IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

No. QB/2010/PTA/0099

Royal Courts of Justice
Thursday, 20th May 2010

Before:

MR. JUSTICE IRWIN

B E T W E E N :

BERNARD LOYNES — Appellant

- and -

BESWICKS SOLICITORS — Respondent

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THE CLAIMANT appeared in Person.

MR. WILSON (instructed by Sherwins Limited) appeared on behalf of the Respondent.

JUDGMENT

(As approved by the Judge)

MR. JUSTICE IRWIN:

1. This is a renewed application for permission to appeal made by Mr. Loynes in person following a refusal for permission to appeal on paper given by Mr. Justice Davis on 20th April.

2. The background has a certain complexity, but I will summarise it as rapidly as I can. There was an action for an unpaid solicitors' bill, which Mr. Loynes agrees was a bill due and which he could not pay, due to financial difficulties arising from the recession. On 6th July 2009 there was a judgment against him for £1,761.54, and that is an agreed debt. On 24th August 2009, a writ of *fieri facias* was issued. On 28th August (which was, in fact, a Friday) the High Court Sheriff's order was made and, indeed, on that date there was the first attendance by the Sheriff's Officer at the appellant's property - a property which used to be the appellant's residence but which at that stage he had vacated so that it could be rented out. Although as it happens on that weekend (as I understand it on the evidence) it was empty of any tenant and the appellant was present at the premises. There was therefore an unchallenged visit on 28th August.

3. On the following day, no doubt in response to the message that had been left at the property, Mr. Loynes wrote to the respondent to this application offering to pay by instalments on terms which were not accepted.

4. The Sheriff's Officers have all along stated that there was a second attempt to visit the property on the Bank Holiday Monday, 31st August of last year. That is contested.

5. On 1st September the respondents refused the offer of terms and, on 2nd September, a demand was made for payment of the full amount. On 7th September - because money had arrived with him following (as I understand it) some debts being paid to him - Mr. Loynes paid the full amount then demanded, although he disputed the fees. On 26th October there was an application in the case and on 10th November there was an application for assessment of the fees.

6. It seems to me that Mr. Loynes has not quite understood how that system works and it may be that is part of his concern arising in the case. He had of course paid all of the fees due, but under protest. The only way of resolving the protest was a hearing in front of the Master. In order for there to be a hearing in front of the Master, a costs bill had to be drawn. Had Mr. Loynes in due course achieved in front of the Master every point that he had made, or had he made an offer to settle and compromise the dispute over the fees which he had paid but still disputed, then the costs of drawing the bill might well have been avoided, but - given that there was a continuing dispute and that the only way of resolving it was a hearing in front of the Master and that the hearing in front of the Master had to be on the basis

of a drawn bill - it was inevitable that the bill costs had to come into account and were, in principle allowable, subject of course to the Master's discretion.

7. There was then a hearing in front of a Master on 10th November. In the course of the period just before the hearing, a bundle of documentation was presented to Mr. Loynes rather than being presented well in advance.

8. It might be wise and helpful in future if such bundles were presented well in advance because it will tend to avoid the kind of anxiety and dispute which has clearly arisen in this case. It is important that those who are responding to this understand that. I am in the position of having to decide whether or not there is a wrong decision and that that decision should be disturbed. Clearly, the award of costs was an exercise of discretion and judgment by the Master. The test for me on appeal is whether that was "wrong". It might very well be that a different costs Judge or Master faced with a bundle delivered on the day to a litigant in person would exercise discretion differently, and that is a point which those who are responding and instructing counsel before me should consider carefully.

9. However, the fact is the bundle was delivered on that day. As a result of reading (as I understand it) the second statement of Mr. Badger in the bundle (but certainly reading the bundle) Mr. Loynes took the view that in order to contest the second visit - which he says never took place - he required further evidence. So there was an adjournment part-heard of the assessment, with a second date on 30th November. Mr. Loynes complied with the procedural orders following the first hearing and everyone attended on the second hearing. I think it is on the second hearing when the second statement from Mr. Badger was in play, setting out a note as to how the calculation of fees within item 12 of the bill was reached. It is sensible also to observe what that process is. Any business is entitled to seek to reduce the transaction cost (if I can describe it in that way) of calculating charges and to standardise them, not in an unreasonable way, but in a reasonable fashion. As I understand it, that is what the respondents have done and it is what Mr. Badger was saying - that, although these charges are at least in some degree standardised, it is because that is the cheaper and more economical way of approaching the fixing of such fees.

10. In a careful judgment - although it is expressed in short reasons, once analysed it is a careful and thoughtful judgment - Master Fontaine went through the arguments put forward by both sides, actually finding in favour of Mr. Loynes on a number of key points, in particular, as to the existence of the second visit to the premises. However, she did allow items as set out in the judgment and in particular she, in my view, quite rightly, interpreted schedule 3 to the High Court Enforcement Officers Regulations 2004 as follows:

"For example, and it is the best example, there is provision under schedule 3 para.(a)(2) for a maximum of £50 to be awarded in relation to mileage expended in an enforcement officer's attendance on a place of execution."

Mr. Loynes has said that, of course, means that the maximum that can be charged in respect of such an attendance is £50. With great respect to him that is, perhaps understandably, a misunderstanding of the Regulation.

11. As Mr. Wilson has helpfully pointed out in the course of argument, the charges that are stipulated at standard rates or maximum rates in Part A, para.(a) of the schedule and also in para.(b), are those which are standardised precisely because they can be deducted from the proceeds of sale of goods seized. That, of course, enables the enforcement officer simply to collect those monies, whereas charges that go beyond that require an order from a Master, District Judge or Costs Judge. So, for example, in relation to the attendance on the premises, it is perfectly proper for an enforcement officer to charge mileage at the requisite rate and up to the total allowed but in addition to make a charge for the attendance because the only cost of the attendance is not confined to the mileage in getting there.

12. For all those reasons, it seems to me that the approach taken by Master Fontaine was a careful one. The approach taken to the administration fee, respecting the standardisation derived from the business model of the respondents, was also appropriate. The reduction of the initial visit fee below what was charged and the disallowance of the second visit were all perfectly sensible readings of the evidence and in favour of Mr. Loynes. The evidence produced to support the fee allowed and the cost basis of the financial management fee - there was evidence in the statement of Mr. Badger and the Master took a view on that. She was entitled so to do. The costs draftsman charge and the cost of preparing the costs bill, those are modest. Having seen the bill and having seen many bills before, this is not the most complex, but nor is it two or three items only. Every single item in the original account charge - or a very great number of them - were contested. The respondents at that hearing knew they would have to justify every corner or Mr. Loynes would complain.

13. For all those reasons it seems to me that Mr. Justice Davis was entirely right in saying that there was no reasonable basis for saying the judgment was wrong. I find there is no realistic prospect of success on an appeal and permission is refused.
