

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
TECHNOLOGY AND CONSTRUCTION COURTS (QBD)

Rolls Building
Fetter Lane
London, EC4A 1NL

Date: 29 July 2020

Before :

THE HONOURABLE MR JUSTICE FRASER

Between :

RG Securities (No.2) Limited

Claimant

- and -

(1) Allianz Global Corporate and Specialty CE

(2) Building Lifepans Limited

(3) R Maskell Limited

Defendants

**Ruling on summary assessment of costs on Third Defendant's
application for summary judgment**

Alan Tunkel (instructed by Foskett Marr Gadsby & Head LLP) for the **Third Defendant**

Catherine Piercy (instructed by Stewarts Law) for the **Claimant**

Mr Justice Fraser:

Introduction

1. My judgment on the application by the Third Defendant, R Maskell Ltd (“Maskell”), for summary judgment on its defence against the Claimant, dismissed that application and found for the Claimant. The neutral citation for this judgment is [2020] EWHC 1646 (TCC), the judgment being handed down remotely using the Covid-19 protocol. The parties were given an opportunity to agree the consequential order, including that element of it dealing with costs. They were unable to agree the latter and therefore asked for that matter to be dealt with in writing.
2. The central basis of the substantive application was that the claim against Maskell was statute barred. There was also an alternative application, should the main one fail, whereby Maskell sought permission to bring a counterclaim against the Claimant, together with an associated company (not yet a party to these proceedings), R Maskell Loughton Ltd (“Maskell Loughton”), seeking to bring a Part 20 claim against the Claimant too. That latter and alternative application was not necessary for reasons explained in the judgment.
3. The parties lodged their written submissions on costs, which I limited to two pages each. There is a danger, when costs are to be dealt with in writing, that a most dispiriting type of satellite litigation ensues. The costs at stake on this application are not large, and the amount of time and effort spent arguing in written submissions can sometimes match the level of costs being argued about. The page limit was designed to avoid that.
4. The Claimant, having successfully fought off the application, understandably seeks its costs, with a summary assessment in the sum of £25,101, the amount in its costs schedule exclusive of VAT. VAT was included in the costs schedule, giving a grand total of £30,121.80. However, if the Claimant is VAT registered, it can reclaim the VAT and the summary assessment figure should not include it. If the Claimant is not VAT registered, the costs I award below should be increased by the amount of VAT applicable at the time, as the Claimant will not be able to reclaim the VAT.
5. Maskell challenges the costs total sought by the Claimant for a number of reasons, seeks its own costs of issuing the failed application, challenges the number of hours spent by the Claimant’s legal advisers, challenges the totals, and provides an alternative calculation of the Claimant’s costs in the sum of approximately £10,000 only.
6. A figure awarded by way of summary assessment is simply that – a summary assessment. It is not an item by item detailed assessment, and this ruling should not be taken as constituting one. The figure awarded by the court is not intended to be a full indemnity to the party receiving its costs, and some deduction from the overall total is justified. Costs have to be proportionate and reasonably incurred, and proportionate and reasonable in amount, as this is a requirement under CPR Part 44.4(1)(a). I do not consider that counting the number of pages of exhibits to witness statements – which is one of the approaches adopted by Maskell in its submissions to justify a reduction -

is of particular assistance. This was a reasonably complex application that led to a reserved judgment. The court has a general grasp of what is a proportionate level of costs of such applications, although specific items within the overall total do also have to be considered.

7. There are two specific points that I wish to deal with individually in this ruling. The first is the submission that Maskell was justified in issuing the application originally, because deliberate concealment (with the consequent impact upon limitation) was only pleaded by the Claimant in the Reply and Defence to Counterclaim. The matters at [10] to [16] in the substantive judgment on the application make it clear that the potential concealment arises as a result of certain statements made by solicitors acting either for Maskell or Maskell Loughton in the property sale. It is correct that these were not pleaded in the Particulars of Claim. However, one would not necessarily expect them to be, as limitation is a procedural bar. This means that limitation does not extinguish a claim, it merely raises a procedural bar that prevents it being advanced. Accordingly, limitation is raised in a defence. The correct place to meet these points in this case, after they were raised by Maskell in the Defence, was in the Reply.
8. However and in any event, even after these points were pleaded in the Reply, Maskell continued to press its application and fully argued it. Submitting that Maskell was justified in issuing the application might be a good point had Maskell decided not to proceed with the application, but instead sought to withdraw it and asked for the costs of issue. However, in circumstances where the application was continued, it is not a justifiable reason to award Maskell any of its costs, given the application failed. The general rule under CPR Part 44.2(2)(a) is that the unsuccessful party pays the costs of the successful party. There is no reason to displace that here, nor is there any particular reason to treat the costs Maskell incurred in issuing it differently.
9. The second point relates to a challenge to the level of Ms Piercy's brief fee, which is £8,000. The submissions lodged by Maskell maintain that this is excessive, and compare it unfavourably with the lower figure of £4,200 for Mr Tunkel. This is a bad point for the following reason. The only fee paid to counsel for the Claimant on the costs schedule is the brief fee. Counsel's fees for Maskell are however split into two; part is for "advice/conference/documents", in the sum of £5,610; a second part is the brief fee for the hearing itself of £4,200. Thus counsel's fees for Maskell total £9,810, compared with £8,000 for the Claimant. It would be extremely difficult to conclude that the comparison, which Maskell seeks to have the court make, is a valid one. In order to compare like with like, the total figure for counsel's fees of £8,000 should be compared with the total figure for counsel's fees of £9,810, not compared with only one component part of it of £4,200. I find Ms Piercy's brief fee entirely reasonable and proportionate in any event.
10. I find that the time spent and the hourly rates are reasonable and proportionate. There is nothing in any of the other points raised by Maskell. However, some global reduction is justified and I award the Claimant the VAT-exclusive sum of £20,000 by way of summary assessment of its costs of the application. This sum is to be paid within 14 days.