Neutral Citation Number: [2024] EWHC 166 (KB)

Case No: KB-2021-004601

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/01/2024

**Before** :

**MR JUSTICE FREEDMAN**

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**Between :**

**(1) VIARENTIS PROPERTY MANAGEMENT LIMITED**

**(2) VECTRYSS LTD**

**Claimants**

**- and –**

**(1) VIAGEFI 1 LIMITED**
**(2) VIAGEFI 3 LIMITED**
**(3) VIAGEFI 4 LIMITED**
**(4) VIAGEFI 5 LIMITED**
**(5) VIAGEFI 6 LIMITED**

**Defendants**

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**Hugo Page KC** (instructed by **Watling & Co**) for the **Claimants**
**Matthieu Gregoire** (instructed by **Bates Wells Braithwaite LLP**) for the **Defendants**

Hearing date: 12 January 2024
Judgment sent out in draft on 25 January 2024

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# Approved Consequentials Judgment

**This judgment was handed down remotely at 12noon on 30 January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.**

**MR JUSTICE FREEDMAN :**

## I Introduction

1. Following the handing down of the judgment on 21 December 2023, there has been a hearing on 12 January 2024. The Court has been assisted by skeleton arguments for the Claimants on 10 January 2024 and for the Defendants also on 10 January 2024.

2. In the course of the hearing, the most fundamental point of difference between the parties emerged. The Defendants submits that, as pleaded, the claim is based on outstanding invoices. In the judgment, it is stated that the Claimants should not be entitled to charge anything because the invoices are calculated wrongly. The Defendants submit that since there is no alternative claim e.g. for the amounts set out in the invoices or such other amounts that may be due, the claims should be dismissed.

3. The Claimants submit that even to the extent that the invoices were calculated wrongly, and at least to the extent that the claim does not exceed the invoices, the Claimants should be awarded such sums as are calculated on a correct basis. The Clamants submit that the Court has already indicated that that is the way ahead and that the Defendants did not make this 'all or nothing' contention in the course of the trial.

## II Background

4. By way of the briefest summary only and without this being a substitute for the earlier judgment, the Court found that the invoices from 1 January 2017 should have been calculated by reference to the true value of the properties. Instead, they were calculated by reference to the Garcia valuation which the Claimants ought to have known from at latest 21 December 2016 were excessive.

5. More specifically, there have been three periods identified. The first period is between January 2017 and July 2017, when the invoices were calculated by reference to the excessive Garcia valuations. A part of those invoices was unpaid, and the counterclaim seeks damages by reference to moneys overpaid: see para. 57.1. In respect of those invoices that were not paid during that period, the invoices are said to have been wrongly calculated to the extent of the difference between the invoices by reference to the Garcia valuations and a charge by reference to the true value of the properties at the relevant time. The Defendants' submission is that since the invoices were not properly calculated, no sum is due.

6. In respect of the second period between August 2017 and December 2017, the Claimants made unilateral adjustments on a non-principled basis: see the judgment at para. 217. The Defendants submit that invoices on a non-principled basis are ineffective, and that it is now too late, in these proceedings, to base any claims on these invoices. The Claimants submit that the likelihood is that the sums are less than the amounts actually due.

7. The opening words of para. 217 of the judgment are to the effect that there had been adjustments by additional invoices in respect of the second period, so as to make the sums charged accord with the amounts properly charged. It now turns out that there

may not have been any such adjustments. In these circumstances, although the Claimants do not make any concession, they realistically recognise that it is now too late for them to seek higher amounts. That is realistic because it would open up defences such as waiver or estoppel, which should have been part of the liability section of the hearing.

8. In respect of the third period, between January and April 2018, the amounts charged have been by reference to the revised valuation. Since it has not been determined what is the true value of the properties in respect of that period, the Defendants deny that the Claimants should be entitled to invoice by reference to such valuation as appeared in the accounts year ending 31 December 2017.

## III Submissions of the Defendants

9. In summary, the Defendants point to the pleadings and skeleton arguments to the effect that the claims by the Claimants are for specific sums calculated in specific ways and without any alternative case. For example, it does not make a claim for a specific sum, adding a rider such as "*or such other sum as to the Court may seem due for the services rendered"*. The Defendants submit that the pleadings have to be clear and must include "*a concise statement of the facts on which the Claimant relies (CPR 16.4(1)(a)) and enable a Defendant to know the case that it has to meet"*: see *Bridgland v Earlsmead Estates Limited* [2016] EWHC B9 (TCC) at [97].

10. The Defendants say that it would be unfair if the Claimants were able to claim sums that departed from the ways in which the invoices were calculated, even if those were the correct sums. The reasons for this include the following:

    (i) A preliminary point about pleading in respect of issues 2b and 2c was resolved against the Defendants: see the judgment at [87] - [95]. It would be inconsistent and unjust to be strict with one party and lax with the other;

    (ii) The quantum hearing was ordered by Master Thornett by reference to the counterclaim, which in its relevant part, was limited to sums overpaid. That is inferred because by seeing the order in the context in the argument before Master Thornett, and the way in which the Claimants were contending that the Garcia valuations were a matter for the Defendants and not a matter for the Claimants: see the skeleton argument of the Claimants at page 217 at paras. 5-6 in the consequentials bundle;

    (iii) The Defendants say that in the event that there had not been a 'all or nothing' pleading, the disclosure that would have been sought would have been more extensive and in particular would have straddled periods after July 2017. It is now unfair for this to be raised at this stage.

