Neutral Citation Number: [2023] EWHC 1937 (Ch)

Claim No PT-2021-000841

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
PROPERTY TRUSTS AND PROBATE LIST (ChD)

Rolls Building
Fetter Lane
London EC4A 1NL

Date: 27 July 2023

Before :

HIS HONOUR JUDGE MONTY KC
Sitting as a Judge of the High Court

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Between :

MONICA MARGARET RAMJI

Claimant

- and -

(1) GRAHAM JOHN HARVEY
(in his capacity as Executor of the estate of Sugrim Orlando Ramji Deceased)
(2) DEVIKA LAMBERT
(3) CHANDRA RAMJI
(4) LYNN-MARIE MONEK NEALE
(5) JOANNE NEWMAN
(6) KATIE NEWMAN
(7) DANIEL NEWMAN
(8) CHRISTOPHER NEWMAN
(9) LAUREN RUNACRE
(10) WILLIAM NEWMAN

Defendants

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Mr Otchie (instructed by **Mould Haruna**) for the **Claimant** and the **Ninth Defendant**
Ms Challenger (instructed by **IDR Law**) for the **Second, Third and Eighth Defendants**
Ms Lynn-Marie Neale, the **Fourth Defendant**, in person

Written submissions: 14, 18, 20 July 2023

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Approved Judgment – Consequential Matters

HHJ Monty KC:

1. On 6 July 2023, I handed down my reserved judgment following the 5-day trial of two preliminary issues: [2023] EWHC 1664 (Ch). The Second, Third and Eighth Defendants (represented by Ms Challenger), and the Fourth Defendant (Ms Neale, who was in person), were the successful parties, and the Claimant and the Ninth Defendant, represented by Mr Otchie, were the unsuccessful parties.

2. The parties were unable to reach an agreement about the costs of the preliminary issues, and I directed that the parties should file written submissions.

3. In accordance with my directions, I received Ms Challenger's submissions on 14 July, Mr Otchie's submissions in response on 18 July, and Ms Challenger's reply submissions on 20 July. I have received no submissions from Ms Neale.

4. In summary, Ms Challenger seeks her clients' costs on the indemnity basis, and Mr Otchie accepts that his clients should pay their costs, but submits that they should be on the standard basis.

5. The court's jurisdiction to make an award of costs on an indemnity basis arises from CPR 44.3(1)(b). The approach of the court when deciding the basis of costs has been recently and thoroughly reviewed and set out in a number of cases.

6. The test as to whether costs should be on the standard or indemnity basis is that set out in *Excelsior Commercial Industrial Holdings Ltd v Salisbury Hammer Aspden and Johnson* [2002] EWCA Civ 879. For the court to order costs on the indemnity basis, there must be some circumstances which take the case out of the norm. In *Esure Services Ltd v Quarcoo* [2009] EWCA Civ 595, at [25], Waller LJ explained that the word "norm" was not intended to reflect whether what occurred was something that happened often so that in one sense it might be seen as "normal", but was "intended to reflect something outside the ordinary and reasonable conduct of proceedings": see the judgment of Mrs Justice Joanna Smith in *Cabo Concepts Ltd v MGA Entertainment (UK) Ltd & Anor* [2022] EWHC 2024 (Pat), [16], and also the discussion about whether unreasonable conduct must be unreasonable to a high degree at [17-23].

7. It is a matter for the exercise of the court's discretion, which is a wide one: see for example *Suez Fortune Investments Ltd v Talbot Underwriting Ltd* [2019] EWHC 3300 (Comm). at [11-12].

8. The summary in *Three Rivers District Council v Bank of England* [2006] EWHC 816 (Comm) at [25] was approved by Stuart-Smith J as he then was in the *Ocensa Pipeline Group Litigation* [2016] EWHC 3348 (TCC) as a "useful but not exhaustive summary of the principles and of circumstances that may influence a decision whether or not to award indemnity costs" whilst noting that "both the statements of principle and the specific examples of conduct that may support the making of the order were tailored to the facts of that extraordinary litigation". I adopt that summary here:

> "(1) The court should have regard to all the circumstances of the case and the discretion to award indemnity costs is extremely wide.

(2) The critical requirement before an indemnity order can be made in the successful defendant's favour is that there must be some conduct or some circumstance which takes the case out of the norm.

(3) Insofar as the conduct of the unsuccessful claimant is relied on as a ground for ordering indemnity costs, the test is not conduct attracting moral condemnation, which is an a fortiori ground, but rather unreasonableness.

(4) The court can and should have regard to the conduct of an unsuccessful claimant during the proceedings, both before and during the trial, as well as whether it was reasonable for the claimant to raise and pursue particular allegations and the manner in which the claimant pursued its case and its allegations.

(5) Where a claim is speculative, weak, opportunistic or thin, a claimant who chooses to pursue it is taking a high risk and can expect to pay indemnity costs if it fails.

(6) A fortiori, where the claim includes allegations of dishonesty, let alone allegations of conduct meriting an award to the claimant of exemplary damages, and those allegations are pursued aggressively inter alia by hostile cross examination.

