



Neutral Citation Number: [2021] EWHC 3183 (Ch)

Case No: PT-2019-LDS-000063

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

Leeds Combined Court Centre,
1 Oxford Row, Leeds LS1 3BY

Date: 26/11/2021

Before :

HH JUDGE DAVIS-WHITE QC
(SITTING AS A JUDGE OF THE HIGH COURT)

BY ORIGINAL ACTION

Between:

NICHOLAS MARK HALL

Claimant

- and -

(1) KENNETH HALL

(2) KENNETH SCOTT HALL

(3) MARCUS WILLIAM HALL

(4) KENNETH HALL (BUILDER) LTD

Defendants

BY PART 20 CLAIM

Between

MARCUS WILLIAM HALL

Part 20

Claimant

- and -

(1) NICHOLAS MARK HALL

(2) KENNETH HALL

(3) KENNETH SCOTT HALL

(4) KENNETH HALL (BUILDER) LTD

Part 20

Defendants

Written submissions of Newtons Solicitors Limited for the Claimant, Nicholas Mark Hall
Written submissions of Chadwick Lawrence LLP for the 3rd Defendant, Marcus William
Hall

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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HH JUDGE DAVIS-WHITE QC (SITTING AS A JUDGE OF THE HIGH COURT)

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HH Judge Davis-White QC :

1. On 28 September 2021 I had before me a number of applications in these proceedings. One of the applications was brought by the first, second and fourth defendants seeking, in effect, revisions to the timetable that I had laid down by an earlier order (the “Relevant Application”). Put briefly, that arose, because my earlier order laid down a timetable for adjustments to be made to the existing statements of case so that they reflected the remaining claims and defences then being asserted following a major settlement between some but not all of the parties to the proceedings. Such settlement did not encompass the third defendant. At the time of my earlier order, the claimant had indicated that it wished to continue at least part of its claim against the third defendant. The timetable for adjusted statements of case that I laid down, proceeded on the assumption that the particulars of claim of the claimant would be the first statement of case to which all others would respond and refer back to.
2. After the date of my earlier order, the claimant indicated that it intended to discontinue any remaining claims brought. The consequence was that the third defendant, as Part 20 claimant, would need to amend its statements of case to plead relevant facts and matters in full, rather than, at least in part, reacting to the claimant’s statement of case. The third defendant, again in brief, failed to engage with agreeing revised directions to reflect the changed circumstances. The Relevant Application therefore had to be made. The claimant remained interested in the proceedings as defendant to the counterclaim brought against the third defendant.
3. By my order of 28 September 2021, I ordered that the costs of the claimant and of the first, second and fourth defendants in relation to the Relevant Application should be paid by the third defendant, all on the indemnity basis.. As regards the relevant defendants’ costs, these were summarily assessed in the sum of £11,342, plus VAT. As regards the claimant’s costs, these were ordered to be the subject of summary assessment. The order also laid down a timetable to that end for submission of an appropriate schedule of costs and thereafter for sequential written submissions.
4. This is my judgment regarding the summary assessment of the claimant’s costs.
5. As a general matter, I of course have in mind the difference between indemnity costs and costs ordered on the standard basis. In particular, in the case of indemnity costs there is no proportionality factor and the burden of proof on reasonableness lies on the paying party rather than the receiving party.
6. I have been provided with a bundle for the summary assessment of costs. I have also looked back to the bundle before me on 28 September 2021.
7. One procedural issue raised by the third defendant’s solicitors, Chadwick Lawrence LLP (“Chadwick Lawrence”) was that the claimant had failed to observe my timetable for the service of a costs schedule, because the costs schedule had been sent by email. This was apparently relied upon because the third defendant did not serve written submissions in accordance with the timetable that I had laid down, but belatedly a few days later. In effect, the suggestion was that the timetable terminated by reason of an initial failure by the claimant. No sanction was laid down by the 28 September order in any event. In the circumstances I would, if necessary, have extended time for service or permitted service by email. I also note that the claimant’s solicitors have made the

points that, although the notepaper of Chadwick Lawrence indicates that service by email is not accepted, first, Chadwick Lawrence has in these proceedings routinely accepted service by email and secondly, that the acknowledgement of service filed by that firm on behalf of the third defendant amounts to an acceptance that service may be by email. I do not have to decide these points. However, I should note that I consider the approach taken by Chadwick Lawrence on this issue, and the ink spent upon it, to be contrary to the overriding interest. It suggests to me that Chadwick Lawrence, whether on instructions or as initiator, has failed to appreciate that I am not prepared to tolerate a failure to observe the requirements of the overriding objective where it lays down requirements on parties to proceedings. The failure sensibly to cooperate and take forward the proceedings was the conduct which caused me to make an order for costs on the indemnity basis against the third defendant on 28 September 2021.

