

**Judgment 21/2012**

**4ENG Limited and Harper & Harper  
Civil Action File No 1246  
Royal Court  
8<sup>th</sup> May 2012**

---

**Taxation of costs.**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

The 22<sup>nd</sup> day of February 2012 before John Russell Finch, Esquire, Judge of the Royal Court, sitting alone

**4ENG LIMITED**

**(A company incorporated in England and Wales)**

**Applicant**

**-and-**

**(1) ROGER HARPER**

**Respondents**

**(2) BRENDA HARPER**

The Judge of the Royal Court having considered submissions in writing in respect of a request for taxation of the indemnity costs arising out of an Order of 8<sup>th</sup> July, 2011, this day handed down his decision in respect of the said taxation in the terms attached hereto.

S M D Ross  
Her Majesty's Deputy Greffier

Approved Text  
08.05.2012

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

**(ORDINARY DIVISION)**

**4ENG LIMITED**  
**Between:** (A company incorporated in England and Wales) **Applicant**  
**-and-**  
**(3) ROGER HARPER**  
**(4) BRENDA HARPER** **Respondents**

**RULING AS TO COSTS**

**Decision handed down: 8<sup>th</sup> May, 2012**

**Before: John Russell FINCH Esquire, Judge of the Royal Court**

**Cases and Materials referred to:**

Ladbroke PLC v Galaxy International Limited, a decision of Southwell LB in the Royal Court, dated 10<sup>th</sup> November, 2008;  
Rule 2(6) of the Royal Court (Costs and Fees) Rule, 2010.

**Background**

1. In accordance with my Order of 8<sup>th</sup> July, 2011, the costs of the Applicant's application of 1<sup>st</sup> July, 2011 are to be met by the Respondents on a full indemnity basis, with the amount payable to be determined by myself. Under the provisions of Rule 2(6) of the Royal Court (Costs and Fees) Rules 2010:

*"In relation to costs awarded on a full or part indemnity basis, all costs shall be allowed except insofar as they are unreasonable in amount or unreasonably incurred."*

On a taxation of costs any doubt raised as to whether costs are reasonable in amount or reasonably incurred must be resolved in favour of the receiving party, here the Applicant.

2. I requested written submissions by the parties by 18<sup>th</sup> July, 2011, which were duly received. There has been a delay in dealing with this matter caused by the papers not finding their way to me very speedily and then my own pressing and onerous trial commitments. This delay is regretted and I shall endeavour to deal with this matter in as straightforward and simple a way as possible. I shall refer to the parties as "A" and "R" respectively.
3. AO Hall produced a Schedule of Costs, the final version dated 15<sup>th</sup> July, 2011. The grand total is £18,988.80. It is made up as follows:

McGrigors' (English solicitors) costs	
Profit costs:	£4,485.00
Success Fee (@ 90%):	£4,036.50
<u>Sub-total</u>	<u>£8,521.50</u>
VAT @ 20%	£1,704.30
AO Hall's fees (+ disbursements)	£8,763.00
<b><u>TOTAL:</u></b>	<b><u>£18,988.80</u></b>

The first question that logically arises for determination relates to the English solicitors' costs.

### McGrigors' Costs

4. A submitted that in recent years the costs of external lawyers can be recovered in certain circumstances. The case cited in support is Ladbroke PLC v Galaxy International Limited, a decision of Southwell LB in the Royal Court, dated 10<sup>th</sup> November, 2008. At paragraph 15 of his judgment Southwell LB held that:

*".....the Royal Court does have a discretionary power by virtue of Section 1(1) of the 1969 Law to permit the recovery of fees and disbursements of external lawyers in circumstances in which such fees and disbursements have been reasonably incurred and are reasonable in amount".*

A little later on Southwell LB, having examined the general position, concluded (at paragraph 20) that:

*"In my judgment, therefore, the public interest of Guernsey requires that in the majority of cases only the fees and disbursements of Guernsey Advocates' firms should be allowed."*

5. However, at paragraph 21, Southwell LB considered that *"in appropriate and exceptional cases (which will be relatively few)"* the fees and disbursements of external lawyers should be allowed on taxation. Several examples were given by way of guidance, the one most apposite being number (2), which I shall quote in its entirety:

*"(2) In civil cases litigants from outside Guernsey may have existing long-standing ties with external lawyers and the use of such external lawyers in connection with proceedings in the Guernsey Courts may to some extent be reasonable so as to ensure that the existing knowledge held by the external lawyers of the client litigants and of the facts which underlie the disputes are made available to the Guernsey Advocates conducting the cases for those litigants. I emphasize the words "to some extent" above, because in the great majority of cases there can be no justification for duplication of costs by the use of both Guernsey Advocates and external lawyers in all or most of the stages of Guernsey proceedings."*

