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11 November 2009

HHJ Griggs
Exeter County Court
Southernhay Gardens
Exeter EX1 1UH
(also by fax to 01392 415642 and e-mail because of the current uncertainty of mail delivery)

Dear Judge Griggs

Arthur v Layte PZ200604

As I am sure you will agree this case has degenerated into farce and is a complete mess that can only get worse if the root of the problem, Mr Arthur, is not addressed.

As you probably know we received a DRAFT copy of your 14th July 2009 judgement on 5th November 2009. This being some four months after the hearing and five days after the 30th October 2009 hearing for which it was required. I asked the transcribers for an APPROVED copy on the 6th November 2009 and I am grateful they immediately sent me a copy by e-mail in .PDF format (un-editable). I can see no difference between the DRAFT and APPROVED versions. I understand the DRAFT copy was available on 21st October 2009 and in view of the postal strike and even though Mr Clarke seems not to understand the basics of communicating by e-mail with .PDF attachments I would have thought, due to the urgency of the matter, he would have had the common sense to ask the transcribers to e-mail a copy on the 21st which would then have given us just enough time to produce the annotated version (which we now have) for use at the 30th October 2009 hearing which we would then have attended <u>despite</u> the extant application to vacate it and Mr Arthur's threat to continue the litigation if we did attend.

It is obvious from reading the transcript that, at the 14th July hearing, and in our absence, Mr Arthur has been less than truthful and you seem to have wanted to believe him to get this case either concluded or out of your jurisdiction without any regard to the justice of the matter. You say DJ Wainwright's order of 10th September 2007 was a fair order. You say it was made as a last resort and at the end of her tether. The order was actually made just six days after we filed our bills on 4th September 2007. She must have a very short tether! Prior to this she had been considering "the bill filed" (filed by Mr Arthur: see 3 below).

The issues are:

1 We believe the bills we served on 8th March 2007 (and filed on 4th September 2007) were in an appropriate form such that the paying party was capable of disputing the items claimed and/or the value of the item by detailed points of dispute as set out in the costs rules "points of dispute".

2 The order of 23rd November 2005 that awarded us costs against the Claimants stated "*such costs to be assessed by detailed assessment if not agreed.*". We believe this means the costs assessment process is to be a detailed one rather than a summary one if costs cannot be agreed between the parties. Mr & Mrs Arthur refused to even communicate let alone attempt to agree costs.

3 By order of 15th August 2007 (drawn 29th August 2007, received 30th August 2007) DJ Wainwright requested that we file true copies of the bills we had served on 8th March 2007 for her consideration. Despite the fact that we understood the Judiciary should not become involved at

this stage of the detailed costs process, we complied immediately and the Court should have received the copy bills on about 4th of September 2007. Prior to this date DJ Wainwright (and DJ Mitchell) had been considering what was referred to as "the bill filed" which on 23rd October 2007 (on inspecting the Court file) we discovered to be a 12 page "bill" filed by Mr Arthur. The 12 pages had been extracted from our <>105 page bills that we served on 8th March 2007 and needless to say looked nothing like a bill of costs to CPR compliance and nothing like our real bills!).

4 On 10th September 2007 DJ Wainwright made an order that required us to produce bills in a CPR compliant form such that "the Claimants can usefully respond" by 1st November 2007 (subsequently extended to 1st December 2007). The Defendants were (and still are) of the opinion that their bills were already in such a form and had been since first serving on 8th March 2007.

5 On 12th September 2007 DJ Wainwright wrote a letter advising that she objected to some of the content of our bills but made no criticism of the form of them. This is not a summary process and the Defendants believe that DJ Wainwright should not have assumed it was and had no right to even comment on the content of our bills as the Defendants believe that, under the rules, this is the sole duty of the paying party at this stage of the detailed costs process and in normal circumstances copies of our bills would not have even been filed (see 3 above).

6 On your (HHJ Griggs) direction given verbally at the 27th March 2008 hearing we re-submitted our bills for consideration by DJ Middleton. We made a few changes to the content because of the criticisms made in DJ Wainwright's 12th September 2007 letter but as she had not criticized the form of our bills (and having re-appraised the Rules and found no fault) we made no changes, or no significant changes, to the form.

