



Neutral Citation Number: [2019] EWHC 3510 (Ch)

Case No: BL-2019-000587

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

The Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Date: 16/12/2019

**Before :**

**MASTER TEVERSON**

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**Between :**

<b>FRANCIS LAWRENCE LITTLE</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>BLOOMSBURY LAW SOLICITORS</b>	<b><u>Defendant</u></b>

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**Yasmin Yasseri** (instructed by **Howard Kennedy LLP**) for the **Claimant**  
**Richard Ritchie** (instructed by **Bloomsbury Law Solicitors**) for the **Defendant**

Hearing dates: 30 September 2019

**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MASTER TEVERSON

**MASTER TEVERSON:**

1. This is my reserved judgment following the final hearing of a Part 8 claim which took place before me on 30 September 2019.
2. By a Part 8 claim issued on 20 March 2019, the Claimant, Francis Lawrence Little, claimed the following relief:-

“A declaration that

  - a Francis Lawrence Little is known as Frank Turner
  - b The Claimant is the registered owner of property known as 61 South Park Crescent, Catford, London, SE6 1JJ (“the Property”)
  - c Upon the sale of the Property the Claimant was rightfully entitled to the proceeds of sale, the sum of £349,995
  - d The Defendant, being solicitors instructed by the Claimant to manage the sale of the Property have wrongfully, unjustifiably and unreasonably withheld such proceeds of same.
  - e An order that the Defendant do pay the proceeds of sale to the Claimant
  - f An order that the Defendant do pay interest on the proceeds of sale at 8%, the sum being due as a commercial debt from 15 June 2015 until 3 March 2019 being £104,020.56 and continuing at the daily rate of £76.71 until judgment or alternatively at such rate and for such period as the court thinks fit
  - g an order that the Defendant pay the costs of this application
  - h such further or other orders as may be just.”
3. The Defendant, Bloomsbury Law Solicitors, acted for the Claimant on the sale of the Property referred to in the claim form. The sale completed on or about 12 June 2015. Since that date and prior to the issue of the claim, the balance of the proceeds of sale, after redemption of the mortgage and costs of sale, totalling £330,658.36, were retained by the Defendant on client account.
4. Following the issue and service of the claim, the Defendant under cover of a letter dated 1 April 2019 transferred the sum of £258,351.27 to the client account of the Claimant’s solicitors, Howard Kennedy. On 3 June 2019, the Defendant accounted to the Claimant for a further £1,153.61 representing the interest that had accrued on the money in its client account from the date of sale to 1 April 2019.
5. By its acknowledgement of service dated 5 April 2019, the Defendant stated that it intended to contest the claim in relation to issues d, e, f and g. It said it was neutral and deferred to the court in relation to issues a, b and c.
6. As a result of the transfer made to the Claimant on 1 April 2019, I am not called on to determine the entitlement of the Claimant to the proceeds of sale. The main focus of the claim apart from the specific issues relating to disputed deductions and interest is

whether the Defendant acted reasonably or unreasonably in withholding from the Claimant the balance of the proceeds of sale in the period between completion of the sale in June 2015 and 1 April 2019.

7. This is the second set of proceedings between the parties. The first involved the presentation of a petition by the Claimant to wind up the Defendant firm of solicitors. That petition was dismissed on 15 August 2016. It was ordered that the Claimant pay the Defendant's costs on an indemnity basis.
8. At the hearing before me, the issues in dispute between the parties were:-
  - a. Was the Defendant entitled to deduct
    - i. £9,469.87 interest on the costs awarded to it under the order of 15 August 2016 dismissing the winding up petition with costs on an indemnity basis;
    - ii. £95.72 interest on the costs of the detailed assessment of the costs under a final costs certificate dated 25 September 2018;
    - iii. £15,382.50 further costs claimed by the Defendant as costs arising since the order of 15 August 2016 dismissing the winding up petition.
  - b. Whether the Claimant is entitled to interest in addition to the interest that the proceeds of sale earned in the Defendant's hands, being the client account held for the Claimant
  - c. The costs of these proceedings.
9. Issues b and c in particular require a review of the background history. A substantial amount of written evidence has been filed both in relation to these proceedings and the earlier winding up proceedings. For the purposes of this judgment I will provide no more than a summary. I have read and re-read all the evidence for the purposes of preparing this judgment. On a hearing of this type, on written evidence alone, and based on the written and oral submissions by counsel, the court is not in a position to embark on a determination of disputed issues of fact in a way that it would at a trial.
10. The Defendant, Bloomsbury Law Solicitors, on or about 26 March 2015 accepted instructions to act on behalf of the Claimant in respect of the sale of the Property. The Property was registered in the name of Frank Turner. The lawyer handling the transaction on behalf of the Claimant was a Mr Bryan Lewis, a consultant employed to work at the Defendant under the supervision of a partner, Mr Jamil Ahmud. Mr Lewis was provided with documents evidencing the Claimant's identity under the name Francis Lawrence Little and a copy of a statutory declaration dated 16 February 2014 confirming that he was also known as Frank Turner and that Francis Lawrence Little and Frank Turner were one and the same person.
11. The sale completed on or about 12 June 2015. The proceeds of sale were recorded on the Defendant's completion statements as £349,955.00. There is a £50 discrepancy

