

GT Stewart Limited v Mr Paul Oliver Taylor

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Introduction

1. The High Court (Birmingham District Registry) has confirmed in *GT Stewart Limited v Mr Paul Oliver Taylor* that a claimant who settled a claim in its favour was not automatically entitled to its costs by virtue of CPR 44.2(2)(a). The court took a holistic approach and placed emphasis on pre-action conduct when deciding on the principle of costs. 3PB Barrister, Makhsudul Islam (instructed by Lawrence Kurt Solicitors) represented the defendant in this commercial claim.

Factual Background

2. GT Stewart Limited (“the Claimant”), a firm of solicitors, was instructed by Mr Taylor (“the Defendant”) to represent him in a personal injury claim. The Defendant had suffered a serious head injury and was claiming against a local authority in the Midlands (“the PI Claim”). The retainer between the Claimant and Defendant set out a conditional fee arrangement, otherwise known as a “no win, no fee” agreement.
3. Whilst negotiations were ongoing for settlement of the PI Claim (for £450,000.00), the Claimant informed the Defendant of a shortfall on its costs, *i.e.*, the difference between what it had incurred and what was likely to be recovered from the local authority. The Defendant was informed that the shortfall would be deducted from his damages.
4. The Claimant provided the Defendant with different shortfall figures, and each time the figure increased in amount. Due to this, the relationship between the parties broke down.
5. It was the Defendant’s position that the Claimant was unable to say with certainty what the true shortfall was, as it would not have crystallised until costs had been agreed with the local authority or a detailed assessment had taken place. Consequently, the Defendant terminated the retainer prior to the settlement of the PI Claim and instructed Lawrence Kurt Solicitors (“LKS”). LKS settled the claim shortly after its instruction.

6. Subsequently, the Claimant's position was that its costs incurred in the PI claim was £383,976.98 and this was payable in full by the Defendant. In order to protect its common law and contractual lien, the Claimant lodged an application and was successful in being added as a "third party" to the PI Claim. The Claimant obtained an order whereby LKS gave an undertaking to hold £233,976.98 from the damages in its client account, pending further order from the court. The court further ordered that £150,000.00 was to be paid directly by the local authority to the Claimant, as this portion of the Claimant's costs was uncontested.
7. The Claimant and Defendant exchanged correspondence attempting to bring about a resolution, across a period of approximately 18 months, but to no avail. The Claimant made a proposition to the Defendant, whereby he would retrospectively enter into a short-term retainer from the point of termination to enable the Claimant to negotiate costs or proceed to detailed assessment. This was not rejected by the Defendant, but the proposal was not taken up.
8. The Claimant issued proceedings in March of 2023 for the sum of £383,976.98 in unpaid legal fees ("the Debt Claim"). Crucially, 1 month and 12 days before the issue of proceedings, the Defendant repeated the Claimant's proposition of entering into a retrospective, short-term retainer, and in addition, gave an alternative of assigning the retainer over to LKS for it to engage in costs negotiations with the local authority, or proceed to detailed assessment. Both propositions were rejected by the Claimant.
9. During the course of the Debt Claim, the parties agreed to a stay and entered into a retrospective, short-term retainer. The Claimant negotiated and settled costs, and for the first time, provided an accurate shortfall to the Defendant in September of 2024. The shortfall was agreed without dispute by the Defendant, and the Claimant compromised the Debt Claim by way of a consent order in the PI Claim.

Procedural Background

10. At the point of the consent order being agreed, the parties had already exchanged costs budgets and the claim was listed for a costs and case management ("CCMC") hearing in early 2025. The Claimant sought the sum of £156,959.00, and the Defendant the sum of £170,515.00, in their respective costs budgets.
11. Despite the Debt Claim being settled shortly before the CCMC hearing, the Claimant pursued the hearing in the normal way, *i.e.*, to have costs budgets assessed and

directions to a trial or a disposal hearing. The Claimant also sought judgment against the Defendant.

12. It was the Defendant's position that the Debt Claim was no longer capable of being progressed in litigation beyond the issue of costs, and therefore the CCMC hearing could only be pursued as a disposal hearing.

Decision (District Judge Dickinson Sitting as a Judge of the High Court)

13. At the CCMC hearing the court agreed with the Defendant's position. As the Debt Claim was compromised, the court made a preliminary finding that the sole issue before it was the principle point of costs. In other words, had the Claimant been "successful" on the Debt Claim and therefore entitled to its costs pursuant to CPR 44.2(2)(a), or should the court's exercise of its discretion depart from the usual order in line with CPR 44.2(2)(b)?
14. In doing so, the court had to take into consideration whether issuing proceedings after the Defendant's proposition to enter into a retrospective, short-term retainer was premature.
15. Having heard robust submissions from the Defendant, the judge found in its favour, *viz.*:
 - 15.1. The Debt Claim was compromised on the exact terms of the pre-issue proposition put forward by the Defendant.
 - 15.2. The Claimant having initially rejected the Defendant's proposal, then later changed its mind and entered into a retainer, in circumstances where there had been no material change from its pre-issue position.
 - 15.3. The debt owed to the Claimant was not ever in dispute but it was the manner in which the costs settlement was being progressed, together with the lack of certainty surrounding the shortfall in costs.
16. The court ordered that the Claimant was not to be entitled to its costs.

Comment

17. This case is a perfect example of why good conduct is so crucial to the recovery of costs. By virtue of settling a claim in one's favor and thereby being "successful", it did not automatically engage CPR 44.2(2)(a), and on this occasion, the court opted for the route under CPR 44.2(2)(b).
18. The court found against the Claimant because of its unreasonable rejection of the Defendant's proposition without any proper grounds, prior to the issue of proceedings. It was not impressed with the Claimant's change of mind during the course of the Debt Claim, where circumstances had not materially altered.
19. This case serves as a reminder to lay persons and solicitors alike, that during the course of disputes, heads must rule over hearts. The Claimant's rejection of the Defendant's proposal was in part because of the manner and timing of the Defendant's termination of the retainer, and the impasse reached through correspondence. No doubt this is what prompted the Claimant's issue of proceedings. Had the Claimant accepted the Defendant's proposal, albeit a repeat of its own proposal, it could have saved itself many thousands of pounds in pursuing the Debt Claim.
20. The decision also highlights the importance for solicitors acting on a conditional fee agreement to have complete transparency and systems in place to provide regular updates to clients on possible costs shortfalls. One of the judge's grounds for finding in favor of the Defendant was the shortfall being accurately set out in correspondence, for the first time, 18 months and 22 days into the Debt Claim. In other words, until there had been a crystallised shortfall figure, the issue of proceedings was premature.
21. The decision from the High Court is well-reasoned and sensible and has the effect of sounding out a warning to litigating parties that conduct is a pervasive issue in litigation. The courts expect parties to behave in a proper manner (including during pre-action). If they do not, even if a party was to be successful on a claim or in defense of a claim, it risks facing the wrath of the court, and discretion being applied in a manner which departs from the usual position on costs.

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