8. The parties' submissions regarding the assessment of costs were largely set out in tabular form. I set out below as an appendix to this judgement and in tabular form a summary of the relevant challenges to the claimants' cost schedule, the claimant's response decision and reasons for it. Based on that the parties should be able to do the appropriate mathematics and agree a minute of order. I should add that item 11 in the Appendix was altered after circulation of this judgment in draft in the light of the identification by the claimant of a typo in the original costs schedule.
9. I have also been provided with a costs schedule from the claimant relating to the process leading to summary assessment as set out in my order of 28 September 2021. On one view, these costs may be said to be part of the relevant costs, just as the preparation of a costs schedule itself is usually part of the overall costs rather than being the subject of a separate costs order. However, to the extent necessary I would make a separate order that such costs be paid by the third defendant to the claimant. The reason for such order is that, as appears from the table set out below, the claimant has largely succeeded on the quantification process. Further, much correspondence was taken up with the issue of whether the main costs schedule had been properly served given it was sent by email. As regards the basis of such costs I would order them on the standard basis. Having considered the reasonableness and proportionality of the relevant costs set out in the relevant costs schedule, both on an individual and a totality basis, I am satisfied that they are reasonable and proportionate and will therefore summarily assess such costs in the sum claimed of £1,728 (£1,440 plus VAT of £288).
10. The preceding paragraph of this judgment was circulated as part of this judgment in draft. It elicited commendably short further written submissions by Chadwick Lawrence, by letter. I have carefully and fully considered that letter. The two main points made are as follows. The first main point submitted is that the process of written submissions to determine costs could and should have been avoided by the claimant's solicitors lodging a specific costs schedule for the relevant part of their costs rather than a global schedule which then had to be refined. At the hearing it was suggested that I simply take a proportion of those global costs on a rough and ready basis. I was not prepared to do that. Having gone through the relevant process I am confirmed in the view that I took on this aspect at the hearing. As regards the general point, it does not cause me to change my conclusion set out in paragraph 9 and reduce the sum I was minded to award. As I have said, a not insignificant part of the costs of the process was caused by the point taken on service. It is no answer to this to say that the point might not have been raised had there simply been oral argument. Further, where there are

numbers of costs of different matters involved, solicitors cannot be sure on what basis the court will order costs and face the spectre that if they divide up the costs between two many schedules it will be said that the work in doing so was unreasonable and/or disproportionate. Of course each case turns on its own facts. On the facts of this case, I do not consider that the costs I would otherwise award as set out in paragraph 9 above should be altered on the basis that the need for the written procedure to determine costs has caused unnecessary or unreasonable/disproportionate costs.

11. The second main point taken is that I have in summarily assessed the costs in a smaller amount than claimed. However, as I have said in paragraph 9, the claimant is clearly the overall winner as regards the disputed items. I do not consider that this submission should cause me to revise my conclusions in paragraph 9.
12. Finally, I note that it is complained that the costs schedule which was not in fact used was lodged some 2 to 3 hours late. It does not seem to me that this has any causative effect because whether lodged early or late the same result would have occurred: namely a written procedure to determine the relevant costs.
13. The parties should lodge an agreed minute as quickly as possible. If no such minute can be agreed the matter will have to be referred back to me.

APPENDIX

<u>No.</u>	<u>Item</u>	<u>Quantum</u>	<u>D3 comment (summary)</u>	<u>C comment (summary)</u>	<u>Judge comment</u>	<u>Decision</u>
	Attendance on claimant					
1.	Personal attendance	£90 (0.3 hr at £300 p/h)	Unreasonably incurred and unreasonable in amount. Suggest £30	18 mins (being time apportioned bet Cs application and D1,2,4) is reasonable	Time and cost claimed is reasonable.	£90 allowed
	Attendance on opponents					
2.	Letter out	£210 (0.7 hr at £300p/h)	None received by D3 and C consented to D1,2,4 application.	All corres with D,1,2,4	Time and cost claimed reasonable. D3 had failed to engage.	£210 allowed
3.	Telephone	£150 (0.5 hr at £300 p/h)	None received by D3.	All tel calls with D1,2,4	Time and cost claimed reasonable. D3 had failed to engage.	£150 allowed
4.	Attendance at hearing	£600 (2hr at £300)	Unreasonably incurred and unreasonable in amount. Grade A only there because of C's application.	Hearing just over 2.5 hours. Just over 0.5 hour taken on Cs appn. Rest of time of D1,2,4: Grade A reasonable	Time and amount claimed reasonable. The directions shape the ongoing case and were important. Grade A attendance appropriate. D3 only indicated its position v late in the day.	£600 allowed
	Work on Documents					