between this figure and the contract price and the sale price referred to on the office copy entries.<sup>1</sup> Nothing turns on that discrepancy.

12. After the Property had been sold, but before the balance of the proceeds had been paid to Mr Little, Mr Ahmud, became suspicious that the Claimant might not be the true owner of the Property and had no right to sell it.
13. Following completion, Mr Lewis asked Mr Ahmud to effect three transfers, in addition to a transfer redeeming the mortgage in the sum of £13,385.47. The first was a transfer of £25,000 in favour of a Mr D. Gunns. The second was a transfer of £3,251.95 in favour of The Key Exchange. The third was a transfer of £305,771.36 to East West Bridge Trading Limited, a company based in Hong Kong, in sterling to HSBC in Hong Kong.
14. The Defendant's conveyancing file shows that Mr Ahmud queried with Mr Lewis why £25,000 was being paid to Mr Gunns. Mr Ahmud was initially told by Mr Lewis on 15 June 2015 that Mr Gunns had introduced the Buyer. Mr Gunns was described by Mr Lewis on 15 June 2015 as "Sub Agent and Business Partner". On 16 June 2015 in a longer email from Mr Lewis to Mr Ahmud, Mr Gunns was referred to as "a business colleague/friend of Frank Turner" and as someone who "has advanced monies to Mr Turner for his business and to help pay his mortgage and [for] refurbishment of the property over a number of years". Mr Lewis told Mr Ahmud that the client had agreed with Mr Gunns to repay him out of the sale proceeds. He said this was accepted by Mr Gunns on the basis that Bloomsbury Law would repay the monies, "as Mr Turner only has banking facilities abroad and Mr Gunns wanted to be satisfied that he would be repaid". Mr Lewis said he had given a verbal undertaking to that effect at a meeting with the client and Mr Gunns. Mr Ahmud told Mr Lewis that the Defendant could not act as a bank for the client paying his debts.
15. The file shows that the client then instructed the Defendant to send all the proceeds of sale to East West Trading Ltd. There is a dispute as to whether Mr Ahmud initially agreed to this request. The request was in any event later refused by Mr Ahmud after he was told that there was no IBAN number for the account. Mr Ahmud expressed concern that the funds would not reach their destination without an IBAN number. Mr Ahmud was also concerned and suspicious as to the client's insistence on the funds being sent to a trading account.
16. On 25 June 2015 Mr Ahmud told Mr Lewis he needed four questions addressed. These included whether the client had a bank account in his name in the UK or Hong Kong and if so why the funds from a personal property sale were not being paid into it. On 26 June 2015 Mr Ahmud wrote to Mr Little asking for proof of identity that he was formerly known as Frank Turner. The Claimant says he found this confusing because the Defendant had previously accepted instructions to act for him as Francis Little to sell the Property which was in the name of Frank Turner.
17. On 1 July 2015 Mr Lewis forwarded to Mr Ahmud a response from Mr Little to a number of further questions that Mr Ahmud had asked. The email was sent by Jane

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<sup>1</sup> £349,995.00 is the figure shown on the Completion Accounts prepared by Bloomsbury Law (bundle 2 pages 409 and 410). £349,955.00 is recorded as being the purchase price in the contract (bundle 1 page 278 and the price stated to have been paid on the office copy entries (bundle 1 page 56). The parties have adopted the higher figure.

Amos of The Key Exchange on behalf of Mr Little. This stated that Mr Little was a Mobile Communications Consultant and that East West Bridge Trading Limited traded in mobile communications. It said Mr Little had stopped using the name Frank Turner when his parents died. In answer to one of Mr Ahmud's original four questions, Mr Little said he had resided most in the UK over the last three years.