    (iv) The Defendants do not say that such alternative claims cannot be pursued following wrongly calculated invoices. They submit that in the circumstances of this case, it may now be too late because of arguments in the nature of abuse of process, and/or limitation.

## IV Submissions of the Claimants

11. The Claimants submit that the argument of the Defendants has no basis for the following reasons:

(i) The invoices are the demands for payment. It does not follow from the fact that they may have been excessive or wrongly calculated that no sum is therefore due. It is an extremely common incident of litigation that a sum claimed in an invoice is found to be excessive or wrongly calculated, in which case the Court will usually give judgment for the correct amount. No authorities to the contrary have been indicated by the Defendants.

(ii) It is a matter of form and not substance that the sums claimed were not qualified by adding a rider of the kind identified above. It the ordinary course, the fact that the invoice may have been excessive does not have the effect that nothing was due.

(iii) The Defendants did not, in their pleading, identify the stand that they are now making. Although there was a denial in para. 48 of the Defence, had it been the case that there was an issue taken in respect of the entirety of the fee, that would have been stated expressly. An example where it was said so was in para 48.2.2 of the Defence to the effect that no sum was payable during the period of a contractual suspension of services.

(iv) There is no prejudice to the Defendants in respect of this next stage. It is intimately connected to the existing counterclaim in which, if the matter is contested, there would be expert valuation evidence. The issue in all cases is what was the amount chargeable (whether paid or not paid). This matter is wholly unlike issues 2b and 2c, which opened up matters of evidence that were not before the Court: see the judgment especially at paras. 90-94.

(v) If the Defendants were correct, and a new invoice was required then there may be no end to that exercise. If there was an answer to the new invoice in that for example that was for too high a sum, then it would be said that a third set of invoices may be required.

(vi) It is submitted that the Court, in the judgment, had in mind that there would have to be a further hearing in respect of the contractual sums payable: see para. 223 and 226.

## V Discussion

12. I reject the submissions made by the Defendants in this regard. What has occurred is standard in this kind of litigation. There has been identified a potential defence to the invoices to the extent that they may exceed the true valuations. As regards the first period, that is intimately connected with the subject matter of the counterclaim. The counterclaim is for the amounts overpaid due to overvaluation and the defence will be to the extent that the amounts invoiced have been similarly excessive by reason of overvaluation.

13. In respect of the second period, there is reason to believe that the sums invoiced may be overall less than the sums actually payable, but the valuation evidence may indicate whether this was the case. In respect of the third period, it may be that the valuations already obtained will show that the invoices already issued, were for the correct amount. However, when expert evidence is obtained, there will be the opportunity for this to be challenged by the Defendants.

14. There is no inconsistency in approach with regards to pleadings. The matters set out above in issues 2b and 2c were new cases requiring very substantial new evidence at the liability stage. This is not the case here even without the above mentioned rider. The rider might be pleaded, but would not have added anything. The question of the true amount payable under the invoices still arises for consideration. The Court ought to find the amount actually due rather than require that the case must fail until such time as an invoice with a correct calculation has been issued. In the broad discretion which the Court has to costs, it might be that there is scope for any difficulty caused by the invoices not having been correctly calculated being reflected in decisions as to costs in due course. It follows that there is no scope for a defence such as abuse of process or limitation.

15. If the points made by the Defendants had been valid, then the Court would not have found itself bound by any indicators within the judgment handed down on 21 December 2023. In the event, the approach in paras. 218 of my judgment is affirmed. Without having the issue now raised in mind, I said at para 218:

> *"In my judgment, the fact that the invoicing may have been wrong does not alter the fact that if the services had been provided, there had been a contractual entitlement. As noted above in connection with the case of Consulting Concepts International, it is the work which triggers the entitlement to be paid even if an action to enforce an entitlement payment may in some circumstances not be brought until there is an invoice as required by the terms of the contract."*

16. In the circumstances of this case, it appears on the basis of the information at present before the Court, that there is no need for fresh invoices, but it may turn out that there ought to be credit notes to the effect that the Court finds that not all of the sums invoiced were due.

17. If and to the extent that Master Thornett did not have in mind, within the scope of his adjournment of quantum, this closely related quantum of the calculation of the invoices, this Court is in a position to say that justice requires that this be made a part of the quantum hearing.

## VI Submissions since the hearing

18. At the hearing, I wished to have an indication as to what invoices were said to have been unpaid and the effect of the judgment in respect of the sums claimed. The

Claimants have sought to do this in tabular form. The Defendants have written to say that they introduce documents and figures which have not been the subject of permission. They submit that they *"contain figures that are neither accepted nor evidenced as far as we can tell."* I could only reach a conclusion about this by asking questions about the documents and the figures. At this stage, without an agreed document, I shall ignore the documents. I have reached the above conclusions without reference to these documents, but on the basis of the written submission preceding the hearing and the oral submissions at the hearing.

## Conclusion

19. It was agreed in the hearing that matters relating to costs would await the outcome of this judgment. One of the possibilities that was canvassed in the event that the submission of the Defendants was not successful is that the costs should be reserved. Subject to hearing more from the parties, that may turn out to be the most pragmatic course. It will also be necessary to consider directions in relation to the further quantum hearing and by quantum should be tried.