<u>No.</u>	<u>Item</u>	<u>Quantum</u>	<u>D3 comment (summary)</u>	<u>C comment (summary)</u>	<u>Judge comment</u>	<u>Decision</u>
5.	Preparing advice to client	£90 0.3 hr at £300 p/h	£30 would be reasonable. C consented with addition of suggested direction.	Advising and obtaining instructions necessary to obtain consent.	18 minutes (+ items 1 and 7 + letters & tel at combined 0.5 hr) reasonable. Outcome does not reflect work involved.	£90 allowed.
6.	Considering D1,2,4 application	£120 0.4 hr at £300 p/h	WS in support was 2.5 pages. Submit £60 reasonable.	Time reasonable.	Length of WS not determinative of work involved as evidence a small part of overall issues. Time claimed reasonable	£120 allowed.
7.	Updating advice to client	£30 0.1 hr at £300 p/h	Correspondence	Time modest and reasonable.	Time claimed reasonable (see also item 5 in considering relevant times in the round for reasonableness)	£30 allowed
8.	Preparing Bundle and Diarising	£60 0.2hr at £300 p/h	Grade D or admin staff could have inserted the 3 docs C inserted. Allow nil.	Reasonable.	The documents have to be checked by person with knowledge. Time claimed reasonable	£60 allowed
8.	Checking bundle pre hearing	£30 (0.1hr at £300 p/h)	Unreasonable. Allow £30 for Grade D.	Seems agreed	D3 says £30 for Grade D is reasonable: presumably on basis Grade D takes longer. In any event reasonable for Grade A to do at this point.	£30 allowed.

<u>No.</u>	<u>Item</u>	<u>Quantum</u>	<u>D3 comment (summary)</u>	<u>C comment (summary)</u>	<u>Judge comment</u>	<u>Decision</u>
9.	Considering request for disclosure	£390 (1.3 hrs at £300 p/h)	Not within costs D1,2,4 application. Will be separate application.	Disclosure sought by letter 13 October. WS made 21 September (see item 10) seeking order for disclosure followed, 3 pages covered disclosure.	This was part of the costs of preparing for the directions hearing. Cost therefore properly within the scope of the order. Costs claimed are also reasonable.	£390 allowed
10.	Considering Dan Hirst's WS	£240 (0.8 hrs at £300 p/h)	Relates to costs of C's appn which reserved.	The WS also covered the disclosure application (see 9).	Have to take 9 and 10 together. Note that 2 rather than 3 pages more accurate (see item 9) as covering disclosure. However, taking with time of item 9: 0.5 hours reasonable.	£150 allowed. (0.5 hr at £300 p/h)
11.	Preparing costs schedule and response	£300 1 hr at £300 (apportionment of 2 hours)	Grade A unreasonable. Allow Grade D 0.5 hours. Allow £75	Reasonable. Note 3.5 hours spent by D1,2,4 =£720	Note that D1,2,4 apportioned as to 0.2 hrs (Grade A); 0.5 hrs (Grade B) and 2.8 hrs (Grade C). Consider that reasonable sum is 0.5 Grade A and 0.7 hours Grade D. (Grade D would take longer).	£255 allowed (£150 Grade A + £105 Grade D)

<u>No.</u>	<u>Item</u>	<u>Quantum</u>	<u>D3 comment (summary)</u>	<u>C comment (summary)</u>	<u>Judge comment</u>	<u>Decision</u>
12.	Considering corres.	£60 (0.2 hrs at £300 p/h)	Not recoverable	This related to late suggestion D3 contained in corres. And reasonable	Whether correctly describe din schedule, the work was reasonably incurred and reasonable in amount	£60 allowed
13.	Skeleton Argument and authorities	£120 (0.4 hrs at £300 p/h)	Unreasonably incurred; unreasonable in amount. Auths were for Cs application. Only 1 para of 22 page skeleton related to application. Allow £30.	Equal apportionment between two applications was reasonable.	Equal apportionment not appropriate on these items. However some of auths were relevant on basis of costs and on issue of on account payment.	£90 allowed (0.3 hour at £300 p/h)
14.	Preparing revised costs schedule	£390 (1.3hrs at £300 p/h)	Unreasonably incurred; unreasonable in amount. Instead of Grade A, Grade D at 18 mins appropriate. Allow £45.	Necessary to apportion and therefore involve Grade A	Grade A necessary. Time reasonable	£390 allowed