

Case No: HC-2014-000179

Neutral Citation Number: [2016] EWHC 1810 (Ch)

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 19/07/2016

**Before :**

**MASTER MATTHEWS**

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**Between :**

**Aliston Albert Ashman**

**Claimant**

**- and -**

**Clyde Caulson Thomas**

**Defendant**

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**Joshua Hedgman** (instructed by **Taylor Rose TTKW**) for the **Claimant**  
**Francis Hoar** (instructed by **Mordi & Co**) for the **Defendant**

Hearing dates: 21 June 2016

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**Judgment**

## Master Matthews :

1. On 21 June 2016 I gave judgment extempore in preliminary issues that I had tried. I awarded the costs of those issues to the Defendant, to be paid by the Claimant on the standard basis if not agreed. In seeking to agree the terms of the order, counsel for the defendant sought to include a term for a payment on account of costs. On 23 June the Defendant served a costs schedule in the sum of £48, 647.70. Counsel for the Claimant resists the order for payment on account. The parties have filed short written submissions on the point and I have to decide it.
2. CPR rule 44.2(8) provides:

“Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so”.
3. The Claimant says that a payment on account should be sought at the time that the costs order is made. The alternative is that an interim costs certificate may be issued at any time after the commencement of the detailed assessment process, under CPR 44.16(1). But here no request for a payment on account was made at the time the order was made, and no detailed assessment proceedings have yet been commenced.
4. Moreover, the Claimant says it is inappropriate to deal with the matter by way of written submissions, and that in any event no costs schedule was served 24 hours before the hearing, in breach of CPR 44PD para 9.5(4)(b). For myself, I do not think that a payment on account cannot be sought by written submissions in an appropriate case. Frequently costs questions arising at the end of a hearing are left over to be dealt with in this way. Nor is the failure to serve a costs schedule 24 hours before the hearing an objection, fatal or otherwise. The whole of para 9.5 of PD44 is, as para 9.5(1) makes clear, concerned with summary and not detailed assessment of costs.
5. The substantial point, as it seems to me, is whether a request for a payment on account can only be made at the hearing itself. If so, then, once the parties come to draw up the order for the court’s approval, it is too late to argue for its inclusion.
6. The general rule is that an order takes effect from the moment it is made by the court, not when it is entered and sealed by the court office: see *Holtby v Hodgson* (1890) 24 QBD 103; CPR 40.7. But the court retains power to alter its judgment or order at any time until it is entered and perfected by sealing: *Re Barrell Enterprises* [1973] 1 WLR 19, CA. This power is not restricted to exceptional circumstances: *Re L (Children)* [2013] 1 WLR 634, Sup Ct.
7. There is nothing in the rules, nor any case of which I am aware, to alter the general rule in the context of payments on account of costs. Indeed, the mandatory terms of CPR rule 44.2(8) (subject to the existence of a ‘good reason’) mean that there is even more reason to exercise the power when the matter is drawn to the court’s attention than there might otherwise be. Accordingly I conclude that there is no objection in principle to considering the Defendant’s request for a payment on account of costs, and indeed good reason to do so, when this is sought after the hearing but before the order is sealed. I shall therefore do so.

8. As I have said, the statement of costs is in the sum of £48,647.70 (including VAT). The Defendant asks for an order that £20,000 be paid on account within 14 days. The Claimant criticises the statement on a number of grounds. He says it is unclear what costs are attributable to the preliminary issues and what to the substantive proceedings. He says (correctly) that it is signed by the Defendant's solicitors as a firm and not by a solicitor personally. Thirdly, he says (again correctly) that the rates claimed are beyond the guidelines.
9. Counsel for the Defendant tells me (and I accept) that the costs schedule is restricted to the preliminary issues. That disposes of the first criticism. He also says that his instructing solicitor will sign the statement personally. Since this is not a summary assessment, I am not inclined to worry about the lack of a proper signature now. I am considering the costs figures for a different purpose. If I order a payment on account, it is provisional and not definitive, and I am invited to leave a considerable margin for possible overclaim of costs.
10. The question of excessive rates is another matter. I also bear in mind that all the work appears to have been carried out by Grade A fee-earners and there has been no delegation. The solicitors' total profit costs claimed are £27,349.75. There are significant hours recorded as having been spent. It should have been possible to delegate some of the work to less expensive fee-earners. It is not an answer (if it be the case) that the firm has no other fee-earners available. The paying party should not be asked to pay more than is reasonable and proportionate. I have no comment on the various counsels' fees.
11. In my judgment this is a case where a payment on account of costs is justified. But given the criticisms made of excessive rates, excessive hours and lack of delegation, it would not be safe to order a payment of £20,000. I will therefore order that £17,500 be paid on account of costs within 14 days.