



Neutral Citation Number: [2023] EWHC 2074 (Ch)

Case No: BL-2020-000672

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (Ch.D)

Rolls Building
Fetter Lane
London, EC4A 1NL

Date: 9 August 2023

Before:

MR NICHOLAS THOMPSELL
sitting as a Deputy Judge of the High Court

Between:

SHABBIR GHEEWALLA

Claimant

- and -

- (1) SAFFANA RASUL
(2) AKEELA AHMED (claim discontinued)
(3) HIDAYAT ALI RASUL (claim dismissed)

Defendants

JUDGMENT

MR NICHOLAS THOMPSELL:**1. INTRODUCTION**

1. This short judgment relates to an application made by Mr Shabbir Gheewalla (whom I shall refer to as ‘**Mr Gheewalla**’ or the ‘**Claimant**’) in relation to his claim for a *quantum meruit* award for services that he provided to the partnership known as the “Ambassador Hotel Group Partnership” (the ‘**Partnership**’) or to the owners of the property formerly comprised in the Partnership.
2. In my judgment of 12 December 2022 (*Gheewalla v Rasul and ors* [2022] EWHC 3180 (Ch) (the “**December Judgment**”), I dismissed the Claimant's claim for a consultancy fee due to him equal to one third of the profits from the Partnership based on two alleged oral agreements. I also dismissed also his claim against the Third Defendant, Mr Rasul, for alleged interference in such agreements. However, I accepted that he had a claim against the First Defendant, Dr Rasul and the Claimant's daughter, Mrs Ahmed for a *quantum meruit* award for the services that he provided to Dr Rasul and Mrs Ahmed during the period from 30 April 2014 to 31 December 2016, This was , however, on the limited basis that the only services to be valued for the purposes of the *quantum meruit* claim were the services actually provided by Mr Gheewalla in relation to the management of the 51 flats.
3. Mr Gheewalla had discontinued his claim against the Second Defendant. Mr Gheewalla (through his counsel) has accepted that notwithstanding this discontinuance, his daughter will remain jointly liable for any award made against the First Defendant.
4. Following directions provided by Deputy Master Teverson through an order dated 4 October 2021, the determination of these matters was to be dealt with initially through a trial as to liability only, on the basis that if a finding be made that monies were due to Mr Gheewalla, the amount owing to him should be determined by a further hearing. Accordingly, the December Judgment dealt only with the question of liability and a further hearing will be needed to deal with quantum.

2. THE APPLICATION

5. Following directions provided by me by means of orders on 8 February 2023 and 9 June 2023, the parties, having failed between them to agree on the identity of a jointly appointed independent expert to assist with the quantification of the *quantum meruit* claim, the Claimant made an application to the court for the court to appoint an expert from amongst those proposed by the Claimant and by the First Defendant, and also vacating the originally scheduled hearing date listed in the three day trial window after 30 August 2023 and rescheduling this for the earliest available date after 31 October 2023. The application requested for the matter to be dealt with without a hearing.
6. The Claimant's notice was accompanied by a draft order and a supporting witness

statement with exhibits.

7. The First Defendant has responded with her own witness statement also supported by exhibits. The First Defendant has raised no objection to this matter being dealt with without a hearing, and I agree that it is appropriate that I should determine the order to be made in this manner. However, in the interests of open justice I am setting out in this judgment my reasons for making the order.

3. THE APPOINTMENT OF AN INDEPENDENT EXPERT

8. The principal matter to be dealt with in the application is the appointment of an independent expert to be jointly instructed by parties. The parties were required by my previous order each to propose three possible persons who would be suitable to act as independent expert in this matter and to agree between them which to appoint, or in default of agreement to apply to the court to determine this.
9. The Claimant has made various suggestions in this regard, including various recruitment agencies but for the most part these were made or, as far as the First Defendant could tell, appeared to be made, without checking the availability of the suggested expert. They were also made without providing to the First Defendant any CV or other information that would allow the First Defendant to make a reasoned assessment of the suitability of such suggested experts. The First Defendant also complains that in the case of some of these proposed experts, the Claimant had unilaterally sent to them prejudicial emails including controversial information.
10. However the Claimant has, at a late stage, identified a Mr Ian Stafford OBE as his proposed joint independent expert.
11. The First Defendant, on the other hand, at an earlier stage has proposed two possible candidates. The first is Mr M Raza Khan of Samson Consultants Ltd. The second is Mr Bruce Maunder Taylor.
12. The First Defendant objects to Mr Ian Stafford on the basis that his CV, and her independent internet search, have revealed that Mr Stafford had no experience in providing expert reports on property management and that his error of specialism lay within employment law, with a specific interest in disabilities, mental and physical health.
13. The Claimant objects to the First Defendant's nominated experts on the basis that in his view, as expressed in his witness statement, they "*lack the necessary qualifications, knowledge, skills, expertise and experience required... Consequently their ability to provide impartial and objective evidence to the court would be compromised*". The Claimant has also complained that Mr Maunder failed to provide a figure of how many reports he has prepared for a court and how many trials he has attended. This seems to me to be a poor basis for objection as Mr Maunder has clarified that he prepares one or two reports a month and gives oral evidence to the court three or four times a year. This is clearly greater experience in appearing in court than Mr Stafford, who, the court understands,

has only appeared once to give oral evidence as an expert in court.