(7) Where the unsuccessful allegations are the subject of extensive publicity, especially where it has been courted by the unsuccessful claimant, that is a further ground.

(8) The following circumstances take a case out of the norm and justify an order for indemnity costs, particularly when taken in combination with the fact that a defendant has discontinued only at a very late stage in proceedings:

(a) Where the claimant advances and aggressively pursues serious and wide-ranging allegations of dishonesty or impropriety over an extended period of time;

(b) Where the claimant advances and aggressively pursues such allegations, despite the lack of any foundation in the documentary evidence for those allegations, and maintains the allegations, without apology, to the bitter end;

(c) Where the claimant actively seeks to court publicity for its serious allegations both before and during the trial in the international, national and local media;

(d) Where the claimant, by its conduct, turns a case into an unprecedented factual enquiry by the pursuit of an unjustified case;

(e) Where the claimant pursues a claim which is, to put it most charitably, thin and, in some respects, far-fetched;

(f) Where the claimant pursues a claim which is irreconcilable with the contemporaneous documents;

> (g) Where a claimant commences and pursues large-scale and expensive litigation in circumstances calculated to exert commercial pressure on a defendant, and during the course of the trial of the action, the claimant resorts to advancing a constantly changing case in order to justify the allegations which it has made, only then to suffer a resounding defeat."

9. The difference between standard and indemnity costs is potentially substantial, because if there is an order for indemnity costs, then prima facie any approved budget becomes irrelevant, and the conduct out of the norm which justifies such an order means that

> "the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party".

See CPR 44.3(3) as well as *Lejonvarn v Burgess* [2020] EWCA Civ 114 at [90]; *Denton and Others v TH White Limited* [2014] EWCA Civ 906 at [43]; *Optical Express Limited and Others v Associated Newspapers Limited* [2017] EWHC 2707 (QB) at [52]; and *Kellie v Wheatley and Lloyd Architects Limited* [2014] EWHC 2886 (TCC) at [17].

10. Losing badly is not of itself a good reason for awarding indemnity costs: *Amoco (UK) Exploration Company v British American Offshore Ltd* [2002] BLR 135 at [2].

11. These, then, are the principles I apply when considering whether there should be an order for indemnity costs.

12. Ms Challenger says that indemnity costs is the appropriate order because of my findings that the Claimant and the Ninth Defendant gave dishonest evidence in circumstances where they knew that the case they brought – in relation to the preliminary issues – was based on that dishonest evidence. By way of example:

    (1) In relation to the claim for a beneficial interest in 2 Montacute Road ("2 MR"), the Claimant had relied on her attempt to register a caution against 2 MR on the false basis that she had contributed to the purchase price, and her Form E in the divorce proceedings contained the same untruth; also false was the Claimant's assertion that she had contributed to the purchase price from money received in her divorce proceedings.

    (2) The Ninth Defendant gave evidence about conversations with the Claimant and the late Mr Ramji about 51 Ravensbourne Park Crescent ("51 RPC") which she knew was untrue, and which I found was untrue evidence.

    (3) The Transfer was set aside because of undue influence, which was brought to bear on Mr Ramji by the Claimant and the Ninth Defendant.

13. Further, Ms Challenger says that in circumstances where the Claimant brought no evidence of detrimental reliance her claim in relation to 2 MR was bound to fail, and it was not reasonable to raise and pursue that claim.

14. Ms Challenger says it follows that this was all out of the norm.

15. Mr Otchie says that it was Ms Challenger's clients, the Second, Third and Eighth Defendants, who had brought a deeply flawed, far-fetched and improbable claim and

pursued speculative claims of dishonesty. This is a reference to that part of their claim – that the Transfer was not signed by Mr Ramji and that his signature was not properly witnessed – which failed.

16. In my view, it was not surprising in the circumstances of this case that the Transfer was challenged. As it happened, I held that the challenge failed, but it seems to me that Ms Challenger is right, and that should not lead to a reduction in the costs of the Second, Third and Eighth Defendants. I deal with this point further below.

17. The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, but the court may make a different order: CPR 44.2(2)(a) and (b). In deciding what order, if any, to make about costs, the court will have regard to all the circumstances, including the conduct of all the parties, whether a party has succeeded on part of its case, even if that party has not been wholly successful, and any admissible offers to settle other than those made under Part 36: CPR 44.2(4). The conduct of the parties includes (a) conduct before, as well as during, the proceedings; (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue; (c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and (d) whether a party has exaggerated its claim: CPR 44.2(5). The court should not be too ready to depart from the general rule even where there are some issues on which the overall winner has lost. See *Fox v Foundation Piling Ltd* [2011] 6 Costs LR 961 [62], and *F&C Investments (Holdings) Ltd v Barthelemy* [2011] EWHC 2807 (Ch).

18. There is a helpful review of the authorities in *Triumph Controls – UK Ltd v Primus International Holding Company* [2019] Costs LR 1571, at paras [12] – [15].

