



Neutral Citation Number: [2023] EWHC 248 (KB)

Case No: QB/2021/000899

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL  
Date: 8 February 2023

**Before:**

**John Kimbell KC**  
**(sitting as a Deputy High Court Judge)**

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**Between:**

**(1) CAMBERLEY GROUP PLC**  
**(2) CAM LOCK LIMITED**  
**(3) BROADOAK MANUFACTURING LIMITED**

**Claimants**

**- and -**

**(1) PAUL FOSTER**  
**(2) MARK PILLING**  
**(3) SUCHADA CHURAT**

**Defendants**

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**Mark Stephens** (instructed by **Laytons LLP**) for the **Claimants**  
**James Wibberley** (instructed by **Blake Morgan**) for the **First Defendant**  
The Second and Third Defendants were not represented

**APPROVED JUDGMENT ON COSTS**  
**FOLLOWING WRITTEN SUBMISSIONS**

This judgment was handed down remotely by circulation to the parties' representatives by email and will be released for publication on the National Archives caselaw website. The date and time for hand-down is deemed to be 10.30am on 8 February 2023

**John Kimbell KC sitting as a Deputy High Court Judge:**

**Introduction**

1. Following the handing down of my judgment [2022] EWHC 2643 on 25 October 2022 (**‘the Judgment’**), the parties have exchanged written submission on in relation to costs. The first round of written submissions from all parties were received on 9 November 2022 and the second round of responsive submissions were received on 16 November 2022. All the submissions were helpfully concise and well structured.
2. As set out more fully described in paragraphs 1 – 42 in the Judgment these proceedings concerned a dispute between a family-owned group of companies (**‘the Camberley Group’**) and three former employees of companies in the group. The claims, which are summarised in the table below, included: breach of fiduciary duty, breach of contract, unlawful interference with contractual relations, misappropriation of funds and unjust enrichment. The First and Third Defendants denied all liability. The Second Defendant has made some limited admissions but denied for liability most of the claims advanced.
3. The table below shows the original pleaded claims against the Defendants and the sums awarded:

<b>Claim No.</b>	<b>Nature of Claim</b>	<b>Def.</b>	<b>Amount claimed</b>	<b>Nature of Damages Claimed</b>	<b>Sum Awarded</b>
1	Breach of warranty	D1	£101,049	Return of settlement sum	£97,449 (C1)
2	Breach of warranty	D1	£29,164 <sup>1</sup>	Misappropriated funds	£20,050 (C1) + £9,214 (C2)
3	Wrongful inducement of breach of contract / conspiracy	D1	£24,274	Loss of Management Time	0
4	Wrongful inducement of breach of contract / conspiracy	D1	£79,638	Cost of investigation consultants	0
5	Wrongful inducement of breach of contract / conspiracy	D1	£80.920	Loss of future business with CJ Carter	0
<b>TOTAL CLAIMS AGAINST D1 ALONE</b>			<b>£261,607</b>		<b>£126,713</b>
6	Breach of contract / conspiracy	D2	£80.920	Loss of future business with CJ Carter	0

<sup>1</sup> Originally all claimed by C2.

7	Breach of contract / conspiracy	D2	£79,305	Cost of investigation consultants	£4,500 (Cyfor)
8	Breach of contract / Conspiracy	D2	£31,882	Loss of Management Time	0
9	Breach of contract conspiracy	D2	£2000	Securing IT system	£2000 (C3)
10	Unjust enrichment / deceit	D2	£5,108	Dishonest expenses claims	0
<b>TOTAL CLAIMS AGAINST D2 (without involvement of D3)</b>			<b>£199,215</b>		<b>£6,500 (C3)</b>
11	Unjust enrichment claim / deceit	D2 and D3	£25-50k	Overpaid wages	£15,486
<b>TOTAL CLAIMS AGAINST D2 + D3</b>			<b>£25-50K</b>		<b>£15,486</b>

4. Claims 1 and 2 in the above table were very closely related in terms of the evidence on which they were based. They are referred to by the parties and in the judgment collectively as “The Warranty Claim” (Judgment para. 30). This claim had three aspects and concerned D1 alone. What was alleged was that:
- a. Mr Foster had submitted false invoices for work done and/or items supplied in relation to his home in the total sum of £29,000 which were paid by C1/C2.
  - b. These false claims constituted “circumstances of which he is aware or ought reasonably to be aware which would amount to a material breach of the terms and conditions of employment which would justify summary dismissal”. These were the words in a warranty given by Mr Foster in a settlement agreement with C1 when he left his employment with the Camberley Group.
  - c. As a matter of law if (a) and (b), were proved, there is a claim for the repayment of the £119,000 which C1 had paid D1 under the settlement agreement.
5. Mr Foster lost on all three aspects of the Warranty Claim. In the Judgment (paras. 72 – 112) I rejected all the ways in which he said that he was either specifically or generally authorised by Mr Griffiths (as the chairman of C1 and the majority shareholder) to present the false invoices and have them paid by C1 or C2.