18. Mr Ahmud made enquiries with the mortgage lender. He found that the date of birth recorded for Mr Turner by the lender did not match the date of birth Mr Little had given Bloomsbury Law. The lender told Bloomsbury Law that the mortgage instalments were not being paid either by Mr Frank Turner or by Mr Francis Lawrence Little.
19. In the meantime, Mr John Faith, a cousin of the Claimant had become involved in trying to procure the release of the proceeds of sale. Initially this involved telephone calls with the Claimant to Mr Ahmud.
20. By letter dated 6 July 2015, Mr Chris Allen, a partner at Howard Kennedy wrote to Mr Ahmud vouching for Mr Faith who it was stated had founded a multimillion pound company and was its chairman. The letter stated that Mr Faith would make a statutory declaration confirming that at the time of the purchase of the Property, Mr Little had been known as Mr Turner.
21. On 2 September 2015 Howard Kennedy confirmed that Mr Little was now a client of that firm. The Defendant replied on 9 September 2015 saying their investigations were continuing and they were in discussions with Birmingham Midshires, the mortgage lender. They said it was very likely that in due course they would have to report the matter to the police.
22. On 2 October 2015 Howard Kennedy sought the release of a copy of Mr Little's conveyancing file. They wrote again on 20 January 2016. They wrote again on 4 February 2016 saying a report would be made to the Solicitors Regulation Authority if no response was received.
23. On 5 May 2016 Howard Kennedy wrote to the SRA expressing Mr Little's grave concern that his client funds might be at risk. This led to an investigation by the SRA. On 23 June 2016 Howard Kennedy invited the SRA to take emergency action to ensure that Mr Little's funds were safeguarded. They suggested that the SRA's powers of intervention had arisen and alleged there was clear evidence that the Defendant was in breach of the Solicitors Account Rules and that client money was in danger.
24. On 4 July 2016 the SRA confirmed to Howard Kennedy that "£300,000" proceeds of sale of Mr Little's property was being held on the Defendant's client account. On 3 October 2016 the SRA informed Howard Kennedy there was no evidence of misconduct on the part of Mr Ahmud or the Defendant and that the SRA would not be taking any further action in relation to their report about the Defendant.
25. In the meantime, on 25 May 2016 Mr Little served a statutory demand on the Defendant. On 5 July 2016 a winding up petition was served on the Defendant. It was advertised in circumstances of which the court was later highly critical.
26. The petition was heard by Chief Registrar Baister on 15 August 2016 and dismissed. Mr Little was ordered to pay the Defendant's costs of and occasioned by the petition

and the Respondent's application to have it struck out, on an indemnity basis, with such costs to be subject to a detailed assessment.

27. It was accepted by Ms Yasmin Yasseri counsel appearing before me on behalf of the Claimant that Mr Ahmud and the Defendant had reasonable grounds for suspicion and concern relating to the transaction up until at least August 2015. Mr Ritchie, counsel for the Defendant, put it more bluntly. He said the whole thing stank. I accept that Mr Ahmud and the Defendant were justifiably suspicious and concerned in the months following completion of the sale and that it was reasonable for the Defendant to withhold the balance of the proceeds of sale in that period. In fairness to the Claimant, I should make clear that in support of this claim he filed evidence explaining the use by him of the name Frank Turner as being a family name.
28. Ms Yasseri further accepted (as she was bound to do) that by presenting and advertising a winding up petition against the Defendant, the Claimant and his solicitors had gone about the matter in entirely the wrong way. There can be no doubt that seeking to wind up the Defendant was an inappropriate course of action. The dismissal of the winding up petition however left unresolved the entitlement of the Claimant to the proceeds of sale.
29. On 16 September 2016 Howard Kennedy wrote to the Defendant concerning the issue whether their client was the Frank Turner that purchased the Property. They enclosed a copy of Mr Little's record of convictions as maintained on the Police National Register in order to demonstrate their client was also known to the Police as Frank Turner. The PNR also showed that Mr Little used an alias birth date. The Claimant is a man with a criminal record. He was in August 2016 on remand for an alleged burglary offence. The charges against him for that offence were however dropped in March 2017.
30. In the letter of 16 September 2016 the Claimant offered and agreed to £30,000 being deducted from the sale proceeds in full and final settlement of the costs award. The letter required the Defendant to confirm by 21 September 2016 that it held the sale proceeds to Mr Little's order. The letter was expressed to be sent in accordance with the Practice Direction on Pre-Action Conduct. Ms Yasseri relies on this letter as triggering the date after which it became unreasonable for the Defendant to retain the balance of the proceeds of sale.
31. By letter dated 27 September 2016 the Defendant informed Howard Kennedy they had reported the matter to the Police for them to investigate the sale of the Property. The letter said there were many issues which provided the Defendant with genuine and grave concerns. The letter said if Mr Little wanted to make an application to the court, it was a matter for him. The Defendant said they were neutral on the matter and wished for the monies to be paid to the correct person without there being a third party claim to the monies in the future or suggestion that the Property was bought with the proceeds of crime.
32. On 28 September 2016 the Defendant informed Howard Kennedy that the matter had been reported to the National Fraud Intelligence Bureau (NFIB"). Further letters were exchanged between the Defendant and Howard Kennedy relating to the Police investigation on 11 and 12 October 2016.