19. The court may order that a party must pay a proportion of another party's costs, an order that costs be paid from or until a certain date only, and an order for costs relating only to a distinct part of the proceedings: CPR rule 44.2(6)(a), (c) and (f). Before making the latter type of order, the court must first consider whether it is practicable to make one of the first two types: CPR rule 44.2(7). An issues-based order is possible, but the rules require the court first to consider making a proportion of costs order or a time-limited order.

20. The court therefore has a wide discretion as to costs, but the starting point is always to identify the successful party. The words "successful party" mean "successful party in the litigation", not "successful party on any particular issue": see *Kastor Navigation Co Ltd v Axa Global Risks (UK) Ltd* [2004] 2 Lloyd's Rep 119 at [143].

21. It is clear that the Second, Third and Eighth Defendants were the successful parties here. The claim to a beneficial interest in 2 MR failed in its entirety, and the claim to set aside the Transfer of 51 RPC succeeded.

22. The next question is whether there is any reason to depart from the general rule.

23. As the notes to the White Book say, at 44.2.10, in any litigation a winning party is likely to fail on one or more issues, and there is no automatic rule requiring a reduction of a successful party's costs if he loses on one or more issues. In my judgment, there should be no reduction in the Second, Third and Eighth Defendants' costs, and there are no grounds whatsoever for making them pay any costs (let alone on the indemnity

basis). The Second, Third and Eighth Defendants were clearly the successful parties in this litigation, and the fact that they did not succeed on the challenge to the signatures on the Transfer does not mean that they should have their costs reduced. After all, if the Claimant and the Ninth Defendant had told the truth, there would have been no need for a trial at all.

24. Further, I reject the suggestion that the evidence of the Claimant and the Ninth Defendant was merely poor recollection. It was not. I was entirely satisfied that they were not telling the truth, and they knew that was the case.

25. It is hard to think of a case which is more "out of the norm" than one where parties have knowingly lied in an attempt to gain a financial advantage, and have perpetuated those lies in their written and oral evidence.

26. In my judgment, this is plainly a case where the Claimant and the Ninth Defendant should pay the costs of the Second, Third and Eighth Defendants on the indemnity basis.

27. I next need to deal with the question of a payment on account of costs.

28. Unless there is a good reason not to do so, where a costs order is made subject to a detailed assessment, the court must make an order that there be a payment of a reasonable sum on account of costs: CPR 44.2(8).

29. I can see no good reason why I should not make such an order. Mr Otchie says that the amount being sought for costs is disproportionate, criticises the Second, Third and Eighth Defendants for not having filed a detailed Statement of Costs, and says that I should conduct a summary assessment, but with respect he has misunderstood the task of the court at this stage.

30. I am not going to assess the costs on a summary basis. This was a 5-day trial. There should be a detailed assessment if the costs cannot be agreed.

31. I have to assess what would be "a reasonable sum on account of costs." In *Cleveland Bridge UK Limited v Sarens (UK) Limited* [2018] EWHC 827 (TCC), Miss Joanna Smith QC sitting as a Deputy High Court Judge (as she then was) held that "a reasonable sum on account of costs", where there has been costs budgeting, is 90% of the estimated costs as per the costs budget and a sum in respect of the incurred costs in the costs budget which is an estimate of the likely recovery subject to an appropriate margin to allow for error: see [21] of *Cleveland Bridge*, but see also the judgment as a whole for the reasoning behind this approach. See also see *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 3258 (Ch), *MacInnes v Gross* [2017] EWHC 127 (QB), and *Harrison v University Hospitals Coventry & Warwickshire NHS Trust* [2017] 1 WLR 4456.

32. Here, where there has been no costs budgeting, the starting point is that Second, Third and Eighth Defendants' costs of the preliminary issues are as set out in the brief Statement of Costs, namely £86,534.08. Whilst this is not a detailed Statement, it is supported by a signed statement from a partner in IDR Law Limited that "The costs stated above do not exceed the costs which the Second, Third and Eight Defendants are liable to pay in respect of the work which this statement covers. Counsel's fees and

other expenses have been incurred in the amounts stated above and will be paid to the persons stated." I accept that as an accurate statement of the costs. Whether or not the costs of the Claimant and Ninth Defendant were less, or substantially less, than that is not relevant. In my judgment, and in the exercise of my discretion, an appropriate percentage of those costs, representing what would be a reasonable sum on account, and bearing in mind that costs will be assessed on the indemnity basis, is 80%, which is mathematically £69,227.264; I will order that there will be a payment on account of costs of £69,000.

33. In my view, this is the right balance between making an order on the basis of incurred costs where I have found that liability is for costs on the indemnity basis, and an estimate of likely recovery of the incurred costs on a detailed assessment where there has been no costs budgeting, and where one has to take a view (which at this stage must be fairly broad-brush) on reasonableness of the costs overall.

34. The parties are agreed that the claim should be transferred to the County Court at Central London, Business & Property List, where it will be assigned to me for case management and trial; they are also agreed that there should be a three-month stay for the parties to consider whether they can settle all outstanding matters, and if the case does not settle, there will be permission to restore for further directions.

35. Counsel are invited to agree an order giving effect to all of this.

(End of judgment)