6. Claims 2 – 9 in the table above were referred to in the Judgment as the “The Damages Claim”. This claim was advanced against both D1 and D2. The factual core was an alleged conspiracy between Mr Foster and Mr Pilling to cause damage to C3 by setting up a rival business and trying to lure away virtually all of C3’s customers. The claim was put on a different legal basis against Mr Foster and Mr Pilling because the relevant events took place after Mr Foster had left his employment with the group but while Mr Pilling remained an employee. The claim was therefore framed in tort against Mr Foster (as a claim for unlawful interference with the contractual relations between Mr Pilling and C3) whereas the claim against Mr Pilling was for simple breach of the implied term of loyalty and fidelity in his contract of employment.
7. Mr Foster and Mr Pilling both denied that there was any such conspiracy to set up a company and lure away C3’s customers. They alleged their discussions about going into business together were nothing more than pipedreams. They both alleged that in any event the Camberley Group had suffered no loss.
8. I found that there was indeed a conspiracy between Mr Pilling and Mr Foster the aim of which was to lure away clients of C3 and that it was acted upon. At the heart of the case against them was a detailed business plan which was recovered from Mr Pilling’s work laptop. This listed all of the customers of C3 which they intended to lure away and a detailed timetable for doing so. Mr Pilling had lent Mr Foster money and Mr Foster had (through his father) taken a lease of premises from which a rival business might be operated. I rejected his evidence that these industrial premises were intended only for the storage of furniture and personal effects. The trial of the claim involved the piecing together of fragments of evidence about what the two men did and discussed over an extended period of time. The conclusion on liability is in para 150 of the Judgment.
9. Although I found the conspiracy case proved on the evidence, apart from two relatively small items of loss and damage, in the total sum of £6500 awarded against Mr Pilling, the Claimants failed to prove that they had suffered any loss and damage as part of claims 2 - 9.

10. The third category of claims was referred to by the parties and in the Judgment as the unjust enrichment claims. This encompasses claims no 10 and 11 in the above table. Claim 10 was an allegation against Mr Pilling alone that he made false mileage claims. This was abandoned at the beginning of the trial, leaving just one such claim, which I rejected. However, the background was that Mr Pilling admitted that he had dishonestly submitted other false claims for personal items.
11. Claim 11 was a claim for overpaid wages advanced against Mr and Mrs Pilling jointly. They both denied the false wages claim but I found that false claims for hours worked had been submitted dishonestly by Mr Pilling. I ordered them to repay £15,486 in overclaimed wages.
12. The trial lasted five days. There were four full lever arch files of documents and another four lever arch files of authorities. Looking at the matter very broadly, the Warranty Claim and Damages Claim took up almost all the court time in roughly equal portion. The unjust enrichment claims involved very little evidence and would not have justified proceeding in the High Court. Had the unjust enrichment claim been pursued on its own it would have either been a day or half day County Court trial.
13. No party drew my attention to any relevant without prejudice save as to costs offers.

### **Submissions**

14. The Claimants submitted that costs should be awarded on an issues basis. The Claimants sought:
  - a. Their costs against D1 on the Warranty Claim
  - b. Costs against D1 and D2 for the costs of the liability part of the Damages Claim
  - c. No order on the quantum sub-issue in the Damages claim.
  - d. No order on the false mileage claim
  - e. Costs against D2 and D3 on the unjust enrichment claim.

The Claimants sought an assessment on the indemnity basis. This was justified in part on the basis of criticisms in the judgment of D1's evidence in relation to the conspiracy claim and criticism of his conduct in relation to and communications with Mrs Foster.

The indemnity assessment in relation to Mr Pilling was based on some correspondence with Mr Pilling's former solicitors marked without prejudice save as to costs in which it appears that Mr Pilling at one point contemplated admitting parts of the claim against himself and giving a statement which would have assisted the Claimants' Damages Claim against D1.

