



Neutral Citation Number: [2024] EWHC 78 (KB)

Case No: QA-2022-000170  
County Court Case No: G00PE681

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 23/01/2024

**Before :**

**THE HONOURABLE MR JUSTICE MARTIN SPENCER**

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**Between :**

**(1) ALAMANTAS RUZGE**  
**&**  
**(2) AR CAR BODY REPAIRS LTD**

**Claimants/**  
**Appellants**

**- and -**

**TAIMOUR ASGHAR**

**Defendant/**  
**Respondent**

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**Mr Charles Davey (authorised by the Bar Standards Board to conduct litigation) for the**  
**Claimants/Appellants**

**Mr John-Paul Tettmar-Saleh (instructed by Hegarty Solicitors) for the**  
**Defendant/Respondent**

Hearing date: 7th November 2023

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## **JUDGMENT ON COSTS**

This judgment was handed down remotely at 10.30am on Tuesday, 23<sup>rd</sup> January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**THE HONOURABLE MR JUSTICE MARTIN SPENCER**

## **The Honourable Mr Justice Martin Spencer:**

1. Further to the Judgment delivered on 7 November 2023 whereby the appeal of the Claimants from the decision of Mr Recorder Midwinter KC made on 17 June 2022 in the Peterborough County Court was allowed in part, issues have now arisen in relation to the appropriate costs order to be made pursuant to that Judgment. In this judgment, I shall refer to the Appellants as the Claimants and the Respondent as the Defendant.
2. There were 7 grounds of appeal in the original Notice of Appeal:
  - i) That the learned Recorder should have allowed the claim for harassment;
  - ii) That the learned Recorder should have allowed the claim for exemplary damages;
  - iii) That the learned Recorder should have allowed the claim for damages for assault;
  - iv) That the Defendant's counter claim should have been dismissed;
  - v) That a greater percentage should have been allowed in relation to interest on costs;
  - vi) That an award of Indemnity Costs should have been made;
  - vii) That the Claimants should have recovered a greater percentage of their costs than 40%.
3. Originally, permission to appeal was refused on the papers. The Claimants renewed their application for permission to appeal and, by his Order dated 19 June 2023, Soole J granted permission to appeal on grounds (i), (ii), (iii), (vi) and (vii) and refused permission to appeal on ground (v), ground (iv) having been abandoned by the Claimants.
4. By the Judgment of 7 November 2023, the appeal in relation to grounds (i), (ii) and (vi) failed but the appeal in relation to grounds (iii) and (vii) succeeded. In relation to ground (iii), I made an Award of Damages of £500. In relation to ground (vii), the recovery of costs was increased from 40% to 80%. This triggered consequences under CPR Part 36 because the award of 80% damages resulted in the Claimants improving on an offer made under Part 36 on 19 September 2022.

### Costs of Appeal: Principle

5. The parties agree that the general rule under CPR Part 44.2 (2) (a) that the unsuccessful party should pay the successful party's costs should apply. However, the parties differ in that each party claims to be the successful party.
6. The Defendant claims to have been the successful party because the Claimants succeeded on only two of the five grounds of appeal which were live at the hearing in November 2023 and because the three grounds upon which the Claimants failed were the most significant in terms of the effect which success would have had on the sums recovered by the Claimants. Thus, it is submitted that, had the Claimants succeeded in their claims for harassment or exemplary damages, the award of damages would have increased considerably. They further argued that, had the Claimants succeeded on

ground (vi) and achieved an award for indemnity costs, this would have resulted in an award of costs much closer to 100%. Thus it is submitted that the Defendant not only won on the majority of grounds but won on the most substantial of them and, standing back and looking at the matter as a whole, the Defendant is the overall winner and so should be entitled to the costs of his Appeal. However, it is conceded that the position is different in relation to ground (vii) given the Part 36 Offer so that, in relation to that ground of appeal, the Defendant should be ordered to pay the Claimants' costs from 11 October 2022 upon the expiry of 21 days after the Part 36 Offer. Thus the Defendant submits that the correct approach would be to order the Claimants to pay the Defendant's costs of the appeal on the standard basis but with a percentage reduction to reflect the Claimants' success on grounds (iii) and (vii) and that there should be an Order that the Defendant pay the Claimants' costs of ground (vii) from 10 October 2022.