14. I have reviewed the CVs of all three proposed independent experts, in each case having regard to the matters on which the court requires expert evidence.

15. Essentially, what the court is looking for here is evidence on two matters:

- a. what amount of time and effort would the expert expect to be needed (I suggest expressed on a monthly basis) for a person to act as the owners' representative in supervising the management of letting 51 flats (of the nature of the flats in question) and making any necessary decisions on the part of the owners, in circumstances where the lettings were being managed by a firm of letting agents, acting on the terms on which they were acting; and
- b. what would have been an appropriate range of remuneration for a person providing such a service (I suggest expressed either as an hourly rate or as a monthly service fee) as an independent contractor operating on an arm's length basis during the period from 30 April 2014 to 31 December 2016.

16. Having reviewed the CVs of all three proposed independent experts, I note the following points which appear to me to be salient in this context:

- a. Mr Stafford is a former army officer. He retired in 2014 after 37 years' service reaching the rank of Lieutenant Colonel. He has worked as the manager of a small hotel and in that context had responsibility for recruiting staff. He also worked as executive officer for private insurance company in London, with responsibilities that included human resources. Since 2017 he has been engaged in writing over 120 reports for DJ Fox and Associates and as a volunteer has supported veterans with physical or mental health conditions into employment. He uses his military experience and expertise as an employment expert to provide assessments of future career and earnings across a wide range of sectors, concentrating on popular sectors for ex-service personnel, such as civil uniformed services and a broader range of services that has included within commercial sectors (amongst many others) property management. It appears that the main focus of his reports is to consider the effect of disability or injury on future earnings of staff, this being one of the main focuses of D J Fox & Associates Ltd which provides recruiting services for ex-military personnel, carries out training and produces civilian and military employment reports for personal injury cases.
- b. Mr Raza Khan's expertise is in relation to market valuations, including in relation to lease extensions and lease enfranchisement and commercial rent reviews. The bulk of his experience is within property development of residential schemes in and around London. He does not within his CV claim any particular expertise in managing, or recruiting persons to manage, flats.
- c. Mr Maunder Taylor has had experience as a partner in a firm of Chartered Surveyors, Estate Agents and Property Managers since 1970. His specialisations include specialisation in residential block management and

assisting partners with service charge management disputes. His firm employs management staff and he has access to employment records for such staff for the period in question. He has contributed two sections to RICS ISURV entitled, "*Adding a Block Management Portfolio to Your Business*" and "*Roles, Relationships and Main Tasks*" and provides training courses on different aspects of residential block management.

17. Having reviewed these three CVs, I judge Mr Maunder Taylor to have the most appropriate experience. Mr Stafford clearly has wide experience of employment in general but it appears that very little of this is focused on the specific area of letting management. Mr Raza Khan has experience in relation to property valuation and property development but does not claim experience in relation to property management or employing property managers. Mr Maunder Taylor clearly is immersed in the world of property management and, as such, is in the best position to provide a report that would be useful to the court. Accordingly I will make an order requiring the parties to appoint Mr Maunder Taylor.

5. THE HEARING DATE

18. Largely as a result of the Claimant failing to deal with the original timelines for proposing (with appropriate detail, and having confirmed their willingness to act) it is not now practical to proceed with the scheduled hearing dates for the final determination of the quantum of the Claimant's *quantum merit* claim. I therefore accept that this should be rescheduled for the earliest available date after 31 October, 2023.

6. COSTS

19. The Claimant has proposed that costs be reserved to the final determination of this matter date. The First Defendant, however, has asked for its costs in relation to the making of this order.
20. I agree that she should be given costs for the following reasons. The appointment of an expert has been unduly protracted and this, in my view, is almost entirely due to the Claimant not properly engaging with the process by finding expert was suitable and willing to act, and procuring CVs for those expert so that the First Defendant could make proper evaluation of their suitability. This was only done by the Claimant at a late stage when put forward Mr Stafford. To get to the stage where we are now, the Claimant has made three separate applications and I agree with the First Defendant that this should not have been necessary. The current application before me could have been made by consent and it is unclear why the Claimant withdrew from a previous proposition that it would be.
21. In my order of 9 June 2023, I ordered costs in the case. The First Defendant should be granted her costs relating to the appointment of the expert incurred after that date, to be assessed, if not agreed, on the standard basis.