15. Mr Wibberley, on behalf of Mr Foster, accepted that Mr Foster ought to pay C1's costs of the Warranty Claim. However, the following orders were sought:
  - a. In so far as C2 has incurred any additional costs to those incurred by C1, D1 should pay 50% of those.
  - b. C3 should pay D1's costs of the Damages Claim; alternatively 80% of D1's costs.
16. He submitted that assessment ought to be on the standard basis and that enforcement ought to be stayed until the conclusion of the financial remedies proceedings in the Family Court between Mr and Mrs Foster.
17. The Second and Third Defendants submitted that the Claimants' conduct was disproportionate and had the true size of the claim been appreciated earlier it would have been resolved in a lower court or settled. They had spent £20,000 in costs before they ran out of money and were forced to represent themselves.

### **Principles**

18. Counsel for the Claimants and the Defendants agreed that the Court must apply CPR 44.2(2).
  - (2) If the court decides to make an order about costs –
    - (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
    - (b) the court may make a different order.
19. I also reminded myself of CPR 44.2(4) – (6)

- (4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –
- (a) the conduct of all the parties;
  - (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
  - (c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.
- (5) The conduct of the parties includes –
- (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
  - (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 claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.
- (6) The orders which the court may make under this rule include an order that a party must pay –
- (a) a proportion of another party's costs;
  - (b) a stated amount in respect of another party's costs;
  - (c) costs from or until a certain date only;
  - (d) costs incurred before proceedings have begun;
  - (e) costs relating to particular steps taken in the proceedings;
  - (f) costs relating only to a distinct part of the proceedings

20. In my judgment, there can be no doubt that the Claimants were overall the successful party and the Defendants the unsuccessful party within the meaning of CPR 44.2(2). I do not consider it reasonable or proportionate to distinguish between the individual claimant companies. They are all part of the same corporate group and whether one rather than another suffered damage was largely a matter of accident or internal accounting. They had a complete identity of interest as they were all in the joint ownership of Mr and Mrs Griffiths. I have no doubt the legal costs were all paid under a single account in the name of the Camberley Group. The evidence of Mr Acey and Mr Dobrowolski was deployed for all the claims. It would, in my judgment, be wholly artificial to make different cost awards according to which claimant within the Camberley Group was advancing any particular claim.
21. However, it is also clear that the Defendants succeeded on some significant issues. The claim in tort failed against Mr Foster even though the conspiracy itself was proved as a

matter of fact. The proof of loss and damage is essential to a claim in tort so the claim against Mr Foster failed overall. The loss and damage claim against Mr Pilling was also nearly all rejected too and the one false mileage claim made against him was also rejected.

22. I have regard to the following commentary in the 2022 White Book at 44.2.8 and 44.2.10 about how best to deal with situations where parties have succeeded and lost on different issues:

“In numerous cases the Court of Appeal has stressed that the courts should be ready to make proportionate (or percentage) costs orders which reflect, not merely the overall outcome of the proceedings, but also the loss on particular issues.

In Multiplex Constructions (UK) Ltd v Cleveland Bridge UK Ltd [2008] EWHC 2280 (TCC); 122 Con. L.R. 88, a case where many claims and counterclaims were brought (some of which succeeded and some of which failed) Jackson J, after reviewing the authorities on r.44.2 generally as they then stood, extracted from them eight “principles” ([72(i)] to [72(viii)]), including two principles relevant to proportionate costs orders, in particular (1) that in many cases the judge can and should reflect the relative success of the parties on different issues by making a proportionate costs order ([72(v)]), and (2) that in assessing a proportionate costs order the judge should consider what costs are referable to each issue and what costs are common to several issues; it will often be reasonable for the overall winner to recover not only the costs specific to the issues which he has won but also the common costs ([72(viii)]).

...In Grupo Hotelero Urvasco SA v Carey Value Added SL [2013] EWHC 1732 (Comm); [2013] 5 Costs L.R. 669 (Blair J), a complex case where the losing claimant succeeded on three important issues, the trial judge concluded that the costs order should reflect, in a substantial way, the defendant’s failure to make good a particular argument, and, at least to an extent, the outcome of two other issues, and ordered that the defendant’s costs should be reduced by 25%.”

