points and matters of principle which require consideration before individual items in the bill are addressed should be identified, and the specific points made stating concisely the nature of the grounds of dispute. This has not been done. It has not even been addressed once the Respondent has been put on notice that he has failed to address the issues. The protests, as Mr Wilcock called them, are in fact I consider perfectly reasonable. The issue has been very clearly set out at paragraph 38 of *Ainsworth*.

14. Common sense dictates that the points of dispute must be drafted in a way, which enable the parties and the Court to determine what is in dispute and why. That is the very purpose of such a document. It is necessary in order to enable the receiving party to be able to reply to the complaint. It is also necessary in order to enable the Court to deal with the issues raised in a manner which is fair, just and proportionate.

15. There has been an abject failure in this matter by the Respondent to comply with this requirement. In such circumstances the objections set out at points 6, 7 and 8 of the points of dispute are struck out.

16. The second issue relates to the Claimant having departed from the approved budget. It is the Claimant's contention that there has been good reason to depart from the approved costs budget in respect of three phases. They are set out as follows in monetary terms, and it is accepted within those monetary terms that the amounts are significant: Disclosure where there is a departure of £23,218. Witness statements £21,319.11 and trial preparation £51,439.83. We are approaching a figure of £100,000 which is in issue here.

17. The Court of Appeal in *Harrison v University Hospitals Coventry and Warwick NHS Trust* decided it was inappropriate to provide guidance as to what would constitute good reason. Lord Justice Davis said that to do so would "subvert the purpose of costs budgeting." The fact is that it is for the Court to decide on the facts of each case.

18. The test to be applied is in *Denton v T H White Limited*. That case sets out a three-stage test. Firstly, the significance of a departure from the accrued budget. Secondly, the cause of it and thirdly, all the circumstances of the case, in particular the need for the litigation to be conducted efficiently, at proportionate cost and the need to enforce compliance with rules, practice directions and Court orders.

19. Mr Lee has conceded the departure is more than modest. It is addressed in the competing argument in the witness statements produced, both in the bundle from the action and the helpful witness statements pursuant to my earlier order from the conducting solicitors Mr Jones and Mr Steadman.

20. Procedurally any amendment to a budget should take place during the course of the litigation and before they exceed them. However, in this case the reasons are set out in depth. Firstly in Mr Lee's skeleton, secondly in the witness statements, which I accept reflect very different positions and thirdly, by my analysis of the very detailed solicitors bundle that has been produced to me.

21. It is important and appropriate that I briefly identify the issues. I accept, as Mr Lee has stated, that much of the additional costs were not caused directly by Mr Dean, but by G Co and their solicitors.

22. So far as disclosure is concerned there has been in brief, to put it mildly, revision of the number of documents to be produced and then the involvement of E disclosure experts. This then led to witness statements, which led to an increase of some five witness statements, including unexpected witnesses Mr Beckerson and Mrs Mowens and generally an increased time on the lengthy witness statements. This in turn then was triggered into the trial preparation which was greatly increased, and there was substantial consolidated disclosure where the number of lever arch files were more than doubled.

23. There is throughout this, and I have read the whole history, a general picture of a snowballing effect throughout the stages. Doing the best I can, I am persuaded that the facts of the witness statements and the submissions, as well as the documents, show there was good reason to exceed the budget, but not by as much as is claimed in each phase.

24. My findings apply all the three stage tests in *Denton* and I have a view myself of the figures that might be appropriate, but I accept that it is not appropriate for me at this stage merely to recite them. The parties may wish to negotiate them themselves, or if that approach is not acceptable or unsuccessful, then I think the correct approach would be for them to make further representations and submissions to me. I leave that to them.

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*We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.*

This transcript has been approved by the Judge