Kelly v Hays Plc

Queen's Bench Division

19 February 2015

Case Analysis

Where Reported

[2015] EWHC 735 (QB)

Case Digest

Subject: Civil procedure **Other related subjects:** Legal profession

Keywords: Costs assessments; Hourly fees; Litigators' fees; Reasonableness; Settlement; Solicitors' remuneration

Summary: In determining the costs of a settled personal injury claim, a master had erred in finding that the claimant's solicitors' fees were to be assessed as if a central London firm had been instructed. He had not asked the right question, namely what type of firm should have been retained; the appropriate category of solicitors' fee was national Band one, with some uplift to take into account matters of complexity in the case.

Abstract: The appellants appealed against a master's costs order in respect of the respondent's recoverable hourly rates following the settlement of a personal injury claim. The respondent, whom the appellants had employed in outer London, had commenced a personal injury claim against them, on the basis that she had been injured through their failure to provide her with a safe place to work. The claim was for over £433,000. The appellants said that they had surveillance evidence that showed that she had not suffered any personal injury or she had exaggerated the claim, and that the claim was out-of-time. In November 2013, the appellants agreed to pay the respondent £50,000 in full and final settlement of the claim, plus the costs of the action, to be assessed if not agreed. The parties did not reach agreement. A hearing was set to determine a preliminary costs issue, namely in determining costs, what the respondent's

solicitors' hourly rates should be. She had instructed a city firm, with rates ranging from between £160 and £450 per hour. The appellants argued that that was unreasonable and that the hourly rates of a national Band one firm, which were between £118 and £217, were appropriate. The master stated that the test was whether it was objectively reasonable for the respondent to instruct a city firm. He found that the claim had no international element, and she had not been justified in instructing them. He said that the issue that he had to determine was which firm it would have been objectively reasonable to have instructed. He noted that the respondent was not required to have approached the cheapest solicitor, and found that it would have been objectively reasonable for her to have instructed a central London firm. He uplifted the rates by 20 per cent to take account of the fact that it was a multi-track case and that there was complexity over certain issues, so that the hourly fee rates ranged between £140 and £380. The appellant submitted that it was wrong to say that it was appropriate to instruct a central London firm; the master had asked the wrong question and failed to provide reasons.

Appeal allowed. The instant appeal was by way of review rather than rehearing. Accordingly, it could only be allowed where the decision was plainly wrong, there had been a defect in reasoning, the master had failed to take into account a relevant matter or had taken into account an irrelevant matter, or there was a serious procedural irregularity. There could be no criticism of the master's observation that the appellant had not been required to approach the cheapest firm. He did not have to make a binary choice between a national Band one firm or a city firm. The master had a wide discretion. However, he had not only failed to provide reasons as to why central London hourly rates were preferable, he had also failed to provide reasons for rejecting the appellants' submissions that a national Band one firm was appropriate. The court was not satisfied that he had asked the correct question, namely what type of firm should have been retained, *Wraith v Sheffield*

Forgemasters Ltd [1996] 1 W.L.R. 617 applied. Even if the correct question had been posed, the conclusion was not one which it was reasonable for him to have reached on the material before him. It was thus appropriate for the instant court to reach its own determination on the matter, taking into account CPR r.44.4(3). The relevant factors were: the importance of the matter, any legal complexities, the location of the respondent's home and her place of work, and what she knew about the fees. Although some aspects of the claim had been complex, it was a relatively straightforward personal injury claim. No part of the claim had raised issues which needed experts over and above the expertise of a normal experienced solicitor. The respondent's home was just outside London, and she worked in outer London. The appropriate category of solicitors was national Band one. However, there had been some aspects of complexity, which would justify some enhancement to the hourly rates. Those aspects were the limitation point, the extent of damages and the consideration of surveillance evidence. Although some degree of uplift should be taken, that was less likely to apply further down the pecking order of fee grades. It was reasonable to select fee earners of £295 for grade A, £230 for grade B, £175 for grade C and £120 for grade D.

Judge: Jeremy Baker J

Counsel: For the appellants: George McDonald. For the respondent: Philip Astor.

Significant Cases Cited

Wraith v Sheffield Forgemasters Ltd
[1996] 1 W.L.R. 617; [1996] 2 All E.R. 527; [1997] 1 Costs L.R. 23; (1996) 146 N.L.J. 590; (1996) 140 S.J.L.B. 64; Times, February 20, 1996; QBD; 31 January 1996

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1996

Significant Legislation Cited	Civil Procedure Rules 1998 (SI 1998/3132) r.44.4(3)
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