33. In paragraph 29 of his witness statement dated 5 April 2019 Mr Ahmud states that the Defendant submitted a Suspicious Activity Report to the National Crime Agency on 12 November 2016.
34. The issue regarding the Claimant's entitlement to the proceeds of sale of the Property was not pursued further on behalf of the Claimant until April 2018. On 11 April 2018 Howard Kennedy wrote to the Defendant to give additional evidence showing that their client was Frank Turner and was entitled to the proceeds of sale. The letter enclosed bank statements showing that at all times the mortgage on the Property had been paid by Delia Gray, previously known as Delia Carter, the former partner of the Claimant. The letter enclosed birth certificates of the Claimant's and Ms Gray's two children. Their surnames were shown on the birth certificates as Little. The letter said that Mr Little had taken advice from leading counsel, Mr Hugh Norbury QC, and [counsel] "remains firmly of the belief that he [the Claimant] has a very strong claim to the proceeds of sale". Privilege was not waived, beyond that statement, in the content of Mr Norbury's advice.
35. On 25 September 2018 the Defendant's costs of the winding up proceedings were assessed in the total sum of £47,359.50. On 1 October 2018 the Defendant served the Final Costs Certificate showing that the Defendant's costs of and occasioned by the petition and the application to have it struck out had been assessed in the sum of £47,359.50 (including £2,306.00 for the costs of the detailed assessment). The Defendant said the amount owing under that certificate including interest was £55,010.79 up to 28 September 2018. The letter referred to further costs incurred by the Defendant "in dealing with the matter in relation to the further evidence your client has now put forward".
36. Howard Kennedy replied by letter dated 15 October 2018. They said they had met Mr Francis Little and were satisfied that he was the true owner of the Property and had no doubts as to his identity based on the evidence which they had reviewed and provided to the Defendant. They said the Claimant would agree to the assessed costs under the final costs certificate and the interest that had accrued on them being deducted from the proceeds of sale provided the Defendant agreed no later than 22 October 2018 to the proceeds of sale being released within 7 days thereafter. They said there was no basis on which the Defendant might claim its costs from the Claimant of performing its regulatory and statutory functions.
37. The Defendant replied on 23 October 2018 saying they were under "a professional duty to our profession, the Proceeds of Crime Act and to the Court to make sure that we are not duped by your client into paying monies when he is not entitled to receive the same, more so, when Mr Norbury has not confirmed that any claim made by your client cannot fail under any circumstances." They enclosed details of their costs dealing with the issue of the proceeds of sale which they said were not within their Bill of Costs and which the Claimant was liable to pay.
38. Howard Kennedy wrote back on 30 November 2018 inviting the Defendant to settle the final costs certificate from the proceeds of sale. They said the Claimant had no obligation to contribute to the Defendant's time costs incurred in complying with its regulatory obligations. The Defendant replied on 6 December 2018 saying it could only deduct its costs from the proceeds of sale once it was fully satisfied that the Claimant was entitled to the proceeds of sale. The Defendant said the parties were close to

resolving the matter and “should that occur and your client is not in an agreement to pay our legal costs beyond the Costs Order, then it will be a matter for the Court to decide the costs position”.