6. It is also necessary to refer to paragraph 22, which is relevant in the present matter:

*"In cases in which it is justifiable and reasonable to allow costs of external lawyers on taxation, the question will arise (as it does in this case) whether the fees of external lawyers should be allowed at or near the rates charged by the external lawyers, or limited to the maximum or other rates appropriate for Guernsey Advocates and their employees. In my judgment, those who tax costs in Guernsey proceedings should be careful not to allow fees of external lawyers at rates higher than those permitted for Guernsey Advocates and their employees, except in the relatively rare cases where this can clearly be seen to be reasonable ....."*

It is appreciated that Southwell LB was dealing with the question of recoverable costs not indemnity costs, but the observations made are germane to the present application. I shall refer to this in more detail below.

7. The rationale for the involvement of McGrigors is set out in A's written submission at paragraph 3.4. They are A's solicitors of record in England and the Guernsey case arose in support of "lengthy" proceedings brought before the High Court. The relevant assets were situated in Guernsey. McGrigors have acted for A since March, 2006 and, in view of their involvement, it is submitted on behalf of A that it was far more effective for them to prepare and swear the detailed affidavit lodged in support of the application. Furthermore, McGrigors' costs are "*appropriate and reasonable*" due to their long-standing involvement in representing A. It is also submitted that there has been no duplication of work between McGrigors and AO Hall, as is "clear" from the Costs Schedule.
8. R's submissions are that the indemnity costs Order relates only to the reasonable costs of AO Hall on the basis of the actual charge rate applied by them. McGrigors costs and VAT are not recoverable and the Success Fee is part of a Conditional Fee Agreement, not enforceable in Guernsey and also not recoverable. A's costs are also unreasonable in amount due to "*duplication of work carried out by multiple fee earners at two separate law firms*" (paragraph 5 of submissions). The duplication allegation is then set out.

#### **External Firm**

9. It seems to me that, in all the circumstances, the involvement of McGrigors fell within the ambit of the "*appropriate and exceptional*" cases described by Southwell LB and cited at paragraph 5 above. The Guernsey proceedings were in support of the main case that was resolved in the High Court. It was therefore reasonable to have recourse to the firm having the care and control of those proceedings. Nevertheless even though this is an indemnity costs matter it is very important to guard against unnecessary duplication of costs which would, under Rule 2(6) of The Royal Court (Costs and Fees) Rule, 2010 be "*unreasonably incurred*".

#### **The Success Fee**

10. McGrigors entered into a Conditional Fee Agreement ("CFA") with A on 22<sup>nd</sup> March, 2006. The relevant amount here is 90%. A was successful under the CFA, with judgments dated 8<sup>th</sup> May, 2008 and 4<sup>th</sup> December, 2009. A submits (paragraph 3.7) that:

*"The CFA is a valid contractual agreement between the Applicant and McGrigors and as such the costs included in the Schedule of Costs pursuant to the CFA (being £4,036.50) are costs which the Applicant is liable to pay and thus are valid costs of the application"*.

R's opposition to this aspect of the claim has already been referred to.

11. It is this aspect of the application which has caused me most concern. The CFA is not known to Guernsey Law, but the costs of it are payable by A. In the absence of any authority I consider that it is appropriate to fall back on the wording of Rule 2(6) – were these costs "*unreasonable in amount or unreasonably incurred*"? In this matter, of course, any doubt must be resolved in favour of the receiving party. In my opinion the fact that a CFA is involved does not of itself make the amount irrecoverable, but special care needs to be taken to assess whether what is claimed is reasonable in all the circumstances of the case. This will be dealt with later on after other details have been considered.

## Duplication

12. R submits (paragraph 5 of submissions) that the costs claimed by A are unreasonable due to duplication of work “*carried out by multiple fee earners at two separate law firms*”. There are six fee earners and the amounts particularly referred to are £697.50 – attendance on AO Hall by McGrigors; and £992.00 – attendance on McGrigors by AO Hall (page 2 of the Costs Schedule). The fee earners’ rates for McGrigors at the relevant time are set out as £320 per hour for a partner, £260 and £225 for two associates and £140 for a trainee. In my judgment these rates cannot be considered excessive for a prominent London firm. The total number of hours claimed for is 6.6 and neither can that total be regarded as excessive. Subject to the assessment of the CFA (see below), these are allowed.
13. R further submits (paragraph 6 of submissions) that there is duplication of work by AO Hall and McGrigors in the following specified areas:

- (i) (a) McGrigors’ figure of £364.95 “*internal communications and tactical considerations*”; and  
(b) AO Hall’s figure of £764.00 in respect of the same heading.

