

In the County Court at Cheltenham and Gloucester

Claim No : J1QZ6Q6V

BETWEEN

Harrison Clark Rickerbys      CLAIMANT  
Limited

and

Ms.Raquel Maria Rosario      DEFENDANT  
Sanchez

SKELETON ARGUMENT ON BEHALF OF THE  
DEFENDANT  
For the hearing on 9<sup>th</sup> January 2024

1. There are five reasons why the Defendant says this judgment and writ of enforcement should be set aside -
  - 1.1. The Defendant did not become aware of the proceedings until after judgment had been entered; thereafter she has acted promptly;
  - 1.2. The Claimant, on the other hand, was aware of a complaint in relation to the fees and that the Defendant would escalate that complaint to the Legal Ombudsman if the Claimant did not uphold it;
  - 1.3. The Defendant has done so and, despite the Claimant's unsuccessful efforts to dispute LeO jurisdiction, there is an ongoing LeO investigation in relation to these fees which will be binding on the Claimant if the LeO's determination is accepted by the Defendant
  - 1.4. The bills are not statutory bills, so the claim was an abuse of process
  - 1.5. Default judgment for the amount claimed is not available in a claim for solicitors' fees in any event
2. Taking those in turn –

### **Conduct (1.1 and 1.2)**

3. The way in which the Defendant became aware of the judgment is dealt with at paragraphs 6 to 9 of her witness statement. She was unaware of it until it was mentioned by the Legal Ombudsman in May 2023. Thereafter, allowing for illness, she acted promptly and instructed solicitor who went on record as acting on 27<sup>th</sup> July 2023.
4. Her solicitors made immediate contact with the Claimant, pointed out the problems with the judgment [see exhibit at 11] and promptly issued an application, once it became clear that the Claimant was not prepared to deal with things in a voluntary basis.
5. The Defendant had made a complaint in July 2022 (exhibit p 28) and the Claimant was aware that this would be escalated to the Legal Ombudsman – see paragraph 17 of the Defendant’s witness statement.

### **The Legal Ombudsman Complaint (1.3)**

6. The Legal Ombudsman scheme is a statutory one. It is governed by part 6 Legal Services Act 2007.
7. The Defendant’s complaint to the LeO is summarised in the LeO’s letter to the Claimant dated 18/05/23, which is at page 3 of D’s exhibit. It is plain that all parties are aware that that the complaint is, in large part, about the Claimant’s fees generally (i.e. the c £34,000 that have already been paid, as well as those that are now sought) : *“As touched upon, you have said that the thrust of the complaints raised are about costs as Ms Sanchez wants to dispute the bills issued to her, as well as those she has paid”*
8. The LeO’s determination may include payment of compensation and interest (either through specific losses or for inconvenience / distress) by Claimant to Defendant <sup>1</sup> as well as limiting fees to a specified amount <sup>2</sup> and a requirement to refund any fees paid in excess of that amount.<sup>3</sup>

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<sup>1</sup> Ombudsman Scheme Rule 5.38(b) to (d)

<sup>2</sup> Scheme Rule 5.38(h)

<sup>3</sup> Scheme Rule 5.40

9. A determination by the Ombudsman is binding on the parties if accepted by the complainant (the Defendant).<sup>4</sup> Furthermore a binding determination can be enforced in the courts by the complainant.<sup>5</sup>
10. A default judgment and writ of enforcement plainly cannot be allowed to stand where the parties are engaged in a statutory scheme that might produce a radically different result; that is especially so in a case where the Claimant has attempted, unsuccessfully, to challenge LeO jurisdiction on grounds of the default judgment (which, as is set out below, is wrongly obtained in any event).

#### **Abuse of Process**

11. A pre-requisite for the issue of any action by solicitors for their fees is the delivery of a bill that complies with the statute.<sup>6</sup> The Claimant's bills purport to be "interim statute bills" but they cannot be because there are strict contractual requirements for such bills<sup>7</sup>. There can be no debate here that such strict contractual requirements have not been met, because there was no written retainer.

#### **Non availability of Default Judgment**

12. The Claimant is simply not entitled to default judgment for the amount claimed.
13. In *Thomas Watts & Co (a firm) v Smith* [1998] Lexis Citation 4141 the Court of Appeal said

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*"In my judgment, in a case such as this, where solicitors are applying for payment of their bill, the situation is analogous to one in which a plaintiff is applying for an unquantified sum which has to be quantified by a judicial process before judgment can be awarded for the appropriate amount. This is common in damages claims. Judgment for damages to be assessed is a very common form of order under an Ord 14*

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<sup>4</sup> Scheme Rule 5.49, and s.140(4) Legal Services Act 2007 : "If the complainant notifies the ombudsman that the determination is accepted by the complainant, it is binding on the respondent and the complainant and is final."

<sup>5</sup> Scheme Rule 5.58 and s.141 Legal Services Act 2007

<sup>6</sup> s.69 Solicitors Act 1974

<sup>7</sup> *Richard Slade And Company Plc v Erlam* [2022] EWHC 325 (QB) (16 February 2022)

*application. Where a quantum merit for work done, the benefit of which has been obtained under a contract but where the contract sum has not been agreed is claimed, there may be an order for judgment to be entered for the plaintiff with the quantum to be assessed. In my judgment that is the position of the plaintiff's claim in the present case. It is no doubt too late, having regard to the terms of s 70 of the Solicitors Act 1974, for Dr Smith to make an application for taxation. But if the Court is to be asked to make an order for payment by Dr Smith, the client, of the amount claimed by the solicitors, a process of judicial assessment must, in my judgment, first take place. The judicial assessment should be carried out by a taxing master. It is the taxing masters that have the requisite expertise for that purpose."*

14. The circumstances were considered again in ***Palomo v Turner* [2000] 1 W.L.R. 37**, in which the Court of Appeal reaffirmed the Thomas Watts & CO judgment, holding that:

*"...a client against whom a solicitor brought an action in respect of his charges was entitled to challenge at common law the reasonableness of the charges and to have them assessed by the court notwithstanding expiry of the period allowed by section 70(4) of the Solicitors Act 1974 for taxation; that the burden of proving that the charges were reasonable rested on the solicitor; that there was no disadvantage to the solicitor since he himself was entitled to claim an order for taxation, under subsection (2), without any time limit, and obtain a form of summary judgment upon issue of the taxation certificate; and that, accordingly, the judge had been entitled to hold that the client's evidence showed that a triable issue was raised as to the reasonableness of the solicitor's charges". (Headnote)*

15. The only order to which the Claimant was properly entitled absent a defence was judgment for damages to be assessed, with such assessment to take place by way of either statutory or non-statutory assessment.

#### **Conclusion**

16. The Defendant invites the Court to set aside the judgment and writ with costs to be paid by the Claimant.

08 January 2024

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