39. On 17 December 2018 the Defendant wrote to Howard Kennedy seeking an explanation from the Claimant as to why his signature was different on every document he signed. This was the first substantive response to the further evidence sent on 11 April 2018. Howard Kennedy replied on the same day saying they had understood until receipt of the letter under reply that the only two points that the Defendant required to be resolved were (i) clarification of Mr Norbury QC’s position and (ii) the Defendant’s “purported entitlement” to costs beyond the final costs certificate and conveyancing work. They said they viewed the position very dimly and considered it was a further attempt to prolong the period of time before releasing the funds with a view to improving the interest position on the final costs certificate.
40. On 9 January 2019, the Defendant wrote saying that during the process of reviewing all matters, in order to discuss the same with counsel, the inconsistent signatures had come to light. They said they would revert once they had fully discussed all matters with counsel.
41. On 4 March 2019, the Defendant wrote saying there were two outstanding issues: the further costs they had incurred after the costs order; and “any proceeds of sale that your client is entitled to receive”. On the costs issue, it was argued that one of the live issues before the Registrar was the identity of the Claimant. It was said that all further costs that had been incurred were costs incidental to the order made by the Registrar and were therefore payable by the Claimant. In relation to the proceeds of sale, the Defendant referred to there being two options, an application to the court, or their making a full report to the National Crime Agency informing them of the proposed payment to the Claimant. They said the way they were prepared to resolve the matter once and for all was to make a full and detailed report to the National Crime Agency and, if the National Crime Agency did not intervene, to pay over the proceeds of sale save for the costs order plus interest and “all of the costs that we incurred post the Court’s Order which are incidental to the Order itself relating to your client’s identity.”
42. On 8 March 2019, by email only, the Defendant confirmed to Howard Kennedy they had filed a second SAR with the National Crime Agency. They said they would allow them two weeks to consider the submission and that if they did not hear by close of business on Friday 22 March 2019 they would make payment to Howard Kennedy’s client account of the proceeds of sale, less a deduction of all their costs plus interest.
43. The Claim form was issued on 20 March 2019. Howard Kennedy has confirmed with its IT desk that the Defendant’s email of 8 March 2019 was not received. It was seen for the first time when a copy was attached to the Defendant’s letter of 1 April 2019 expressing surprise that the proceedings had been issued within the time frame to hear from the National Crime Agency.
44. In the event, nothing was heard, and on 1 April 2019 the Defendant transferred the sum of £258,351.27 to Howard Kennedy’s client account. The following sums were deducted from the balance of £330,658.36-

1 £45,053.50 assessed costs under the order of 15 August 2016 and final costs certificate



2 Interest on £45,053.50 from 15 August 2016 to 1 April 2019 (959 days) at £9.87 per day amounting to £9,469,87.

3 The costs of the detailed assessment at £2,306.

4. Interest on £2,306 from 25 September 2018 to 15 March 2019 (188 days) at £0.51 per day amounting to £95.72.

5 Incidental costs arising from the Order of 15 August 2016 at £15,382.50.

The total amount deducted was £72,307.09.

45. The Claimant does not dispute the deductions totalling £19,336.52 from the gross proceeds of sale to reach £330,658.36. They relate to the redemption of the mortgage and the costs of sale. The Claimant accepts the deduction of £45,053.50 for the assessed costs of the winding up petition. He accepts the deduction of £2,306 as the assessed costs of the detailed assessment. He disputes the interest claimed on the costs and the costs of the detailed assessment. He disputes the £15,382.50 incidental costs claimed.
46. The first disputed deduction relates to interest on costs. It was not in dispute before me that interest on costs runs from the date of the judgment which itself contains an order for costs. This is known as the incipitur date. This was confirmed by the decision of the Court of Appeal in *Simcoe v Jacuzzi UK Group plc* [2012] EWCA Civ 137; [2012] 1 WLR 2393. It is reflected in the terms of the Final Costs Certificate itself. The relevant order is that of 15 August 2016 dismissing the petition with costs.
47. The Claimant disputes the entitlement to interest on the ground that at all relevant times the sum out of which the assessed costs were finally deducted on 1 April 2019 was being held on client account by the Defendant. The Claimant says either there should be no entitlement to interest or that the entitlement to interest should stop running since in letters dated 8 December 2017, 30 November 2018 and 17 December 2018, the Defendant was invited by the Claimant to settle its costs bill from the proceeds of sale.
48. The Defendant submits first that it could not deduct its costs including accrued interest without the Claimant's express authority. It submits further and in any event that it could not deduct its costs even with the Claimant's authority until it was clear that the proceeds of sale did belong to the Claimant and were not tainted with illegality. The Defendant says that in this respect its costs were in a different category to its conveyancing costs which had been deducted following sale because the conveyancing costs were a necessary cost of sale irrespective of to whom the funds belonged. The Defendant further says it is not open to the Claimant to dispute the entitlement to interest as this raised before the costs judge.
49. I do not consider that it is open to the Claimant to dispute the entitlement to interest in its entirety. I accept that the Defendant needed the Claimant's authority to deduct its costs. The costs were not agreed prior to the detailed assessment. Looking at the correspondence, the first time the Claimant agreed to the full amount of costs with accrued interest being deducted from the balance of the proceeds of sale was by letter dated 15 October 2018. That offer was conditional on the Defendant agreeing by no later than 22 October 2018. The invitation to settle the final costs certificate from the

