

Donald Pugh v (1) Harris Calnan Construction Company Limited and
(2) Stanners Design Limited

Monday, 30 June 2003
District Judge Trent
Mayor's and City of London Court

Headnote: Defendants' liability for Adjudicator's fees. Recoverable costs following application for summary judgment under Part 24. Costs to be awarded where Adjudicator's claim would have been allocated to the Small Claims Track. Proportionality for Adjudicator's costs.

I am dealing with a claim brought by Mr Pugh against Harris Calnan Construction Company Limited and Stanners Design Limited. Stanners Design Limited are represented by the managing director, Mr Hope.

Mr Pugh was engaged as the adjudicator to determine the dispute between Harris Calnan and Stanners. He undertook the adjudication fully and all that remains is for the parties to pay his fees which they have not done. Mr Pugh has brought a claim for the balance of the fees owing of some £1,840.05.

The second Defendant only filed a Defence. Sorry, I am reminded that the first Defendant also filed a Defence. Although the first Defendant effectively paid his share, the second Defendant did not. Therefore roughly 60% of the fees have been paid. The first Defendant blamed the second Defendant. The second Defendant did raise points in relation to Mr Pugh's jurisdiction.

It has not been necessary to deal with the issue under Part 24. That issue has been resolved, the second Defendant having paid the balance of fees, interest and fixed costs. The only question is whether the parties should pay the Claimant's costs.

I have come to the conclusion they must pay the costs. There is no justification for not doing so. The Defence is wholly misconceived and the Claimant would have succeeded had the matter gone to a full small claims hearing. Mr Hope implied that the main reason for non-payment was a jurisdictional objection. The real reason behind the non-payment was an attempt to delay.

However, the Court has been concerned at the extent of the costs. These amount to roughly £2,600 which appear to be disproportionate, especially when considering that this would have been allocated to the Small Claims Track. I also consider the issue of those fixed costs which are normally applicable following Part 24 proceedings under rule 45.4.

However, bearing in mind the Court's discretion under CPR 44.3, I am of the view that fixed costs would not be appropriate. My judgment is that costs should be awarded on the indemnity basis. I have no doubt Mr Pugh would have won at trial. The Defence was mischievous and an attempt to delay.

Had the matter proceeded to trial I would have ordered costs on the indemnity basis. Further this Court ordered a stay for one month in which the Defendants made no effort to compromise this claim. Above all, though, this Court has a duty to avoid satellite litigation and to enforce the remedy which statute and the JCT agreement have brought about. It should be remembered that Mr Pugh is the innocent party and should be paid. I am therefore going to order costs on the indemnity basis. I am going to award costs as claimed.

(Ex. Rel. Oliver Isaacs 3, Paper Buildings Temple, London)

Mr Isaacs appeared on behalf of the Claimant. Mr Hope appeared on behalf of D2, D1 did not appear.