7 DJ Middleton spent some nine months considering our bills but found no genuine fault with the form (or the content) of them and in June 2008 passed them back to DJ Wainwright for re-consideration. DJ Wainwright then certified our bills as compliant (albeit the form had not changed but the content had marginally) and ordered the Claimants to dispute essentially the same bills she had excused them from disputing in 2007.

8 Mr Arthur has now disputed the second Defendants bill but as every item he has disputed now (in 2009) is identical in description and amount claimed as in her bill as served on 8th March 2007 we submit he should have disputed the items then and DJ Wainwright should not have excused him from doing so in her order of 10th September 2007.

9 Mr Arthur has finally admitted to receiving a copy of the first Defendants bill which is virtually identical to the one served on 8th March 2007 but he did not dispute it then and he still hasn't. We suggest the Court should ask him "Why not?"

Put basically:

Our view

We say we served on Mr & Mrs Arthur a package by recorded delivery DH754143015GB which was signed for by N. Arthur on 8th March 2007. We say the package contained two bills of costs. The first Defendant's bill consisted of about 60 pages and the second Defendant's bill consisted of about 45 pages. We confirm the bills were identical in every way to the ones we filed on DJ Wainwright's direction on about 4th September 2007 (see 3 above)

And

We say the bills we served on 8th March 2007 and filed on about 4th September 2007 were in an appropriate form such that the paying party was capable of disputing the items claimed and/or the value of the item with detailed points of dispute in the form set out in the costs rules.

And

Since Mr Arthur has (in 2009) now disputed one of the bills, and it is in the same form and virtually the same content now as when first served on 8th March 2007, we say this proves our point. The bills were disputable in March 2007 if they are disputed now.
And
We say we have complied with all Court Orders including the 10th September 2007 Order because we served a compliant bill six months before the Order was made.

Mr Arthur's and the Court's view
Mr Arthur says there was only one bill served on 8th March 2007 which consisted of 12 pages and it was not in an appropriate form and not capable of being disputed. (See 3 above underlined)
And
Having asked for and having received copies of the Defendant's true bills on about 4th September 2007 (see 3 above) DJ Wainwright by her Order of 10th September 2007 and letter of 12th September 2007 appears to agree with Mr Arthur in that she implies the bills as served on 8th March 2007 (and filed on 4th September 2007) were not in an appropriate form, although she changed her mind over a year later.
And
You (HHJ Griggs) by your ruling of 16th January 2008 agree with DJ Wainwright that the bills as served on 8th March 2007 (and filed on 4th September 2007) must not have been in an appropriate form because you think the implication they were not that she made in her Order of 10th September 2007 and letter of 12th September 2007 to be fact. However you admit this is not a considered opinion because you have not looked at the bills yourself and DJ Wainwright has since changed her mind which makes your ruling of 16th January 2008 look rather "dubious".
And
By your (HHJ Griggs) Judgement made at the 14th July 2009 you rule that we have failed to comply with the 10th September 2007 Order and you believe Mr Arthur who told you we have not complied with several other Orders. (As you know we had made a formal application to adjourn the 14th July 2009 hearing (because were booked to be abroad) nevertheless you heard it anyway. Presumably to save yourself the inconvenience that we might have contradicted something Mr Arthur may have said).

The question is.
Were the bills as served on 8th March 2007 and filed on 4th September 2007 (and which have been served and filed several times since then with marginal corrections/amendments but in essentially the same form) in an appropriate form such that the Claimants could respond with points of dispute?
The Defendants say "yes". Mr Arthur and HHJ Griggs say "No". DJ Wainwright says "No then Yes"

You say you have given us permission to appeal (but we have not seen the Order yet!) so it seems it will be for the Court of Appeal to decide who is right. Copies of the bills we served on 8th March 2007 and filed on 4th September 2007 (and subsequent slightly amended copies) should be in the Court file but if not then further copies can be provided.
We will point out that we responded to DJ Wainwright's comments regarding the content although we remain of the opinion she should not have become involved in the detailed costs process when she did.

Yours sincerely

JH Layte

cc Court of Appeal, DJ Wainwright, DJ Middleton, DJ Mitchell, DJ & A Arthur