monies held by the Defendant was repeated in Howard Kennedy's letter dated 30 November 2018. This was not made conditional on agreement by a certain date.

50. The Defendant's response was that it could only agree once fully satisfied that the Claimant was entitled to the proceeds. The effect of the position being adopted by the Defendant was that it was for it to decide when that point was reached.
51. This requires the court on the material before it to consider the reasonableness of the stance by this time being adopted by the Defendant.
52. It is accepted that the Defendant had reasonable grounds for suspicion and concern in the months following completion.
53. Between September and November 2016 the Defendant made three separate reports to the authorities; one to the Police on 27 September 2016, one to the National Fraud Intelligence Bureau on 28 September 2016 and a Suspicious Activity Report to the National Crimes Agency on 12 November 2016.
54. In April 2018 the matter of the proceeds of sale was again pursued on behalf of the Claimant and additional evidence supplied. There was a delay in the Defendant responding to that evidence because it said its papers were lodged with the costs office. The assessment was completed on 25 September 2018.
55. The correspondence shows that there was genuine surprise and dismay on the Claimant's side when by letter dated 17 December 2018 the Defendant raised further issues regarding the signatures of the Claimant.
56. It is in my view arguable that following the dismissal of the winding up petition, the Defendant should have applied to the court for directions on the basis that it continued to have reasonable doubts concerning the entitlement of the Claimant to the balance of the proceeds. By then, the proceeds had been retained for over a year.
57. By the end of November 2018, over two years later, it was in my judgment no longer appropriate for the Defendant to continue to investigate the matter. In my judgment, the time for investigation had come to an end. The Defendant had two courses open to it. It could either pay over the balance to the Claimant or it could apply to the court for directions. If it decided to take the latter course, the Defendant could and should have sought permission to deduct the assessed costs and accrued interest from the proceeds of sale and any further costs it claimed to have incurred.
58. In my judgment, the Defendant should in response to the letter of 30 November 2018 either have agreed to settle the Claimant's liability under the final costs certificate from the balance of the proceeds of sale being held by it or have applied to the court for directions. In my view the entitlement to interest should end on and after 1 December 2018.
59. I turn now to the Defendant's deduction of subsequent legal costs totalling £15,382.00. Pursuant to my order dated 17 May 2019 Mr Ahmud provided a breakdown of those costs attached to his second witness statement dated 30 May 2019. The breakdown shows that £11,385.00 of those costs is made up of time costs or profit costs for work done on documents by Mr Ahmud between 18 August 2016 and 1 April 2019. £1927 is

charged by Mr Ahmud for attendances on others. The hourly rate charged is £450 for a partner. £620 is charged for the Costs draftsman in preparing the statement of costs. £1,000 is the disbursement for the fee paid to counsel for telephone advice on 21 January 2019.

60. Mr Ritchie on behalf of the Defendant submitted that these were additional costs incidental to the costs of the petition. He argued that the primary issue in the winding up proceedings was whether the Claimant was Mr Turner. He argued that subsequent to the order of 15 August 2016 the Claimant had produced further evidence which went to exactly the same issue and that the Claimant could easily have put this evidence before the court at the hearing on 15 August 2016.
61. Section 51(1) of the Senior Courts Act 1981 provides that “the costs of and incidental to” all proceedings in the High Court including the administration of estates and trusts shall be in the discretion of the court. The issue as to whether costs are “of” or “incidental” to proceedings usually arises in the context of costs incurred prior to proceedings. The order of 15 August 2016 was a final order that the petition presented do stand dismissed. No authority was cited to me by Mr Ritchie of a case in which costs incurred in proceedings following a final order were treated as costs of or incidental to the proceedings. The costs of an appeal are distinct although they may result in the costs order below being set aside. The costs of enforcement are treated as separate costs even though they may be incurred in the same proceedings.
62. Mr Ritchie referred me to the decision of the Court of Appeal in *Contractreal Ltd v Davies* [2001] EWHC Civ 928. In that case a lease contained a covenant by a tenant to pay all costs of proceedings for any of the rents reserved. The landlord had brought proceedings under section 81 of the Housing Act 1996. It sought to argue that the costs of those proceedings were incidental to proceedings for the recovery of rent. The argument was rejected. I do not find anything in that judgment which is of assistance to Mr Ritchie. Lady Justice Arden said at paragraph 41 after reviewing the authorities:-  
  