7. For the Claimants, it is submitted that they are the successful party. Not only did they succeed on grounds (iii) and (vii) but the effect of the Part 36 Offer being improved upon is that there should be an award of indemnity costs from the expiry of the Part 36 Offer so that, in effect, the Claimants also succeed on ground (vi). Thus, of the grounds of appeal that were live at the Appeal Hearing, they only failed in relation to the first two, namely the claims for harassment and exemplary damages.
8. The Claimants further submit that, even if the appeal against the claims for harassment and exemplary damages had not been pursued, the Court would still have needed to have considered the learned Recorder's determination of those issues in some detail in order to determine the merits of the challenge to the award of only 40% of the Claimants' costs, so that at least some of the time taken on appeal in considering the claims for harassment and exemplary damages would not have been saved. Whilst it is conceded that the hearing of the merits of the appeal would have been overall shorter, it is submitted that a full day would still have been required in order then to deal with the costs' issues arising. As those issues are now being dealt with on paper subject to written submissions, no court time would, in effect, have been saved if the first two issues had not been pursued.
9. The Claimants further argued that the Court should take into account the fact that the Defendant did not engage in any attempt to resolve any of the issues which were the subject of the appeal. Although the Defendant has pointed out that the Claimants failed to better three out of four of their Part 36 Offers, that is irrelevant: what is important is that the Claimants made a well calculated Part 36 Offer more than a year before the hearing of the appeal which it succeeded in bettering.

#### Determination

10. In my Judgment, it is clear that the Claimants are the successful party. Had the Defendant wished to protect himself in costs, he could have made Part 36 offers in relation to the claim for assault and the percentage of costs recoverable by the Claimants, so that the only issues on appeal would have been the claims for harassment and exemplary damages, in which case he would have been the successful party. He did not do so, and in consequence the Claimants are the successful party in relation to the Appeal and, in principle, they are entitled to their costs, subject to an appropriate deduction to reflect their failure in relation to grounds (i) and (ii). The Order for Costs should further reflect the fact that, in relation to ground (vii), the Claimants made a Part

36 Offer which the Defendant could and should have accepted so that, in relation to ground (vii), the Claimants' costs should be awarded on an indemnity basis as from 10 October 2022.

Costs of Appeal: Quantum

11. The total costs claimed by the Claimants, net of VAT, amount to £22,721.80. However, the Defendant contests some of the detailed claims which contribute to this total.
  - i) First, the Defendant contests time claimed as spent attending on the Claimants (4.5 hours) and on others (6.4 hours), a total of £3,240 at £300 per hour. A deduction of 50% is proposed. In answer, the Claimants submit that 4.4 hours attending on own client is entirely reasonable and proportionate (the equivalent time spent by the Defendant was 3.6 hours, but did not include attendances prior to the grant of permission to appeal) and they give a detailed breakdown of the attendances on others, which includes attendances on the court, the transcribers and the Claimants' former solicitors. The Claimants accept a deduction of 0.5 hours for time spent chasing the former solicitors which should have been unnecessary. I accept the Claimants' submissions and allow these claims in full, subject to the conceded reduction of £150.
  - ii) Next, the Defendant contests the claim for 3.3 hours spent on personal attendances on opponents. Nothing is claimed for letters out/emails. As the Claimants observe, the claim has clearly been put in the wrong section: it is inconceivable that there should have been no letters or emails. Although, in the spirit of compromise, the Claimants are prepared to concede 0.1 hours in relation to this claim (which would be the equivalent of £30), in my judgment this concession is unnecessary and I allow the sum claimed in full.
  - iii) Challenges are made to the schedule of work done on documents, amounting to £8,880 and representing 29.6 hours. It is clear that there is some duplication, for example the time for preparing the appeal bundle has been claimed twice, and this is conceded by the Claimants. The time claimed in relation to items 14, 20, 24 and 26 (concerned with the appeal bundle) is a total of 7.3 hours. Deducting the duplication of items 24 and 26 (1.5 hours) leaves 5.8 hours, and the Claimants concede a further deduction of 0.8 hours leaving 5 hours claimed. In addition, the Defendant submits that there is likely to be duplication or overlap between the claims for work done on the skeleton argument and considering the Defendant's skeleton and submissions, and the sum claimed for counsel's fees. These items amount to 6.1 hours (£1,830) and the Defendant proposes a reduction of £1,580. In my judgment, it is appropriate to allow half of this part of the claim or £915 equivalent to a deduction of 3.05 hours. This leaves a total claim for work done on documents of 24.25 hours or £7,275.
  - iv) I reject the remaining challenges to the Claimants' Bill of Costs which, in my judgment, are all fully answered by the Claimants in their submissions.
12. In consequence, the total of deductions to be made to the net costs claimed is £1,754, leaving a total of £20,967.80. From this, an appropriate deduction needs to be made to reflect the failure of the appeal in relation to grounds (i) and (ii), but subject to the award of indemnity costs in respect of ground (vii) from 10 October 2022. Balancing these

matters, and taking a broad view, in my judgment the appropriate deduction is 20%. That leaves the award for costs in the net sum of £16,774.24 which I round up to £16,775.

13. Finally, so far as VAT is concerned, one of the Claimants is registered for VAT and one is not. I agree with the Claimants' submission that the appropriate course is to award VAT on half of the costs allowed, a sum of £1,677.50
14. In the result, I award the Claimants their costs of the appeal in the total sum of £18,452.50.