

NEUTRAL CITATION NUMBER: [2021] EWHC 3760 (Ch)

Case No:PT-2020-BHM-000053

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS AT BIRMINGHAM**  
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

Priory Courts  
33 Bull Street  
Birmingham B4 6DS

Wednesday 3 November 2021

BEFORE MR JUSTICE MARCUS SMITH

BETWEEN:

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CHRISTINE MARGARET CHAPMAN

Claimant

- and -

CLARENCE COURT EGGS LIMITED

Defendant

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MR D MITCHELL appeared on behalf of the Claimant

MR R VARMA and MR T COATES appeared on behalf of the Defendant

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**APPROVED JUDGMENT**  
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**MR JUSTICE MARCUS SMITH:**

1. I have before me an application for costs in relation to the successful summary judgment application that has resulted in the conclusion (subject to one point that I will be coming to) of the entirety of these proceedings.
2. Ordinarily – and both parties accept this – costs should follow the event. That is essentially the order that I am going to make and that is without disagreement from either party. The area of disagreement relates to the extent to which there ought to be a discount in relation to the costs ordered in favour of the applicant/claimant because of certain points that were aired or taken in the skeleton arguments and in the prior correspondence and dealings between the parties but which were not taken when it came to oral argument before me on the application.
3. I want to be quite careful here because it does seem to me that the slimming down of points in what was a not straightforward application is to be encouraged and not discouraged. Nevertheless, points taken need to be abandoned, if they are going to be, in a timely way. In this case this is an admonition that goes to both sides because there was a conspiracy claim, which I can see would have been pretty troubling to the applicant, that was abandoned but, as Mr Varma rightly points out, was abandoned by way of an application that was served with proper notice, whereas the shaping of the summary judgment application by Mr Anderson, QC was shaped in its final form pretty much on his feet.
4. I want to pay tribute to Mr Anderson’s judgment in that he paid clear attention to the ultimately winning point and ditched points for the summary judgment application which, whilst they might well have been successful at a trial, would probably have faced a rather more difficult battle on summary judgment.
5. It does seem to me that whilst a costs order in favour of the claimant ought to be made, there must be some discount to reflect the fact that the issues could have been narrowed earlier. I do not think the discount should be as great as contended for by the defendant, that is to say 50 per cent. That, it seems to me, is an unrealistic discount which I am not going to make. My sense is that a percentage of something like 80 or 70 per cent recovery (i.e. a discount of between 20 and 30 per cent) is appropriate in this case.
6. I am going to take a position that is between the 100 per cent that Mr Mitchell seeks and the 50 per cent that Mr Varma seeks and order that the costs recoverable for the summary judgment application be limited to 75 per cent of the assessed costs.

**(After further submissions)**

7. Having made the costs orders that I have, I have an application, which is not resisted in principle, for payment of costs on account. The area of debate is just how much I should order by way of a payment on account.
8. The guiding principle – and I do not want to set out the rules in any great length – is that I need to calibrate an amount which is at the maximum amount that I consider will inevitably be recovered on a detailed assessment. In other words, I must ensure that as much costs as will be recovered are paid as soon as possible, so that the claimant is out of her money for as little time as possible.
9. It is also important to ensure that the gap between costs paid now and costs paid in the future is as narrow as possible for the defendant because, of course, interest runs on the unpaid costs at a rate which, given present interest rates, is remarkably high, so it is important to get the figure right.
10. In broad terms, we have incurred costs of £113,000, which, given that these proceedings ended at summary judgment, is high. That said, these were hard-fought and complex proceedings and the summary judgment matter was a single narrow point within those points, which is illustrated by the fact that the defendant's incurred costs were some £270,000.
11. Mr Varma did not make this point but I will make it for him: the fact is that, had the costs orders gone the other way, I strongly suspect that one might be saying that an axe would be taken to that figure on detailed assessment. It just seems to me that this is a reflection of the fact that both sides have been spending more than I think one would want or expect by this stage of the process.
12. On top of that, there are summary judgment costs, the costs of the application, which are around £100,000. But, given the order that I have made regarding reduction, I will treat it as £75,000. So, the amount of costs that will be subject to detailed assessment are – and this is a slight overstatement – £200,000. That is a working figure that I am going to use for trying to ascertain what is going to be cut back and how much.
13. Normally, I would take a figure of between 60 and 70 per cent in relation to the sums that could be recovered on taxation. So, taking, say, 70 per cent, that gets one to £140,000 if this was an action where there was no concern about costs being taxed down further. My concern, however, is that this is a case where, although the claimant's incurred costs are substantially smaller than the equivalent incurred costs of the defendant, there is going to be not a scalpel but something of an axe applied by the costs judge when this comes to detailed assessment. I may be wrong about that, but it does seem to me that that is what I am taught by the figures that I am looking at.
14. I floated in the course of submissions a figure of £100,000, which is to apply a 50 per cent discount for the detailed assessment for costs and would result in an order of £100,000. I think, having heard both parties' counsel with some care, that even that is a little bit too high and I am going to order an interim payment or payment on account of costs of £90,000. That is the order that I make based on the material that I have before me.