*“So those authorities show that the expression “of and incidental to” is a time-hallowed phrase in the context of costs and that it has received a limited meaning and, in particular that the words “incidental to” have been treated as denoting some subordinate costs to the costs of the action. If Miss Hegarty was right in this action it would mean that the costs of some very substantial proceedings would be treated as costs of and incidental to other proceedings.”*
63. Mr Ritchie sought to gain traction from Lady Arden’s next point at paragraph 42 where she said there had not been, and indeed might never be, any proceedings for the recovery of rent to which such costs would be incidental. Mr Ritchie submitted that the matter could be tested by analogy to the *Contractreal* case. He submitted there might not have been any further proceedings concerning the Claimant’s entitlement to the proceeds of sale in which case, on the Claimant’s argument, the costs would never have been recoverable.
64. I reject Mr Ritchie’s submission that the additional costs claimed can be recovered from the Claimant as costs of or incidental to the winding up proceedings. If Mr Ritchie were right, there would be the potential for litigants after litigation had been finally disposed of to seek to continue the dispute and seeking to relate costs back to the concluded proceedings. In this case, the winding up petition was dismissed by a final order. Further

and in any event, I am not persuaded the costs can in any sense be treated as “incidental” to the petition. The issue on the petition was concluded once and for all when the petition was dismissed.

65. Mr Ritchie submitted that if his analysis was wrong, the costs must be part of the costs of these proceedings and fall to be dealt with as part of those costs. The Claimant I think agreed with that alternative submission.
66. I accept, as the correspondence shows, that the entitlement of the Defendant to deduct these additional costs became part of the dispute between the parties. I do not however consider that by this route the Defendant should be permitted to deduct these additional costs.
67. The Defendant ought in my judgment to have taken steps to seek directions from the court well before the bulk of these further costs were incurred. I do not consider that it was reasonable for the Defendant first to notify the Claimant of the existence of these further costs in October 2018 and then to insist on agreement to their deduction at the same time as continuing to maintain that it was not fully satisfied as to the Claimant’s entitlement to the proceeds of sale.
68. The position of the Defendant was closely akin to that of a trustee holding a fund where reasonable doubt had existed as to the beneficiary’s entitlement to the fund. In considering the costs of claims for enforcement of beneficiaries’ rights to distribution of capital or interest, Lewin on Trusts 16<sup>th</sup> edition at paragraph 27-171 sets out three propositions:-
  - a. If a reasonable doubt exists as to the title of the beneficiary, trustees will normally be allowed the costs of proceedings to compel distribution to the beneficiary, even if the court orders distribution, since the trustees are entitled to the protection of the court;
  - b. But if trustees without reasonable cause fail to pay beneficiaries who are entitled they will be deprived of costs or ordered to pay costs, even though their reasons for withholding payment are honest but unreasonable;
  - c. In a case where reasonable doubt arises as to the beneficiary’s title, the prudent course is for the trustees to apply to the court for directions rather than do nothing and defend, perhaps unsuccessfully, a claim brought by a beneficiary.
69. In my view, by the end of November 2018 at the latest, the Claimant was required to decide whether to pay the proceeds of sale over to the Claimant’s solicitors or to apply to the court. That time frame is one which in my judgment gives considerable latitude to the Defendant and takes account of the history of the matter and no doubt the soreness felt by the Defendant in having to resist the winding up petition.
70. I do not consider that it was reasonable for the Defendant to seek to introduce the issue of these additional costs in October 2018 and when serving the final costs certificate. The Defendant was not entitled to profit as a trustee or claim remuneration. Further, and in any event, the costs or the bulk of them would not have been incurred had the Defendant sought the protection of the court instead of waiting for the Claimant to bring the matter before the court.

