

Claimant
Philip Daval-Bowden
First
PDB1
29 November 2017

Claim no. HC-2016-002849

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

B E T W E E N:

SIR CLIFF RICHARD, OBE

Claimant

-and-

(1) THE BRITISH BROADCASTING CORPORATION

(2) THE CHIEF CONSTABLE OF SOUTH YORKSHIRE POLICE

Defendants

WITNESS STATEMENT OF PHILIP DAVAL-BOWDEN

I, **PHILIP DAVAL-BOWDEN**, of Masters Legal Costs Services LLP, 3-4 New Street, Bishopsgate, London EC2M 4HD **WILL SAY** as follows:-

1. I am the Senior Managing Partner of Masters Legal Costs Services LLP ("**Masters**"). I am a costs lawyer and specialise in providing consultancy, advice and advocacy services in costs proceedings in all forums up to the Supreme Court and Privy Council in England and Wales, as well as in various other jurisdictions. I have considerable experience of advising on costs budgeting, costs management and the recovery of costs as an aspect of the litigation process.

2. I make this statement from matters within my own knowledge or on the basis of information provided to me as indicated in this statement. Insofar as the matters set out in this statement derive from my own knowledge, they are true. Where matters are not within my personal knowledge they are true to the best of my information and belief.
3. So far as concerns legal professional privilege, I refer to p.6 of Simkins LLP's letter to the BBC dated 19 October 2017, where the Claimant's solicitors stated the extent to which privilege was being waived for the purpose of the First Trial. Nothing in this statement is intended or should be taken as any further waiver, and I have no authority to make any such waiver.

Instruction of Masters by the Claimant

4. In October 2016 following the issue of these proceedings, Masters were instructed by Simkins LLP to analyse the costs that had been incurred by Simkins LLP in relation to work undertaken for the Claimant since August 2014, and to identify which of these costs appeared to be occasioned by or incidental to the litigation recoverable in principle as costs of the action, and which did not appear obviously to fall within this definition but which were arguably attributable to the Defendants' wrongdoing, and therefore in principle recoverable as special damages.
5. I was responsible for this instruction and was assisted by one of the Associates of the firm, Rachel Mole (Costs Lawyer).

The Allocation of costs

6. *Re Gibson's Settlement Trusts* [1981] Ch 179, identifies three strands of reasoning to determine whether pre-action legal costs are allowable as being "of and incidental to" the litigation. The three strands of reasoning are:
 - a. Whether the work in respect of which the costs were incurred was of use and service in the claim;

- b. Whether the work in respect of which the costs were incurred was of relevance to an issue in the claim; and
- c. Whether the need for the work in respect of which the costs were incurred can be attributed to the paying party's actions or omissions

(the "**Gibson's Test**")

- 7. We reviewed Simkins LLP's activity summaries in respect of the work undertaken by them for the Claimant between August 2014 and October 2016. Having done so, in consultation with Simkins LLP, we identified a number of work streams which did not appear to me to be costs "of and incidental to" the litigation applying Gibson's Test. However, some of these work streams, although not costs "of and incidental to" the litigation, appeared to have some direct connection to, and to have prompted by, the wrongdoing of the Defendants which is complained of in this action. We allocated these work streams to the Claimant's claim for special damages. Meanwhile, there was a third category of work streams which appeared to fit into neither category and which were excluded altogether.
- 8. So far as concerns the first and second categories, there were some borderline cases. Sometimes, on reviewing Simkins LLP's activity summaries, it was not clear whether the work that had been done was work which fell within one or other of the limbs of Gibson's Test or which, alternatively, did not but was arguably recoverable as part of the Claimant's claim for special damages. In such cases it was necessary to apportion the time spent as recorded on the activity summaries between the two categories.

Special damages

- 9. The work streams identified as not satisfying Gibson's Test but as arguably being recoverable as part of the Claimant's claim for special damages were as follows:
 - a. Online
 - b. Media
 - c. "Blackmail"
 - d. Home Affairs Select Committee

- e. Immigration and Travel
- f. Media Interviews

10. I am aware that on 18 May 2017 the Defendants were provided, in the form of the Claimant's Further Information concerning his claim for special damages, with a summary of the work that was undertaken by Simkins LLP in respect of each of these work streams, and a breakdown of how much of the overall special damages claim for £279,261.00 in respect of legal costs fell within each category of work. Having reviewed this statement of case, which was based on Masters' analysis, I confirm that it appears to provide a true and accurate account of the information contained in Simkins LLP's activity summaries and of Masters' analysis of that information.

Pre-Action costs

11. In the meantime, all the work undertaken by Simkins LLP in the pre-litigation phase which appeared to be costs "of and incidental to" the proceedings applying Gibson's Test, was treated as *inter partes* costs recoverable in the litigation and allocated to the relevant section of Claimant's costs budget. Based on this analysis, Simkins LLP prepared a summary of the work that we considered fell within this category for the purpose of serving it on the Defendants together with the Claimant's updated Costs Budget on 5 June 2017. Having considered this document again in the course of preparing this statement, I confirm that it represents a true and accurate summary of the work allocated to this category. As such, for the sake of convenience, I exhibit a copy of it to this statement (as "**PDB1**").

Statement of Truth

I believe the facts stated in this witness statement are true.

Signed



Philip Daval-Bowden

Dated: 29 November 2017

Claimant
Philip Daval-Bowden
First
29 November 2017

Claim no. HC-2016-002849

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

B E T W E E N:

SIR CLIFF RICHARD, OBE

Claimant

and

**(1) THE BRITISH BROADCASTING
CORPORATION**

**(2) THE CHIEF CONSTABLE OF
SOUTH YORKSHIRE POLICE**

Defendants

**WITNESS STATEMENT OF
PHILIP DAVAL-BOWDEN**

SIMKINS

Lynton House
7-12 Tavistock Square
London WC1H 9LT
Ref: GZB/JMO/JQW/10558.78