



Neutral citation: [2021] CAT 2

**IN THE COMPETITION
APPEAL TRIBUNAL**

Cases Nos: 1312-1325/5/7/19 (T) and
1350/5/7/20 (T)

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

26 January 2021

Before:

THE HONOURABLE MR JUSTICE ROTH

(President)

TIM FRAZER

PAUL LOMAS

Sitting as a Tribunal in England and Wales

BETWEEN:

DUNE SHOES IRELAND LIMITED & OTHERS

Respondents/Claimants

- and -

- (1) VISA EUROPE LIMITED**
- (2) VISA EUROPE SERVICES LLC**
- (3) VISA UK LIMITED**

Applicants/Defendants

RULING: COSTS

1. On 22 December 2020, the Tribunal handed down judgment giving its reasons for dismissing the Defendants' application that it should make a reference to the Court of Justice of the European Union in this case ("the Judgment"): [2020] CAT 26. The Claimants have now applied for their costs of resisting that application. Their solicitors served a schedule of costs in the total amount of £98,674.80, including VAT. However, in response to an inquiry from the Tribunal as to whether the Claimants can recover VAT, the Claimants' solicitors wrote on 23 January 2021 to state that they are not now seeking the VAT element so that the total which the Claimants seek to recover is in fact £82,229.
2. As set out in the Judgment, the Claimants opposed the application on two distinct grounds. First, they argued that it was not necessary to refer the question proposed by the Defendants in order to determine the issues in the proceedings. Secondly, they argued that the application amounted to an abuse of process by the Defendants since they had not advanced the arguments relied on as the basis for the reference in previous proceedings in the Supreme Court concerning the same underlying issues.
3. Since we held against the Defendants on the first ground, it was unnecessary to resolve the second. The Claimants' argument of abuse of process had not been raised prior to service of their counsel's skeleton argument. It was accordingly not addressed in the Defendants' counsel main skeleton but they put in a supplementary skeleton argument of 7 pages contesting the allegation of abuse. At the hearing on 1 December 2020, Mr Rabinowitz QC for the Defendants made only very brief submissions on the abuse point at the end of his opening submissions and, having heard Ms Smith QC for the Claimants on the first point, we did not require any submissions from her on the issue of abuse.
4. The Defendants properly accept that in the circumstances the Claimants are entitled to most of their costs of the application and they do not take issue with the quantification of the costs claimed. But they argue that there should be a deduction from the total to reflect the fact that the Claimants did not succeed on a discrete part of the case, on which, the Defendants contend, the Claimants' argument was "hopeless". They seek a reduction of 20 per cent.

5. The Tribunal has a broad discretion as to costs pursuant to rule 104(2) of the Tribunal Rules 2015. Here, the allegation of abuse of process was not canvassed at all in the witness evidence but was set out in the skeleton argument for the Claimants. Since there is significant case-law on abuse, no doubt it took up some time in counsel's preparation of the skeleton (where it comprised 3 out of the 15 substantive pages) and of course it prompted additional work on the part of the Defendants' lawyers. Since we did not hear oral argument from the Claimants in response to the Defendants' submissions on abuse, we consider it would be inappropriate for us to express a view on whether the abuse argument would have failed, still less to dismiss it as having had no prospect of success. In those circumstances, we consider that the fair resolution is to make a modest deduction from the costs which the Claimants can recover to reflect this uncertainty. In our view, the appropriate deduction is 10 per cent.
6. The Claimants will therefore recover 90 per cent of their costs of the application, summarily assessed in the amount of £74,006.10. Those costs are to be paid within 14 days of the date of this ruling.

The Hon Mr Justice Roth
President

Tim Frazer

Paul Lomas

Charles Dhanowa O.B.E., Q.C. (*Hon*)
Registrar

Date: 26 January 2021