71. I turn now to the Claimant's claim for interest. By orders dated 17 May 2019 and 1 July 2019 the Claimant was given permission to amend and re-amend his claim for interest in paragraph f of the details of claim. Paragraph f as amended and re-amended seeks:-  
  
"f An order that the Defendant do pay interest on the proceeds of sale pursuant to the Senior Courts Act 1981 from 15 June 2015 until 1 April 2019 (when the sum of £258,351.27 was paid by the Defendant) and continuing on the outstanding sum of £91,643.73 or such further sums as the court finds due and owing until judgment or alternatively at such rate and for such period as the court thinks fit and/or [pursuant to] the court's inherent jurisdiction."
72. On behalf of the Claimant, Ms Yasserli invited the court to order the Claimant interest over and above the sum of £1,153.61 paid over on 1 June 2019 and said to represent the actual interest that had accrued on the Defendant's client account. Ms Yasserli referred me to the decision of the Court of Appeal in *Wallersteiner v Moir* [1975] QB 373. In that case interest under the equitable jurisdiction was awarded against a director of two companies. A default judgment had been entered against that director on the basis that he had been guilty of fraud, misfeasance and breach of duty and was required to pay sums totalling £500,000 back to the companies. Lord Denning MR stated that interest in equity was never awarded as a punishment. He said that Equity awards interest where money is misused by an executor or trustee or anyone else in a fiduciary position "who has applied the money and made use of it himself for his own benefit".
73. That is not the position in this case. As the SRA investigation confirmed, the balance of the proceeds was held in the Defendant's client account. I do not consider there is a basis for awarding interest against the Defendant under the inherent or equitable jurisdiction at a rate close to judgment act rate as I was invited by Ms Yasserli to do so on behalf of the Claimant.
74. Nor do I consider it appropriate to award interest at a rate linked to the rate of return which the Claimant says he could have achieved through investment of the proceeds in East West Trading Ltd or by reference to the rate which the Claimant says could have been obtained by investing in a Malaysian interest bearing bank account at approximately 6%. There is no evidence to support these contentions. There is no evidence that investment in East West Trading Ltd would have produced a high rate of return or, indeed, any return. No mention was made of a Malaysian Bank account until the Claimant's second witness statement. In any event, it is not shown the Claimant has any links with banking in Malaysia.
75. A more useful starting point is in my view the SRA Accounts rules 2011. They provide that where money is held on client account, interest must be accounted for where it is fair and reasonable to do so in all the circumstances. Rule 2.3 provides that interest paid must be a fair and reasonable sum calculated over the whole period for which the money is held.
76. The amount held was around £330,000. It was held from around 12 June 2015 to 1 April 2019. The Defendant must have come to appreciate that instant access to the money was not going to be needed until the issue of the entitlement to the money was resolved.
77. Mr Ritchie drew attention to the delay on the Claimant's side in progressing the matter between September 2016 and April 2018. Against this I think it right to balance my

judgment that by the end of November 2018 at the latest, the Defendant should either have released the money or applied to the court for directions.

78. In my judgment, in all the circumstances, a fair and reasonable amount of interest to be paid over the whole period in respect of which the money was held is to order interest at base rate, compounded annually. This is intended to reflect the amount held and the length of time for which it was held but without any punitive element.
79. My conclusions on the specific issues argued before me are:
- i The Defendant was entitled to deduct interest on the costs awarded to it at the rate of 8% under the order of 15 August 2016 until 1 December 2018 but that the offer contained in the letter of 30 November 2018 and all the circumstances was effective to stop interest running thereafter. This applies both to the interest on the costs awarded and on the costs of the detailed assessment. The former runs from 15 August 2016. The latter runs from 25 September 2018.
  - ii The Defendant was not and ought not to be entitled to deduct the further sum of £15,382.50.
  - iii interest should be payable on the sum of £330,658.36 representing the balance of the proceeds from 12 June 2015 to 1 April 2019 at base rate with annual rests. Credit should be given for the interest paid on 1 June 2019.
80. In the light of this judgment, I will hear the parties on the issue of costs. I accept that the Defendant may fairly be said at the outset to have been caught up in a problem of the Claimant's own making (although it did accept instructions to act knowing the Property was in the name of Frank Turner). It is accepted on behalf of the Claimant and I accept that the Defendant and Mr Ahmud had reasonable grounds for concern and suspicion in the months following completion. I have no doubt that the episode regarding the attempt to wind up the Defendant distracted attention. I have concluded that following September 2016 the matter of the proceeds of sale remained unresolved and that in my judgment by the end of November 2018 at the latest the Defendant should either have released the funds or sought the protection of the court. I do not expect or require any further written submissions. I am grateful to both counsel for their written and oral submissions.