The time for item (a) is 1.6 hours for item (b) 2.6 hours. Nothing in this part of the costs claim seems unreasonable either in nature or extent and I will allow it.

- (ii) (a) McGrigors’ figure of £433.80 “*attendance on Respondents’ English Solicitors and Guernsey Advocate*”; and  
(b) AO Hall’s figure of £57.00 “*correspondence with Trinity Chambers*”.

The time for item (a) is 1.6 hours, for item (b) 0.2 hours. There is nothing that appears unreasonable here.

- (iii) (a) McGrigors’ figure of £1,558.80 (comprised of £1,122.30, £234.00 and £202.50 in three items at pages 3-4 of the Costs Schedule) for “*drafting of affidavit*” and dealing with exhibits copying etc.

The time for this figure is made up, for the three separate items, as 5.2 hours, 1 hour and 1 hour respectively; and

- (b) AO Hall’s figure of £3,813.50 “*including but not limited to, input into affidavits, drafting skeleton argument, drafting Court Order and research*”.

The time for this item (b) is 15.1 hours. 11.4 hours are attributable to Associates J Williams, with 3.7 hours attributable to Advocates Barclay and Brehaut. It seems to me that the hours are rather excessive and there is scope for claiming an element of duplication. The bulk of the more involved work was done by McGrigors. I reduce the total figure by 50%, i.e., £1,906.75. This accords with R’s written submissions at paragraph 8. The McGrigors amounts appear reasonable here.

14. R also submits that the total figure for drafting the Costs Schedule is excessive. The total claimed is £1,590.25, comprised of £506.25 (McGrigors), £379.00 (AO Hall), £117.50 (AO Hall – amending), £587.50 (AO Hall – costs submissions). Again, I consider that there is some duplication here and that a reasonable figure would involve a reduction of 50%, viz, £795.13. For the avoidance of doubt and further submissions I consider the costs attributable to preparing the Costs Schedule are properly incurred, but reduce the amount. Issue was also taken with AO Hall’s claim for time for Court attendance and preparation for the same on 8

July, 2011 (including amending the draft Order following the hearing) (page 5 of Costs Schedule). The number of hours is 6.2 with Advocate Brehaut at 3.9 and J Williams at 2.3, the amounts being £1,111.50 and £540.50 respectively. Perhaps erring slightly on the side of generosity to A's Advocates I make a reduction of £413.00 viz, 25%, leaving £1,239.00. I do not require any further details as I conducted the hearing and am familiar with the documentation and the figure claimed is slightly excessive in the light of these considerations.

### The CFA

15. I have already mentioned this at paragraphs 10-11 above. The CFA was effectively a 90% figure comprising £4,036.50 of McGrigors' costs; VAT is payable at 20% (£807.30). I repeat that this aspect of the application has caused me the greatest concern. I would be slow to disapprove of a lawful arrangement in the Courts of England, which is our closest judicial neighbour. If, on the facts, such an arrangement appeared repugnant then it would not be sanctioned. Here I would propose to reduce it on the basis that a 90% (in effect) amount was large for this particular case, it was not a speculative negligence claim, for example, and also to take some account of the limited element of duplication I have found. These points do not together justify more than a one-third reduction, viz, to £2,691.00, a reduction of £1,345.50. That, if my figures are right, involves reducing the VAT amount from £807.30 to £538.20, VAT reduction £269.10.

### Conclusions

16. The total reductions therefore are as follows:

Page 4 of Schedule (preparation of Court Application by AO Hall):	£1,906.75
Pages 4-5 of Schedule (Costs Schedule, both firms):	£795.13
Page 5 of Schedule (Court Attendance by AO Hall):	£413.00
Page 6 of Schedule (CFA):	£1,345.50
Page 6 of Schedule (VAT payable on CFA):	£269.10
Total deductions:	<u>4,729.48</u>
Amount of costs claim:	£18,988.80
<u>Less</u> deductions:	£4,729.48
<b>Total allowed and payable:</b>	<b><u>£14,259.32</u></b>

**J R Finch**  
**Judge of the Royal Court**

**8<sup>th</sup> May 2012**