Case No: E14LV817

IN THE COUNTY COURT AT LIVERPOOL

Liverpool Civil and Family Court
35 Vernon Street
Liverpool
L2 2BX

Date: 7th November 2019

Before :

District Judge Jenkinson

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Between :

DANIEL STONEY	**Claimant**
- and -	
ALLIANZ INSURANCE PLC	**Defendant**

- -
- -

Anthony Learmonth (instructed by **Coyne Learmonth**) for the **Claimant**

Paul Hughes (instructed by **Taylor Rose**) for the **Defendant**

Hearing date: 7th November 2019

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JUDGMENT

District Judge Jenkinson:

1. This matter is listed before me today for the determination of a single issue, namely whether or not the court fee of £455, which the Claimant paid to issue this claim, is recoverable as an item of costs from the Defendant following the successful conclusion of the claim.

2. Pursuant to CPR 44.3, the court should not allow costs which have been unreasonably incurred or are unreasonable in amount.

3. The Defendant accepts that it cannot be argued that the court fee was disproportionate or unreasonable amount. It is clearly an example of a disbursement with an irreducible minimum, and indeed court fees are expressly identified as the best example of such at paragraph 82 of the judgment of the Court of Appeal in West *v* Stockport NHS Foundation Trust & Demouilpied v Stockport NHS Foundation Trust [2019] EWCA Civ 1220.

4. However, the Defendant contends that the court fee was unreasonably incurred, because the Claimant, who is identified in the medical report served in support of this claim as being unemployed, is likely to have been in receipt of one or more of the qualifying benefit such as would have entitled him to apply for fee remission, thereby avoiding paying the court fee.

5. The Claimant's solicitors have been aware of this argument throughout. They accept that no application for fee remission was ever made, or, it would appear, discussed or considered. For these purposes they have not adduced any evidence to suggest that the Claimant would not have been entitled to court fee remission, and, as I indicated at the outset, this being an assessment on the standard basis, and in which the benefit of the doubt is effectively afforded to the Paying Party, I propose to approach this issue on the basis that the

Claimant would have been entitled to fee remission had such an application been made.

6. The Defendants position is, therefore, a simple one. It was unreasonable to incur a disbursement that could have been avoided in its entirety by the completion of a simple application form.

7. The Claimant's position is more nuanced. Mr Learmonth refers to his firm's individual business model. His firm will act for Claimants, including the present Claimant, on the basis that the firm will fund all disbursements (including the court fee) on behalf of the Claimant, and will not seek recovery from the client regardless of the outcome of the case, provided that the client purchases an ATE policy, which reimburses disbursements including the court fee in the event that the claim is unsuccessful.

8. Mr Learmonth makes reference to paragraph 66 of the judgment of the Court of Appeal in the case of Herbert v H H Law Ltd [2019] EWCA Civ 527, which makes it clear that the court fee is a solicitors' disbursement, which accordingly his firm is required to pay whether or not they are put in funds by the client. He contends that the fee exemption regime exists so as to facilitate access to justice for Claimants who could not otherwise afford to pay the court fee and not, in that context, to effectively ease the cash flow of solicitors in that situation. In fact, he says that he would be misleading the court by completing a form predicated upon a financial inability to meet the court fee, when the fee was effectively funded on the Claimant's behalf by this arrangement.

9. On behalf of the Claimant, Mr Learmonth makes further reference to the case of Peters *v* East Midlands SHA [2009] EWCA Civ 145. In that case the Court of Appeal held that a Claimant was entitled to opt for self-funding future care and accommodation, and is not required to rely on statutory provision by local authority. Whilst accepting that this case addresses an issue of damages as opposed to costs, he contends that if the Claimant is entitled to look to the tortfeasor for expenses that would otherwise be payable by the state, he is entitled to adopt the same approach in respect of costs.

10. Mr Hughes, in response, contends that in the arena of costs as opposed to damages, the courts have traditionally been critical of parties who seek to recover costs by reference to one regime, when lower costs could otherwise have been incurred. He points, for example, to the stance adopted in Surrey v Barnet & Chase Farm Hospitals NHS Trust (& Others) 2018 EWCA Civ 451.

11. In my judgment, it is necessary to approach this issue by reference to basic well-established principles, and without imputing policy considerations which I do not consider are a matter for me here. I can fully understand that it is perhaps an unpalatable submission on behalf of a Defendant's insurance company that the court fee which has been necessarily incurred as a consequence of the negligence of their insured, should be borne not by them but by the state. However, if that position is felt to be wrong as a matter of principle, it is in my judgment a matter for the rules committee or for Parliament to address.

12. On an application of the rules as they stand, therefore, I make the following findings:-

a) The Claimant was entitled to a full remission of the court fee of £455;

b) To achieve this, he would simply have been required to complete a form setting out his means and details of any benefits that he was in receipt of. There has been no evidence adduced on behalf of the Claimant that this would have been an overly onerous or disproportionate exercise;

c) The fees remission application form (as I am told) simply asks financial questions. It does not, for example, enquire as to whether or not the Claimant has alternative means of funding the court fee, such as legal expense insurance, or whether or not he had a solicitor acting, and if so whether they were in a position to fund the court fee. It seems to me that this reflects the basic principle that the costs, including the court fee, are the Claimant's costs, and are not complicated by the involvement of solicitors or the business model summarised at paragraph 8 (above).

13. It follows on that basis, that I am not persuaded (reminding myself that the burden in this regard rests with the Receiving Party) that the court fee is a disbursement that was reasonably incurred, and in those circumstances, it is not recoverable by reference to CPR 44.3.

Lee D. Jenkinson

District Judge