As the authorities referred to below indicate, in summary, the position is that, where a party successful overall has been unsuccessful on an issue (or issues), being an issue which that party raised, pursued or contested, a court (1) should consider adopting an issue-based approach, and (2) in deciding what order to make in relation to that issue (or issues) may decide (a) that party should be deprived of his costs of that issue, or a proportion of those costs, or those costs from or until a certain date;



or even (b) that that party should pay the costs of the otherwise unsuccessful party on that issue, or a proportion of those costs, or those costs from or until a certain date.”

23. I consider that the loss of profits claim due to the alleged loss of Craig Carter was a weak one but I do not accept the submission made on behalf of Mr Foster that it was so poor that it should not have been pursued. The chain of events involving the approach to Craig Carter by Mr Foster pretending to be someone else and the removal of Craig Carter’s tools reasonably led the Claimants to conclude that Craig Carter had indeed been lured away. The same applies to the various claims for investigation costs. The claimants failed to adduce evidence to satisfy the legal test for this type of claim but the claim itself was not misconceived or improper.
24. However, the problem in this case in respect of costs is that Mr Pilling was not in any way involved in the Warranty Claim and Mr Foster was not involved in any way in claims 10 and 11. I cannot therefore simply order the Defendants (or even just Mr Pilling and Mr Foster) to pay a proportion of the Claimants’ overall costs of the litigation. It would be unfair to order Mr Pilling to pay any part of the Claimants’ costs of the Warranty Claim and it would be unfair to order Mr Foster to be liable in any way for the Claimants’ costs of pursuing claims 10 and 11. I am therefore driven to the conclusion that I have no alternative but to make an issue based costs order.
25. In light of the foregoing and having considered all the points made in the parties’ written submissions, I consider that the fair and just costs order to make is as follows:
  - a. Mr Foster to pay all of the Claimants’ costs of the Warranty Claim (claims 1 and 2 in the table above).
  - b. Mr Foster and Mr Pilling to be jointly and severally liable to pay 66% of the Claimants’ costs incurred in relation to the Damages Claim (claims 3 – 9 in the table above).
  - c. There be no order in relation to claim 10 given the context in which the claim arose, namely other, admittedly false, expenses.
  - d. Mr and Mrs Pilling to be jointly and severally liable for the costs of the unjust enrichment claim (claim 11 in the table above) but their liability is to be capped

at £10,000. This cap is set at this level to take account of the low level of damages recovered but is also intended to reflect the fact Mr Pilling knew he had dishonestly reported more hours than his wife had actually worked.

26. As to whether any part of the costs ought to be assessed on the indemnity basis rather than the standard basis, I consider that with the exception of the Damages Claim and claim 11, the assessment should be on the standard basis.
27. The reason for ordering the Damages Claim to be assessed on the indemnity basis is that the conduct of Mr Foster and Mr Pilling in relation to this claim and its particular circumstances took the situation out of the norm within the meaning of Excelsior Commercial and Industrial Holdings Ltd [2002] EWCA Civ 879 as explained in para 44.3.8 of the White Book.
28. I rejected Mr Foster and Mr Pilling's evidence in relation to the Business Plan in strong terms. They were clearly both involved in a detailed plan to damage the Camberley Group and decided cynically to seek to deny it. Their attempts to explain away the details in the Business Plan, the hire of the business premises, Mr Pilling's loan to Mr Foster involved both of them in giving fanciful and knowingly untruthful evidence.
29. As to the appropriate basis for assessment in relation to the Warranty Claim, although some of the language used by Mr Foster to his ex-wife in communications is deeply regrettable, it does not seem to me to be a reason to award indemnity costs. His conduct in relation to the witness summons in relation to Mrs Foster is also not something which in my judgment leads to an award of assessment on the indemnity basis. He simply served a summary of what he thought Mrs Foster would say. The fact that she served a statement saying something very different does not indicate an abuse of process. As to the merits of the Warranty Claim itself and Mr Foster's evidence in relation to it, I consider it is in a different category to his implausible evidence in relation to the Business Plan. All in all, although he lost on it, the manner in which it was defended was not out of the norm in the Excelsior sense.

30. The defence of claim 11 was “out of the norm” because Mr. Pilling knew he had deliberately overstated the hours his wife had worked and they gave false evidence attempting to justify the working time reported.
  
31. I accede to the request to stay the enforcement of the costs orders against Mr Foster pending the outcome of the financial remedies hearing due to take place before HHJ Hess on 21 – 23 March 2023.
  
32. I would ask that the parties draw up an order to reflect this judgment on costs.